

MONDAY, JULY 2, 2001

Book 002-000000000000

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was on vacation from July 2<sup>nd</sup> through July 6<sup>th</sup>, 2001.

Monthly Report - Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending June 30, 2001.

Payroll Transmittal - The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 13 - Pay Date: June 29, 2001. Total Missoula County Payroll: \$796,279.74. The Transmittal Sheet was returned to the Auditor's Office.

TUESDAY, JULY 3, 2001

The Board of County Commissioners met in regular session; a quorum of members was present.

Claims List - Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 3, 2001, batch number 1370 (pages 1-3), with a grand total of \$28,575.32. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Amended Contract - Chairman Evans signed an Amendment to Contract No. 01-07-5-21-021-0 between the Montana Department of Public Health and Human Services and Missoula City-County Health Department, dated October 3, 2000. This contract reflects a continuation of WIC monies from the State and the amendment increases the contract amount by \$4,788 for state sponsored travel, for a grand total of \$365,435.00. The document was returned to the Health Department for further signatures and handling.

Budget Transfer - The Commissioners signed Budget Transfer Control No. 01-024 for the Office of Planning and Grants, transferring \$2,384 between Funds for unanticipated capital expenditures.

Budget Transfer - The Commissioners signed Budget Transfer Control No. 01-037 for the Health Department, transferring \$275,000 to a Trust Fund for Capital Improvements.

Grant Award - Chairman Evans signed an acceptance for a Grant Award for the ongoing Crime Victims' Advocate Program that serves victims of violent crime in the City and the County of Missoula. The Federal Amount awarded is \$63,135; Guaranteed Local Matching is \$15,784, for a grand total of \$78,919. The term will be July 1, 2001 through June 30, 2002. The document was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Resolution No. 2001-064 - The Commissioners signed Resolution No. 2001-064, dated July 3, 2001, a Budget Amendment for the Sheriff/Juvenile Detention Department, in the amount of \$22,631.73, for the JAIB Grant 99 Reverted, adopting same as part of the Fiscal Year 2001 Operating Budget for Missoula County.

Resolution No. 2001-063 - Chairman Evans signed Resolution No. 2001-063, dated July 3, 2001, for the purpose of conducting a public hearing on a proposal that Missoula County amend and restate an economic development revenue note issued under Montana Code Annotated, on behalf of Blue Mountain Clinic, Inc. This proposal would reduce the interest rate and extend the term of the Economic Development Revenue Note. The hearing date is set for July 25, 2001.

Board Appointment - The Commissioners approved and signed a letter, dated July 9, 2001, reappointing David Sullivan to a three-year term as a member of the RSID 901 Lolo Water and Sewer Board. Mr. Sullivan's term will run until June 30, 2004.

Professional Services Contract and Memorandum of Agreement - The Commissioners signed a Professional Services Contract, dated July 3, 2001, between the Missoula County Extension Office and the Food and Environmental Quality Lab at Washington State University, for the purpose of providing a document to assist land managers in assessing the safety of herbicide application for vegetation management. The project is to be completed by August 1, 2001. The total amount shall not exceed \$8,000.00; however, additional costs will include travel expenses to Missoula to make presentations to vegetation managers.

In conjunction with the above, Chairman Evans signed a Memorandum of Agreement between the Missoula County Commissioners and Washington State University, through its Food and Environment Quality Lab and/or Pesticide Information Center, for the purpose of providing \$8,000 in financial support for the research concerning herbicide safety assessment.

Both documents were returned to Gerry Marks in the Extension Office for further signatures and handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

WEDNESDAY, JULY 4, 2001

The Courthouse was closed for the Independence Day holiday. In the afternoon, Commissioner Curtiss spoke at the Historical Museum's 4<sup>th</sup> of July Celebration at Fort Missoula.

THURSDAY, JULY 5, 2001


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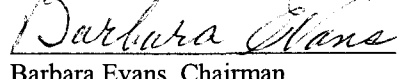
The Board of County Commissioners met in regular session; a quorum of members was present.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 5, 2001, batch number 1369 (pages 1-2), with a grand total of \$55,228.94. The Claims List was returned to the Accounting Department.

FRIDAY, JULY 6, 2001

The Board of County Commissioners met in regular session; a quorum of members was present.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

MONDAY, JULY 9, 2001

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was on vacation.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 5, 2001, batch number 1374 (pages 1-4), with a grand total of \$3,677.52. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 9, 2001, batch number 1372 (pages 1-4), with a grand total of \$8,487.55. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 9, 2001, batch numbers 1373 and 1375 (pages 1-6), with a grand total of \$65,321.23. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending June 30, 2001.

Deed Restriction Agreement and Subordinate Deed of Trust

Chairman Evans signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and Randy L. and Stacia Rathert in the amount of \$5,000.00 for the property located at 9647 Lady Slipper Lane, Missoula, Montana 59808, for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with down payment, closing cost and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth therein. The documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

TUESDAY, JULY 10, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 10, 2001, batch number 1379 (pages 1-4), with a grand total of \$64,896.95. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 10, 2001, batch number 1383 (pages 1-4), with a grand total of \$22,223.54. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 10, 2001, batch number 1384 (pages 1-6), with a grand total of \$69,045.34. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 10, 2001, batch number 1385 (pages 1-6), with a grand total of \$56,950.00. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Thomas Asbridge, an employee of the Road Department, as principal for Accounting Warrant #266389 issued June 15, 2001 on the 7910 Payroll Fund in the amount of \$1,525.70, now unable to be found.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter – The Commissioners signed a letter, dated July 2, 2001, to James Caron, Executive Director of the Missoula Children's Theatre, unanimously agreeing to require monthly payments on the Missoula Children's Theatre Community Development Block Grant ("CDBG") loan with Missoula County, as outlined in the loan agreement dated November 20, 1996. Payments are due the first of each month, with the first payment due on December 1, 2001. Mr. Caron had requested that the Commissioners forgive payments for an additional five years.

Agreement – The Commissioners signed a Memorandum of Agreement, dated July 10, 2001, between Missoula County and the Western Montana Mental Health Center for the purchase of alcohol and other substance abuse prevention, intervention and treatment services for prioritized populations. These services will be provided by Turning Point, in accordance with the Missoula County Alcohol and Other Drug Treatment and Prevention Services Plan for 2000-2003. The term will be July 1, 2001 through June 30, 2002. The total amount shall not exceed



\$30,760.18. The document was returned to Nancy Harte in the Office of Planning and Grants for further signatures and handling.

Request for Action – The Commissioners signed the Department of Emergency Services (“DES”) Work Plan for Federal Fiscal Year 2002. This is a standard form required to receive any federal money, not signing would mean the loss of \$35,000 to \$40,000 per year. The document was returned to Jane Ellis, DES Coordinator, for further handling.

Request for Action – Chairman Evans signed the Summary Sheet for Assurances and Certifications for the Department of Emergency Services (“DES”). This is a standard form required for on-going FEMA funding; not signing would mean the loss of \$35,000 to \$40,000 per year. The document was returned to Jane Ellis, DES Coordinator, for further handling.

Resolution – The Commissioners signed Resolution No. 2001-065, an Emergency Declaration relating to an extraordinary winter storm on the night of June 3, 2001, and the early morning of June 4, 2001. The event was declared an emergency, as the Emergency Operations Center was opened to manage the incident, and significant damage to infrastructure did occur in several areas of Missoula County during the storm. It was also resolved that Missoula County may utilize the 2 mill levy to fund the County’s share of costs to repair the damage.

Agreement – The Commissioners signed an Agreement, dated July 10, 2001 between Missoula County and JTL Group, Inc., for the construction of a 30-foot wide County road, Farm Lane (Rural Special Improvement District No. 8465), in Lolo, Montana. The work is to be completed per the bid specification. The total base bid price is \$78,398.75, as per the items set forth in Exhibit A, Unit Price Schedule, attached to the Agreement. The document was returned to Jesse Sattley, RSID Coordinator, for further handling.

Contract – The Commissioners signed a Contract, dated July 10, 2001 between Missoula County and JTL Group, Inc., for Rural Special Improvement District No. 8469, Street Improvements on Snowdrift Lane, per the items set forth therein. The work is to be completed per the bid specification. The total amount shall not exceed \$152,732.00. The document was returned to Jesse Sattley, RSID Coordinator, for further handling.

Board Appointment – The Commissioners approved and signed a letter, dated July 10, 2001, confirming the appointment of Frank Maradeo of Seeley Lake, as a member of the Seeley-Swan Cemetery District Board. Mr. Maradeo’s term will run through April 30, 2004.

Dues – The Commissioners approved the payment of MACo (Montana Association of Counties) dues for Fiscal Year 2002 in the amount of \$7,000.

Report – Chairman Evans signed a HOME Investment Partnerships Program report showing that Missoula County – 1992 Grant Year – has successfully completed the Annual Certification of Income and Affordability Monitoring for FFY 2001, certifying that the information included in the report represents a true and complete statement of the facts. The document was returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

Resolution No. 2001-066 – The Commissioners signed Resolution No. 2001-066, dated July 10, 2001, granting an agricultural covenant to Donald K. and Janet A. Klepper, owners of property described in Book 431, Microrecords, Page 778, located in the N½ of Section 26, T 15 N, R 20 W (further described as Tract 1 of Certificate of Survey 5169). The Covenant restricts the use of the land exclusively for agricultural purposes.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, JULY 11, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners Curtiss signed the Claims List, dated July 10, 2001, batch number 1387 (pages 1-2), with a grand total of \$95.00. The Claims List was returned to the Accounting Department.

Plat and Agreements – The Commissioners signed the plat for Pleasant View Homes No. 2, Phase I, located in the W½ of Section 7, T 13 N, R 19 W, P.M.M., Missoula County, a total gross area of 13.78 acres, with the owner of record being pleasant View Homes, Inc.

Also signed were the following Agreements pertaining to Pleasant View Homes No. 2:

1. Subdivision and Improvements Agreement and Guarantee, dated June 6, 2001, setting forth the improvements that remain to be completed for Phase I, for a total cost of \$606,700. Improvements shall be completed no later than June 8, 2002;
2. Development Agreement, dated July 11, 2001, stating that unsold lots shall be seeded with a permanent grass cover after the roads and utilities are installed;
3. Development Agreement, dated July 11, 2001, stating that the Developer shall provide all maintenance of the park and common areas until enough development to support the Homeowner’s Association has taken place; and
4. Subdivision and Improvements Agreement and Guarantee, dated June 28, 2001, setting forth the park improvements that remain to be completed for Phase III, for a total cost of \$2,000. Improvements shall be completed no later than June 29, 2002.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending June, 2001.

Waivers – At the Clerk and Recorder/Treasurer's Meeting held in the forenoon, the Commissioners approved letters signed by Vickie M. Zeier, Missoula County Clerk & Recorder/Treasurer, reflecting their agreement to waive the penalty and interest for the following:

- 1) W. Henry Deeringer, Owner, Midas Auto Service, P.O. Box 1117, Missoula, Montana 59806, for 1999 delinquent personal property taxes for Tax ID #80743100. Mr. Deeringer was also given 60 days to pay the 2000 taxes with the penalty and interest figured to June 6, 2001.
- 2) Mr. and Mrs. Vincze, P.O. Box 154, Lolo, Montana 59847, for first half real estate taxes due November 30, 2000 for Tax ID #1050509.
- 3) Mary P. Meese, 616 Continental Way, Missoula, Montana 59803, for real estate taxes due May 31, 2001 for Tax ID #1396908.
- 4) Kevin Wetherell, P.O. Box 806, Seeley Lake, Montana 59868, first half real estate taxes due November 30, 2000 for Tax ID #2133757.

Agreement – The Commissioners signed an Aviation Agreement, dated July 11, 2001, between the Missoula County Airport Industrial District and the Missoula County Airport Authority ("MCAA"), meeting the subdivision requirement for Condition #22 for Phase 4, Missoula Development Park. The requirement grants an aviation easement to the MCAA, if required, subject to the approval of the MCAA, to be placed on the face of the final plat.

The Commissioners also approved an identical Aviation Agreement for Phase 3A, Missoula Development Park.

Resolution No. 2001-067 – Following the Public Meeting, Chairman Evans signed Resolution No. 2001-067, dated July 11, 2001, relating to \$1,000,000 General Fund Bonds, Series 2001; authorizing the issuance, awarding the sale, determining the form and details, authorizing the execution and delivery and making appropriations for the payment thereof.

#### **PUBLIC MEETING – July 11, 2001**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, County Surveyor Horace Brown, County Public Works Director Greg Robertson, Chief Financial Officer Dale Bickell and Chief Civil Attorney Michael Sehestedt.

#### **Public Comment**

Bob Massey, 4585 Tiberius Drive, stated his home was just off Blue Mountain Road. Several years ago he had discussed with the Board the matter of paving that road between the two Forest Service accesses. It has become a serious dust pollution problem over the years. He had been told that it would be paved. The road has been closed off and on for the past two or three summers while work was done on it. He wondered if there was a definitive date when the paving might be completed to abate the dust.

Greg Robertson stated the basic subgrade work on the road has been completed. The work was suspended last summer because of the fires. In checking available funding, resources and equipment, the earth work portion was subcontracted to Pumco. They should be done in the next few days. The following week, the Road Department will begin work on the sub-base, which should take approximately 4-5 weeks. He estimated the paving should be completed by the third week of September.

#### **Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$954,480.49. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Resolution: Award Sale of Bonds for Self-Funded Liability Insurance Program**

Dale Bickell stated the Resolution request today was to actually fix the sale of the bonds. On June 13, 2001, the Commissioners adopted a resolution that it was in the best interest of the County to fund a negotiated bond sale in order to refinance the Risk Management Insurance Fund that had been depleted due to some significant claims. Through the County's financial advisor, D.A. Davidson, they have received favorable terms. The resolution today will adopt those terms.

Commissioner Curtiss moved that the Board of County Commissioners authorizes the Chair to sign all necessary documents relating to the self-funded liability insurance program bonds, series 2001. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Gooden Acres Lot 3 Second Summary Subdivision (2 Lots on 9.65 Acres) – Houle Creek Road in the Frenchtown Area**

Karen Hughes, Office of Planning and Grants, presented the staff report.

This is a request from Jean Chambers, represented by Ron Ewart of Eli & Associates, to create Gooden Acres Lot 3, a two lot subdivision of Lot 3 of Gooden Acres. The property is also owned by Russ and Cindy Olson. The parcel is 9.65 acres and the request is to divide it into two lots of 4.64 acres and 5.01 acres. Lot 3A is currently vacant and Lot 3B is occupied by a single family residence. The property is located on Houle Creek Road about 1.5 miles north of the Frenchtown Frontage Road. The original Gooden Acres Subdivision was approved by the Board of County Commissioners in 1999.

Staff has recommended approval of two variance requests and approval of the second summary subdivision, subject to 5 conditions. Planning Board held a public hearing on June 19, 2001, and voted unanimously to recommend approval of the

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variances and subdivision request. Most of the discussion was based on public comment from neighbors about dust abatement issues and redivision of a lot.

There are no key issues for the proposal. It does not completely comply with the land use designation for density which is one dwelling unit per 10 acres. The resources that exist on the property, steep and forested areas, are preserved through no build zones. Staff felt the intent of the land use designation has been complied with through the proposal. There are no significant effects on agriculture or agricultural water users.

One variance request is for on-site paving for Houle Creek Road. The entire width of the Houle Creek right-of-way is on Lot 3A. The paving of that portion of the road would connect on either end with gravel road so it did not make sense to pave it at this time. However, there is an RSID waiver on the plat for any future improvements to Houle Creek Road, including dust abatement, paving, sidewalks, bicycle paths, etc. The other variance request is for sidewalks. Again, that would be addressed through the RSID waiver.

Ron Ewart, Eli & Associates, developer's representative, thanked Karen Hughes and OPG staff for their work on this proposal. The developer is in agreement with the conditions recommended. The property was purchased in common by Russ and Cindy Olson and Cindy Olson's mother, Jean Chambers. Mrs. Chambers would like to have her own home on the property which resulted in this subdivision proposal. He met with Clint Harris on site and determined the best location for the driveway onto the new lot. The site would cause minimal impact to the topography. The building site has been moved more toward the east to remove it from the view of the neighbors to the north. There are covenants on the property from the original subdivision which address wildland/residential interface standards, etc.

Chairman Evans opened the public hearing. There being no comments, the public hearing was closed.

Chairman Evans asked Karen Hughes to find out what subdivisions had RSID waivers for Houle Creek Road. She would like to see that road paved.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request to Section 3-2(8) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request to Section 3-2(1)(G) of the Missoula County Subdivision Regulations to not pave Houle Creek Road, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the Gooden Acres, Lot 3, Second Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Gooden Acres, Lot 3, Second Summary Subdivision Conditions of Approval:**

##### **Roads**

1. Prior to final plat approval, the plat shall show a one-foot "no access" strip along the Houle Creek Road frontage of Lot 3A, excepting the 30 foot wide driveway. The final plat shall show the location of the driveway access, subject to review and approval of the County Surveyor's Office. *Subdivision Regulations 3-2 and County Surveyor recommendation.*
2. Drainage plans shall be reviewed and approved by Missoula County prior to final plat approval. *Subdivision Regulation Article 3-4(2).*

##### **Fire**

3. The developer shall contribute \$100.00 per new lot to the Frenchtown Rural Fire District. Evidence of contribution shall be presented to OPG at the time of final plat approval. *Subdivision Regulations Article 3-7(2).*

##### **Hillside**

4. The no-build zone on the plat shall be amended to allow for the driveway on Lot 3A, subject to review and approval by OPG prior to final plat approval.

##### **Weeds**

5. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval. Provision for implementation of the Plan shall be included in a development agreement to be filed in the Clerk and Recorder's Office, subject to OPG and County Attorney Office review and approval, prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B), Missoula County Weed Control Board and staff recommendation.*

#### **Consideration: Ram Addition (5 Lot Summary Commercial Subdivision) – Wye Area**

Denise Alexander, Office of Planning and Grants, presented the staff report.

Ram Addition is a five lot commercial subdivision located along the east side of US Highway 93 North, just south of Jim and Mary's RV Park and north of the Wye. The property is owned by Richard Rostad and Robert Massey, represented by Nick Kaufman of WGM Group.

The property is zoned C-C2 and Valley West Community Development Rural Zoning District, which overlays the C-C2 zoning. It is covered by the 1979 Wye-O'Keefe Creek Area Plan and the 1998 Urban Area Comprehensive Plan Update. It is located in the Urban Growth Area, the Air Stagnation Zone, the Building Permit jurisdiction and along a Primary Travel Corridor.

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Two variances have been requested. Staff is recommending denial of the variance to pave the access. Staff is recommending approval to not provide pedestrian facilities on Highway 93. Staff is also recommending approval of the subdivision based on the findings of fact and subject to 19 conditions of approval.

The majority of the conditions have to do with access and roads. The original request was to access this subdivision from two gravel driveways. In discussions with Greg Robertson, Public Works Director, staff is recommending the subdivision be accessed from Highway 93 onto a dedicated County roadway easement developed with a privately maintained paved road with boulevard walkways then onto a privately maintained paved cul-de-sac street within the subdivision. This will provide access to Lots 1 through 4. Lot 5 may have access through Jim and Mary's RV Park if they purchase that property as is their intention. If that does not happen, then a condition requires that a driveway easement be provided from the cul-de-sac to Lot 5.

Staff is also recommending that the access from Lady Slipper Lane, in the northeast corner of the subdivision, be for emergency access only and that a no access strip be provided along the west and southern boundaries of the subdivision, except for where the cul-de-sac street comes into it.

Other conditions concern verification or modification, before final plat, of several things that are in the development agreement – water for fire protection to be approved by Frenchtown Fire District, a maintenance agreement for roads until they are accepted by the County for maintenance, landscaping plans for the Primary Travel Corridor, weed control on the property and setbacks for the Primary Travel Corridor.

Some discussions at Planning Status caused minor changes to Conditions 1, 2 and 5. Conditions 1 and 2 have to do with the easement for the cul-de-sac bulb. Condition 5 has to do with boulevard sidewalks on Snap Dragon Drive on only one side of the road.

Nick Kaufman, WGM Group, developer's representative, was present as were the developers, Richard Rostad and Robert Massey. He stated they were in concurrence with the recommendations from staff and thanked the Public Works Department and OPG for working with them on this proposal. Condition 4 relates to evidence of dedication of the easement for Snap Dragon Drive from Williams Addition to US Highway 93. Language for that dedication was submitted to the County Attorney's Office today and the process should be completed before the end of the week. Condition 7 is an important condition to understand. Lot 5 on the plat is the northernmost lot and is being sold to the owners of Jim and Mary's RV Park. They will expand the RV Park into that area. Therefore, access for Lot 5 will be to the north out Lady Slipper Drive to Highway 93 and will not access onto Snap Dragon Drive. The only way that lot would have access to Snap Dragon is if Jim and Mary's did not purchase the lot, however, there is a signed buy/sell agreement on the purchase. He would like it understood that Condition 10, the waiver of the right to protest an RSID/SID for Snap Dragon Drive, would not apply to Lot 5, based on benefit, as it would have no access to Snap Dragon Drive. On Condition 13, staff is asking for a one foot no access strip along the southern portion of the property. The roads are private and will have a private access approach to Highway 93 signed by the Montana Department of Transportation. The 60 foot easement along the southern portion of that property would connect Snap Dragon Drive to Highway 93 in the future as a dedicated public right-of-way. When the right-of-way is dedicated, that allows the Public Works Director to have authority over driveway approaches to Snap Dragon Drive. The developer's preference would be to remove the requirement for a no access strip along the southerly lot frontage of Snap Dragon and place language in the Development Agreement that the Public Works Director has authority to grant approach permits to Snap Dragon Drive after full review and at their discretion, based on the use of the property. It is anticipated that Lot 4 will be a church and as it serves the residential area, having a driveway onto Snap Dragon, with appropriate review by the Public Works Director, seems reasonable. The no access is a good idea while it is a private easement but as a public right-of-way it allows the Public Works Director authority over it. To make sure there is no confusion, they would like language in the Development Agreement that reinforces approach permit approval or denial. He suggested changing Condition 13 to read: "A one foot no access strip shall be shown on the plat along the subdivision's westerly boundary abutting US Highway 93. Language shall be included in the Development Agreement noting the Public Works Department's authority over approach permits on Snap Dragon Drive, such language to be approved by the County Attorney's Office and Public Works Department." The developer has a limited access agreement with the Department of Transportation on Highway 93 and cannot have any more access points, therefore making the no access strip on Highway 93 redundant.

Chairman Evans asked for public comments.

John Coffee, Lambros Real Estate, stated he was representing Walt and Judy Lubeck, the owners of Jim and Mary's RV Park. Before this subdivision was created, he approached Mr. Rostad and Mr. Massey about the possibility of the Lubecks purchasing some of this land, which resulted in the current layout of Lot 5. The Lubecks long-term goal is to expand Jim and Mary's RV Park onto that property. The short-term goal is to bring water to the property and plant some trees. There is a signed buy/sell agreement on this transaction with earnest money. He has some concerns about the RSID/SID waiver. There would be no benefit to Lot 5 for improvements on Snap Dragon Drive. There is an emergency access to Lot 5 should the need arise. There is a condition that provides that if the Lubecks do not purchase Lot 5, there would be an easement from the cul-de-sac to Lot 5. The Lubecks are ready to buy as soon as the final plat is approved, but the final plat won't be approved until there is access to Lot 5. It makes no sense to create an easement across their own property for property they are buying. They would be willing to close early, based on preliminary plat approval, and place the money in escrow until final plat approval. They are eager to please and will do whatever is necessary to complete the transaction.

Denise Alexander stated she and Colleen Dowdall, Deputy County Attorney, worked together to draft Condition 7. The scenario Mr. Coffee described, with the money in escrow until the final plat was approved, was also suggested by Colleen Dowdall as being adequate to have the plat designed without the driveway easement. A suggestion about the concern on the RSID/SID waiver on Lot 5. Condition 7 could be amended to read: "Access to Lot 5 shall be provided either through Jim and Mary's RV Park with a no access strip across the southern boundary of Lot 5, or through a driveway easement ...." This would guarantee that if the Lubecks purchase Lot 5 they would not be able to use the

cul-de-sac and access would have to be through the RV Park which would guarantee they would not be using Snap Dragon Drive.

John Coffee stated that was an excellent suggestion and concurred with it.

Michael Sehestedt stated this was a good solution to the RSID concern.

Bob Massey stated that the one foot no access strip is a taking of property rights. When the Highway Department does that, they purchase it from the landowner. This creates a limitation on the property in perpetuity without any compensation. It could limit use negatively in the future.

Michael Sehestedt stated that a no access strip cannot be imposed just anywhere but it can be used to mitigate the impacts that result from a subdivision. The justification for a no access strip is typically public safety, it will mitigate the impact of a particular subdivision by limiting its access to a main road. In this case, the no access strip between Lot 5 and the rest of the subdivision is being used as a clear justification of excluding Lot 5 from any assessment for an RSID for Snap Dragon Drive. The current plans for Jim and Mary's RV Park may or may not come to fruition. Given this scenario, there will be two pieces of property. Uses change over time and it might be wise to leave the language as it is. At the time Snap Dragon Drive is improved would be the time to make the decision on whether to include Lot 5 in the assessment. The no access strip would remove it from the possibility of assessment. A "dark side" possibility would be that this parcel is financed with a different banker and the no access strip is created. Things go really bad for Jim and Mary's RV Park and one bank forecloses on the original property. That lienholder is in first possession and any subsequent easements granted are gone. The second bank forecloses on Lot 5 and their easement to the north across Jim and Mary's is gone and the easement to the south is gone by virtue of the no access strip. That would leave Lot 5 with no access at all. He was not suggesting there would be a failure, but was looking at it from a legal perspective. He felt it might be better to leave the language as it is. The discussion of benefit from the RSID could be done at the time Snap Dragon is paved.

Commissioner Curtiss asked if the developer was expected to landscape on both side of the street even though the sidewalk was only required on one side?

Denise Alexander stated they would not be expected to do that.

Commissioner Curtiss asked if when Snap Dragon is connected all the way through, would it be required to continue with the landscaping.

Denise Alexander stated that could be incorporated into the RSID or it could be a condition of the subdivision to the south. She also addressed Mike Sehestedt's "dark side" scenario. Someone could ask that the plat be amended to remove the no access strip.

John Coffee stated that leaving the language as is was a good idea. The no access strip could create some possible problems in the future. The RSID issue could be addressed at the RSID hearing.

There were no further public comments.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(14) of the Missoula County Subdivision Regulations to not provide non-motorized facilities on U.S. Highway 93. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners deny the variance request from Section 3-2(14)(B)(i) of the Missoula County Subdivision Regulations to not provide paving on Snap Dragon Drive. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve Ram Addition Summary Subdivision based on the findings of fact and subject to the recommended conditions in the staff report, including the new language in Condition 13. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Ram Addition Summary Subdivision Conditions of Approval:**

##### **Roads**

1. The developer shall dedicate a 60 foot wide County road right-of-way and public utility easement on the final plat for an internal cul-de-sac road centering on the lot line shared by Lots 1 and 4 and ending in a 60 foot radius cul-de-sac bulb for access to Lots 2 and 3. The 30 foot private access easements on the southwest and southeast corners of the subdivision shall be removed from the plat. *Subdivision Regulations Article 3-2(1)(E) and Public Works Department recommendation.*
2. Plans for a privately-maintained cul-de-sac road within the required 60 foot wide public right-of-way easement shall be reviewed and approved by the Public Works Department prior to final plat approval. This road shall be improved with a 32 foot wide paved surface with a 45 foot paved turn-around radius at the cul-de-sac, and a 6 foot wide asphalt paved boulevard pedestrian walkway on one side of the street separated from the edge of street by a grassy drainage swale planted with shade trees per subdivision boulevard standards. *Subdivision Regulations Article 3-2(1)(E) and (9) and Public Works Department recommendation.*
3. The name of the cul-de-sac road shall be reviewed and approved by the County Surveyor prior to final plat approval. *Subdivision Regulations 3-2(12) and OPG recommendation.*
4. Evidence of dedication of the easement for Snap Dragon Drive from Williams Addition to US Highway 93 as a County road right-of-way shall be provided prior to final plat approval. *Subdivision Regulations 3-1(6) and public Works Department recommendation.*

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5. Plans for a privately maintained road within the Snap Dragon Drive right-of-way from US Highway 93 to the cul-de-sac road in Ram Addition shall be reviewed and approved by the Public Works Department prior to final plat approval. The road shall be improved to a 36 foot wide paved surface with a 6 foot wide asphalt paved pedestrian walkway on the north side of the street separated from the edge of street by a 6 foot grassy drainage swale planted with shade trees per subdivision boulevard standards. *Subdivision Regulations Article 3-2(1)(E) and (9)(A) and Public Works Department recommendation.*
6. Evidence of approval of the Montana Department of Transportation State Highway Access permit for Snap Dragon Drive to US Highway 93 shall be provided prior to final plat approval. *Subdivision Regulations Article 5-2(4)(A) and OPG recommendation.*
7. Access to Lot 5 shall be provided either through Jim & Mary's RV Park, or through a driveway easement across Lots 2 and 3 to the southern edge of Lot 5, prior to final plat approval, subject to the review and approval of the County Attorney's Office and OPG. *Subdivision Regulations Article 3-3(1)(D)(iii), County Attorney Office and OPG recommendation.*
8. The Private Driveways section of the Development Agreement shall be revised to address maintenance of the improved portion of Snap Dragon Drive and the internal cul-de-sac road required by these conditions. *Subdivision Regulations Article 3-2(1)(ii) and Public Works Department recommendation.*
9. The following note shall be placed on the final plat:

"The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance and snow removal shall be the obligation of the owner or Property Owners Association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are accepted by the County of Missoula for maintenance." *Subdivision Regulations Article 5-2(4)(J) and Public Works Department recommendation.*
10. The following note shall be placed on the final plat:

"Acceptance of a deed for a lot in this subdivision shall constitute the assent of the owners to any future RSID/SID for public improvements to Snap Dragon Drive and all public streets within this subdivision based on benefit, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities." *Subdivision Regulations Article 5-2(4)(K) and Public Works Department recommendation.*
11. Notes 2 and 3 shall be removed from the final plat. *Subdivision Regulations Article 3-1(G), Public Works Department and City-County Health Department recommendation.*
12. Access from Ladyslipper Lane to this subdivision shall be labeled as "Emergency Access Only" and plans for an appropriate access barrier and signage shall be reviewed and approved by the Public Works Department and the appropriate fire jurisdiction prior to final plat approval. *Subdivision Regulation Article 3-2(1)(E) and Public Works Department recommendation.*
13. A one foot no access strip shall be shown on the plat along the subdivision's westerly boundary abutting US Highway 93. Language shall be included in the Development Agreement noting the Public Works Department's authority over approach permits on Snap Dragon Drive, such language to be approved by the County Attorney's Office and Public Works Department. *Subdivision Regulations 3-2(1)(E) and Public Works Department recommendation.*

## Fire

14. The final plan for water supply for fire protection purposes shall be reviewed and approved by the appropriate fire jurisdiction prior to final plat approval and be included in Part "d" of the Fire Standards section of the Development Agreement. *Subdivision Regulations Article 3-7 and Frenchtown Rural Fire District recommendation.*

### Primary Travel Corridor

15. An overall landscaping design concept plan in compliance with the Primary Travel Corridor Standards shall be submitted for review and approval by the Montana Department of Transportation and OPG prior to final plat approval. *Subdivision Regulations Article 3-14 and OPG recommendation.*
16. The Travel Corridor Standards section of the Development Agreement shall be revised to include the requirement that at time of development, Zoning Compliance Permits and/or Building Permits shall be reviewed and approved by OPG for compliance with the overall landscaping design concept plan and the setback and building design standards of the Primary Travel Corridor standards. *Subdivision Regulations Article 3-14 and OPG recommendation.*

## Weeds

17. A revegetation plan for the entire subdivision area shall be submitted for review and approval of the County Weed Board, prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*
18. The Weed Section of the Development Agreement shall require lot owners to revegetate any areas disturbed by construction or maintenance with beneficial species as soon as construction or maintenance is completed. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*

## Setbacks

19. The building setback lines shall be removed from the plat except for the required Primary Travel Corridor building setback line on Lots 1, 2 and 5. *Subdivision Regulations Article 3-1(B) and OPG recommendation.*

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There being no further business to come before the Board, the Commissioners were in recess at 2:10 p.m.

**THURSDAY, JULY 12, 2001**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners traveled to Polson and attended a Highway 93 meeting held at the Lake County Courthouse.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Aviation Agreement, dated July 12, 2001, between the Missoula County Airport Industrial District and the Missoula County Airport Authority ("MCAA"), meeting the subdivision requirement for Condition #22 for Phase 3A, Missoula Development Park. The requirement grants an aviation easement to the MCAA, if required, subject to the approval of the MCAA, to be placed on the face of the final plat.

Request for Action – Upon recommendation by the Office of Planning and Grants, the Commissioners approved and Chairman Evans signed a Shoreline Construction Permit for Jeff Schroeder to replace an existing 320 square foot dock on Holland Lake. The property is a Forest Service lease, described as being the SW¼, NW¼, SE¼, Section 35, T 20 N, R 16 W. The permit was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Agreement – The Commissioners signed two agreements, a General Agreement and a Maintenance Agreement, between Missoula County and the Montana Department of Transportation, for the purpose of developing, constructing, servicing and maintaining a Community Transportation Enhancement Program ("CTEP") project, STPE 32(37), titled Frontage Road Path-Frenchtown. These agreements are required in order to obtain the money from the State for this CTEP project. The agreements were returned to County Surveyor Horace Brown for further signatures and handling.

Closing Documents – Chairman Evans signed closing documents for the Missoula County \$327,000 Pooled Rural Special Improvement District Bonds, Series 2001 (RSID Nos. 8465 and 8469). The date of original issue is June 15, 2001; the principal amount is \$17,000; the interest rate per annum is 3.50%, with a maturity date of July 1, 2002. The Registered Owner is Montana Municipal Cooperative, Bozeman, Montana.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, JULY 13, 2001**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Chairman Evans and Commissioner Carey were out of the office all afternoon.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 12, 2001, batch number 1380 (pages 1-2), with a grand total of \$1,270.52. The Claims List was returned to the Accounting Department.


Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 12, 2001, batch number 1388 (pages 1-2), with a grand total of \$18,449.21. The Claims List was returned to the Accounting Department.

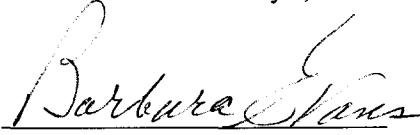
Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 12, 2001, batch number 1389 (pages 1-2), with a grand total of \$840.01. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 12, 2001, batch number 1389 (pages 1-4), with a grand total of \$407,848.36. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated July 12, 2001, batch number 1395 (pages 1-2), with a grand total of \$6,000.00. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming MLCS Ltd. Of Rydal, Pennsylvania, as principal for Missoula High School Warrant #47420 issued May 3, 2001 on the General Fund in the amount of \$659.70, now unable to be found.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JULY 16, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated July 13, 2001, batch number 1393 (pages 1-5), with a grand total of \$45,306.72. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 16, 2001, batch number 1392 (pages 1-4), with a grand total of \$99,163.56. The Claims List was returned to the Accounting Department.

Monthly Report - Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending June 29, 2001.



JULY 17, 2001

Certificate of Survey – The Commissioners signed a Certificate of Survey to show the retracement of tract of land located in the NE¼ of Section 1, T 13 N, R 20 W, with the owners being the Missoula County Airport Industrial District.

**TUESDAY, JULY 17, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. Chairman Evans was out of the office all day.

Claims List – The Commissioners signed the Claims List, dated July 16, 2001, batch number 1394 (pages 1-5), with a grand total of \$15,860.55. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 17, 2001, batch number 1390 (pages 1-4), with a grand total of \$15,996.57. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 17, 2001, batch number 1391 (pages 1-4), with a grand total of \$17,853.74. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 17, 2001, batch number 1397 (pages 1-4), with a grand total of \$112,209.51. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 14 - Pay Date: July 13, 2001. Total Missoula County Payroll: \$811,066.45. The Transmittal Sheet was returned to the Auditor's Office.

Agreement Amendment – Chairman Evans signed Amendment No. 2, dated July 17, 2001, to the Agreement with Missoula County for Engineering Services with HDR Engineering, Inc. for work associated with the Lolo RSID No. 901, Wastewater Treatment System Priority Improvements. This supplemental agreement addresses a couple of housekeeping items, as set forth therein. The budget implication is an increase in the contract amount of \$5,543.91, for a grand total \$215,950.44. The document was returned to Greg Robertson, Public Works Director, for further signatures and handling.

Agreement – The Commissioners signed a Gravel Agreement, dated July 9, 2001, between Missoula County and the Girven Family 1998 Revocable Trust for the purpose of purchasing gravel from their pit site, located in the Swan area. This agreement has no fiscal or budget implications.

Agreement Modification – Chairman Evans signed Modification No. 500013-01, dated July 17, 2001, to the Agreement with Missoula City-County and the State of Montana, Department of Environmental Quality ("DEQ"), for the purpose of conducting inspections of public water supply systems to ensure their safety and to provide training and other technical assistance as assigned by the State. The modification changes the total payment amount of the contract and extends the agreement through September 30, 2001. The total amount shall not exceed \$28,900. The document was returned to the Health Department for further handling.

Request for Action – Per the recommendation of the Public Works Department, the Commissioners adopted a written irrigation policy for the El-Mar RSID. The policy is entirely consistent with the Lolo RSID and Mountain Water. There is no fiscal impact or budget implications as a result of this adoption.

Request for Action – Per the recommendation of Chief Administrative Officer Ann Mary Dussault, the Commissioners authorized the filing of the application for Fiscal Year 2001 Local Law Enforcement Block Grant, including all understandings and assurances contained therein, and designated Captain Don Morman as the official representative of the applicant. The document was returned to Don Morman in the Sheriff's Department.

Extension Request – Per the recommendation of the Office of Planning and Grants, the Commissioners signed a letter to Greg Martinsen of Martinsen Surveys, approving his request for a one-year extension of the plat approval deadline for Carlton Tracts No. 3 Subdivision. The new filing deadline is July 26, 2002.

Extension Request – Per the recommendation of the Office of Planning and Grants, the Commissioners signed a letter to Greg Martinsen of Martinsen Surveys, approving his request for a one-year extension of the plat approval deadline for Sorrel Springs No. 41 Subdivision. The new filing deadline is July 19, 2002.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, JULY 18, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated July 17, 2001, batch number 1399 (pages 1-2), with a grand total of \$11,706.56. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 18, 2001, batch number 1400 (pages 1-5), with a grand total of \$18,320.36. The Claims List was returned to the Accounting Department.

CHIEF ADMINISTRATIVE OFFICER MEETING

JULY 18, 2001

At the Chief Administrative Officer Meeting held in the forenoon, the following items were signed:

Request for Action – Per the recommendation of Barb Martens of the Projects Office, the Commissioners approved an amendment to the Missoula Development Park Phasing Plan for Phase 3 to: 1) include Phase 3D (Block 5 – Expressway gravel pit) and LaLonde Ranch Historic Park; 2) correct the erroneous Exhibit A attached to Book 542 Page 1571 Covenants, approve stripping of bikelanes this fiscal year on Expressway and Airway Boulevard; 3) approve 5' wide concrete boulevard sidewalks on one side of all interior streets; and 4) approve filing the Property-Owners Association Documents near the time the transition takes place from the County to the Association.. There are no additional fiscal impacts as a result of this amendment. The document was returned to Barb Martens in the Projects Office for further handling.

Revision – The Commissioners signed a revision to the Missoula Development Park Covenants, Conditions, and Restrictions, correcting erroneous Exhibit A attached to Book 542 Page 1571 Covenants. The document was returned to Barb Martens in the Projects Office for further handling.

PUBLIC MEETING – July 18, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, County Surveyor Horace Brown, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt.

Public Comment

Chairman Evans stated that on July 17, 2001, John Wicks gave her a check for \$10,000 to be used as a donation to the 9-1-1 System. The reason for this was thirteen years ago he had surgery, then developed a blood clot in his foot which got infected, causing his femoral artery to burst. He was bleeding severely and used one hand to stop the bleeding and called 9-1-1 with the other hand. Help came immediately and saved his life. This donation is in memoriam of his mother, Ruth Jahn Wicks. The check was presented to Dorothy Frojen from the 9-1-1 Center. Chairman Evans was extremely grateful for all the work the Center does.

Commissioner Curtiss stated she is glad 9-1-1 is there when they are needed.

Jane Ellis, Director of Emergency Services, stated that on behalf of the County, the 9-1-1 Center, the Commissioners, et.al., they were extremely grateful to Mr. Wicks. This was an incredibly generous gift. It is not unusual for people to be grateful in the short run after a traumatic event, but for someone to remember for 13 years is very impressive. She looked forward to talking with the 9-1-1 staff to see how they would like the funds to be used.

Chairman Evans stated that Mr. Wicks was not present today because he wanted to go fishing.

Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$740,798.74. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Seeley Lake Motor Lodge (12 Space RV Park) – Duck Inn on Highway 83

Dale McCormick, Office of Planning and Grants, presented the staff report.

This is a proposal from Bob and Kathleen Harlock to create a 12 space RV Park on 4.54 acres, located on the east side of Highway 83 in Seeley Lake. Formerly known as the Duck Inn, it is accessed from Highway 83 and contains a 10 room motel building. The remaining portion of the property is wooded, vacant land, with a grade of 1% to 2%.

The development is proposed in two phases. Phase 1 contains 4 RV spaces, a recreation room, a bath house and 4 cabins that would be unplumbed. Also, as part of a Phase 1, a maintenance and equipment storage building and 4 additional motel units are proposed. Currently, the caretaker uses one of the rooms in the existing motel building. That would be converted to a motel room and a new caretaker's unit would be created in the new 4 unit motel building.

Phase 2 is an additional 8 RV spaces, bringing the total to 12 spaces. The phasing is being proposed so the additional 8 RV spaces will be created when municipal sewer is available to the development.

The property is accessed from two existing entrances off Highway 83, a State highway with 24 foot paved surface width within a 100 foot right-of-way adjacent to the property, designated as a Primary Travel Corridor. The required 25 foot buffer Primary Travel Corridor cannot be placed entirely on-site due to existing driving lanes and parking areas. Staff has recommended that the subdivider provide a plan showing landscaping in the Highway 83 right-of-way between the property line and the pedestrian walkway to comply with Primary Travel Corridor standards.

The access road to the RV Park and the additional areas will be a private gravel road, 24 feet in width. A secondary access to the site for emergency vehicles is proposed off Cedar Lane. Cedar Lane is a gravel road with a right-of-way claimed by the County through prescriptive use and County maintenance. The County Surveyor and Public Works Department have recommended the developer dedicate 30 feet of County right-of-way running along the entire length of the southern boundary of the property. The Public Works Department initially recommended a one foot no access strip along the entire length of Cedar Lane. New information recommended that requirement be removed.

The applicant is proposing an on-site pedestrian walkway paralleling Cedar Lane that will be graded, compacted and surfaced with wood chips. It will connect with the existing walkway that runs through the community of Seeley Lake.



Commissioner Curtiss stated it is common practice and makes good sense to allow for future road needs. There are many areas in the County where that was not looked at and access has now become problematic. She wondered if there was some compromise that could be made to allow for that easement to be purchased by a future potential developer.

Michael Sehestedt stated he would suggest, instead of a easement dedication, that a no build zone or no construction of permanent improvements be allowed in that area. The proposed plan shows some setback and a walkway in that area. The idea is that if in the future there is someone to the east that wants to develop and they are required to improve the road, they would be responsible for acquiring the necessary right-of-way. By not allowing permanent improvements in the area, it keeps the property in a condition to negotiate a sale. It addresses the issue of the trees not being removed and the road won't be widened. It does allow that if there is a future demonstrated need, the property isn't so encumbered with improvements that it makes it impossible to acquire. He heard the applicant say that if there was a need in the future, he would prefer that future developer purchase the right-of-way from him. This was a way to keep the right-of-way available without the depriving the owner of the economic use or value of the land. He would like to have the wording done in such a way to avoid clearly stating it was a no build zone so as to devalue it for future purchase. He did not know exactly how to phrase it, perhaps Mr. Ewart or Mr. Harlock could help develop the wording. But he would like the wording done in such a way as to keep this strip in a condition that would be realistically viable for road expansion without taking it from the applicant or so depreciating its value as to not realize a reasonable return.

Chairman Evans stated she appreciated the effort to find a compromise, but a potential buyer could make the argument that it wasn't worth full value because it couldn't be built on.

Michael Sehestedt stated that was what he was trying to avoid as well. Perhaps it could be shown on the plat as a possible future road easement.

Bob Harlock stated that they need to submit plans over the next year as to what will be done on the property. Perhaps they could show in the plans to be approved that there was no development planned for that portion of the land. Would that be satisfactory. Right now, the only thing in that area is a walkway.

Michael Sehestedt stated the action today was approving the four RV spaces. It could be conditioned on simply submitting plans that do not show development of any improvements other than a walkway in that 30 foot strip. Would that be acceptable to the developer. The approval would be conditioned upon submission of plans that do not include any non-walkway improvements.

Ron Ewart stated this was done quite often. A no build zone could be shown on the plat. A development agreement could be filed that uses the plan as an exhibit that says the developer promises not to build anything within that 30 foot zone. The plan gets filed with the Office of Planning and Grants, it does not get recorded.

Michael Sehestedt suggested the condition be that the development plan not show anything beside walkway, road or fencing within the 30 foot strip adjacent to Ceder Lane. Would that be acceptable?

Dale McCormick stated that the condition currently reads "A 30 foot wide public access easement ...." That could be changed to "A 30 foot wide no build zone running along the entire length of the southern boundary...." That no build zone would not prohibit putting in a sidewalk or pathway as proposed.

Chairman Evans stated that to her that condition devalued the land.

Michael Sehestedt suggested saying "submit a development plan as a condition of these 4 units and the development plan does not show any permanent improvements other than walkways, fence or roadways in that 30 foot strip." When Mr. Harlock comes back with future development plans, it could be looked at again.

Commissioner Carey asked if that wording allowed the County to do road improvements.

Michael Sehestedt stated it did not allow that.

Commissioner Carey stated that to him, that was the issue.

Michael Sehestedt stated it makes it more realistic, should someone develop to the east, to purchase the right-of-way from Mr. Harlock.

Commissioner Curtiss stated that a condition of such possible future development would be to purchase the necessary land for easements to construct the road. She was assuming that Mr. Harlock would be willing to sell the land for the right-of-way easement.

Bob Harlock stated by all means he was willing to do so, if the price was right.

Commissioner Carey stated that in the future, Mr. Harlock may not be the owner and the new owner may not want to sell. That could create the situation of blocking development.

Michael Sehestedt stated that if the person to the east buys the property and doesn't have sufficient access to develop their property, they would have to resolve that one way or another. The issue is whether or not it is appropriate to solve the adjoining property owner's problem by acquiring right-of-way from this property right now.

Colleen Dowdall stated the rule is the County cannot take property for roads unless it is paid for. The way it is usually done in a subdivision is that instead of paying for the right-of-way a developer gives the right-of-way to mitigate the impact of the subdivision. In this case, it would be hard to make that connection, that Mr. Harlock has to give the County anything to mitigate anything. There is an issue of whether or not the County should pay for this. This is an

attempt to provide an opportunity for someone else to pay for the right-of-way if it is needed for development in the future. In the meantime, there is not a good argument for taking this right-of-way without paying for it. It does serve a public good but private property is not supposed to be taken to serve the public good without compensation.

Michael Sehestedt stated that it is usually required for a developer to dedicate a right-of-way to mitigate the direct impacts of their development.

Chairman Evans stated the possibility of the County ever paying to upgrade this road is very slim. Taking the right-of-way for the public good would be risky. If someone else wants to upgrade the road for the benefit of their development, it should be their responsibility to pay for it. She felt counsel's suggestion was a good compromise.

Colleen Dowdall stated the condition could be amended to read: "The developer shall submit plans that show no development except for a walkway, road or fencing in a 30 foot wide strip running along the entire length of the southern boundary of the property."

Commissioner Carey moved that the Board of County Commissioners approve the Seeley Lake Motor Lodge RV Park Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report including the amended language of Condition 3. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Seeley Lake Motor Lodge RV Park Subdivision Conditions of Approval:**

1. The lot owner shall file a document of record waiving the right to protest a future RSID/SID for public sewer and water systems based on benefit, which may be used in lieu of signatures on an RSID/SID petition. The RSID/SID waiver shall state:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for public sewer systems, based on benefit. The lot owner shall connect to public sewer within 180 days of when the public sewer is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein." *Subdivision Regulations Article 3-7 and OPG recommendation.*

2. The lot owner shall file a document of record waiving the right to protest a future RSID/SID for improvements to Cedar Lane based on benefit, which may be used in lieu of signatures on an RSID/SID petition. The RSID/SID waiver shall state:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvement to Cedar Lane, including but not limited to dust abatement and the installation of pedestrian walkways or bikeways, 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 depicted herein." *Subdivision Regulations Article 3-2 and OPG recommendation.*

3. The developer shall submit plans that show no development except for a walkway, road or fencing in a 30 foot wide strip running along the entire length of the southern boundary of the property.
4. The subdivider shall file a Development Agreement containing the language included in the applicant's proposed Protective Covenants, to be reviewed and approved by the County Attorney prior to final plan approval. *Subdivision Regulations 3-1(10) and OPG recommendation.*
5. The Development Agreement shall be amended to state that: "Fire hydrants must be free of obstructions to access within a 10 foot diameter at all times." *Subdivision Regulations 3-1(6), OPG and Seeley Lake Rural Fire District recommendation.*
6. Final plans for the emergency access and on-site traffic circulation shall be reviewed and approved by the Seeley Lake Rural Fire District Chief prior to final plan approval. *Subdivision Regulations 3-1(6), OPG and Seeley Lake Rural Fire District recommendation.*
7. Easements for all utilities running through the property shall appear on the final plan and shall be recorded with the County Clerk and Recorder. Width and location of easements shall be reviewed and approved by the appropriate utility. *Subdivision Regulations Article 3-6 and OPG recommendation.*
8. To comply with Primary Travel Corridor Standards for a 25 foot landscape buffer, the subdivider shall submit a landscape plan showing landscaping in the Highway 83 right-of-way between the walkway and the property line, subject to review and approval by the Montana Department of Transportation. *Subdivision Regulations 3014(3) and OPG recommendation.*
9. The following phasing plan shall be approved for this subdivision:
  - Phase 1 – All improvements and proposed development except for RV spaces 5-12 and the internal access road to serve those spaces.

Timeline – 1 year to submit for final plan approval (July 18, 2002).

- Phase 2 – RV spaces 5-12 and the internal access road to serve those spaces.

Timeline – 7 years to submit for final plan approval (July 18, 2008).

There being no further business to come before the Board, the Commissioners were in recess at 2:12 p.m.

002-0045

**THURSDAY, JULY 19, 2001**

The Board of County Commissioners met in regular session; all three members were present.

**Claims List** – Chairman Evans and Commissioner Carey signed the Claims List, dated July 19, 2001, batch number 1401 (pages 1-3), with a grand total of \$7,727.14. The Claims List was returned to the Accounting Department.

**Claims List** – The Commissioners signed the Claims List, dated July 19, 2001, batch number 1402 (pages 1-3), with a grand total of \$12,048.85. The Claims List was returned to the Accounting Department.

**Claims List** – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 19, 2001, batch number 1404 (pages 1-5), with a grand total of \$106,304.40. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the plat for Missoula Development Park – Phase 4, a subdivision located in the E½ of Section 36, T 14 N, R 20 W, PMM, Missoula County, a total of 49.59 acres, with the owner of record being the Missoula County Airport Industrial District.

Plat – The Commissioners signed the plat for Sandtner Addition, a minor subdivision located in the SW¼ and the SE¼ of Section 5, T 13 N, R 16 W, PMM, Missoula County, a total area of 11.27 acres gross and net, with the owner of record being Edith E. Sandtner.

**Plat** – The Commissioners signed the plat for Missoula Development Park – Phase 3A, a subdivision located in the SW¼ of Section 36, T 14 N, R 20 W, PMM, Missoula County, a total of 4.36 acres, with the owners of record being the Missoula County Airport Industrial District and Nurture, Inc.

## ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed and renewed a Professional Services Contract between Missoula County and Beth Thompson, M.D. to act as the Health Services Medical Advisor for the Health Department, and to act as liaison with health care providers in the community. The term will be July 1, 2001 through June 30, 2002. The total amount shall not exceed \$6,000.

**Agreement Modification** – Chairman Evans signed Modification No. 290083-1, dated July 19, 2001, to the Agreement between the Missoula Valley Water Quality District and the State of Montana, Department of Environmental Quality (“DEQ”), for the purpose of completing a Nonpoint Source project. The modification extends the completion date from April 30, 2001 to May 14, 2002. There are no budget implications as a result of this modification. The document was returned to the Health Department for further handling.

Amended Task Order – Chairman Evans signed Amendment Number One to Task Order Number 01-07-4-31-028-0, dated July 19, 2001, between the Montana Department of Public Health and Human Services and Missoula County, amending the immunization contract from \$10,928 to \$21,832. The document was returned to the Health Department for further signatures and handling.

Task Order – Chairman Evans signed Task Order No. 02-07-5-01-032-0 to the Missoula County Master Contract that covers the period July 1, 1998 through June 30, 2005 (Maternal and Child Health). This Task Order is the Block Grant master contract for Health Services. The term will be July 1, 2001 through June 30, 2002. Compensation and Source of Funding are outlined in the Task Order in Section 3A: Compensation and Source of Funding. The document was returned to the Health Department for further signatures and handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, JULY 20, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. Chairman Evans attended a meeting of the Judicial Standards Commission held at Judge McLean's residence at Georgetown Lake.

## Election Canvass

In the forenoon, Commissioner Carey, County Auditor Susan Reed, and County Superintendent of Schools Rachel Vielleux canvassed the Canyon River Water & Sewer District mail ballot election.

*Vickie M Zeier*  
Vickie M. Zeier  
Clerk & Recorder

Barbara Evans  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JULY 23, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated July 23, 2001, batch number 1411 (pages 1-5), with a grand total of \$31,590.71. The Claims List was returned to the Accounting Department.

Plat – The Commissioners, as owners, signed the plat for Missoula Development Park – Phase 3B, a subdivision located in the SW¼ of Section 36, T 14 N, R 20 W, PMM, Missoula County, a total area of 9.25 acres, with the owners of record being the Missoula County Airport Industrial District and Nurture, Inc.

Plat and Improvements Agreement – The Commissioners signed the plat and Subdivision Improvements Agreement and Guarantee for Invermere, Phase 1A, a residential subdivision located in the SE¼ of Section 12, T 12 N, R 20 W, Missoula County, a total area of 15.18 acres, with the owner/developer of record being Drake A. Lemm. The estimated cost for improvements set forth in the Agreement and Guarantee is \$327,968.00. Said improvements shall be completed no later than May 15, 2002.

Order – The Commissioners signed the Order of Missoula County Commissioners as to Formation of Canyon River County Water and Sewer District, dated July 23, 2001, as the result of a special mail ballot election held on Tuesday, July 17, 2001. The vote was canvassed and the sole qualified elector also elected the three nominated directors: Tara Anne McDonough, Douglas B. McAlear, and Cynthia J. Sampson.

Plat and Agreements – The Commissioners signed the plat and Subdivision Improvements Agreement and Guarantee for Stillwater Addition at Maloney Ranch, Phase 1, located in the N½ of Section 24, T 12 N, R 20 W, PMM, Missoula County, a total area of 62.03 acres, with the owner of record being Maloney Properties, LLC. The estimated cost for improvements set forth in the Agreement and Guarantee is \$274,830.93. Said improvements shall be completed no later than two years after plat filing

Also signed was an Agreement entitled “Common and Riparian Area Management Plan” dated July 23, 2001, between Stillwater Addition Homeowners Association, Inc. and Missoula County, which requires the creation of a riparian management plan for the Common Area. One goal of this Plan is to re-introduce natural, drought-resistant grasses. Native species of trees and shrubs will be able to compete, because grazing has been limited.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated May 10, 2001, between The Missoula County Park Board (the “Board”) and the Bonner Development Group for assistance with park development. The Board agrees to provide up to \$1,500.00 in matching funds for improvements as delineated in Attachment A to the Agreement. Funds must be spent by May 1, 2003. The document was returned to Lisa Moisey, Projects Assistant for the Park Board, for further signatures and handling.

Closing Documents – Chairman Evans signed the following documents relating to the \$1,000,000 General Funds Bonds, Series 2001 for Missoula County, Montana:

- 1) County Clerk and Recorder/Treasurer’s Certificate and Receipt;
- 2) Certificate with Respect to Satisfaction of Condition Precedent for Issuance of Bonds;
- 3) Arbitrage Certificate;
- 4) Officers’ Certificate;
- 5) Affidavit as to Signatures of County Officers; and
- 6) Request and Authorization to execute the Certificate of Authentication and deliver the Bonds to The Depository Trust Company of New York, New York.

The documents were returned to Dorsey & Whitney for further handling.

Agreement and Plan – Chairman Evans signed a Community Development Block Grant (“CDBG”) Loan Agreement, dated July 23, 2001, between Pyramid Mountain Lumber, Inc. and the Missoula Area Economic Development Corporation (“MAEDC”), for the purpose of increasing employment opportunities for low and moderate income persons residing within Missoula County. The total loan amount is \$368,000.00. Payment is to be made in the amount of \$2,121.00 payable monthly, beginning on September 1, 2001 and continuing on the same day of each subsequent month until August 1, 2006.

In consideration of the financial assistance provided by the CDBG loan, Chairman Evans also signed a Hiring and Training Plan that is an integral part of the grant agreement. Pyramid Mountain Lumber, Inc. will be responsible for implementing the plan, and will be assisted by the Montana Job Service and MAEDC.

The documents were returned to Dick King at MAEDC for further handling.

#### TUESDAY, JULY 24, 2001

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Commissioner Curtiss was out of the office in the forenoon.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated July 24, 2001, batch number 1407 (pages 1-5), with a grand total of \$53,859.98. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated July 24, 2001, batch number 1409 (pages 1-3), with a grand total of \$26,467.64. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated July 24, 2001, batch number 1410 (pages 1-5), with a grand total of \$11,886.06. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 24, 2001, batch number 1412 (pages 1-4), with a grand total of \$204,607.21. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 24, 2001, batch number 1415 (pages 1-3), with a grand total of \$14,493.89. The Claims List was returned to the Accounting Department.



Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated July 24, 2001, batch number 1416 (pages 1-2), with a grand total of \$135,300.00. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Digital Descriptor System, Cedar Rapids, Iowa, as applicant for Accounting Warrant #391311 issued June 21, 2001 on the Missoula County 4003 Fund in the amount of \$38,170.00 (payment for SI-3000 System), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter and Documentation – The Commissioners signed a Transmittal Letter and Documentation for continuation of funding for the Missoula County Domestic Violence Program (YWCA Shelter Grant). The total amount shall not exceed \$53,000.00, which includes a local match of \$16,000 for the Jesuit Volunteers who provide 1.5 FTE staffing in the YWCA Shelter. The match amount is loaded in the preliminary Fiscal Year 2002 Missoula County budget. The documents were returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Grizzly Fence, for the purpose of providing a 8' high chain link fence with privacy inserts at the Health Department, which is located at Alder and Orange Streets, Missoula, Montana. The term will be August 1, 2001 through August 30, 2001. The total amount shall not exceed \$1,875.00.

Resolution No. 2001-068 – Chairman Evans signed Resolution No. 2001-068, dated July 24, 2001, a resolution of intent to create Rural Special Improvement District ("RSID") No. 8843, for the maintenance of three fire hydrants in the Invermere Phase 1A Subdivision, located at T 12 N, R 20 W, Section 12, Missoula County, Montana. There are 21 lots in the district with an estimated annual cost of \$52.45 per lot for a total of \$1,101.49 per year. A hearing date was set for August 15, 2001, at 1:30 p.m.

Agreement – The Commissioners signed a Work Experience Site Agreement between Missoula County and the Missoula Job Service WORc Program, for the purpose of providing participants with work experience at Missoula County's worksites. There are no budget implications. The document was returned to Marie Pruitt in Human Resources for further handling.

Resolution No. 2001-069 – The Commissioners signed Resolution No. 2001-069, dated July 24, 2001, relating to the Trust Agreement for Self-Insurance Plan of Missoula County, Montana. This resolution revokes the suspension of the Trust Agreement adopted May 31, 2000 and restores the Trust Agreement in all respects as it regards the duties, obligations, powers and rights of the Trustee, First Interstate Bank, N.A. of Missoula.

Agreement – Chairman Evans signed a Subcontract Agreement between the Missoula City-County Health Department and the National Association of County and City Health Officials, Washington, D.C., to conduct activities under the NACCHO/ATSDR cooperative agreement and to implement an environmental health needs assessment project in reference to the site at Missoula White Pine Sash. The term will be July 12, 2001 through August 12, 2002. The total amount shall not exceed \$6,000 to the Water Quality District. The document was returned to the Health Department for further handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Community Care for the purpose of providing tobacco education classes in Missoula County schools (as it did last year). The term will be August 1, 2001 through June 30, 2002. The total amount shall not exceed \$6,500.00, which is funded by the tobacco grant.

Other items included:

- 1) The Commissioners reviewed a letter, dated July 23, 2001, from Karen Bonomo, Manager of The Western Montana Fair, stating that the bleachers at the Fairgrounds were determined to have structural defects. The costs to bring the structure into compliance with the Uniform Building Code will be \$17,878.00. The Commissioners authorized payment for the repairs to come from the "One-Time Bucket Fund."

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **WEDNESDAY, JULY 25, 2001**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Curtiss attended the County Board of Adjustment regarding the Animal Shelter relocation.

Claims List – The Commissioners signed the Claims List, dated July 25, 2001, batch number 1414 (pages 1-3), with a grand total of \$4,736.85. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer Meeting held in the forenoon, the following items were signed:

Resolution No. 2001-070 – The Commissioners signed Resolution No. 2001-070, a resolution to rezone property located in the NW¼ of Section 1, T 13 N, R 20 W, PMM, from "Missoula Development Park Special District Community Commercial" to "Canyon Creek Village Planned Unit Development Zoning District," subject to conditions. Rezoning is more particularly described in the metes and bounds description and the approved Canyon

Creek Village Preliminary Plat attached thereto. The document was returned to Denise Alexander at the Office of Planning and Grants for further handling.

Request For Action – Per recommendation by the Office of Public Works, the Commissioners approved and authorized the Director of Public Works to initiate the access break permitting process for constructing the fourth leg to the Airway Boulevard/I-90 Interchange. It is estimated that the permitting process will cost between \$5,000 and \$10,000. The budgeted amount is \$10,000.

#### PUBLIC MEETING – July 25, 2001

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Jean Curtiss. Also present were Commissioner Bill Carey, County Surveyor Horace Brown, Public Works Director Greg Robertson and Chief Civil Attorney Michael Sehestedt. Commissioner Chairman Barbara Evans was out of the office.

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$489,255.76. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

#### Bid Award: 10,000 Tons of Plant Mix Asphaltic Concrete (Road Department)

Greg Robertson presented the staff report.

Missoula County solicited bids for asphaltic concrete in the amount of 8,000 tons. The solicitation included an allowance of an increase of 25% of this amount if bids came in below estimated cost. Two bids were received; JTL Group, Inc at \$21/ton and L.S. Jensen & Sons, Inc. at \$26/ton.

After evaluating the bids, JTL Group, Inc. is the responsible low bidder. Because of the excellent price received from JTL Group, Inc., the allowance for a 25% increase was invoked in the contract language to increase the total quantity to 10,000 tons.

It is the recommendation of the Public Works Department to award the contract to JTL Group, Inc. in the amount of \$210,000. The amount budgeted is \$235,000.

Chairman Evans joined the public meeting at this time.

Commissioner Carey moved that the Board of County Commissioners award a contract for 10,000 tons of Plant Mix Asphaltic Concrete to JTL Group, Inc. in the amount of \$210,000 as the responsible low bidder. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing: Proposed Modification to Economic Development Revenue Note on Behalf of Blue Mountain Clinic, Inc. Project

Michael Sehestedt presented background information.

In 1995, the County approved an Economic Development (or Industrial Development) Revenue Bond in the form of a note. It provided for modification of interest periodically, based on the prime. The bond has been modified once, amended it as to interest pursuant to terms. This is a second request for modification to reduce the interest rate from the current rate to 100 basis points above the New York prime, x .650, producing a final rate equal to the New York prime x .7, and to extend the terms of the note. The lender is in agreement with this action. The Board's action today is authorizing the modification, not compelling the modification to be made. Bond Counsel has prepared a proposed resolution for the Board's execution.

Chairman Evans opened the public hearing.

Commissioner Curtiss stated that this action was reducing the rate and extending the term of the note, as long as the lender agrees.

Michael Sehestedt stated that was correct.

Wayne Chamberlain stated he was the Executive Director of Blue Mountain Clinic. He was present to answer any questions the Board may have. The lender has agreed to the terms and this action is to process the paperwork.

There being no further comments, the public hearing was closed.

Commissioner Curtiss moved that the Board of County Commissioners authorize the chair to sign the proposed modification to the Economic Development Revenue note on behalf of the Blue Mountain Clinic, Inc. Project. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey asked how much money this would save Blue Mountain Clinic?

Wayne Chamberlain stated it would save the clinic approximately \$2,000 a month.

Chairman Evans asked if the term of the note was being extended, wouldn't that even out over time.

Wayne Chamberlain stated that was correct, but with fundraising efforts, they are making principal payments and this will help improve their cash flow without changing the indebtedness.

There being no further business to come before the Board, the Commissioners were in recess at 1:38 p.m.

#### **FISCAL YEAR 2002 BUDGET HEARING**

##### **PRELIMINARY HEARING**

**WEDNESDAY, JULY 25, 2001 – 2:30 P.M.**

**ROOM 201 – COURTHOUSE ANNEX**

The Preliminary Hearing on the Fiscal Year 2002 Budget was opened at 2:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Chief Financial Officer Dale Bickell, Chief Administrative Officer Ann Mary Dussault and Public Works Director Greg Robertson.

Dale Bickell presented a general overview of the financial condition of the County. A handout with budget information for Fiscal Year 2002 was available.

During the Fiscal Year 2001 budget process, a lot of cuts were made to control deficit spending. The results of that process have resulted in a good stabilization of the County's financial position, particularly the general fund. The general fund status is currently showing a \$400,000 surplus, which could increase based on final figures not yet known. The Capital Improvements Fund still shows a deficit of about \$1 million that has been carried forward for the past few fiscal years, pending the sale of the County Shops property. That sale did occur during FY2001, however, the cash was not received during the fiscal year. There is a contract that will fund that deficit in the next four fiscal years. The overall picture is much better than last year. Consequently, the Commissioners were able to do some new projects and restore some positions.

There were significant changes that occurred during the Legislative Session that directly impact the FY2002 budget. The first major impact is HB 124, the "Big Bill." This bill was designed to simplify the revenue streams between local governments and the State. There were a lot of complex distributions, including motor vehicle taxes, which were distributed in many different ways. This bill essentially takes all the different revenue streams – gambling revenue, motor vehicle tax, corporate license tax, certain reimbursements, etc. – and sends them to the State. In return for that, local governments receive an entitlement share. For FY2002, the share will be the amount received in FY2001 plus a 3% growth factor. The growth factor in future years will change based on the Montana state-wide economy. It will be a much better system of maintaining revenues, it will be stable with guaranteed growth and easier to lobby the legislature.

SB 176 is another big change that will take effect in FY2003. The District Court system will be assumed by the State. The County will retain the Clerk of Court and Public Defenders and the County is still responsible for Court space needs in the Courthouse. However, all the employees in the District Court will become State employees. In order for the State to recoup the revenue from assuming all the expenses, it will create a reduction in the County's entitlement share. The results of the "Big Bill" and SB 176 should be revenue neutral in the first year and is expected to be positive in future years.

SB138 is the Local Government Accounting Bill. The results of this bill ease a lot of restrictions on the ability to amend the budget for various reasons. In the past, if there was unanticipated revenue from a private source, those monies could be received but there was no authority to spend them. This bill allocates that authority. It also allows the County to avoid the use of contingency funds, "just in case" expenditures. Emergency monies can be spent as needed. It also sets the stage for multi-year budgeting.

The first budget priority was to rebuild cash reserves, particularly in the General Fund, at 1% per year. By the end of FY2000, cash reserves were at almost dangerously low levels. FY2001 has returned conservatively \$400,000. There was revenue left over to restore some positions that were eliminated in FY2001. Of 17 positions eliminated, 7 positions will be restored in FY2002 (2 deputies, 2 attorneys and other miscellaneous support positions). Operational increases were also granted on a case-by-case basis.

New services and positions that have been funded for FY2002 include additional personnel to fulfill civil juror summons process requirements for the Sheriff's Office, establish a transport unit for the Detention Center and create a new grants administrator position and add a new long-range planner at the Office of Planning and Grants. Another area of concern was the Employee Benefits Trust. Recent large claims had depleted the trust. To keep insurance premium increases at a reasonable, affordable level, the trust was funded an additional \$300,000. To the extent possible, this will be paid through cash reserves. There is the possibility a tax levy could be used for this. Under HB 409, passed by the last legislature, local governments are allowed to recoup increases in insurance costs through additional levy authority.

Several enhancements were approved in order to ensure that District Court did not lose any positions during State assumption in FY2003. These were positions that were primarily grant supported. All of these were supported through District Court reserves, there were no additional taxes.

A new Public Works Director has been hired and the elected County Surveyor position will be eliminated at the end of the current term, December 31, 2002. In working toward that transition, the Surveyor and Road/Bridge funds have been separated into distinct divisions that more accurately account for the activities involved and will help with the transition to the Public Works Department which will begin January 1, 2003.

Priorities were set in the Capital Improvements fund. They include: an increase in the Sheriff's Office replacement pool to fund new vehicles; establish a copier replacement pool; renovations to the old Courthouse building; and roof repair at the warehouse and health department. The renovations to the Courthouse were a high priority and in FY2002 will include replacing the roof and repairing some exterior damage and improving life/safety features.

2000-2001 0020

The bottom line effect to taxpayers for FY2002 will be about a \$24 increase to the average homeowner based on an average house price of \$136,000.

Susan Reed, County Auditor, introduced Karen Bonomo, the new Fair Manager. She comes to Missoula from Rock Springs, Wyoming.

Chairman Evans asked for public comments. The following people spoke in support of:

Speaker's Name	In Support of
Phyllis Jamison	Stray Cat Problem
Dick Farey	Missoula Food Bank
Susan Kohler	Missoula Aging Services
Fran Maronic	Watson Children's Shelter
Jim Morton and Kate Jerrum	Supplemental Security Income Transfer (SSIT) and Displaced Homemakers Program
Elaine Summerfield	Partnership Health Center
Kelly Rosenleaf	Child Care Resources
Henry Grasiani	Salvation Army – Travel Assistance and Winter Shelter Funds
Laura Millen	Art Museum of Missoula
Klaus City	Montana Legal Services – Family Law Advice Clinic
Tammie Everson	Western Montana Mental Health Center's Crisis Stabilization Facility
Barb Robinson	Friends to Youth
Jan Blayden	Poverello Center

Written testimony was submitted from Ann O'Connell in support of Court Appointed Special Advocates (CASA) of Missoula, Inc.

There being no further comments, Chairman Evans continued the public hearing on the Fiscal Year 2002 Budget at 3:23 p.m. The hearing will reconvene Thursday, July 26, 2001, at 7:00 p.m. in Room 201 of the Courthouse Annex.

#### THURSDAY, JULY 26, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated July 26, 2001, batch number 1413 (pages 1-3), with a grand total of \$8,237.32. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated July 26, 2001, batch number 1417 (pages 1-4), with a grand total of \$29,292.44. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 26, 2001, batch number 1428 (pages 1-2), with a grand total of \$13,500.00. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming the Western Montana Turf Club (c/o Western Montana Fair Office) as principal for Accounting Warrant #394701 issued July 24, 2001 on the 2160 Fund in the amount of \$120.00 (payment for sponsor sales percentage), now unable to be found.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, no items were signed. Budget issues were discussed.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### FISCAL YEAR 2002 BUDGET HEARING

#### CONTINUATION OF PRELIMINARY HEARING

THURSDAY, JULY 26, 2001 – 7:00 P.M.

ROOM 201 – COURTHOUSE ANNEX

The Preliminary Hearing on the Fiscal Year 2002 Budget was reconvened at 7:00 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Chief Financial Officer Dale Bickell, Chief Administrative Officer Ann Mary Dussault, Undersheriff Mike McMeekin and Public Works Director Greg Robertson.

Dale Bickell presented a general overview of the financial condition of the County. A handout with budget information for Fiscal Year 2002 was available.

During the Fiscal Year 2001 budget process, a lot of cuts were made to control deficit spending. The results of that process have resulted in a good stabilization of the County's financial position, particularly the general fund. The general fund status is currently showing a \$400,000 surplus, which could increase based on final figures not yet known. The Capital Improvements Fund still shows a deficit of about \$1 million that has been carried forward for the past few fiscal years, pending the sale of the County Shops property. That sale did occur during FY2001, however, the cash was not received during the fiscal year. There is a contract that will fund that deficit in the next four fiscal years. The overall picture is much better than last year. Consequently, the Commissioners were able to do some new projects and restore some positions.

There were significant changes that occurred during the Legislative Session that directly impact the FY2002 budget. The first major impact is HB 124, the "Big Bill." This bill was designed to simplify the revenue streams between local governments and the State. There were a lot of complex distributions, including motor vehicle taxes, which were distributed in many different ways. This bill essentially takes all the different revenue streams – gambling revenue, motor vehicle tax, corporate license tax, certain reimbursements, etc. – and sends them to the State. In return for that, local governments receive an entitlement share. For FY2002, the share will be the amount received in FY2001 plus a 3% growth factor. The growth factor in future years will change based on the Montana state-wide economy. It will be a much better system of maintaining revenues, it will be stable with guaranteed growth and easier to lobby the legislature.

SB 176 is another big change that will take effect in FY2003. The District Court system will be assumed by the State. The County will retain the Clerk of Court and Public Defenders and the County is still responsible for Court space needs in the Courthouse. However, all the employees in the District Court will become State employees. In order for the State to recoup the revenue from assuming all the expenses, it will create a reduction in the County's entitlement share. The results of the "Big Bill" and SB 176 should be revenue neutral in the first year and is expected to be positive in future years.

SB138 is the Local Government Accounting Bill. The results of this bill ease a lot of restrictions on the ability to amend the budget for various reasons. In the past, if there was unanticipated revenue from a private source, those monies could be received but there was no authority to spend them. This bill allocates that authority. It also allows the County to avoid the use of contingency funds, "just in case" expenditures. Emergency monies can be spent as needed. It also sets the stage for multi-year budgeting.

HB 345 was the Elected Officials Salary Bill. Prior to this bill, elected officials salaries were set by State Statute. Now a Compensation Committee comprised of County Commissioners, elected officials and two citizen taxpayers set a salary schedule that is adopted by the Commissioners. For this year, the committee adopted a salary schedule that grants a 4% salary increase at the start of the fiscal year and a 4% increase at the mid-point of the fiscal year. The effect of this increase also trickles down to certain deputy level employees in the Sheriff's Office, County Attorney's Office, County Auditor's Office and the Clerk of Court. The general impact of this increase was \$132,000 in excess of the Personnel Plan increase.

The first budget priority was to rebuild cash reserves, particularly in the General Fund, at 1% per year. By the end of FY2000, cash reserves were at almost dangerously low levels. FY2001 has returned conservatively \$400,000. There was revenue left over to restore some positions that were eliminated in FY2001. Of 17 positions eliminated, 7 positions will be restored in FY2002 (2 deputies, 2 attorneys and other miscellaneous support positions). Operational increases were also granted on a case-by-case basis.

New services and positions that have been funded for FY2002 include additional personnel to fulfill civil juror summons process requirements for the Sheriff's Office, establish a transport unit for the Detention Center and create a new grants administrator position and add a new long-range planner at the Office of Planning and Grants. Another area of concern was the Employee Benefits Trust. Recent large claims had depleted the trust. To keep insurance premium increases at a reasonable, affordable level, the trust was funded an additional \$300,000. To the extent possible, this will be paid through cash reserves. There is the possibility a tax levy could be used for this. Under HB 409, passed by the last legislature, local governments are allowed to recoup increases in insurance costs through additional levy authority.

Several enhancements were approved in order to ensure that District Court did not lose any positions during State assumption in FY2003. These were positions that were primarily grant supported. All of these were supported through District Court reserves, there were no additional taxes.

A new Public Works Director has been hired and the elected County Surveyor position will be phased out at the end of the current term, December 31, 2002. In working toward that transition, the Surveyor and Road/Bridge funds have been separated into distinct divisions that more accurately account for the activities involved and will help with the transition to the Public Works Department which will begin January 1, 2003.

Priorities were set in the Capital Improvements fund. They include: an increase in the Sheriff's Office replacement pool to fund new vehicles; establish a copier replacement pool; renovations to the old Courthouse building; and roof repair at the warehouse and health department. The renovations to the old Courthouse were a high priority and in FY2002 will include replacing the roof and repairing some exterior damage and improving life/safety features.

A Budget Comparison in the General Fund between FY2001 and FY2002 shows a 6.8% growth in revenue and an 8.8% growth in expenditures, and total revenues under expenditures of \$425,000. That does not mean a budget that is deficit spending, most of the deficit is one time costs related to capital items. A comparison of the County-wide budget shows a total increase in revenues of 2.7% and a 15.7% increase in expenditures. A lot of that is related to Community Development Block Grants in the Office of Planning and Grants, primarily concerning the East Missoula Sewer project and the Pyramid Lumber project. It also shows the cash reserves at the end of FY2001 at over \$1 million.

The bottom line effect to taxpayers for FY2002 will be about a \$24 increase to the average homeowner based on an average house price of \$136,000.

Chairman Evans asked for public comments. The following people spoke in support of:

Speaker's Name	In Support of
Christina Swanson	Parenting Place (formerly Child and Family Resource Council) Parenting Classes, Children's Program and Infant Care
Will McDowell, 4660 Spurgin Road	Bike Path on Clements Road

Chairman Evans asked Greg Robertson to respond to Mr. McDowell's comments.

Greg Robertson stated he had reviewed the information presented by the homeowners. They had done a very thorough job. Right now, there are two projects ahead of this, one in Frenchtown and the other in the Lolo area. Those are fully funded right now. Annually, about \$200,000 in Federal aid is allocated for these types of projects. The Clements Road pathway is the next project to be funded. The money will become available with the next Federal fiscal year, in October of 2002. There will be adequate funds to do the project. The Public Works Department will time their activity so that billing occurs at that time. It will not be within the County's fiscal year as it does not fit within the Federal budget. He hoped the job will be put out for bid and constructed to correspond with that time frame. He estimated construction would begin in September 2002.

Chairman Evans asked again for public comments. The following people spoke in support of:

Speaker's Name	In Support of
Michael McGone	Bike Path on Clements Road
Terry Dunham	Detention Officers Association negotiations

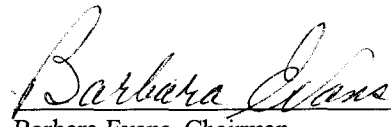
There being no further comments, Chairman Evans closed the hearing. The Commissioners were in recess at 7:25 p.m.

#### FRIDAY, JULY 27, 2001

The Board of County Commissioners met in regular session; a quorum of members was present. Chairman Evans was out of the office all day.

Replacement Warrant – Acting Chairman Jean Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Teresa Thane as applicant for Missoula County Public Schools Warrant #098514 issued June 22, 2001 on the MCPS Payroll Fund in the amount of \$416.89 (payment for wages), which was not received in the mail. No bond of indemnity is required.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### MONDAY, JULY 30, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated July 26, 2001, batch number 1420 (pages 1-5), with a grand total of \$160,445.80. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 26, 2001, batch number 1423 (pages 1-4), with a grand total of \$82,834.82. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 26, 2001, batch number 1424 (pages 1-2), with a grand total of \$884.96. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 30, 2001, batch number 1418 (pages 1-2), with a grand total of \$1,605.43. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated July 30, 2001, batch number 1427 (pages 1-2), with a grand total of \$5,999.06. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 15 - Pay Date: July 27, 2001. Total Missoula County Payroll: \$897,431.44. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2001-071 – Chairman Evans approved Resolution No. 2001-071, dated July 30, 2001, relating to Economic Development Revenue Note (Blue Mountain Clinic, Inc. Project), Series 1995, and authorizing the issuance of a second amended and restated note to reflect a change in the interest rate calculation and extension of the note term.

Agreement – Chairman Evans signed a Memorandum of Agreement, dated May 10, 2001, between The Missoula County Park Board (the "Board") and Missoula Equestrian Park for assistance with park development. The Board agrees to provide up to \$1,500.00 in matching funds for improvements as delineated in Attachment A to the Agreement. Funds must be spent by May 1, 2003. The document was returned to Lisa Moisey, Projects Assistant for the Park Board, for further signatures and handling.

#### TUESDAY, JULY 31, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated July 31, 2001, batch number 1430 (pages 1-5), with a grand total of \$36,909.54. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter – The Commissioners signed a letter to Debbie Austin, Forest Supervisor, Lolo National Forest, voicing their strong support of the public acquisition of 475 acres on the south-facing slope of Mount Sentinel above Pattee Canyon. The Five Valleys Land Trust is spearheading this effort.

Change Order – Chairman Evans signed Change Order #1 for construction of sidewalk and pathway improvements within Phase 1, Missoula Development Park, as recommended by the Missoula Development Authority. The bid was awarded to JTL Group, Inc. The total base bid is \$417,164.75. This Change Order will increase the base bid by \$152,115, for a new total cost of \$569,279.76. The document was returned to Barb Martens in the Projects Office for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.



WEDNESDAY, AUGUST 1, 2001

002 0024

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated July 31, 2001, batch number 1431 (pages 1-4), with a grand total of \$42,163.54. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 1, 2001, batch number 1434 (pages 1-5), with a grand total of \$25,189.26. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending July 31, 2001.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed and renewed a Professional Services Contract between Missoula Correctional Services and Missoula County Detention Facility to provide programming for State inmates for education, case manager, chemical dependency counselor, and group facilitators. The term will be July 1, 2001 through June 30, 2002. The total amount shall not exceed \$185,746.04.

Request for Action – The Commissioners approved a solicitation to construct about 1,000 feet of roadway adjacent to the Blackfoot River about one mile upstream from Johnsrud Park. This is a cooperative project between the BLM and Missoula County. The County is providing the survey, design, and construction administration services, and the BLM is providing the funding. The document was returned to Joe Jedrykowski in the Public Works Department for further handling.

Other items included:

- 1) A continued discussion was held on the budget implications of the Animal Shelter Site. A Motion to not rescind the decision on the Animal Shelter location was passed 2-1, with Chairman Evans opposed.

#### PUBLIC MEETING – August 1, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, County Surveyor Horace Brown and Deputy County Attorney Marnie McClain.

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$531,666.80. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### Consideration: Meadowlands Lot 4A (Thornton Drive near the Wye)

Dale McCormick, Office of Planning and Grants, presented the staff report.

K & E Equipment Partnership, represented by Ron Ewart of Eli & Associates, is requesting approval of a two-lot commercial/industrial summary subdivision located southeast of Meadowlands Lot 5 Subdivision, near the Wye, east of Highway 10 on Thornton Drive. Meadowlands was originally a six lot subdivision, filed in October, 1994. At the time of filing, Lot 4 was 4.02 acres in size. In 1997, an amended plat for boundary location was filed that took an acre of Lot 4 and added it to Lot 3. With this filing, the new lots were named Lot 4A and Lot 3A. The total size of the property currently is 3.02 acres. Lot 4A-1 and Lot 4A-2 are proposed to be 1.43 acres and 1.5 acres respectively.

The property is zoned C-C2, General Commercial, and is presently vacant. The land slopes downward from northwest to southeast at a grade of approximately 2% to 5%. Surrounding land uses include vacant land and commercially zoned land on which commercial uses are situated. Big Sky Tractor and Missoula RV Repair are located nearby.

Individual well and septic systems are proposed to serve the lots. The property is located within the Urban Growth Area, the Air Stagnation Zone, the Airport Influence Area and the Building Permit jurisdiction.

Access to the proposed subdivision is provided via Thornton Drive, a 32 foot wide paved public road within a 60 foot right-of-way. Thornton Drive has two access points on Highway 10. A private access and utility easement was created with the original Meadowlands subdivision to access the remainder to the northeast. Recently, Meadowlands Lot 5 was approved for subdivision with a condition of approval that the private access and utility easement on Lot 5C be dedicated as a public access easement. The other half of the private access easement created with the original Meadowlands Subdivision is located on Lot 4A-1. County Public Works Department commented that they supported making the 30 foot wide private access easement on Lot 4A-1 public. Staff is recommending the private access easement be made a public access easement as a condition of approval for Meadowlands Lot 4A, resulting in a total of 60 feet of public easement.

A variance is being requested from the requirement to provide sidewalks. Staff is recommending approval of the variance request. Staff is also recommending approval of the subdivision.

Some of the conditions include \$100 per new lot to the Missoula Rural Fire District, a Development Agreement with the Noxious Weed Management Plan, a statement on the plat that it is within the Airport Influence Area and that the 30 foot private access and utility easement on the north side of proposed Lot 4A-1, abutting Lot 5C, be dedicated on the plat as a public access and utility easement.

Ron Ewart, Eli & Associates, developer's representative, stated the developer was in agreement with the conditions recommended. There are tentative plans at this time to take water and sewer to the Wye area. It is hoped that this will someday be hooked to public water and sewer. He hoped that if City water and sewer was brought in, the area could be maintained by the County and not extend the City limits, unless there was an some type of agreement for services. Currently, Missoula Rural Fire and Sheriff's Deputies serve the area. For the sake of providing efficient services, it should remain under County control.

Chairman Evans asked for public comments. There were none.

Commissioner Carey asked which Subdivision Regulation citation pertained to the variance request. It is shown as two different citations within the staff report.

Dale McCormick stated that the correct citation for the variance request was Subdivision Regulations 3-2(14)(D).

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(14)(D) of the Missoula County Subdivision Regulations to not provide boulevard sidewalks on Thornton Drive. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve Meadowlands Lot 4A Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Meadowlands Lot 4A Summary Subdivision Conditions of Approval:**

1. The developer shall present evidence of contribution of \$100.00 per new lot to the Missoula Rural Fire District large diameter hose fund prior to final plat approval. *Subdivision Regulations Article 3-7 and Missoula Rural Fire District recommendation.*
2. The applicant shall file a development agreement with Missoula County requiring future lot owners to maintain their lots in compliance with the Montana Noxious Weed Control Act, Title 7, Chapter 22, MCA and the Missoula County Noxious Weed Management Plan. The development agreement shall also require lot owners to revegetate any areas disturbed by construction or maintenance with beneficial species as soon as construction or maintenance is completed. The development agreement shall be reviewed and approved by the County Weed Board prior to final plat approval. *Subdivision Regulation Article 3-1(1)(B) and Missoula County Weed District recommendation.*
3. The following statement shall appear on the face of the plat:

"This property is within the Airport Influence Area and subject to the requirements of the Airport Influence Area Resolution."

Prior to final plat approval, the applicant shall grant an avigation easement to the Missoula County Airport Authority. *Subdivision Regulations Article 3-1(2) and Airport Authority recommendation.*

4. The 30 foot Private Access and Utility Easement on the north side of proposed Lot 4A-1, abutting Lot 5C, shall be dedicated on the plat as a Public Access and Utility Easement. There shall be a statement included on the plat that Missoula County will not be responsible for constructing a road within this right-of-way. In the event a road is built in the future, it shall be built to County road standards. *Subdivision Regulations Article 3-2, OPG and County Public Works Department recommendation.*
5. The developer shall petition the subdivision into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-1(6) and Missoula Urban Transportation District recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 1:40 p.m.

**FINAL HEARING**

**WEDNESDAY, AUGUST 1, 2001 – 2:30 P.M.**  
**ROOM 201 – COURTHOUSE ANNEX**

The Final Hearing on the Fiscal Year 2002 Budget was called to order at 2:40 p.m. by Acting Chair Bill Carey. Also present were Commissioner Jean Curtiss, Chief Financial Officer Dale Bickell, Chief Administrative Officer Ann Mary Dussault and Undersheriff Mike McMeekin. Commissioner Barbara Evans was out of the office.

Dale Bickell recapped the financial condition of the County as presented at the preliminary hearings. Only those items that had any changes since the preliminary hearings were discussed. A handout with budget information for Fiscal Year 2002 was available.

After final cash figures were calculated, the \$300,000 to the Employee Benefits Trust will be funded out of cash and no tax increase will be used. HB 409 will be banked and could be used in future years if necessary.

New items included in Capital Improvements include an early pay-off of the Public Defender/Youth Court building loan to free up operating capital and various Courthouse energy efficiency projects in anticipation of increased utility costs in FY2003.

A Budget Comparison in the General Fund between FY2001 and FY2002 shows a 7.4% growth in revenue and an 11.4% growth in expenditures. A comparison of the County-wide budget shows a total increase in revenues of 1.4% and a 18.9% increase in expenditures.

The bottom line effect to taxpayers for FY2002 will be about a \$25 increase to the average homeowner based on an average house price of \$136,000.

Ann Mary Dussault stated that some of these numbers are slightly different than what was presented previously. The floating mill accounts for most of those changes. By the time the budget is adopted, those numbers will be fixed, but for now they are still changing slightly.

Acting Chair Carey asked for public comments. The following people spoke in support of:

Speaker's Name	In Support of
Doug Waters	Cemetery Budget for Ongoing Maintenance and Utility Costs

Rob Chaney, Missoulian, asked questions about the changes from the Preliminary Hearing to today's figures.

Dale Bickell stated the figures presented today were more final and affected public safety and planning. Some of them were classification changes among different funds. There was some transferring among some of the poor funds in order to fund the projects recommended. Others reflected inflationary effects.

Rob Chaney asked what happened in District Court with their decrease.

Dale Bickell stated that was money used for debt service that would not be needed after the pay off of the building loan.

Ann Mary Dussault stated a portion of the millage went to the poor fund so that the CBOs that the District Court elected not to fund this year received funding. The District Court was supporting about \$66,000 in debt service over a period of years to pay off the InterCap Loan on the two buildings. By paying off that debt, it freed up millage worth about \$66,000. A portion of that was put in the poor fund so Missoula Youth Homes and Friends to Youth could be funded this year. The other portion was put in the general fund which contributed to the enhancement granted to the Sheriff's Office to serve jury process summons, a new demand from District Court.

There being no further comments, Acting Chair Carey closed the hearing. The Commissioners were in recess at 3:00 p.m.

#### THURSDAY, AUGUST 2, 2001

The Board of County Commissioners met in regular session; a quorum of members was present. Chairman Evans was out of the office August 2<sup>nd</sup> and 3<sup>rd</sup>.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 1, 2001, batch number 1433 (pages 1-2), with a grand total of \$3,934.45. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending July 31, 2001.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending July 31, 2001.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, no items were signed:

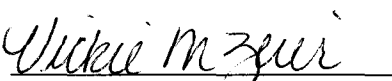
The Commissioners held a continued discussion on the Budget.

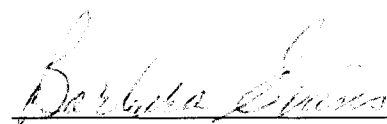
The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### FRIDAY, AUGUST 3, 2001

The Board of County Commissioners did not meet in regular session. Commissioner Carey was out of the office all day due to illness.

Replacement Warrant – Acting Chairman Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Kami Olberding as applicant for Accounting Warrant #390770 issued June 19, 2001 on the Missoula County 2180 Fund in the amount of \$420.00 (payment for Court Reporting Services), which was not received in the mail. No bond of indemnity is required.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, AUGUST 6, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Chairman Evans was out of the office all day, and Commissioner Carey was out all afternoon.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 3, 2001, batch number 1437 (pages 1-5), with a grand total of \$31,828.97. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 3, 2001, batch number 1438 (pages 1-4), with a grand total of \$14,879.92. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 3, 2001, batch number 1439 (pages 1-2), with a grand total of \$367.15. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 3, 2001, batch number 1441 (pages 1-5), with a grand total of \$43,546.13. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 3, 2001, batch number 1442 (pages 1-4), with a grand total of \$114,282.17. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 3, 2001, batch number 1443 (pages 1-2), with a grand total of \$18,696.75. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 6, 2001, batch number 1446 (pages 1-2), with a grand total of \$31,000.00. The Claims List was returned to the Accounting Department.

**TUESDAY, AUGUST 7, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated August 7, 2001, batch number 1440 (pages 1-4), with a grand total of \$19,231.64. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 7, 2001, batch number 1445 (pages 1-2), with a grand total of \$7,935.00. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Memorandum of Understanding – The Commissioners signed a Memorandum of Understanding, dated August 7, 2001, between the Missoula County Board of Commissioners and the District Court of the 4<sup>th</sup> Judicial District, regarding use of office space in the Health Department for the Crime Victim Advocate Program. The term will be August 15, 2001 through June 30, 2002. There will be no charge for the use of this space unless, after June 30, 2002, Court Personnel supported by grant funds occupy it. In that event the rental rate shall be \$2.33 per square foot. The document was returned to Chief Administrative Officer Ann Mary Dussault for further handling.

Agreement – The Commissioners signed an Agreement between the Montana Department of Transportation (“DOT”) and Missoula County relating to work to be accomplished for Glacier Creek Bridge under Federal Aid Project No. BR 9023(29). There are no fiscal impacts, as the project is 100% funded by the DOT. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

Retention Plan – Chairman Evans approved and signed a Cops in Schools Officer Retention Plan, relating to a Memorandum of Understanding (“MOU”) between the Missoula County Sheriff’s Department and District 40. The retention plan covers the fourth year or one full school/budget year past the end of the grant. District 40 will pay Missoula County \$12,600 yearly for four years, and these funds will be banked and will pay the officers’ position for one full budget cycle past the end of the grant. The document was returned to Don Morman in the Sheriff’s Department for further handling.

Other items included:

- 1) The Commissioners approved the ordering of BCC name badges from MACo.
- 2) A discussion was held on miscellaneous budget issues.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, AUGUST 8, 2001**

The Board of County Commissioners met in regular session; all three members were present.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Agreement, dated August 8, 2001, for Professional Engineering Services between Missoula County and Professional Consultants, Inc. to extend sewer improvements to Lots 9, 10, 11, 12 and 13, Block 3, Phase 4, and water improvements to Lots 12 and 13, Block 3, Phase 4, Missoula Development Park. This

2001-0002-0023

contract is also for coordination of gas and electric service to Lots 2 and 3, Block 3, Phase 1, and Lots 4 and 13, Block 3, Phase 4. Cost estimates to complete the sewer extension is \$116,449, and the water extension is \$39,050.

Request for Action – The Commissioners approved a request from the Crime Victim Advocate Program for the continued use of its current space on the second floor in the old Courthouse until a higher priority use is designated or until said space needs to be demolished in order to attain ADA accessibility between the annex and the old Courthouse.

Memorandum of Understanding – The Commissioners signed a Memorandum of Understanding, dated August 8, 2001, between the Missoula County Board of Commissioners and the Office of Planning and Grants, regarding rental of approximately 900 square feet of basement space in the Health Department for the use of the Crime Victim Advocate Program. The term will be August 15, 2001 through June 30, 2002. Rental rates will be \$175 per month, or \$2,100 per year, and will be automatically renewed at the end of each successive fiscal year.

Letter – The Commissioners signed their concurrence on a letter written by Greg Robertson, Director of Public Works, to Phyllis Jamison, dated August 8, 2001, providing an update on the status of Woodville Avenue. The letter stated that the segment of Woodville Avenue south of 3<sup>rd</sup> Street functioning as a driveway is classified as a non-maintained County road; no further maintenance activities will occur on this segment until such time that it is brought up to County geometric standards. The letter was returned to Greg Robertson, Director of Public Works, for further handling.

Certification of Acceptance – Chairman Evans signed a Missoula County Public Works Department Surveyor's Office Certification of Acceptance for County Maintenance for ACM. No. 2001-0002, Roller Coaster Road, Road No. L 0315-W, T 14 N, R 20 W, Section 27. The limits of acceptance are .134 miles from the intersection with Highway 10 West thence northeasterly 159.71 feet to the intersection with El Way thence northeasterly 547.66 feet to the center of a 50 foot radius cul de sac, 32 foot of asphalt within 80 foot of right of way. The document was returned to the County Surveyor's Office.

Tax Abatements – The Commissioners approved requests for a waiver of penalty and interest for the following:

- 1) CM Manufacturing, Inc., Richard M. Johnson, President, for Tax ID #80632161; and
- 2) Ridge Homeowners Association, Tom Hall, Treasurer.

Other items included:

- 1) After a briefing regarding the status of Detention Officers negotiations, the Commissioners approved and authorized up to Option 3, Options and Associated Costs, equaling \$38,546, plus benefits, per the Pay Plan Options table provided.
- 2) The Commissioners authorized Steve Johnson, Office of Human Resources, to settle a Clerk of District Court personnel grievance.
- 3) The Commissioners denied an employee request for the extension of sick leave for a Clerk of District Court employee.

#### **PUBLIC MEETING – August 8, 2001**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, County Surveyor Horace Brown and Chief Civil Attorney Michael Sehestedt.

#### **Public Comment**

Phyllis Jamison stated that in last Saturday's Missoulian, an attorney, Kenneth Phillips, was written up as the "Dog Bite King" because he is devoted to pursuing dog bite cases. She felt it would only be a matter of time before Missoula attorneys obtained settlements on cat bite cases. There are too few cat cages at Animal Control and not enough traps. A nurse at St. Patrick Hospital said that about 3 to 5 cat bites a year result in serious complications. Another nurse said the emergency room sees about one cat bite per week. It is time for cat control and rescue in Missoula. The City Council has sent a proposed Cat Ordinance to public hearing on Monday, August 13, 2001. The City Council is concerned about liability issues. Lois Herbig said her neighbor's son lost part of a finger to a cat bite. Dave Harmon and Jack Reidy are concerned about the birds that are killed by stray cats. Lou Ann Crowley said the Budget Committee wants the new Animal Control Facility to have as many cat cages as dog cages. The City will contribute its share toward that end. Animal Control has put road blocks in the way of any citizen who would trap and rescue stray cats. Paula Nelson requires prior arrangements before bringing in a trapped cat. There are not enough cat cages at the shelter. A fee to drop off a stray cat causes a hardship, plus the refundable trap deposit. A minimum number of cat traps must be available at Animal Control. There should be as many cat cages as dog cages at the new Animal Control Facility and the County should help fund this.

Chairman Evans stated that the County is providing the land on which to build the new facility.

#### **Presentation by Sheriff's Department**

Sheriff Doug Chase stated that today was a special day for both himself and Chief of Police Bob Weaver. Joining the Chief is Assistant Chief Rusty Wickman and Captain of Patrol Marty Luddeman. He asked Mrs. Davis to introduce her sons.

Janice Davis introduced her sons Adam Davis and Tyler Davis. She also introduced Elsie and Catlin Jones, honorary family members who have grown up with Adam and Tyler, her husband Bruce, family friend Dawn and sister-in-law Ingrid Davis.

Sheriff Chase stated that last spring he noticed a "Happy Ad" in the Missoulian thanking Tyler and Adam for rescuing their child from drowning. He did some investigation to find out who these young people were so they could be recognized for what they had done. He contacted Janice Davis who asked Adam and Tyler if they would be willing to be present for an award ceremony. They would be willing to do so, but after the end of the school year. Adam and Tyler were at a party at a private pool outside Missoula County. The 4-year-old girl got away from her parents and found the slide to the pool. She went down the slide and into the water. It was a cool evening and the heated pool was creating quite a bit of steam. Adam and Tyler noticed the child struggling. They thought and acted in an appropriate manner and rescued the child from the water. Adam and Tyler swam to the child and pulled her to the side of the pool where she was pulled out by her parents. They did not frighten the child so as to panic her further. They both showed a great deal of common sense and judgment.

Chief of Police Bob Weaver presented a certificate of appreciation to Adam and Tyler for their outstanding efforts in rescuing a young child from drowning.

Sheriff Chase presented Adam and Tyler with some goodies from the Sheriff's Department as well. He thanked them very much. He also thanked the Davis' for providing the right foundation for their children to grow on.

Chairman Evans stated the Commissioners would like to thank Adam and Tyler for their heroic efforts and congratulated them for a job well done.

#### **Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$310,891.44. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Duane Howlett Family Transfer**

Michael Sehestedt presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as a Tract in the south 1/2, northeast 1/4 of Section 20, Township 15 North, Range 22 West.

Duane and Norma Howlett have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10.07 acres in size located on the Nine Mile Road. The Howletts propose to create an approximately one acre parcel for transfer to their daughter, Julie Howlett.

The parcel was originally created by Deed Exhibit in 1972. It has not been divided since that time. The property is currently improved with two existing residences, one of which is occupied by the Howletts and the other by their daughter.

According to the records kept by the Missoula County Surveyor, the applicants have not previously used exemptions to the Subdivision and Platting Act.

Chairman Evans opened the public hearing.

Duane Howlett stated that his daughter has been living at this location since 1979. She has her own separate sewer system. This request is not changing anything, they would just like to give her an acre of land.

Commissioner Curtiss stated that the law allows the Board to ask questions to determine if the request is an attempt to evade subdivision review. She asked if Mr. Howlett's daughter planned to continue to live there.

Duane Howlett stated that was correct. He stated there were no plans to develop the land, it is for family.

There being no further comments, the public hearing was closed.

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Duane and Norma Howlett to create a new 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.

Michael Sehestedt stated this is approval for the division of land only. The County makes no guarantee with regard to services, access, availability of septic permits, paving, dust abatement, etc.

#### **Consideration: Elk Meadows Lot 47 (2 Lots on 11.87 acres) – Six Mile Area**

Denise Alexander, Office of Planning and Grants, presented the staff report.

This is a request to create a two lot residential subdivision of Elk Meadows, Lot 47. Elk Meadows Ranchettes was a 55 parcel Certificate of Survey that was filed in 1974. It is approximately 4 miles up Six Mile Road from Huson, off Interstate 90. There is an existing home and garage on the property. The applicant is Clare Whitcomb.

The applicant is proposing to divide the property into two lots, one 5.10 acres in size and the other 6.77 acres in size. The property is outside the Urban Growth Area. Elk Meadows Ranchettes was filed prior to the adoption of the 1975 Missoula Comprehensive Plan. The covenants filed with the COS permitted division of the lots to a minimum of 5 acres. About half of the 55 lots have been divided, most by Certificates of Survey. One parcel, Lot 32, was divided by subdivision in 1995.

MISSOULA COUNTY

The Comprehensive Plan designation for this property is Rural Low Density Residential, with a maximum residential density of one dwelling unit per 10 acres. This Rural Low Density Residential designation is applied to areas wishing to maintain a rural atmosphere where agricultural and horticultural activities are secondary to the residences but are still important qualities of the area. This designation also provides less impact than higher densities where environmental protection is needed for fragile areas or where more intense activities could not be supported due to physiographic, hydrologic, biologic or economic conditions.

This request is a re-subdivision of an existing parcel where some impact has already occurred on the natural habitat and where some services are already available. The resulting lots will still be relatively large to retain the rural character. The way the subdivision is designed, it will still be preserving the existing forest and meadow on the property. Considering all of these factors, staff has found that the proposal can be found to be in substantial compliance with the goals and objectives of the Comprehensive Plan.

The Elk Meadows Ranchettes has its own water system, the Elk Meadows County Water District. The existing home is served by a septic system and the new home site will have its own septic system. There is a loop driveway and the owners are proposing a shared private access easement on the new lot so they can continue to use both ends of the driveway. The new lot will be served by the southern approach only.

The applicant proposes a no build zone on Lot 4B located by an open meadow on the east end of the property. This preserves the meadow and the view to the Bitterroot Mountains.

Access to the property is by private, graveled roads maintained by the Elk Meadows Ranchettes Homeowners Association. The road width is less than subdivision regulations and the applicant has requested a variance from surface width of these roads. The applicant is also requesting a variance from pedestrian connections on the property and within the subdivision. Staff is recommending approval of the variance requests and approval of the subdivision with no conditions.

Ron Ewart, Eli & Associates, developer's representative, thanked Denise Alexander for her work on the proposal. This was the first time he had seen a subdivision without conditions. He could not think of any conditions that would be placed on it. Elk Meadows is a very nice place, the roads are well maintained but might be just slightly narrower than subdivision regulations. Jeff Orient is also present today. He is a realtor who also lives in Elk Meadows and is representing the owners. Elk Meadows has a water system, utilities are available, BFI serves the property, there is a school bus stop and mail box clusters. Phone and electric service already serve the property. The property has a gentle slope. About half the parcels have been redivided through the Certificate of Survey process. The owners of this property chose to go through subdivision review. This subdivision should not have any negative effects. A letter from the president and water system manager of the Homeowners Association stating their support of the subdivision has been received.

Chairman Evans asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(I) of the Missoula County Subdivision Regulations for road surface width of Wambli Lane, 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 Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections and pedestrian connections to school bus stops and adjoining neighborhoods, 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 Carey moved that the Board of County Commissioners approve Elk Meadows, Lot 47, Summary Subdivision, based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

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

#### THURSDAY, AUGUST 9, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated August 8, 2001, batch number 1452 (pages 1-2), with a grand total of \$19,518.50. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 9, 2001, batch number 1448 (pages 1-2), with a grand total of \$44,507.73. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 9, 2001, batch number 1449 (pages 1-4), with a grand total of \$37,070.84. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Susannah Murphy as principal for Accounting Warrant #50489 issued June 20, 2001 on the Missoula County General Fund in the amount of \$677.68 (payment for conference costs), now unable to be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming School Specialty, Mansfield, Ohio, as principal for Missoula County Public Schools Warrant #48894 issued May 30, 2001 on the Missoula County Warehouse (74) Fund in the amount of \$4,833.32 (for warehouse supplies), now unable to be found.



ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution – The Commissioners signed the following resolution (in full):

**Resolution No. 2001-072****Adopting A Budget for Missoula County for Fiscal Year 2001-2002.**

**WHEREAS, PURSUANT TO SECTION 7-6-2315, MCA**, the Board of County Commissioners of Missoula County, Montana, has held public hearings on the proposed budget of Missoula County for Fiscal Year 2001-2002, as required by law; and

**WHEREAS, PURSUANT TO SECTION 15-10-202 through 15-10-208, MCA**, the Board of County Commissioners of Missoula County has held hearings and passed resolutions as applicable under the above section; and

**WHEREAS, Sections 7-6-2317 through 7-6-2326, MCA**, provide for the fixing of various tax levies to raise funds sufficient to meet said expenditures authorized in the budget; and

**WHEREAS, THE DEPARTMENT OF REVENUE** is required to certify to the County Commissioners the value of a mill for each taxing jurisdiction in the County under Sections 15-8-201 and 15-10-202 MCA; and

**NOW, THEREFORE, BE IT RESOLVED**, that the final County Budget for Fiscal Year 2001-2002 be as set out in Attachments A, B, and C, and the same is hereby adopted as the final budget, subject to the conditions set forth below.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the levies as detailed below be fixed and adopted for Fiscal Year 2001-2002, based on the mill value of \$145,835 County-wide, and a value of \$74,016 outside the City limits of Missoula.

<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	63.60	A, B, and C
Bridge Fund	4.18	
Poor Fund	4.00	
Fair Fund	0.31	
Museum Fund	1.51	
Extension Fund	1.49	
Weed Fund	2.06	
Planning Fund	2.76	
District Court Fund	6.34	
Mental Health Fund	0.48	
Aging Fund	1.13	
Park/Recreation Fund	1.03	
Risk Management	2.30	
Child Daycare	0.28	
Library	9.11	
Technology	1.18	
Emergency	.17	
<b>SUB-TOTAL</b>	<b>101.93</b>	

Request for Action – Per recommendations by Commissioner Curtiss, CAO Ann Mary Dussault, and Emergency Services Director Jane Ellis, the Commissioners approved the Proposed Use of Federal Forest Receipts – Fiscal Year 02, as per the items set forth therein. This proposal provides direction for approximately \$110,000 in County Title III funds.

Request for Action – The Commissioners approved an application and Chairman Evans signed a Shoreline Construction Permit for Gary Lewis of Deer Creek Excavating, on behalf of Gene and Helen Boucher, to place rip rap on the shoreline of Seeley Lake. The property is on Lot 49 of Seeley Lake Shore Tracts, in the NW¼ of Section 5, T 16 N, R 15 W. The Office of Planning and Grants (“OPG”) recommended approval of the permit.

Board Appointment – The Commissioners approved and signed a letter dated August 10, 2001, appointing Cory Miller as a member of the Lolo Community Council. Mr. Miller’s term will be effective until the School Election in May of 2002.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, AUGUST 10, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. Chairman Evans was out of the office until noon, and Commissioner Carey was out all afternoon.

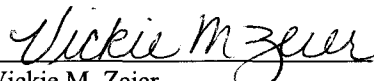
Claims List – The Commissioners signed the Claims List, dated August 9, 2001, batch number 1435 (pages 1-4), with a grand total of \$63,065.75. The Claims List was returned to the Accounting Department.

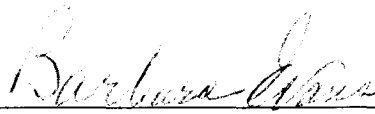
Claims List – Commissioners Curtiss and Carey signed the Claims List, dated August 10, 2001, batch number 1450 (pages 1-3), with a grand total of \$5,793.66. The Claims List was returned to the Accounting Department.

AUGUST 13, 2001

Resolution – The Commissioners signed Resolution No. 2001-073, dated August 10, 2001, amending Section 6.5, the East Butler Creek Foothills District Regulations, subject to conditions set forth therein and attachments to the Resolution.

Contracts – The Commissioners signed a Contract (including all documents made part of this contract by reference), dated August 2, 2001, between the Missoula County Road Department and JTL Group, to provide Missoula County with 10,000 tons of Plant Mix Asphaltic Concrete. The term will be 365 consecutive calendar days from the date of this Contract. The total amount shall not exceed \$210,000.00. The document was returned to Doreen Culver, Bidding Officer, for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, AUGUST 13, 2001**

The Board of County Commissioners did not meet in regular session. Commissioner Curtiss was on vacation the week of August 13<sup>th</sup> through the 17<sup>th</sup>; and Chairman Evans was out of the office all day.

**TUESDAY, AUGUST 14, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. In the afternoon, Chairman Evans attended a "Credibility Roundtable" – natural resources reporting – held at the C'Mon Inn; and in the evening, Commissioner Carey attended a Travelers Rest meeting at the Lolo Community Center.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 13, 2001, batch number 1453 (pages 1-3), with a grand total of \$77,925.54. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 13, 2001, batch number 1454 (pages 1-3), with a grand total of \$2,663.86. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 13, 2001, batch number 1455 (pages 1-4), with a grand total of \$42,185.95. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 13, 2001, batch number 1456 (pages 1-4), with a grand total of \$44,135.01. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 14, 2001, batch number 1451 (pages 1-4), with a grand total of \$33,808.16. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 14, 2001, batch number 1458 (pages 1-4), with a grand total of \$63,142.42. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming AMCA, Milltown, New Jersey, as applicant for Accounting Warrant #385256 issued April 18, 2001 on the Missoula County 7270 Fund in the amount of \$70.00 (payment for membership), which was not received in the mail. No bond of indemnity is required.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 16 - Pay Date: August 10, 2001. Total Missoula County Payroll: \$829,888.92. The Transmittal Sheet was returned to the Auditor's Office.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Addendum – The Commissioners signed an Addendum to the contract with Professional Consultants, Inc., dated February 22, 2001, for engineering and surveying services to develop a final plat for Phase 3-D, Lots 1-6, Block 5, Phase 3, Missoula Development Park. The total amount for the work outlined in the Scope of Services attached to the Addendum shall not exceed \$3,281.00. The document was returned to Barbara Martens, Projects Coordinator, for further handling.

Application – Chairman Evans signed a Treasure State Endowment Program Preliminary Engineering Grants application requesting funding to perform a rehabilitation study for Maclay Bridge. Missoula County is requesting \$10,000 in matching funds to perform this study. Estimated starting and ending dates of preliminary engineering are September 2001 and December 2001. The application was returned to Greg Robertson, Director of Public Works, for further handling.

Request for Action – Chairman Evans signed a request from the Peterson Family Partnership (Quality Supply) to extend the closing deadline for the purchase of Lot 4, Block 3, Missoula Development Park, Phase 4 to September 4, 2001. Revenue generated from this project would be \$177,725.00. The document was returned to Barbara Martens, Projects Coordinator, for further handling.

Notice of Hearing – Chairman Evans signed a Notice of Hearing on the priority usage of PL106-393 (The Secure Rural Schools and Community Self Determination Act of 2000) Title III Funds: To Develop Fire Resistant

Communities throughout Missoula County. The hearing will be held at 1:30 p.m. on Wednesday, August 22, 2001 in Room 201 of the Missoula County Courthouse.

Other items included:

- 1) The Commissioners reviewed a letter dated August 10, 2001, from Sam E. Haddon, United States District Court, District of Montana, confirming that Judge Haddon has asked Dean Edwin Eck and Barbara Evans of Missoula to serve as members of the Magistrate Judge Merit Selection panel.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, AUGUST 15, 2001

The Board of County Commissioners met in regular session; a quorum of members was present.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 14, 2001, batch number 1461 (pages 1-5), with a grand total of \$70,989.83. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 15, 2001, batch number 1465 (pages 1-2), with a grand total of \$33,155.00. The Claims List was returned to the Accounting Department.

Revenue Note – Chairman Evans signed the following documents in connection with the closing of the \$294,249.40 Second Amended and Restated Economic Development Revenue Note (Blue Mountain Clinic, Inc. Project), Missoula, Montana: (1) Closing Certificate; (2) Second Amended and Restated Economic Development Revenue Note; (3) Amendment to Loan Agreement; (4) IRS Form 8038; (5) Arbitrage Certificate; and (6) Notice of issuance of Bonds. The documents were returned to Dorsey & Whitney, LLP for further handling.

### PUBLIC MEETING – August 15, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall and Undersheriff Mike McMeekin. Commissioner Jean Curtiss was on vacation.

### Public Comment

None

### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$504,807.25. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

### Bid Award: Towing Contract for the Sheriff's Department

Undersheriff Mike McMeekin presented the staff report.

Bids were solicited for a towing contract for the Sheriff's Department Civil Bureau for the abandoned vehicle program. The bid also covers the general towing done on orders of the Sheriff's Department on which the Department must pay the fees. Bids were accepted until July 28, 2001. Iron Horse Towing and Red's Towing responded to the solicitation, with the following results:

	RED'S TOWING	IRON HORSE TOWING
Request Number 1	Unit Price	Unit Price
1. Local area towing	\$25.00	\$30.00
2. Outside area towing	\$25.00 + \$1.50 one-way mileage	\$30.00 + \$1.00 per loaded mile
3. Flatbed roll back truck	\$35.00 + \$1.50 one-way mileage	\$40.00
4. Semi-tractor or other large unit	\$65.00 per hour	\$65.00
5. Storage rate (per month) for up to 75 vehicles	\$400.00	\$500.00
6. Winch rate	\$25.00 per ½ hour/\$45.00 per hour (pro-rated)	\$30.00 per hour
Request Number 2	Unit Price	Unit Price
1. Local area towing	\$35.00	\$30.00
2. Outside area towing	\$35.00 + \$1.50 one-way mileage	\$30.00 + \$1.00 per loaded mile
3. Flatbed roll back truck	\$45.00 + \$1.50 one-way mileage	\$40.00
4. Semi-tractor or other large unit	\$75.00 per hour	\$65.00
5. Outside storage per vehicle	\$7.50	\$5.00 per day
6. Inside storage per vehicle	\$12.50	\$10.00 per day
7. Winch rate	\$45.00 per hour	\$30.00 per hour

An evaluation of the bids shows that Red's Towing is the lowest and best bidder for both solicitations. No significant change to the budget is anticipated.

Red's Towing was the lowest bid for abandoned vehicles. Iron Horse Towing had a slightly lower bid for general towing, but the Department has a history of significant performance problems in this area with them. The Department

has been unable, through negotiations, to correct the problems. The Sheriff's Department asked that both parts of the bid be awarded to Red's Towing even though they were not the lowest bidder for general towing.

Commissioner Carey asked what the difference was in the two parts of the bid.

Undersheriff McMeekin stated that Request Number 1 was for abandoned vehicles. Request Number 2 was for department vehicles or seized vehicles held for evidence.

Commissioner Carey moved that the Board of County Commissioners award the bid for a towing contract for the Sheriff's Department to Red's Towing, as the lowest and best bid. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Hearing: Intent to Create RSID #8843 – (Maintenance of three fire hydrants) – Invermere Subdivision (Phase 1A)

Jesse Sattley, Public Works, presented the staff report.

A Resolution of Intention to Create RSID #8843 for a fire hydrant maintenance district to serve the area known as Invermere Phase 1A was adopted on July 24, 2001. The petition requesting the installation of three hydrants was initiated by the owners of the properties within the District and supported 100%. Mountain Water Company will install the hydrants. Missoula Rural Fire District has reviewed the request and has approved the locations.

The estimated cost of maintaining the hydrants is \$1,101.49 per year, including County Administration of 5%. There are 21 lots in the district which spread the annual cost to \$52.45 per lot.

No protests were received. Staff recommends the creation of RSID #8843 for maintenance of three fire hydrants to serve Invermere Phase 1A.

Chairman Evans opened the public hearing. There being no comments, the hearing was closed.

Commissioner Carey asked if ballots were mailed out for this proposal.

Jesse Sattley stated that a petition is received from the owners of the property requesting creation of the RSID. In this case, there is only one owner. The creation of the RSID was a condition of approval for Invermere Subdivision. A notice of intention is mailed to the property owners in the district which sets the hearing date. Protests may be received prior to the hearing or presented at the hearing. In this case, it is a moot point as there is only one owner. However, that is the administrative process.

Commissioner Carey moved that the Board of County Commissioners create RSID #8843 for a fire hydrant maintenance district to serve the area known as Invermere Phase 1A. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

There being no further business to come before the Board, the Commissioners were in recess at 1:37 p.m.

#### THURSDAY, AUGUST 16, 2001

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Carey was out all afternoon.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 16, 2001, batch number 1462 (pages 1-3), with a grand total of \$24,092.90. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed a Professional Security Services Agreement between the Missoula County Sheriff's Department and Dr. Peggy Anderson, representing Frenchtown School District, for the provision of security services for the 2001-2002 school year. This year's contract signifies a rate increase from \$15.00 per hour to \$20.00 per hour, per MCDSA.

Resolution No. 2001-074 – The Commissioners signed Resolution No. 2001-074, creating Rural Special Improvement District No. 8843 – Fire Hydrant Utility and Maintenance of three (3) hydrants for Invermere Phase 1A Subdivision, Missoula County, Montana.

Agreement – Chairman Evans signed an Agreement between the Missoula County Health Board/Missoula Valley Water Quality District ("Contractor"), and the Montana Department of Environmental Quality ("DEQ"), for completing source water delineation and assessment reports ("SWDARs") for public water supplies located within Missoula County. The Contractor will complete a separate SWDAR for individual public water supplies. The total amount shall not exceed \$150,000, per Section III of the Agreement. The reports must be completed by August 31, 2003. The document was returned to the Health Department for further handling.


Other items included:

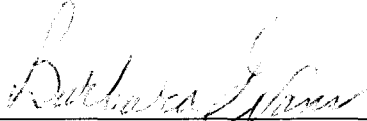
- 1) The Commissioners approved the pursuit of an RSID for Spring Hill Drive.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

## FRIDAY, AUGUST 17, 2001

The Board of County Commissioners did not meet in regular session. Commissioner Carey was in Kalispell attending a Mental Health Board meeting; and at noon, Chairman Evans spoke at the Millennium Circle dedication held at the Boone & Crockett Club's headquarters on Station Drive.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

## MONDAY, AUGUST 20, 2001

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey was out of the office all afternoon.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 17, 2001, batch number 1464 (pages 1-2), with a grand total of \$8,348.16. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 17, 2001, batch number 1469 (pages 1-2), with a grand total of \$2,008.01. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 20, 2001, batch number 1468 (pages 1-4), with a grand total of \$308,471.36. The Claims List was returned to the Accounting Department.

## TUESDAY, AUGUST 21, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 21, 2001, batch number 1472 (pages 1-4), with a grand total of \$87,711.90. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 21, 2001, batch number 1473 (pages 1-2), with a grand total of \$4,289.05. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 21, 2001, batch number 1475 (pages 1-4), with a grand total of \$22,222.89. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and James R. McDonald, of A&E Architects, for complete architectural services to provide design, construction documents, bidding and contract administration for the re-roofing of the Missoula County Courthouse. The term will be July 1, 2001 through July 1 2002. The total amount shall not exceed \$20,835.00.

Agreement – The Commissioners signed a Tri-Party Agreement between the State of Montana, acting through its Department of Transportation ("DOT"), Montana Rail Link Inc., and Missoula County for the closure of an existing public at-grade highway railroad crossing (U.S. DOT 091 450V at RR Milepost 125.95) at Desmet, Missoula County, Montana. The total amount shall be a lump sum of \$75,000.00. The document was returned to Robert Morgan at the DOT for further signatures and handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

## WEDNESDAY, AUGUST 22, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 22, 2001, batch number 1476 (pages 1-4), with a grand total of \$163,475.55. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond Sheila M. Heffernan as principal for Clerk of District Court Warrant #22669 issued July 18, 2001 on the Jury Services Fund in the amount of \$267.26 (payment for jury service/mileage; Cause #DV87995), now unable to be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Young Adult Resources, Milwaukee, Wisconsin, as principal for Missoula County Public Schools Warrant #49215 issued May 31, 2001 on the General Fund in the amount of \$790.00 (payment for miscellaneous books), now unable to be found.

2001-08-20

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Kathleen Wills as applicant for Missoula County Public Schools Warrant #99322 issued July 20, 2001 on the MCPS Payroll Fund (78-42) in the amount of \$189.53 (payment for wages ), which was not received in the mail. No bond of indemnity is required.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution – The Commissioners signed Resolution No. 2001-075, an Emergency Proclamation stating that extremely dry conditions and high temperatures have created hazardous fire conditions throughout Missoula County, and may cause severe loss to Missoula County residents, and proclaiming that an emergency exists as of August 20, 2001. The Resolution also places Level I fire restrictions on all private land in Missoula County.

Amendment -- Chairman Evans signed the Fiscal Year 2002 Annual Amendment to the 1994 Memorandum of Understanding, dated August 11, 1994, between the Montana Department of Natural Resources & Conservation and Missoula County. The 1994 Agreement calls for an annual review and amendment to reflect current services, providers and rates of reimbursement, as per the items listed in the Amendment on the Fiscal Year 2002 Reimbursement Schedule. This Amendment is retroactive to July 1, 2001, and expires June 30, 2002.

#### PUBLIC MEETING – August 22, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Deputy County Attorney Colleen Dowdall and County Surveyor Horace Brown. Commissioner Bill Carey was on vacation.

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$490,299.27. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### Hearing (Certificate of Survey): Agricultural Covenant – Koessler and Green

Colleen Dowdall presented the staff report.

This is a consideration of a request to create an agricultural covenant exemption parcel for that parcel described in Book 6, Page 286, in the southeast 1/4, southwest 1/4 of Section 31 in Township 18 North, Range 15 West.

Barbara Koessler has submitted a request to create a parcel using the agricultural covenant exemption to the Montana Subdivision and Platting Act. The parcel is a narrow strip of land owned by Barbara Koessler, separated from her other ownership by Beargrass Road. The proposed parcel is between Beargrass Road and six individual lots with six individual property owners, known as Lots 4-7 of Streit's Inez Lake Shore Sites, a subdivision platted in the 1950's.

Barbara Koessler is proposing to create one parcel to transfer to a trust made up of the six individual lot owners by use of an agricultural covenant that restricts the use of the land to agricultural uses and requires that the owners enter into the covenant as to the use of the property, revocable only with the consent of the governing body. The six lot owners have then requested a boundary relocation between each individual lot and the newly created parcel. The result will be that each lot will become larger with a frontage onto Beargrass Road. The portion of land will continue to have the agricultural covenant which will restrict building on that portion of the lot.

This is left over property that has no use for Barbara Koessler, but is used by the lot owners for access and various other purposes. The agricultural covenant requires that no buildings or structures be placed on the property, except for those that do not require the lifting of sanitary restrictions. If the agricultural covenant is granted, then action will be taken on a boundary relocation request for each of the six property owners.

The history of the parcel is as follows:

Barbara Koessler has owned the parcel since prior to 1967. Prior to that the land was in her family's name.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Dick Ainsworth, Professional Consultants, Inc., stated that he was representing the South End Inez Lake Lot Owners Trust, and indirectly, Barbara Koessler and her children. Colleen Dowdall explained very well what was being done with this action. The lot owners had approached Barbara Koessler to acquire this land. Ms. Koessler did not want to deal with six individuals, but was willing to sell it as one piece to this trust. The trust will then do the boundary relocations with the six individuals. Howard Toole is the attorney for the trust and is available to answer any questions.

Chairman Evans opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Barbara Koessler to create a new parcel by use of the agricultural covenant exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Hearing: Usage of PL106-393 Title III Funds

Jane Ellis, Director of Emergency Services, presented the staff report.

On August 9, 2001, the Board of County Commissioners adopted a proposed use for the Title III portion of the Federal Forest Receipts for FY2002. This is generally being referred to as the Firewise Program, the purpose of which is to develop fire resistant communities.

There are six possible categories of uses for this money under PL 106-393 Title III. This proposed use would capture most of this money for Category 5, Fire Prevention and County Planning. However, this proposed use does not preclude cooperation with other categories.

This hearing beings the 45 day comment period on this proposed use.

15% of total forest receipts is estimated to be approximately \$110,000 per year. Used for this Firewise Program, these funds can help address the significant wildland urban interface problem that exists in Missoula County.

Public Law 106-393 is what has been referred to for many years as the Forest Reserve money. It is the 25% of timber sales on Federal ground that is received by the County. For many years that money had been divided between the roads and the school, however, the revenues fluctuated dramatically from year to year. In the last year, two changes were made at the Federal level. One stabilized the annual amount that comes to the County and the other change was the creation of Title III. Title III allows the Commissioners to decide to retain between 15% and 20% of the total to put into these programs. The Commissioners made the decision to retain 15% of these funds for the proposed use in the Firewise Program.

The possible uses for Title III funds are:

1. Search, Rescue and Emergency Services
2. Community Service Work Camps
3. Easement Purchases
4. Forest Related Educational Opportunities
5. Fire Prevention and County Planning
6. Community Forestry

Uses 1 and 2 both have the same issue for the County. They are intended for reimbursement of costs incurred by the County for work done on Federal ground. That does not happen in Missoula County very often. There is no Community Service Work Camp and Search and Rescue is largely volunteer.

Uses 3, 4 and 5 can be combined into the Firewise Program proposed. There are ways that smart Easement Purchases can help reduce the wildland interface fire problem. Education is a big piece of preventing these fires. The same can be said for Fire Prevention and County Planning.

The details for Use 6, Community Forestry, are unknown, but probably do not happen in Missoula County.

The program that is being proposed has a goal of developing fire resistant communities throughout Missoula County. It is inevitable that fires will start and burn here. In the last 10 years especially, it has been demonstrated that people are not very smart about how they live with the potential for fire. There are a number of things that can be done to live smarter in these interface areas, including better building materials, access, defensible space, etc. Making those changes can help avoid catastrophic results. This program would use proven tools and community based initiatives to help accomplish the changes of how people live in the interface. This is a County-wide program that seeks to accomplish an understanding of what does and does not work in the interface and should lead to direct action. It is critical for this program to be sustainable. One year's work, while it will make a difference, will not be sufficient to change the culture.

There should be some measurable outcome from this program, in education, mapping and a specific percentage of properties that utilize fuel mitigation. An improvement to public safety would be a "Reverse 9-1-1" system, where emergency personnel can call out to an area with a warning. Other emergency communications items will also be included.

The process involves local fire departments, schools, community groups, etc., as the first point of contact. Local fire departments might provide equipment and apparatus. The education happens best when it is one-on-one at someone's own property.

There are some standards that need to happen in how fuels are mitigated, however, the program does not have to be the same in every community. The program needs to involve individual property owners. They need to acknowledge there is an interface fire problem and agree to work with agencies to address the problem. The property owner may be asked to pay a participation fee and agree to address the problems on their land. Forestry professionals will be involved to address forest health, wildlife habitat and what wildland fire threats exist.

Missoula County can provide an administrative role in this project. The Commissioner want the money spent for "on-the-ground" work. The Missoula County Fire Protection Association (MCFPA), the Montana Department of Natural Resources and Conservation and the U.S. Forest Service can also be helpful in the process.

Chairman Evans opened the public hearing.



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Scott Waldron, Frenchtown Fire Chief, stated he was representing the fire departments in Missoula County. Jane Ellis covered the material well. Frenchtown Fire began a pilot project earlier this year to mitigate danger around homes. To date, they have done 85 homes at a cost of \$262 per home. It makes the homesite safer and the forest around the homesite healthier by removing understory. The fire he just came from went to about three acres in a very short period of time. Suppression costs will be between \$25,000 and \$50,000 on a three acre fire. There are fires in the interface. Changing the culture is the key issue in making this a sustainable program. Peer pressure has contributed to a marked improvement in the areas they have been working on. All fire agencies in Missoula County support this program and ask the Board for their support as well.

Steve Holden, Montana Department of Natural Resources, stated that he was also currently the Chair of MCFPA. He encouraged the Commissioners to support this issue. Jane Ellis and Scott Waldron's comments were applicable to the progress being made in fuels reduction. There are problems associated with fuels build up in urban interface areas throughout Missoula County. This kind of initiative can start a groundswell movement to make a good difference in fire prevention. This does not prevent fires from starting, but once they do, it will present a better opportunity to save homes and protect the safety of the public and fire fighters. He encouraged the Commissioners to support this measure.

Ann Dahl was representing the Swan Ecosystem Center, a non-profit citizens group in the Swan Valley. The Center has people who don't think alike working together on a number of problems that have to do with the ecosystem. They have begun a Firewise Project, which started in the Spring with a community meeting. Swan Valley has a variety of ownership – private, Plum Creek, State lands, Forest Service – which need to work together. The area is also on the edge of Missoula County and Lake County. They brought all the people together who would be involved with dealing with a fire, both before and after. In June they received some funding from the Forest Service. They have created exhibits and are working on a fire demonstration forest at the Forest Service Condon Work Center. Residents are going out into the forest and marking trees to thin and are learning about creating survivable space. An interpretative trail is planned. Also a landscape assessment of the Upper Swan is being created. Their goal is to have a GIS station at the Condon Work Center so people can come in and create or print maps. She is in support of the Title III funds usage that Jane Ellis is proposing. They would like to find ways to be in partnership with Missoula County.

There being no further comments, the public hearing was closed.

Jane Ellis stated that on August 9, 2001, the Board adopted a resolution outlining the proposed use of the Federal Forest Receipts. The hearing today starts the 45 day comment period required under Federal law. No action is required by the Board today.

**Consideration: Old Water Wheel Estates (4 Lot Residential) – Corner of Blue Mountain Road and River Pines Road**

Denise Alexander, Office of Planning and Grants, presented the staff report.

This request is from William and Josephine Maclay and Betty Kenna, owners in trust of the 9.08 acres at the southeast corner of River Pines Road and Blue Mountain Road. Julie Titchbourne of WGM Group is the developer's representative.

The property is zoned C-RR1 which permits one dwelling unit per acre. The 1975 Comprehensive Plan designated the property as Residential, with a maximum density of 2 dwelling units per acre on the area near the roads and Open and Resource near the river. The 1995 Urban Area Open Space Plan also shows the property near the river as a possible future open space cornerstone.

The request is to divide the property into four lots for four homesites. The result would be a density of one dwelling unit per 2.45 acres. The plat illustrates a riparian area, riparian buffer area and a 50 foot no build area along O'Brien Creek and the Bitterroot River and it also shows the 100 year floodplain area.

The most important issues on the property are the floodplain and the riparian area. O'Brien Creek is one of the few perennial streams with no fish passage barriers that empties into the Bitterroot or Clark Fork Rivers. It is a spawning tributary for West Slope Cut Throat Trout, a species of special concern in Montana. Montana Fish, Wildlife and Parks did considerable restoration work on the stream when the new Blue Mountain bridge was constructed. This included planting of riparian vegetation and placing boulders and woody debris in the creek to create pools and deter stream bank erosion. The property is also located on an alluvial fan where there is a stronger tendency for stream migration, so that healthy root systems of riparian vegetation on the banks is especially important to prevent stream bank migration.

Because of these concerns, riparian area protection is especially important on this property, for protection of the existing fishery and of the future homes from migration of the stream bank and related potential for flooding. The plat shows a riparian area which is the actual creek bed and river channel.

Staff is recommending a riparian buffer area be increased in size so that it extends to River Pines Road on the north side of the creek and measures 25 feet from high water mark on the south side of the creek. This area will protect the riparian vegetation so it can thrive. It will only permit pedestrian access. It is intended to prevent motorized activity except for mowing if part of a weed management plan and allows no fencing, grazing or watering of livestock and no structures.

There is also a no build area that is measured 50 feet from high water mark along the creek and river where no structures are permitted except fencing and where landscaping can be done up to the 25 foot riparian buffer edge.

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The 100 year area was determined by a floodplain study done by WGM Group that was approved by the Department of Natural Resources and Conservation and was also reviewed by Brian Maiorano, Floodplain Administrator. This is also an area where no structures are permitted.

The main comments from Montana Fish, Wildlife and Parks regarding the riparian area requested no building or disturbance within 50 feet of the O'Brien Creek stream edge or within 100 feet of the Bitterroot River and no disturbance between O'Brien Creek and River Pines Road, including no grazing. They also asked that no fish ponds be allowed on the subdivision, no additional stream crossings be added and no water be withdrawn from the stream or river without valid water rights. These concerns have been incorporated into the applicant's submittal or as recommended conditions of approval.

FWP is also very concerned about future enforcement of the covenants that deal with the riparian area. Their letter states that the plan be enforceable by a government agency with appropriate jurisdiction or the subdivision be redesigned. The applicant wrote an enforcement section in the covenants that states the lot owners, the governing body and FWP are able to enforce the sections pertaining to riparian management. A letter was received from FWP during staff review asking that they not be included as an enforcement agency but they would fill an advisory role to the County when needed. The requested change is included in the recommended revisions to the covenants contained in Condition 10.

Staff has recommended that the riparian buffer area adjacent to O'Brien Creek be expanded, that the plan include all references regarding riparian management that are in the covenants so that the plan could stand alone if it needed to and that the riparian plan area map be revised to show the enlarged riparian buffer and be drawn to a larger scale with the power lines added onto the map so it would be easier for a lot owner to locate that buffer area on the ground. Staff is also recommending that the edge of the buffer be staked in the field before final plat approval so the lot purchasers are able to see where it is.

Additional recommended revisions to the covenants regarding the riparian sections are included in Condition 10. Other recommended conditions are to require a no access strip on Blue Mountain Road except for the two driveway approaches that are shown, a petition for annexation into the Missoula Urban Transportation District, a provision for maintenance of the shared driveways included in the covenants, payment of \$100 per new lot fee for fire hoses to Missoula Rural Fire District, a note on the plat waiving the right to protest connection to future public or community water system and a note on the plat requiring that the lowest floor of all new construction on the subdivision be at least two feet above the 100 year flood elevation and that crawl space floors may be at flood elevation if they don't contain mechanicals.

The applicant has asked for three variances, to vary from pavement width on the two off-site roads, Blue Mountain Road and River Pines Road, to vary from the requirement for pedestrian connections in the subdivision and to vary from lot width to length ratio for Lot 4. Staff is recommending approval of the three variance requests and of the subdivision, based on the findings of fact in the staff report and the 10 recommended conditions of approval. There is one revision to Condition 4 regarding connection to a public water supply. After "... water system" the following should be added: "adequate for fire protection."

Julie Titchbourne, WGM Group, developer's representative, stated that over 2 acres of this subdivision will be dedicated to riparian area. This will ensure protection as open space. The applicant objects to the condition that the subdivision petition to be in the Missoula Urban Transportation District. The subdivision lies outside the boundary and therefore, no service is provided or anticipated to be provided at this time. They have been working with FWP from the beginning of the project to address the riparian area and buffer. Changes have been made all throughout the process. Pat Saffel from FWP is also present today. Just before the meeting, there was an effort to work out some language on Condition 10 under Article III, Subsection "a," regarding prohibiting installation of fish ponds. Rather than protest the condition, they have come up with alternate language. They propose the condition to read: "The installation of fish ponds is prohibited in the riparian area and riparian area buffers. Additionally, no ponds may be constructed within 50 feet of the Bitterroot River normal high water mark. Property owners are advised to contact the Montana Department of Fish, Wildlife and Parks prior to pond construction to obtain a fish stocking permit. A water right may also need to be obtained from the Montana Department of Natural Resources and Conservation."

Chairman Evans asked for public comments.

Jerry Berens, 2085 Edward Court, stated he was president of the Target Range Homeowners Association. He is speaking against this development. First, the subdivision variance for the lot length to width ratio was also a zoning requirement as part of the C-RR1 zoning. It would need a zoning variance in addition to the subdivision variance. The proposal should go to the Board of Adjustment. Homeowners in the area have come to rely on some of these standards regarding lot length and width. There is plenty of lot width on this subdivision, but they are attempting to crowd in as many lots as possible. Because of limitations of the floodplain, the developable area is restricted. Much of this land is in the floodplain. As a result, they are faced with this dilemma. The ratio could be achieved by removing one lot, which would be more logical. The other area of concern to the County and to him as a taxpayer is the floodplain risk. The County just recently experienced some of the negatives effects of the floodplain risk on Mullan Road. According to the report, Richard Bondy from DNRC recommended notifying lot purchasers of the location of the alluvial fan and its significance in creating greater flood risk. Mr. Bondy also cautioned the maintenance of brush and trees and the like. The report recommends that the County exonerate itself by saying that research has not been done regarding the effects of the 100 year floodplain. This is putting the County on notice as to the potential risk of having building sites as close as these are to the floodplain. According to the preliminary plat, some of the building sites are only one foot above the floodplain and within 10 to 15 horizontal feet from the floodplain. By comparison, the old homestead of the Maclays is 5 to 15 feet above the floodplain, which was prudent. Perhaps boat ramps should be installed as well. As a former lender for a financial institution and HUD officer, he would have required flood insurance on this property because parts of it are in the floodplain. As a lender he would not assume the risk. He recommended the County receive indemnification from the developer as to any future lawsuits regarding any flooding that may occur. It would be cheap insurance to prevent a repeat of the past. The wells are also

located within the 100 year floodplain. That concerns him as river water may reach those wells and have the potential to contaminate the ground water. It may be legal to locate a well in the floodplain, but it is not prudent.

Bruce Fowler, 2755 Blue Mountain Road, stated he had not heard anything about the potential for a new bridge across the river. According to the study commission, which he served on, the proposal was to extend South Avenue which comes into River Pines Road. To bring the bridge and approaches above the 100 year floodplain, the prospective lot owners may have a 20 foot berm in their backyard. If he were to buy a home there, he would be upset if that were not revealed to him. Perhaps the lot owners should not be able to protest a new bridge if it every gets presented. A lot of money has been spent on the study so far. The process went through the protest period, the discussions and the possible sites for a bridge. The most reasonable location is extending South Avenue. He is against subdivision when there are no community services, no water system, no sewer system. He would not like to see increased density when some of these issues could contribute to problems down river. Part of his land floods every year. A few years ago, there was some discussion about a trail system along Blue Mountain Road. If a trail system were installed, a portion of it may come through this subdivision. It makes sense to look at the recreational aspect of this entire area. The improvements that are being made to the road will contribute to more traffic and more use. Some of these things should be included as a future possibility.

Helen Orendain, 2555 Blue Mountain Road, stated her property extends to the Bitterroot River bank. The County has a road easement over her property. The proposed subdivision allows two exits onto Blue Mountain Road, exacerbating an existing speeding problem on the road. Environmental issues have been discussed but it is important to regard the human impact of this subdivision. Blue Mountain curves just south of her driveway and the proposed subdivision. Motorists driving north on Blue Mountain see a curve sign but no warning of cross traffic. Most motorists exceed the 25 mph speed limit at the curve, some as fast as 55 mph. On many occasions, cars have crashed into the trees at the riverbank and some have driven into the river. She has narrowly escaped being hit by a speeding car as she exits her driveway. In the six years she has lived in the area, she has never seen anyone from the Sheriff's Department patrolling the traffic or citing any drivers. The paving of Blue Mountain Road should be complete by November. Cars entering from Highway 93 will have clear sailing. Speed and traffic will increase. If the subdivision has its two exits, along with hers and her neighbors, they will be problems. The County has an obligation to provide notice to the public of cross traffic and some form of speed control, maybe even speed bumps. The Commissioners are well aware of the dangers on Blue Mountain Road. There are no signs that alert motorists of the dangers. Blue Mountain is a winding, scenic road. It cannot be viewed as an alternate to Reserve Street. The County has an obligation to provide a safe road. Regardless of whether this subdivision goes through, the speeding problem will not go away. She hoped that would be noticed and something done about the problem, using calming devices and/or signage.

Archie Neal, 8090 Mesa Court, wanted to know where the proposed easement for bridge might be.

Chairman Evans stated that from her point of view, there was a potential that Congress would have worked to help find funding for the bridge. Some people on the west side of the river did not want a new bridge and caused enough contention that Senator Burns pulled back his support of the project. There is no effort on the part of Congress to fund this bridge. It might be done some day, but she was not holding her breath.

Pat Saffel, Fish, Wildlife and Parks, stated their recommendation was a no build, no disturbance zone within 50 feet of O'Brien Creek and the Bitterroot River. Staff is recommending a 25 foot no disturbance zone and allows fencing within 25 feet of O'Brien Creek. That is acceptable for O'Brien Creek but he would like to encourage maintaining 50 feet along the Bitterroot River. It is a larger body of water and if it floods, it could more easily erode the stream bank. It would be important to provide more protection there.

Helen Orendain again pointed out the critical curve on Blue Mountain Road with no warning of cross traffic. The cars entering Blue Mountain Road off private driveways from beyond this curve are in danger from motorists speeding on Blue Mountain Road coming around the curve. Some signage warning motorists of possible cross traffic was needed.

There were no further public comments.

Commissioner Curtiss asked counsel to address the 3 to 1 ratio that might require a zoning variance.

Colleen Dowdall stated if the zoning has that restriction, prior to issuing a building permit, that variance will have to be obtained. The subdivision could be approved with the condition that the variance be granted.

Denise Alexander stated the 3 to 1 ratio was included in the zoning regulations. She did not catch the zoning implications. The lot is strangely shaped and it is difficult to determine the 3 to 1 ratio on oddly shaped lots. If it is determined that it needs that variance, one will have to be obtained prior to receiving a building permit. She would like someone in the building permit section to review this and make a determination.

Commissioner Curtiss asked if any language should be added to reflect that potential zoning variance?

Colleen Dowdall stated that because it is just one lot and it is oddly shaped and there could be various interpretations of the width to length ratio, the best course would be to put the consulting engineer on notice that this may be necessary. If the variance is not granted, it may require reconfiguring the lot(s) to meet the requirement.

Commissioner Curtiss asked about Mr. Berens suggestion regarding indemnification for future risk of flood.

Colleen Dowdall stated there were lots of differences between this proposal and how it was reviewed versus the Mullan Road situation. The floodplain is identified and building restrictions have been placed on this proposal. The language referred to, that the County has not studied the flood situation, further puts folks on notice that the floodplain has been identified but that doesn't mean there are no problems. Potential owners are on notice that Missoula County did not investigate all the possibilities. The County does not have the authority to do that in subdivision review. The Floodplain Regulations do not restrict having some floodplain on a subdivision, just no building in the floodplain. In

other cases the County has asked for indemnification where certain representations made by the engineering firm needed to be backed by their willingness to take liability. In this case there are no representations by the engineering firm that need indemnification.

Commissioner Curtiss asked which condition pertained to the Missoula Urban Transportation District?

Denise Alexander stated it was Condition 2.

Colleen Dowdall stated that the zoning density permits one dwelling unit per acre. The density of this subdivision is one dwelling unit per 2.45 acres. It is not as dense as it could be due to the restrictions of the floodplain and riparian area.

Chairman Evans asked Horace Brown about a potential trail system as mentioned by Mr. Fowler.

Horace Brown stated the trail would probably come across the new bridge if it is ever built. The current trail is already constructed to Maclay Bridge. There is not one along River Pines Road as the right-of-way is too narrow and the road is too steep. It would have to be done in the future depending on whether the new bridge contained a trail or not, or if the old Maclay Bridge would be used as a trail. That would be decided in the future.

Chairman Evans asked if Horace Brown agreed with her assessment of the Maclay Bridge situation?

Horace Brown did agree with her assessment. He added that a trail would probably not be along Blue Mountain Road. The Forest Service has been working on a plan that would come down to the area where the river access is and it would not follow the road as it is today. The Forest Service has not made a decision yet. He did not have a problem with language pertaining to waiving the right to protest inclusion in a bridge project.

Colleen Dowdall stated this is not an action that has previously been taken. A bridge is a huge expense, it would probably not be paid for with RSIDs. She would want to make sure there were findings that could support such a condition.

Denise Alexander stated that there is a note on the plat waiving the right to protest inclusion in an RSID for any other improvements along River Pines Road or Blue Mountain Road. That would include any walkways, trails, etc.

Commissioner Curtiss stated there were comments from the Forest Service about building and roofing materials. Was that addressed in the covenants.

Denise Alexander stated it was addressed in the covenants. She asked that the developers provide the lot owners of the complete text of the Wildland Interface protection regulations, including building materials.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request to vary from Section 3-2(3) of the Missoula County Subdivision Regulations, for a minimum pavement width of 32 feet for River Pines Road and Blue Mountain Road, based on the findings of fact set forth in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request to vary from Section 3-2(8) of the Missoula County Subdivision Regulations to provide a system of pedestrian and/or bicycle circulation in all subdivisions outside the Urban Growth Area served by public roads, based on the findings of fact set forth in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request to vary from Section 3-3(1)(E) of the Missoula County Subdivision Regulations that no lot shall have an average depth greater than three times its average width, based on the findings of fact set forth in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners amend the Old Water Wheel Estates Summary Subdivision Conditions of Approval as follows: a) Delete Condition 2; b) add the words "adequate for fire protection" after "... water system" on Condition 4; and c) amend Condition 10, Article III, Section "a" to read: "The installation of fish ponds is prohibited in the riparian area and riparian area buffers. Additionally, no ponds may be constructed within 50 feet of the Bitterroot River normal high water mark. Property owners are advised to contact the Montana Department of Fish, Wildlife and Parks prior to pond construction to obtain a fish stocking permit. A water right may also need to be obtained from the Montana Department of Natural Resources and Conservation." Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss moved that the Board of County Commissioners approved the Old Water Wheel Estates Summary Subdivision, based on findings of fact in the staff report and subject to the conditions as amended. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Chairman Evans asked if signage as requested by Ms. Orendain was possible.

Horace Brown stated signs could be placed notifying Blue Mountain Road motorists of driveways entering the road. No speed bumps will be used, they are not allowed in the County and wildlife signs are under the jurisdiction of the Forest Service.

Helen Orendain stated that if speed bumps could not be used, was there some other kind of calming device that could be used.

Horace Brown stated this was a rural area and most calming devices are a greater liability. They are not used in the County.

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**Old Water Wheel Estates Summary Subdivision Conditions of Approval:****Roads**

1. A one foot no access strip shall be shown on the plat along the western property boundary of the subdivision adjacent to Blue Mountain Road except where the two 54 foot wide private access easements are located, subject to review and approval by OPG and County Public Works Department. *Subdivision Regulations 3-2(1)(E) and OPG recommendation.*

**Driveways**

2. A provision for maintenance of the shared private driveways shall be included in the covenants to be reviewed and approved by the County Attorney and filed with the County Clerk and Recorder, prior to plat approval. *Subdivision Regulations 3-2(1)(3) and OPG recommendation.*

**Water**

3. The following statement shall appear on the face of the plat:

“Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for a public or community water system adequate 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.” *Subdivision Regulations Article 3-7(2) and OPG recommendation.*

**Fire**

4. The developer shall contribute \$100.00 per new lot or dwelling unit to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat approval. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*

**Floodplain**

5. The following statement shall appear on the face of the plat and be incorporated into the covenants:

“The lowest floor of all new construction on lots in this subdivision shall be at least two feet above the 100 year flood elevation. Crawl space floors may be at flood elevation if they do not contain mechanicals. The County has not reviewed the subdivision to the extent that guarantees can be made about the potential for flooding on the property.” *Subdivision Regulations Article 3-1(2), Floodplain Administrator and County Attorney recommendation.*

**Riparian Resource Management Plan**

6. The northern boundary of the riparian buffer along O'Brien Creek shall be extended to the subdivision property boundary along River Pines Road. The riparian buffer area on the south side of the creek shall be increased to a 25 foot width measured from high water mark. This revision shall be subject to the review of the Montana Department of Fish, Wildlife and Parks and approval of the Office of Planning and Grants and shall be shown on the plat, the riparian area map and staked in the field prior to final plat approval. *Subdivision Regulations Article 3-13, Fish, Wildlife and Parks and OPG recommendation.*
7. Page 4 of the Riparian Resource Management Plan shall be entitled “Management Plan” and shall include all references to riparian management contained in the covenants as revised. The revised Riparian Resource Management Plan shall be subject to review and approval of the Office of Planning and Grants prior to final plat approval. *Subdivision Regulations Article 3-13 and OPG recommendation.*
8. The Riparian Area Map shall be revised to reflect the new riparian buffer boundaries, include the location of existing overhead power lines and shall be drawn at a 1” = 60’ or larger scale. *Subdivision Regulations Article 3-13 and OPG recommendation.*

**Covenants**

9. The following revisions shall be made to the proposed covenants, subject to review and approval of OPG and the County Attorney, prior to final plat approval:

**Article III**

- a. The installation of fish ponds is prohibited in the riparian area and riparian area buffers. Additionally, no ponds may be constructed within 50 feet of the Bitterroot River normal high water mark. Property owners are advised to contact the Montana Department of Fish, Wildlife and Parks prior to pond construction to obtain a fish stocking permit. A water right may also need to be obtained from the Montana Department of Natural Resources and Conservation.
- b. Add a new section notifying lot purchasers of the location of the lots on an alluvial fan, its significance in creating a greater flood risk and the related caution about the maintenance of the brush, trees and other vegetation along the creek and in the floodplain to not hasten the migration of the creek.
- c. Add a new section stating that lot owners may not withdraw water from O'Brien Creek or the Bitterroot River unless they have a valid water right.
- d. **Section 2: Riparian Area** shall be revised as follows:

“...Except for the removal of invasive weeds, these plantings and the native shrubs and trees shall remain undisturbed. Further, plantings of additional native riparian species is strongly encouraged. Planting of lawns or non-native, ornamental species is prohibited. No stream bank modifications shall take place. Lot owners may not add rip-rap to stream banks. Grazing, tilling, mowing (unless part of an approved weed

control plan) and fencing are prohibited in the riparian and buffer areas. In order to protect the stream from nutrients, sedimentation and other harmful substances, fertilizing, filling and dumping is also prohibited in the riparian area and riparian buffer."

The last paragraph shall be removed and placed as the last paragraph in **Section 2: Enforcement** of Article IV.

- e. **Section 4: Location of Buildings** shall be revised as follows:

"For purposes of this section only, the building location shall be considered to be the building's foundation lines; and eaves, steps, open porches and decks shall be considered as part of the building. No building shall be located in the 100 year floodplain as delineated on the recorded plat of Old Water Wheel Estates. The finished floor elevation of all buildings shall be 2 feet above the 100 year floodplain as shown on the recorded plat of Old Water Wheel Estates."

- f. **Section 9: Fences** shall be revised as follows:

"In order to maintain existing riparian habitat, fencing is prohibited in the riparian and buffer areas as shown on the recorded plat of Old Water Wheel Estates and livestock shall be fenced in a manner to prevent access to the creek or the river and the associated riparian and buffer area."

- g. **Section 10: Animals** shall be revised as follows:

"No animals being kept on the premises shall be allowed to graze or water in the riparian area and buffer."

- h. **Section 14: Recreational Vehicle and Power Equipment Use** shall be revised as follows:

"No vehicles or power equipment (unless part of an approved weed control program) shall be operated in the riparian area and riparian buffer."

- i. **Section 20: Landscaping** shall be revised as follows:

"When any structure shall be erected on any lot, the owner of such lot shall revegetate any ground disturbance created by construction or maintenance with beneficial species at the earliest appropriate opportunity after construction or maintenance is completed and remove any unsightly underbrush and landscape the lot appropriately with its environment and in conformation with **Section 2: Riparian Area** of these covenants."

- j. **Section 21: Fires and Fire Safety** shall be revised as follows:

"This subdivision is located in a boundary wildland/residential interface area. Declarants shall provide each lot owner with a copy of Fire Protection Guidelines for Wildland Residential Interface Development published by the Montana Department of State Lands."

#### Article IV

- k. **Section 1: Duration** The last sentence shall be revised as follows:

"Sections 2, 4, 6, 9, 21 and 23 in Article III of these protective covenants may not be amended or eliminated with the approval of the governing body."

- l. **Section 2: Enforcement** Remove the reference to Missoula County or Montana State Fish, Wildlife and Parks Department from the first sentence. In the paragraph moved from Article II, Section 2, delete the reference to the Montana State Department of Fish, Wildlife and Parks as an enforcement agent.

*Subdivision Regulations Articles 3-13, 3-1(2) and (10), OPG, FWP, Floodplain Administrator and County Attorney recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:35 p.m.

**THURSDAY, AUGUST 23, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 22, 2001, batch number 1474 (pages 1-2), with a grand total of \$3,285.89. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 22, 2001, batch number 1477 (pages 1-6), with a grand total of \$30,118.43. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 23, 2001, batch number 1482 (pages 1-3), with a grand total of \$36,100.26. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending July 31, 2001.

2001-00034

ADMINISTRATIVE MEETING

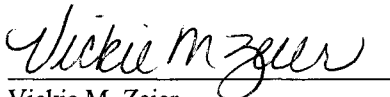
At the administrative meeting held in the forenoon, the following items were signed:

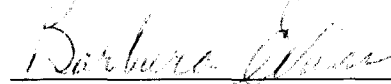
Contract – The Commissioners signed a Contract between the Missoula County Sheriff's Department and Red's Towing for the towing of abandoned vehicles and towing done on orders of the Sheriff's Department in Missoula County. The bid was awarded to Red's Towing on August 15, 2001. The term will be August 23, 2001 through August 23, 2002. Compensation for towing services are set out in the proposal attached to the Contract. The document was returned to Doreen Culver, Bidding Officer, for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, AUGUST 24, 2001**

The Board of County Commissioners did not meet in regular session. Commissioner Curtiss had an all-day training session for the Literacy Grant held at the Library; and Chairman Evans was out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, AUGUST 27, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated August 24, 2001, batch number 1484 (pages 1-5), with a grand total of \$78,501.44. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 24, 2001, batch number 1485 (pages 1-5), with a grand total of \$24,136.31. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 27, 2001, batch number 1481 (pages 1-4), with a grand total of \$22,219.17. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated August 27, 2001, batch number 1483 (pages 1-3), with a grand total of \$5,922.16. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 27, 2001, batch number 1489 (pages 1-5), with a grand total of \$23,656.92. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 27, 2001, batch number 1490 (pages 1-5), with a grand total of \$36,503.08. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 27, 2001, batch number 1491 (pages 1-2), with a grand total of \$4,914.34. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Bruce R. Rogers, Lolo, Montana, as principal for Payroll Warrant #267481 issued August 24, 2001 on the Missoula County Payroll Fund in the amount of \$493.42 (payment for salary 8/5/01 – 8/18/01), now unable to be found.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 17 - Pay Date: August 24, 2001. Total Missoula County Payroll: \$845,165.07. The Transmittal Sheet was returned to the Auditor's Office.

Certification of Acceptance – Chairman Evans signed a Missoula County Public Works Department Surveyor's Office Certification of Acceptance for County Maintenance for ACM. No. 2001-0003, Wheeler Drive, Road No. L 1014-W, T 13 N, R 19 W, Section 06. The limits of acceptance are .329 miles from the intersection with Expressway thence easterly 1081.62 feet to the intersection with Majestic Drive thence easterly 574.13 feet to the intersection with the north access and the center of the cul de sac thence easterly 81.70 feet to the 1/16 line. The document was returned to the County Surveyor's Office.

**TUESDAY, AUGUST 28, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 28, 2001, batch number 1495 (pages 1-2), with a grand total of \$141,671.06. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the plat for George Addition, a minor platted subdivision located in the NW¼ Section 35, T 13 N, R 20 W, PMM, Missoula County, with the owners of record being George L. and Catherine W. Schmitz.

Plat – The Commissioners signed the plat for Horseshoe Hills, a five-lot minor subdivision of Tract 1, COS No. 4627 and the NE¼ of the NE¼ of Section 25, T 16 N, R 14 W, PMM, Missoula County, with the owners of record being Virginia M. McCormick (NE¼, NE¼) and James D. and Rena P. Heaton (Tract 1).



2001-0025

Plat and Improvements Agreement – The Commissioners signed the Plat and Improvements Agreement, dated August 28, 2001, for Riverwood Meadows, a nine-lot subdivision of Tracts B-1 and B-2, COS No. 3353, located in Section 8, T 13 N, R 20 W, PMM, Missoula County, a total area of 10.65 acres, with the owners/developers of record being Todd Peters and Mike Priske (Peters-Priske Land Development). The improvements that remain to be completed are 1) the installation of Base Course Material as required by the approved plans for Mayfly Lane and the pedestrian walkway along Kona Ranch Road; and 2) paving with hot asphalt mix per approved plans. The estimated cost is \$18,376.00. The improvements shall be completed on or before July 3, 2002. This Agreement has been secured by a Letter of Credit issued on behalf of Peters-Priske Land Development, LLC, by First Security Bank of Missoula.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Amendment to Contract – The Commissioners signed an Amendment to the Professional Services Contract, dated June 1, 2001, between Missoula County and Joclynn Ware Snyder, for technical assistance with the Literacy Grant Project, amending the total value of the contract from \$8,700.00 to \$10,700.00. The Wallace Reader's Digest Planning Grant funds this project. The duration of this Contract will be five months, commencing on June 1, 2001 and terminating on October 31, 2001. The document was returned to Peggy Seel in the Office of Planning and Grants for further signatures and handling.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and the Lolo Community Council for the purpose of advancing and promoting the interests and welfare of the residents of the Lolo community in Missoula County. The total amount shall not exceed \$1,000, plus reimbursement for election costs. The term will be July 1, 2001 through June 30, 2002.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Chem-Safe Environmental, Inc. for waste collection, bulking, transportation and disposal services associated with the hazardous waste collection event on September 21<sup>st</sup> and 22<sup>nd</sup>, 2001. All waste materials will be transported from the site of the collection event and disposed of by no later than October 30, 2001. The total compensation is as set forth in the Contract. The document was returned to the Health Department for further signatures and handling.

Interlocal Agreement – Upon recommendation by the Sewer District's Board of Directors and by the County Attorney's Office, the Commissioners signed an Interlocal Agreement between Missoula County and the East Missoula County Sewer District to delineate the responsibilities of the County and the District with respect to financing, construction, ownership, operation and maintenance of the sewer construction project. The method of payment for the construction and administration of the project is established by the Project budget dated March 30, 2001. (The County will contribute \$80,000 of the more than \$4.5 million construction budget). The Contract will be in effect until the closeout of all construction grant and loan programs.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and the Missoula Indian Center, for the purpose of improving access to health care for Native American children in Missoula County through the Covering Kids Coalition. The term will be August 10, 2001 through December 10, 2001. The total amount shall not exceed \$4,000.00.

Agreements – The Commissioners signed two (2) proposed Construction Agreements, dated August 14, 2001, between the Missoula County Airport Industrial District ("Customer") and Montana Power to install, operate and maintain a gas service line for the following:

- 1) Along the west side of Kestrel Drive going north and crossing Expressway; north on Sandpiper and then west to the common corner of Lots 2, 3, 4, and 13, Block 3, Missoula Development Park. The cost of the gas extension is \$18,112.00. Any refunds for Customer's Advance for construction will be made before September 8, 2006; and
- 2) Crossing Expressway from Trumpeter Way on the north side of Expressway to Trumpeter Court along the south side of Expressway, Missoula Development Park. The cost of the gas extension is \$5,017.00. Any refunds for Customer's Advance for construction will be made before October 8, 2006.

The documents were returned to Barbara Martens in the Projects Office for further handling.

Other items included:

- 1) The Commissioners signed a letter to Montana's Congressional Delegation supporting the creation of Ice Age Floods National Geologic Trail.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **WEDNESDAY, AUGUST 29, 2001**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners traveled to St. Ignatius to meet with representatives of the Salish-Kootenai Tribe, et al., regarding Travelers Rest.

MISSOULA COUNTY

**PUBLIC MEETING – August 29, 2001**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, Chief Civil Attorney Michael Sehestedt and County Surveyor Horace Brown.

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$368,673.55. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: 2,750 Tons of Class “B” Asphalt for Blue Mountain Road Project (Road Department)**

This is a request to award a contract for the purchase of approximately 2,750 tons of Class “B” asphalt for the Blue Mountain Road project (Road Department).

Missoula County Public Works Department solicited bids for the purchase the asphalt. Two bids were received: Montana Materials (Jensen’s) at \$26 per ton for a total of \$71,500 and JTL Group, Inc. at \$21 per ton for a total of \$57,750.

It is the recommendation of the Public Works Department to award the bid to JTL Group in the amount of \$57,750. The budgeted amount was \$75,000.

Horace Brown stated Greg Robertson, Director of Public Works, was in charge of the project. This is the bid for asphalt to finish the road. It should be paved about the middle of September.

Commissioner Curtiss moved that the Board of County Commissioners award the Blue Mountain Road asphalt purchase contract to JTL Group, Inc., in the amount of \$57,750 as the lowest bid. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Ardeson Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Parcel 2, COS 4582, Township 15 North, Range 22 West.

Gary Ardeson has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 160 acres in size located in the Ninemile Area off Interstate 90. Mr. Ardeson proposes to create four approximately 40 acre parcels for transfer to his wife, Maria Ardeson, his daughter, Michelle Ardeson and his son, William Ardeson, and retain the fourth parcel as a remainder. Mr. Ardeson intends to build a home on the remainder for himself and his wife. He hopes that the children will keep their property.

Mr. Ardeson did a subdivision a few years ago called College Fund Addition, a division of a lot in Sorrell Springs where his home is located, to sell a parcel in order to fund his two children’s college education.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Section 27, Book 453, Page 1330	1995	Parcel greater than 160 acres	Crown Pacific Limited Partnership Lumber Co.	Robert and Ernest Johnson
COS 4582	1996	Parcel greater than 160 acres	Johnsons	N/A
Book 659, Page 51	2001		Johnsons	Gary Ardeson

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Chairman Evans opened the public hearing.

Gary Ardeson was present and came forward to answer any questions the Commissioners may have.

Commissioner Curtiss stated the reason he is before the Board is to make sure this is not an attempt to evade subdivision review. She asked if Mr. Ardeson did intend to give this land to his children.

Gary Ardeson stated that was his intention. His daughter is a senior at Carroll College and his son is a freshman at Colorado University in Boulder. He would like them both to stay here because he is staying here. He would like to build his home on Lot 3. He did not know if that was an issue, as another lot was mentioned in the application.

Colleen Dowdall stated that would not be an issue.

Gary Ardeson stated he would like to begin construction on his home next spring.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Gary Ardesson to create four new 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 Curtiss seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated Mr. Ardesson would receive an approval letter. The approval was for the split of the land only. It did not provide for adequate access, installation of utilities, compliance with zoning or availability of public services; nor provide road maintenance, dust abatement or other services.

#### **Hearing: 310 Permit for Hellgate Valley Irrigation Company**

Marnie McClain, Deputy County Attorney, presented the staff report.

This is a request to review an application by Hellgate Valley Irrigation Company to repair and maintain their diversion structure on the Clark Fork River under the Natural Streambed and Land Preservation Act (310 Law).

The Natural Streambed and Land Preservation Act is normally administered by the Missoula Conservation District but this application is in a small area of Missoula County not under their jurisdiction. This falls under the jurisdiction of the Board of County Commissioners.

Under the Natural Streambed and Land Preservation Act, also known as the 310 Law, any person proposing a project on the bed or bank of a perennial stream must obtain a permit from either a conservation district or the Board of County Commissioners. The 310 Law provides for the review of projects in conjunction with Montana Fish, Wildlife and Parks in order to minimize impacts to the stream and to other property owners.

The applicant is the Hellgate Valley Irrigation Company. They propose to replace about 50 yards of riprap on the diversion structure in order to improve flow into the irrigation canal. They also need to dredge approximately 150 cubic yards of material from the bed at the mouth of the intake canal.

The project has been reviewed by Mike Rotar of Inter-Fluve, a Bozeman consulting firm under contract with DNRC to provide technical assistance to conservation districts and Boards of County Commissioners in the administration of 310 permits. The project has also been reviewed by the Montana Department of Fish, Wildlife and Parks.

Mike Flynn, Hellgate Valley Irrigation Company, stated the Conservation District surveyed the bottom of the ditch a few years ago and there is considerable buildup at the head of the ditch. He would like to excavate the buildup. He hoped that would allow enough water down the canal and nothing else would be required. If necessary, he would like to replace some rocks. He has approximately 50 yards of rock on site. Last year, Brian Maiorano allowed him to place an excavator in the river and pick up some rock that had washed out of the dam. At that time, he also picked out car bodies, shopping carts, re-bar and other debris.

Marnie McClain stated that she had the application reviewed by Mike Rotar, a water resources engineer with Inter-Fluve. The DNRC makes them available for technical assistance to review 310 projects. Mr. Rotar prepared a report with recommendations. The project also has to be reviewed by Fish, Wildlife and Parks. She recommended the Board approve the application subject to the conditions and recommendations contained in the report from Mike Rotar and Fish, Wildlife and Parks.

Chairman Evans opened the public hearing.

Marnie McClain read the four conditions recommended by Mike Rotar:

1. Riprap used to repair the diversion structure should be placed upstream of, and on top of, existing riprap within the structure. This will help to minimize movement of riprap that is already in place on the channel bed, thus minimizing sediment releases from disturbance of the channel bed. Care should be taken to insure that a significant drop in elevation is not created between the diversion structure crest and the downstream bed level. This can be accomplished by creating a gradual transition (approximate slope of 10H:1V) with riprap material from the structure crest to the downstream bed elevation. Riprap should be a minimum of 2 feet in diameter. Placement of the riprap below the ordinary high water (OHW) elevation for the river may also require a Section 404 permit from the Army Corps of Engineers.
2. The applicant states that ingress and egress to the river will occur via the Hellgate Valley Irrigation Company (HVIC) bridge on Burton Street. It is anticipated that **no** vegetation will be disturbed during these activities. If any vegetation or river/canal banks are damaged during the project, reclamation should be undertaken to restore these areas to their original pre-project condition.
3. The applicant states that approximately 2 feet of material will be removed from the bed at the mouth of the intake canal. The estimated volume of material to be removed is 150 cubic yards. The disposition of this material after removal was not specified. A significant amount of fine sediment can be anticipated with this material and, therefore, removal of this material from the project site, or to an upland location, is recommended.
4. Any sediment discharges that occur from dredging at the canal mouth are expected to remain within the HVIC canal. This can be further insured by preventing flows from re-entering the river through the bypass channel during construction. The applicant should also consider the use of other temporary sediment control devices such as cofferdams, silt fence or other means of isolating specific work areas from the remainder of the river channel during construction.

Commissioner Curtiss asked if anyone oversees the work.

Marnie McClain stated that no one oversees the work. The permit is granted and the Conservation District will follow up to make sure the project is done correctly.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the Natural Streambed and Land Preservation Act (310 Law) application by Hellgate Valley Irrigation Company to repair and maintain their diversion structure on the Clark Fork River subject to the conditions recommended by Inter-Fluve and Montana Fish, Wildlife and Parks. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Consideration: Max Acres (2 Lot Split of 158 Acre Parcel on Petty Creek) – 3 Miles South of Interstate 90

Karen Hughes, Office of Planning and Grants, presented the staff report.

This is a request by Walt and Susan Max, represented by Professional Consultants, Inc., to create Max Acres Summary Subdivision, a two lot split of a property located approximately 2.5 miles south of Interstate 90 on Petty Creek Road, near Alberton. They are proposing to create one 70 acre lot and one 88 acre lot.

Staff is recommending approval of four variance requests for installation of sidewalks or pedestrian walkways, for paving of Petty Creek Road, for driveway width and for driveway grade. Staff is also recommending approval of the Summary Subdivision subject to 10 conditions. Based on Planning Status discussions, staff proposes changes to Condition 1 and Condition 6 and amendments to the Findings of Fact.

The key issues for this subdivision are access and the Petty Creek riparian area.

The property is unzoned and designated as Open and Resource in the 1975 Missoula County Comprehensive Plan. The Open and Resource designation recommends a residential density of no greater than one dwelling unit per 40 acres. The overall density complies with the land use designation and goals and objectives of the plan.

Petty Creek Road serves the subdivision and divides the two lots. It is a 24 foot wide gravel road within a 60 foot right-of-way. It is County maintained. The applicants are not proposing improvements to this road. Subdivision regulations require that all on-site roads be paved and the applicants have requested a variance to the requirement. Paving of this road is expected in 2007 and an RSID waiver has been recommended as a condition of approval to address any contribution that would be needed by these property owners, based on benefit, for improvements to Petty Creek Road, which could include paving.

Driveways for both Tracts 1 and 2 are former logging roads. On Tract 1, the property owners obtained a 310 permit from the Conservation District to replace the bridge across the creek. They are proposing to build both driveways to County subdivision standards with two exceptions. They have requested a variance to the unobstructed driveway width for Tract 1 to be reduced from 20 feet to 16 feet. This has to do with the fact that the driveway cuts across fairly steep slopes to access higher benches. The 20 foot width would require extensive cut and fill. They have talked with the Frenchtown Fire Department and have approval for the reduced driveway width as long as residential sprinkler systems are installed. Staff has recommended that a Development Agreement be filed that states that new homes will have residential sprinkler systems.

The other variance for the driveways is to allow for greater than an 8% grade. There are short sections that go as high as 15% grade. Again, because of the steep slopes requiring reduced grade would require extensive cut and fill across the slope. The Fire Department was amenable to somewhat higher grade. If the grade was 10% or greater, they would like to review the driveway individually at the time the applicants receive a fire safety permit.

There are no sidewalks or pedestrian trails of any kind in this area. There is an RSID waiver recommended as a condition of approval that would include non-motorized facilities.

This property is located within a Wildland/Residential Interface (WRI) area. Frenchtown Fire District would serve the subdivision. There is a fire station at the mouth of Petty Creek, approximately 3.5 miles from the subdivision. The applicants included WRI standards for development in the proposed covenants. Staff has recommended some minor changes to the covenants and to add to them that any home constructed needs to obtain a Fire Safety Permit from the Frenchtown Fire Department.

Tracts 1 and 2 are generally steep. The plat only shows a portion of each tract with buildable areas, the remainder of the property is mostly steep slopes. The property slopes down on each side to the Petty Creek drainage. Petty Creek flows on Tract 1 mostly parallel to the road. There are some benches located above Petty Creek to the east and west that could be used as building sites. A riparian area is shown along Petty Creek. A Riparian Resource Management Plan is included with the proposal.

Staff has recommended the covenants be revised to include the more detailed Riparian Management Plan. In addition, staff has asked that a map of the riparian area be attached to the covenants so property owner are aware of its location. One issue raised at Planning Status was the exact location of the adjusted riparian area. Attachment "A" shows a broader riparian area between Petty Creek and the existing driveway and an area from Petty Creek north between the driveway and Petty Creek Road. This area was identified based on consultation with Brian Maiorano, Floodplain Administrator.

This area has deer, elk, big horn sheep, black bears and mountain lions. The covenants include a section on Living With Wildlife. Staff has recommended that some enforcement provisions be taken out of the covenants. The addition of weed management language to the covenants has also been recommended.

Dick Ainsworth, Professional Consultants, Inc., developer's representative, was present, as were the applicants Walt and Susan Max. The memo with proposed changes to some of the conditions was received this morning and he had

been unable to reach his clients until just before the meeting. The revisions proposed for Condition 1 do not accomplish what was mentioned at Planning Status. The revised findings do explain what is proposed but he was still concerned that the Public Works Department will read the condition and want to enforce their review of drainage plans, etc. There are no new drainage plans and the existing drainage plans have already been reviewed. He would like to explore additional revisions to Condition 1 to accomplish what was discussed at Planning Status.

Colleen Dowdall stated she had reviewed the revisions and the changes refer to driveway approaches.

Dick Ainsworth stated the "and drainage plans" is the part that concerns him. There is not a problem with obtaining driveway approaches. Drainage plans are already part of the submittal. The new finding states: "Road and storm water improvements are not proposed for this subdivision; therefore, engineering plans, calculations and specifications are not necessary to be provided for this subdivision." It doesn't specifically talk about drainage plans.

Karen Hughes stated there is a separate finding that says drainage plans were provided with the proposal. It has been a standard condition that final plans are reviewed and approved by the Public Works Department.

Colleen Dowdall asked if Public Works had approved the drainage plans as part of agency review.

Karen Hughes stated that Public Works responded that they wanted approved drainage plans but did not ask for any changes to the ones provided.

Dick Ainsworth stated the response from Public Works was their standard form letter.

Karen Hughes stated the letter says "engineering specifications, drainage plans and road plans shall be reviewed and approved by the County Public Works Department."

Dick Ainsworth stated that the boiler plate letter makes it sound like this is not a big deal, but when it comes to filing the plat, it becomes a big deal and headache which no one anticipated. It is a reoccurring problem on all subdivision reviews.

Chairman Evans stated the drainage plans have already been submitted and approved.

Dick Ainsworth stated that was correct.

Colleen Dowdall stated Condition 1 could be further revised to removed "and drainage plans."

Dick Ainsworth stated that was his understanding from Planning Status and that was acceptable to him.

Commissioner Curtiss asked if the findings need to be changed.

Colleen Dowdall stated they were provided and it was hoped they were being reviewed as part of the agency review. It might be that the finding should say that the plans were submitted and no changes were requested. Finding #9 under Roads might be revised to read "Drainage plans were submitted with the preliminary plat application and no changes were requested by Public Works."

Karen Hughes stated she would submit some revised language for the findings.

Dick Ainsworth stated that in the same revision to Condition 1 it stated that driveways cannot be over 10% grade unless approved by Scott Waldron. He had no problem with that as Scott Waldron had been on site and said the roads were acceptable. However, one of the variance requests is to approve short stretches of 15% grade. That is in conflict with Condition 1.

Karen Hughes stated the variance request is for driveway grade to be no more than 8%. The condition limits it to 10% unless additional approval has been received. The variance is not to allow for 15%, but not to exceed 8%.

Colleen Dowdall stated the variance is asking to vary from the 8% requirement. If that variance is granted, then the condition is appropriate to set the limit on driveway grade. Perhaps it should say "shall not exceed 10%, but may go to 15% if approved by the Frenchtown Fire Department."

Karen Hughes stated the variance request is for driveways to not exceed 8%.

Colleen Dowdall stated her suggestion was to change Condition 1 which would allow small portions of up to 15% with approval by the Frenchtown Fire Department.

Dick Ainsworth stated his request was specifically to permit a short stretch of driveways up to 15%. The language suggested was fine. This request is a good example of large tract subdivisions that are caught in a change of the Subdivision and Platting Act. The regulations are written for smaller than 20 acre tracts. When applied to large acreages like this, they don't work and many variances are requested which are ridiculous. It would be helpful to have a set of subdivision regulations that cover large acreages. The current regulations are a problem for everyone. He had also asked for a little bit more specific riparian area and it wound up the entire creek bottom. That bothers him, but neither he nor the applicants feel anyone would build there. The expanded riparian area is really overboard and takes a lot of property that is not in the floodplain and not in the riparian area. The choice is to take this recommendation or leave it open ended and argue about it later. This might be the better of two evils. It is unfortunate those two choice were presented the day of the hearing and there was no opportunity for more discussion. Other than that, his clients are in agreement with the conditions as proposed.

Chairman Evans asked if the riparian buffer area shown is not acceptable, what would be acceptable to still protect the area. She did not want to be in a taking position.

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Dick Ainsworth stated he understood that. The option is to accept it as shown or leave it open ended and work it out later. In this case, specifically, the Maxs don't feel anyone would build in the area shown. With that in mind, the area shown is not a problem, but this does take more than necessary. However, it is acceptable.

Karen Hughes stated that a riparian buffer line had not been shown before, partly because Brian Maiorano had been on vacation. Since his return, they had both spent quite a bit of time on the site and there was riparian vegetation that extends quite a ways past the area shown. Based on observations, there was riparian vegetation in all the additional areas shown.

Chairman Evans asked for public comments. There were none.

Commissioner Carey stated that Mack Long's comments read in part that the building of two homes on this site is not likely to significantly impact wildlife habitat or populations in the vicinity, however these minor subdivisions often repeat themselves on the same site every few years and cumulative losses of habitat over time may become significant. He asked whether or not the covenants could state there would be no more subdividing. Had that been discussed.

Dick Ainsworth stated that had been discussed with the applicants and Fish, Wildlife and Parks. The covenants state that the lots could be split once more, which is still at a density of one dwelling to 40 acres. The original covenants stated the lots could be divided into lots no smaller than 5 acres. This did not appear to be a problem and if a lot was split again, it would have to again go through subdivision review.

Chairman Evans asked legal counsel for their opinion on that proposal.

Colleen Dowdall stated she did not believe the Board could require that there be no future subdivision, as it would bind future Boards of County Commissioners in their decision-making process. If the landowner want to put that private restriction on the property, that is up to them.

Michael Sehestedt stated that the Board or their successors would get a chance to review each subdivision and the question of impacts and mitigations of each subdivision would be addressed at that time. The comment in the Fish, Wildlife and Parks letter is accurate, but the key is that each subdivision is reviewed on its own merit and the impacts are mitigated at that time.

Chairman Evans stated that she did not think government had the right to tell people how to develop their land in the future. Things change, situations change and laws change. While it may be desirable that future subdivisions not happen, she did not feel the Board had the legal right to impose that.

Michael Sehestedt stated that the Board actually did have the legal right to do that. The question is whether, in this particular case, requiring that would be an appropriate mitigation. Nothing is being mitigated except future fears. This subdivision isn't going to cause the impacts Fish, Wildlife and Parks is concerned about, but if it happens often enough in the same place in the future, there might be a problem. He was pleased they had chosen to address it now with the restriction imposed in the covenants.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(iii) of the Missoula County Subdivision Regulations to not provide non-motorized transportation facilities in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2 of the Missoula County Subdivision Regulations to not pave Petty Creek Road, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(10)(E) of the Missoula County Subdivision Regulations to reduce the required unobstructed driveway width from 20 feet to 16 feet on Tract 1, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(10)(B) of the Missoula County Subdivision Regulations that states that the grade of driveways shall not exceed 8% grade, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve Max Acres Summary Subdivision, based on the findings of fact set forth in the staff report and subject to the conditions as amended. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Max Acres Summary Subdivision Conditions of Approval:**

1. Driveways shall not exceed 10%, but small portions may go to 15% if approved prior to issuance of a fire safety permit by the Frenchtown Fire Department. Final plans for driveway approaches shall be approved by the County Public Works Department prior to final plat approval. *Missoula County Subdivision Regulations Article 3-4.*
2. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner to waive the right to protest a future RSID/SID for future road improvements to Petty Creek Road, including paving and installation of

2002-0001

pedestrian walkways, 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 depicted herein." *Missoula County Subdivision Regulations 3-2 and staff recommendation.*

3. The following statement shall be included on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water system adequate 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." *Missoula County Subdivision Regulations Article 3-7(2).*

4. The applicant shall file a development agreement, subject to review and approval by the County Attorney's Office, prior to final plat approval, stating that NFPA 13-rated residential sprinkler systems shall be installed in all housing and attached structures within this subdivision and that the sprinkler systems shall be inspected by the Frenchtown Rural Fire District. *Missoula County Subdivision Regulations Article 3-7(1)(E) and Frenchtown Fire Department recommendation.*
5. New building sites shall be cleared and brought to Wildland Residential Interface standards for vegetative reduction, including removal of fuels, trees and pruning to remove ladder fuels, prior to issuance of a fire safety permit, subject to review and approval by the Frenchtown Rural Fire District. The covenants shall be amended to include this information. *Missoula County Subdivision Regulations Article 3-1(2).*
6. The riparian area and buffer zone shall be amended to include property east of the proposed riparian area to the toe of the slope adjacent to the existing driveway and a small area of riparian vegetation north of the riparian area shown on the plat between the driveway and the road (see Attachment A for the area in question). This area should be identified as the "Petty Creek floodplain, riparian area and buffer zone." *Missoula County Subdivision Regulations Article 3-13, staff and Floodplain Administrator recommendation.*
7. The following amendments shall be made to the Riparian Management Plan: It shall state that Petty Creek is an important spawning area for fish in the Clark Fork River and is a bull trout (threatened species) core area. Under Section B: "Proposed low-impact use of the area," it shall state that native vegetation shall not be cleared or removed and that old snags should be left for wildlife habitat. Under Section A: "Proposed access to or through the area," it shall state that no other vehicular access is permitted within the riparian area.
8. The final plat shall show all areas with over 25% grade as "no-build" zones. *Missoula County Subdivision Regulations Article 3-1(2) and staff recommendation.*
9. Sections of the proposed covenants shall be amended as follows:
- Article II, Section 18, shall include the approved maximum driveway grade and it shall state that the minimum unobstructed driveway width for Lot (Tract) 1 is 16 feet and Lot (Tract) 2 is 20 feet.
  - Article II Section 14, shall be revised to include the Riparian Management Plan (called Exhibit A in the application packet) and a drawing that locates the boundaries of the riparian area. The statement in this section about watering horses at Petty Creek shall be revised to state that off-stream watering of stock is encouraged and that stock watering shall be managed in such a way as to not damage the creek or riparian area.
  - Article II, Section 16, of the covenants shall be amended to include the following statement: "The property is located within a Wildland Residential Interface. The Frenchtown Rural Fire District requires a fire safety permit prior to home construction on each lot." The covenants shall also include requirements for lot owners to maintain lots so that vegetation/fuels remain cleared. Sections of the covenants related to fire safety shall be approved by the Frenchtown Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Frenchtown Rural Fire District recommendation.*
  - A section on weeds shall be added that states that property owners shall file a revegetation plan for the total disturbed area where driveways are widened or re-graded. It shall further state that property owners shall maintain their property in compliance with Montana State Noxious Weed Management Act and the Missoula County Noxious Weed Management Plan. Property owners shall revegetate any areas of ground disturbance caused by construction or maintenance with beneficial species at the earliest appropriate opportunity.
  - Article III, Section 2 Enforcement: Delete the reference to the Montana State Department of Fish, Wildlife and Parks and Missoula County enforcement agents and remove the reference to Montana State Fish, Wildlife and Parks Department from the last two sentences. *Subdivision Regulations Articles 3-13, 3-1(2) and (10), OPG, FWP, Floodplain Administrator and County Attorney recommendation.*
  - The covenants shall state that the sections addressing wildlife, fire standards, weeds and riparian management shall not be changed or deleted without approval of the governing body.

The amended sections of the covenants shall be approved by the County Attorney's Office and OPG prior to final plat approval. *Missoula County Subdivision Regulations Article 3-2(10), 3-13, 4-1(12), Montana Fish Wildlife and Parks and staff recommendation.*

10. The two new parcels created by this subdivision shall be identified as lots on the final plat, subject to review and approval by OPG. *Missoula County Subdivision Regulations Article 2-2(56).*



**Hearings (HOME Program Projects)**

2001-00000002

Jenifer Blumberg, Office of Planning and Grants, presented the staff report.

The HOME Program is the Home Investment Partnership Program with the Montana Department of Commerce. Its purposes and goals are to expand the supply of decent, safe, sanitary and affordable housing for very low and low income Montanans; to mobilize and strengthen the abilities of units of local government and community housing development organizations to implement strategy for achieving an adequate supply of decent, safe, sanitary and affordable housing; and to provide participating entities on a coordinated basis with various forms of Federal housing assistance. Eligible applicants to the program are local governments, community housing development organizations and public housing authorities. Eligible activities are homebuyers assistance, homeowner rehabilitation, rental rehabilitation, new construction and tenant-based rental assistance.

This is a request to conduct two public hearings to receive public comment on two proposed HOME Program applications, the Western Montana Mental Health Center Carole Graham House and the Human Resource Council Three-County Home Rehabilitation Loan Program.

After the hearings, the Board is asked to approve Missoula County submitting an application on behalf of the new Carole Graham House, a program of Turning Point and the Western Montana Mental Health Center; and to approve granting CDBG Program Income Funds of \$10,000 to the Carole Graham House project contingent upon HOME Program funds being awarded.

The Western Montana Mental Health Center has purchased and is renovating the former Extended Family Services building on South Fourth Street. The renovated building will provide supportive housing for single parents (primarily women) with children during chemical dependency treatment.

The Human Resource Council will be submitting an application to continue the Three-County (Missoula, Mineral and Ravalli) Home Rehabilitation Program. This is an HRC application and does not require County sponsorship. HRC has asked for a letter of support and continued environmental review action.

It is the recommendation of the Office of Planning and Grants to approve submittal of a HOME application on behalf of the MHC Carole Graham House and to approve granting CDBG Program Income Funds of \$10,000 to the project contingent upon HOME funds being awarded.

**1. Western Montana Mental Health Center Carole Graham House**

Chairman Evans opened the public hearing.

Patty Kent, Director of Housing and Development for the Western Montana Mental Health Center, stated that their request is for Missoula County to submit a grant application for the Carole Graham Home. The County has been a very strong partner in the development of addiction services for about 10 years with Turning Point. There is a need for non-medical detox and also traditional housing for single adults who need intensive out patient treatment. The County was a major player in developing Share House. That has evolved from a small place on Pine Street to its new big, beautiful home on Wyoming Street which serves 8 men and 8 women, each within their own wing, for transitional housing; and 4 beds of non-medical detox. Since 1996, it was also identified that a home was needed for single parents who have children in order to address their addiction treatment needs. Prior to 1996, a single parent would be sent to Butte for intensive in-patient treatment and the children would go to foster care. That was not an incentive to enter treatment. The State was convinced that this would make sense and save money by providing transitional housing for single parents, typically women with kids, while in treatment and provide wraparound treatment for the entire family. It has been a tremendous boon to the community and the families. It is typical for a project of this nature to have funding in place prior to development. The Carole Graham Home started about a year ago in a rental home outside of town on Mullan Road, which was a wonderful place to begin the program and show it works. It was quickly discovered that a typical single family home presents many problems when trying to work with multiple families who are in intensive treatment. The design does not provide adequate privacy and supervision and inhibits treatment. The plan was to find a new lot to develop a home closer to the service campus on Wyoming Street. In December, an opportunity presented itself. A 7,000 square foot building on three City lots on 4th Street has been purchased. It is about 4 blocks from the Mental Health Campus, 3 blocks to a grocery store, 3 blocks to a school and on a bus route. Playground equipment is already on the site as it was a former school and daycare site. Many years ago it was used as the Watson Children's Shelter. The building is being rehabilitated. The Mental Health Center has committed funding of over \$100,000, Fannie Mae committed pre-development funds of \$150,000 and the Board of Housing is a backup for the entire construction loan. They are applying for Federal Home Loan Bank funds and have requested funding from the City Title I. They have been granted funds from the County as well. The final piece of the puzzle will be this HOME grant. When these programs are developed, it is best to do so debt free up front. This has a 6 year plan to become debt free. Staffing will likely be supported by the State, but are not in favor of supporting facility costs. Creating a debt free facility provides some long term economic viability for the program. This HOME grant is to provide the final piece of the puzzle to have a debt free facility and guarantee this program will be in place for many years to come.

Cindy Beessing, Program Supervisor of the Carole Graham Home, stated that the facility has been open a little over a year. During that time, there have been referrals from 84 women and 128 children. That demonstrates the need for this type of program. Currently there is an active waiting list of 28 families. The home has proven successful in its first year of operation. It provides a safe, structured and secure environment for these women and children to stabilize in their sobriety and recovery. There is a strong parenting component in the program. Parenting classes and education are provided. Treatment is provided on-site which is a key element of the program. It is the only program in the State that provides treatment for women with their children on-site for addiction recovery. The limitations in the rental home are spatial. In research on this facility, one of the key issues was no matter how big the home seems, it will not be big enough. That is being encountered in the current rental home. The added space at the new building is very

exciting. It will provide some privacy and help reduce the stress level. The transportation issue has been hard as well. It will be helpful to be on the bus line and close to a grocery store.

Barb Gillis read a letter she prepared regarding the Carole Graham Home. "Good afternoon. My name is Barb Gillis and I am here to speak to you on behalf of the Carole Graham Home. I am a single mom to a three year old son named Shawn Michael and I have been a resident at the Carole Graham Home since May, 2001. I came to the facility for treatment for my alcoholism. I believe very strongly in this program and I feel that I have greatly benefited from the help I have received thus far. Since my arrival at the Carole Graham Home, I have been educated on the disease of alcoholism. I have been given the tools to enhance my communication skills and I am learning to set appropriate boundaries with people. I believe these skills will be of help to me in my relapse prevention. The Carole Graham Home offers one-on-one counseling sessions, five days of group therapy, numerous parenting classes, a life skills group and the opportunity to attend support group meetings such as Alcoholics Anonymous and Narcotics Anonymous. I have been treated in two previous in-patient facilities for my alcoholism prior to my being accepted into the Carole Graham Program. While I feel that I benefited from these past experiences, they do not compare to the excellent curriculum at the Carole Graham Home. They offer single moms an opportunity to become responsible citizens and better parents and I am grateful for having been accepted into such a very fine program and for being given the opportunity to be able to receive the help I need without being separated from my son. The staff at the Carole Graham Home establishes structure and consistency to the lives of the residents and their children, which I feel is an important part of the recovery process. The staff members are knowledgeable, patient, kind and helpful towards the residents. My life has been enriched because of the Carole Graham Program and I feel I have been given a wonderful opportunity to make positive changes in my life. Thank you." She also stated that she was a fortunate resident who had transportation, but it has been a problem for other residents because of the bus situation. The move into town will be a positive move.

There being no further comments, the public hearing was closed.

Michael Sehestedt stated that on the background request for Commission Action this is listed as providing supportive housing for single parents (mostly women) with children. However, the letter and all the testimony have indicated this is exclusively for women with children. He asked for clarification.

Patty Kent stated the Carole Graham Home is for “single parents with children.” They have never encountered a single dad with children who is interested in treatment at the Carole Graham Home, but they are not excluded.

Michael Sehestedt asked if there was any outreach to that particular group. He knew of a couple of cases where this is an issue. He was curious because everyone spoke about this program as being for women with children. In the documents presented, half say "single parent" and half say "for women." Would any efforts be taken to make this more broadly available.

Patty Kent stated it was her understanding that there had never been an application from a single dad with children.

Michael Sehestedt stated that only the Request for Commission Action indicates this program is for single parents, all other references are for women with children. The program needs to look at making it clear that it is available to single fathers. In listening to the testimony, it was not apparent that this program was available for a male, single parent.

Patty Kent thanked Mr. Sehestedt for his input and would make sure that men were included in the outreach for this program.

Commissioner Carey moved that the Board of County Commissioners approve submittal of a HOME application on behalf of the Mental Health Center Carole Graham House. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

## **2. Human Resource Council Three-County Home Rehabilitation Loan Program**

Chairman Evans opened the public hearing.

Brendan Knolls, Housing Program Manager at the District 11 Human Resource Council, otherwise known as HRC, stated he was present to make the public aware of their request. HRC has been doing housing rehab loans for about 5 years. To date they have assisted 111 households throughout three counties – Mineral, Missoula and Ravalli. Those 111 households have received over \$700,000 in home rehab funds used to make the houses habitable and preserve housing stock so low to moderate income residents can maintain and continue living in their homes. In Missoula, they have done 55 loans for over \$400,000. The loans are affordable to the households and repayments are tailored to fit the households budgets. In some cases, they are able to defer the loan completely with no monthly obligation. He had nine letters from clients they have recently helped, and seven letters from organizations who support the program. He read from some of the letters:

*"Dear Sirs or Madams: I'm a 78 year old senior citizen. I manage to survive financially with Social Security as my sole source of income. My little home was in bad shape, both inside and out. There's no way I could afford the extensive repairs that were needed. When I heard about the loans available from HRC, I applied for one of those loans and was accepted. The work has been completed. My home is not only a safer place to live but a more attractive one. The bonanza that was the money from the Human Resource Council has also improved my morale and feeling of self worth. I most earnestly urge you who are responsible for this program to do everything possible in your power to make sure that the funds are available to continue this most worthwhile program. I am sure that there are many more senior citizens out there who are in my previous predicament who are in great need of help that only you (HRC) can offer. As for myself, I'm eternally grateful for the existence of HRC and for the courtesy and respect with which I was treated throughout the negotiations."*

*From Terry King at First Security Bank: "We are writing in support of your organization's application for a HOME grant to continue the home repair loan program serving low and moderate income homeowners in Missoula, Mineral and Ravalli Counties. We support the management of this program by HRC due to its history of success in this area and other affordable housing areas. We fully recognize the extreme need for affordable housing in this area and the positive effect on filling some of these needs by the Home Repair Loan Program. This loan program is especially critical in the very low income arena. In addition, this program offers the only way for low income owners to maintain a safe, energy efficient and comfortable home. This program has proven to be an effective means of addressing the continuing critical need for housing rehabilitation. We strongly support your efforts to continue this vital program."*

Nancy Leifer stated she was representing the Missoula Housing Corporation. One of the strong points about Missoula's ownership support network is the programs that support people through the full cycle of ownership, from before buying a home all the way through to foreclosure prevention. This is one of the key links in that full cycle support. She urged the Commissioners to support the proposal.

Patty Kent, representing the Mental Health Center, stated their support for this program, notwithstanding the competition it will create. The Human Resource Council has an excellent track record and they do good work. It is a tremendous benefit to the community.

There being no further comments, the public hearing was closed.

Michael Sehestedt stated that the hearing was to provide a forum for public comment on HRC's proposal. If the Board finds it appropriate, HRC requests a letter of support be generated to accompany the application. The Human Resource Council will be making their own application.

Brendan Knolls stated the Commissioners have already written a letter of support for the Human Resource Council's application.

Michael Sehestedt stated the Board also needed to act on a request to approve CDBG funds to the Carole Graham House.

Commissioner Curtiss moved that the Board of County Commissioners approve granting CDBG Program Income Funds of \$10,000 to the Carole Graham House Project contingent upon HOME Program funds being awarded. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 2:45 p.m.

#### THURSDAY, AUGUST 30, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated August 29, 2001, batch number 1493 (pages 1-3), with a grand total of \$11,775.57. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 30, 2001, batch numbers 1496 and 1497 (pages 1-4), with a grand total of \$19,916.56. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 30, 2001, batch number 1498 (pages 1-3), with a grand total of \$9,615.81. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 30, 2001, batch number 1499 (pages 1-2), with a grand total of \$7,220.22. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Request for Action – Chairman Evans approved and signed a Shoreline Construction Permit for Mike and Louise Heckford, Power, Montana, to replace an existing dock and install a 130 square foot floating dock on Seeley Lake. The property is Lot 82 of Seeley Lake Shoresites on C Street in Seeley Lake. The document was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Request for Action – Chairman Evans approved and signed a Shoreline Construction Permit for Brent Campbell, represented by Don Larson, to replace an existing dock and install a 596 square foot floating dock on Holland Lake. The property is Lot 5 of Tract 15 in Section 35, T 20 N, R 16 W. The document was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Request for Action – The Commissioners approved a Task Order with DJ&A for extra work for construction management services to construct sidewalks and pathways within Phase 1, Missoula Development Park. The total cost shall not exceed \$8,115.00. The document was returned to Barbara Martens, Projects Officer, for further handling.

Endorsement Letter – In a letter dated September 12, 2001 to Elmer Palmer, Chairman, Lolo Community Council, the Commissioners approved the Council's request (by a vote of 3-0) to rescind Amendment 1, which combined the offices of Secretary and Treasurer, of the Lolo Community Council Bylaws.

Cancellation Letters – The Commissioners signed five (5) letters, dated August 28, 2001, to the following Districts canceling the November 2001 Election (pursuant to 7-13-2262 M.C.A.) and declaring elected by acclamation the candidates who filed a nominating petition for the positions open for this election.

- 1) To the Seeley Lake Missoula County Sewer District, declaring Penny Copps, Dave Whitesitt, and Glen Morin elected as directors for a four year term;
- 2) To the Lorraine South Water District, declaring William J. Docktor, Colleen Caprara, and Sue Polich elected as directors for a four year term;
- 3) To the Elk Meadows Ranchettes County Water District, declaring Pat Hardman and William F. Wodrich elected as directors for a four year term; and asking that the Board of Directors make an appointment to fill the remaining position open on the Board for a four year term;
- 4) To the East Missoula County Sewer District, declaring Deborah G. Nichols elected as director for a four year term; and asking that the Board of Directors make an appointment to fill the remaining position open on the Board for a four year term; and
- 5) To the Seeley Lake Missoula County Water District, declaring Jack Copps, and John Bewick elected as directors for a four year term.

The letters were returned to the Elections Office for further handling.

Agreements – The Commissioners signed eight (8) Memorandums of Agreement, dated July 1, 2001, between Missoula County and the following:

- 1) Missoula Youth Homes, Inc., for shelter care services through the Attention Home for damaged and troubled children with legal, emotional, social, behavioral, and family problems in Missoula County. The total amount shall not exceed \$33,000.00. The term will be July 1, 2001 through June 30, 2002;
- 2) The Salvation Army, to assist indigent residents of Missoula County in accordance with the protocols established by the Emergency Winter Shelter Contingency Plan for Fiscal Year 2002. The total amount shall not exceed \$15,000.00. The term will be December 1, 2001 through March 31, 2002;
- 3) The Salvation Army, to assist stranded individuals with one-time travel assistance who have the opportunity for employment or who have medical needs that can be better served outside Missoula County. The total amount shall not exceed \$12,600.00. The term will be July 1, 2001 through June 30, 2002;
- 4) The Art Museum of Missoula, to provide access to art (Art Museum) for Missoula area residents. The total amount shall not exceed \$138,575.00. The term will be July 1, 2001 through June 30, 2002;
- 5) The Missoula Food Bank, to partially fund the Director's salary, and for the organization and distribution of food to needy individuals. The total amount shall not exceed \$19,865.00. The term will be July 1, 2001 through June 30, 2002;
- 6) The Child and Family Resource Council, to provide parenting classes to improve parenting skills of interested families and to those who are court ordered. The total amount shall not exceed \$10,282.00. The term will be July 1, 2001 through June 30, 2002;
- 7) Family Basics (WORD), for Rent Mediation, a one-time only rental assistance to families at significant risk of losing their homes. The total amount shall not exceed \$6,000.00. The term will be July 1, 2001 through June 30, 2002; and
- 8) The Poverello Center, for the provision of food, shelter and clothing to the homeless population. The funds also partially fund the cook's salary, utilities, and a day-care project at Joseph Residence, as well as two staff positions at the Poverello. The total amount shall not exceed \$40,000.00. The term will be July 1, 2001 through June 30, 2002.

Quit Claim Deed – The Commissioners signed a Quit Claim Deed, dated August 30, 2001, for the transfer of 16 park lands in the Rattlesnake and Wapikiya areas of Missoula County, per the legal descriptions set forth therein, to the City of Missoula. The document was returned to Lisa Moisey, Parks Staff, for further signatures and handling.

Lease Extension – The Commissioners signed a one-year extension for a Lease Agreement between Missoula County and the Missoula Valley Water Quality District (Rosecrest) for the purpose of operating and maintaining an experimental denitrifying septic system. The lease is extended to August 28, 2002.

Lease Extension – The Commissioners signed an extension for a Lease Agreement, dated August 14, 2001, between Missoula County ("Lessor") and Ted Etter ("Lessee") to grant a five-year lease for the use of approximately 840 square feet of garden space in Westview Park in Lolo, Montana. Lessee agrees to pay to the lessor as rent for the real property the sum of one dollar (\$1.00). The lease will expire June 2005, subject to an annual review. The document was returned to Lisa Moisey, Parks Staff, for further handling.

Agreements – The Commissioners signed four (4) Labor Agreements, dated July 1, 2001, between Missoula County ("Employer") and the following:

- 1) The American Federation of State, County & Municipal Employees (AFSCME), Council No. 9, Juvenile Detention Unit ("Union"), for the promotion of harmonious relations between the Employer and the Union; the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, fringe benefits and other conditions of employment. The term will be July 1, 2001 through June 30, 2002;
- 2) The Detention Officers' Association of Missoula County ("Association"), for the promotion of harmonious relations between the Employer and the Association; the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, fringe benefits and other conditions of employment. The term will be July 1, 2000 through June 30, 2002;
- 3) The American Federation of State, County & Municipal Employees (AFSCME), Council No. 9, 9-1-1 Unit, for purposes of collective bargaining with respect to wages, hours fringe benefits and other conditions of employment for employees of the Missoula County 9-1-1 Center, including dispatchers, shift supervisors and shift leaders, and excluding supervisory employees, confidential employees, management officials, temporary

employees, short-term workers, and members of other bargaining units. The term will be July 1, 2001 through June 30, 2002; and

- 4) The United Food and Commercial Workers Union Local 4 (Library) ("Union"), for the promotion and continuous understanding between the Employer and the Union; to provide for equitable and peaceful adjustment of differences which may arise, and to establish mutually agreed upon conditions of employment. The term will be July 1, 2001 through June 30, 2003.

The Agreements were returned to Steve Johnson in Human Resources for further signatures and handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-001 for the Public Works Department (RSID 8916 Fund, El Mar Water/Sewer), transferring \$4,000 from Capital-Reserve to Capital-Vehicles. These funds are for cost overrun on vehicle purchases.

Resolution No. 2001-076 – The Commissioners signed Resolution No. 2001-076, dated August 30, 2001, a Budget Amendment for the Historical Museum at Fort Missoula, in the amount of \$5,105.00, adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County

Request for Funding – The Commissioners reviewed a letter, dated July 27, 2001, to Chairman Evans from the Missoula Rural Fire District ("MRFD") requesting funding for services in the Tax Increment District, previously agreed to by the Commissioners in a meeting on November 4, 1999. Keeping their original commitment, the Commissioners directed Chief Administrative Officer Ann Mary Dussault to process a budget amendment in the amount of \$15,737. Ms. Dussault will also state in a letter to the MRFD that the County will be unable to renew this commitment through an ongoing contract.

Professional Services Contract – The Commissioners signed and renewed a Professional Services Contract between Missoula County and the University of Montana Psychology Department for the provisions of a Mental Health Intern for Partnership Health Center. The term will be July 1, 2001 through June 30, 2002. The total amount shall not exceed \$7,800.00. The document was returned to Janet Schafer at Partnership Health Center for further signatures and handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### FRIDAY, AUGUST 31, 2001

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Chairman Evans attended the Investiture of Sam E. Haddon as U.S. District Judge held at the University of Montana.

Claims List – The Commissioners signed the Claims List, dated August 31, 2001, batch number 1500 (pages 1-5), with a grand total of \$52,762.68. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 31, 2001, batch numbers 1501 and 1502 (pages 1-5), with a grand total of \$50,866.27. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 31, 2001, batch number 1503 (pages 1-4), with a grand total of \$4,683.33. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 31, 2001, batch number 1504 (pages 1-2), with a grand total of \$11,312.89. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 31, 2001, batch number 1505 (pages 1-5), with a grand total of \$24,728.18. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 31, 2001, batch number 1507 (pages 1-3), with a grand total of \$7,599.28. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 31, 2001, batch number 1508 (pages 1-4), with a grand total of \$79,115.99. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 31, 2001, batch number 1509 (pages 1-2), with a grand total of \$5,413.90. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 31, 2001, batch number 1510 (pages 1-3), with a grand total of \$1,684.50. The Claims List was returned to the Accounting Department.

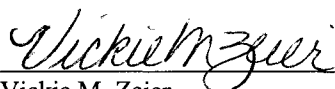
Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated August 31, 2001, batch number 1511 (pages 1-3), with a grand total of \$3,775.00. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated August 31, 2001, batch number 1512 (pages 1-2), with a grand total of \$176.62. The Claims List was returned to the Accounting Department.

Plat and Improvements Agreement – The Commissioners signed the Plat and Improvements Agreement, dated July 26, 2001, for The Grove (formerly "McAfee Subdivision"), an urban-suburban residential subdivision located in the NE¼ of Section 19, T 13 N, R 19 W, PMM, Missoula County, a total area of 5.5 acres, with the owners of record being GH Land Company. The public improvements that remain to be completed are construction of street, water, sewer and non-lot frontage boulevard landscaping. The estimated cost is \$298,983. The public improvements shall be completed no later than two years from the date of the final plat approval. Completion of the public improvements and compliance with this Agreement is secured by a Letter of Credit.

2001-002-0057

Resolution – The Commissioners signed Resolution No. 2001-077, an Emergency Proclamation declaring that an emergency condition exists and establishing Level II fire restrictions. On August 20, 2001, the Board of County Commissioners adopted Level I fire restrictions; this Resolution 2001-077 reinforces that action and expands it to non-forested land where the risk of grass fires is significant.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

## MONDAY, SEPTEMBER 3, 2001

The Courthouse was closed for the Labor Day holiday.

## TUESDAY, SEPTEMBER 4, 2001

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was on vacation from September 4<sup>th</sup> through September 7<sup>th</sup>. In the forenoon, the Commissioners and Peter Nielsen of the Health Department traveled to Superior to meet with the Mineral County Commissioners regarding the Milltown Dam.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending August 31, 2001.

ADMINISTRATIVE MEETING

At the administrative meeting held in the afternoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-002 for the Auditor, transferring \$200 from Office Supplies Fund to Consultants Fund. These funds are necessary to solicit expert's information for audit purposes.

Amendment – Chairman Evans signed the Fiscal Year 2002 Annual Amendment to the 1994 Memorandum of Understanding, dated August 11, 1994, between the Sheriff's Department and Missoula County regarding the management of wildland fires within Missoula County, and reserving the right to downgrade an emergency fire situation to a security function. The 1994 Agreement calls for an annual review and amendment to reflect current services, providers and rates of reimbursement, as per the items listed in the Amendment on the Fiscal Year 2002 Reimbursement Schedule. This Amendment is retroactive to July 1, 2001, and expires June 30, 2002. The document was returned to Don Morman in the Sheriff's Department for further signatures and handling.

Addendum – The Commissioners signed an Addendum to a Contract, dated August 29, 2002, between the Missoula County Sheriff's Department and Red's Towing, amending Article III to provide for a contract term for a minimum of 365 days and thereafter until terminated by a thirty-day notice by either party. The document was returned to Don Morman in the Sheriff's Department for further signatures and handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and The Parenting Place to provide coordination of an early childhood provider network called Healthy Start, part of the Missoula Forum for Children and Youth. The term will be October 1, 2001 through June 30, 2002. The total amount shall not exceed \$3,000.00, which is funded by the tobacco grant.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and John Phillips, PE, Facility Improvement Corporation, to perform a retrocommissioning/energy study of the Public Defenders, Youth Court and County Warehouse buildings. The term will be August 2001 through September 30, 2001. The total amount shall not exceed \$1,890.00.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and the Missoula Indian Center to provide substance abuse prevention, intervention and treatment services for prioritized populations in Missoula County. The total amount shall not exceed \$10,223, plus reimbursement for election costs. The term will be July 1, 2001 through June 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and Friends to Youth for the provision of therapy for damaged and troubled youth with legal, emotional, social, behavioral, and family problems. The total amount shall not exceed \$15,000. The term will be July 1, 2001 through June 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and The YWCA of Missoula for participation in the DPHHS Domestic Violence Program and Rural Domestic Violence Program. The total amount shall not exceed \$16,000. The term will be July 1, 2001 through June 30, 2002.

Request for Action – The Commissioners approved the Task Order with DJ&A for the extra work to complete the design, staking, and construction management of the drainage basin in Park 6 within Phase 1, Missoula Development Park. The total cost is \$943.00. The request was returned to Barbara Martens, Projects Coordinator, for further handling.

Other items included:

- 1) Chairman Evans moved and Commissioner Carey seconded that Commissioner Curtiss be authorized to sign as Acting Chairman for Closings on Lot 4, Block 3, Phase 4, and Lot 13, Block 3, Phase 4, Missoula Development Park.
- 2) The Lolo Community Council provided copies of its Council Minutes and Bylaws, as requested by the Commissioners the previous week.

The minutes of the Administrative Meeting are on file in the Commissioners Office.



## WEDNESDAY, SEPTEMBER 5, 2001

The Board of County Commissioners did not meet in regular session. Commissioner Evans left for Washington, D.C. for meetings with the congressional delegation through September 7<sup>th</sup>.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending August 31, 2001.

Monthly Report - Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending August 31, 2001.

The Weekly Public Meeting was canceled as two of the Commissioners were out of town.

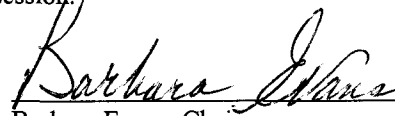
## THURSDAY, SEPTEMBER 6, 2001

The Board of County Commissioners did not meet in regular session. In the evening, Commissioner Curtiss attended a Grant Creek Flood Study Meeting held at the Hellgate Elementary School.

## FRIDAY, SEPTEMBER 7, 2001

The Board of County Commissioners did not meet in regular session.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

## MONDAY, SEPTEMBER 10, 2001

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Chairman Evans was out of the office all day enroute home from Washington, D.C. Commissioner Carey was out of the office all afternoon.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 6, 2001, batch number 1514 (pages 1-3), with a grand total of \$12,840.85. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 7, 2001, batch number 1513 (pages 1-4), with a grand total of \$58,957.36. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 7, 2001, batch number 1517 (pages 1-5), with a grand total of \$43,082.50. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 7, 2001, batch number 1519 (pages 1-2), with a grand total of \$32,000.00. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 10, 2001, batch number 1515 (pages 1-4), with a grand total of \$18,876.01. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 10, 2001, batch number 1516 (pages 1-2), with a grand total of \$9,029.59. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 10, 2001, batch number 1524 (pages 1-3), with a grand total of \$663.00. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated September 10, 2001, batch number 1525 (pages 1-2), with a grand total of \$5,700.00. The Claims List was returned to the Accounting Department.

## TUESDAY, SEPTEMBER 11, 2001

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Chairman Evans was out of the office until noon.

Claims List – The Commissioners signed the Claims List, dated September 10, 2001, batch number 1520 (pages 1-6), with a grand total of \$84,594.25. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated September 10, 2001, batch number 1523 (pages 1-5), with a grand total of \$35,124.36. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 11, 2001, batch number 1526 (pages 1-5), with a grand total of \$43,821.93. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 11, 2001, batch number 1530 (pages 1-2), with a grand total of \$1,172.79. The Claims List was returned to the Accounting Department.

MISSOULA, MONTANA

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending August 31, 2001.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 18 - Pay Date: September 7, 2001. Total Missoula County Payroll: \$958,667.47. The Transmittal Sheet was returned to the Auditor's Office.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Certification of Acceptance – Chairman Evans signed a Missoula County Public Works Department Surveyor's Office Certification of Acceptance for County Maintenance for ACM. No. 2001-0004, Boyer's Place, Road No. L 0150-W, T 15 N, R 21 W, Section 29. The limits of acceptance are .051 miles from the intersection with Mullan Road thence southerly 267.50 feet to the center of a 50-foot radius cul de sac; 24 foot of asphalt within a 60-foot right of way. The document was returned to the County Surveyor's Office.

Amendment – Chairman Evans signed a continuation to an Agreement with the Bureau of Land Management for road maintenance (surfacing and bridge approach stabilization) on the McNamara (Lower Blackfoot River) Road. This amendment increases the total funding by \$95,000.00. The document was returned to Horace Brown, County Surveyor, for further signatures and handling.

Resolution – The Commissioners signed Resolution No. 2001-078, an Emergency Proclamation resolving that Missoula County return to Level I restrictions as detailed in Resolution 2001-075, effective September 10, 2001. The Commissioners had adopted Level II restrictions on August 31, 2001 because of extreme fire conditions as of that date.

Professional Services Contract – The Commissioners signed a Professional Engineering Services Contract between the Missoula Office of Planning and Grants, and WGM Group, Inc., for an infrastructure planning study of the Third Street and River Road neighborhood in Missoula, Montana. The term will be September 11, 2001 through January 30, 2002. The total estimated fee is \$9,336. (Billing will be for actual hours and expenses spent on project).

Budget Transfer – The Commissioners signed Budget Transfer Control No. 100706-1 for the Office of Planning and Grants ("OPG"), transferring \$13,617.33 within the Juvenile Justice Program Account. Funds were previously paid to United Way to support a grant-funded position to be filled in OPG.

Contract – The Commissioners signed a Contract, dated September 7, 2001, between the Missoula County Road Department and JTL Group, Inc. for the purchase of approximately 2,750 tons of Class "B" asphalt for the Blue Mountain Road project at Missoula County. The bid was awarded at the August 29, 2001 Public Meeting. The term will be 365 consecutive calendar days from the date of the Contract. The total amount shall not exceed \$57,750.00. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Contract – The Commissioners signed a Professional Security Services Contract between the Missoula County Sheriff's Department and the University of Montana for the provision of law enforcement, crowd control, and general security at University events. The term will be July 1, 2001 through June 30, 2002. The compensation for services is as set forth in the Contract. The document was returned to Don Mormon in the Sheriff's Office for further signatures and handling.

Amendment – The Commissioners signed an Amendment to the Professional Services Contract, dated May 31, 2001, between Missoula County and Cathy Joy, LPC, for her consultation work with Crime Victims' Advocate Program in Seeley Lake. This Amendment extends the Contract for seven months and one day, commencing on May 31, 2001 and terminating on December 31, 2001. Also amended is the total value of the contract from \$2,500 to up to \$5,500.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and Human Resource Council District XI for the Displaced Homemakers Program which provides support services in terms of shelter, transportation and personnel items for displaced homemakers not eligible for AFDC. The total amount shall not exceed \$5,000.00. The term will be July 1, 2001 through June 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and Partnership Health Center for the provision of services to the medically underserved who cannot purchase health insurance or health care elsewhere. The total amount shall not exceed \$190,000.00. The term will be July 1, 2001 through June 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and Watson Children's Shelter for the provision of services to abused, neglected or abandoned children ages 0-14. The total amount shall not exceed \$20,250.00. The term will be July 1, 2001 through June 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and CASA (Court Appointed Special Advocates) of Missoula, Inc., for the provision of services to children involved in the Fourth Judicial Court who are abused, neglected, delinquent, in need of supervision or treatment, or are involved in domestic relations matters. The total amount shall not exceed \$10,000.00. The term will be July 1, 2001 through June 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and Human Resource Council District XI, Supplemental Security Income Transition Program (SSIT), for the provision of basic resources, primarily shelter, to individuals who are in the process of making application for

disability benefits. The total amount shall not exceed \$180,000.00. The term will be July 1, 2001 through June 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and Child Care Resources, Inc. for the provision of recruitment, training, and support for child care providers that serve working families in Missoula. The total amount shall not exceed \$51,400.00. The term will be July 1, 2001 through June 30, 2002.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Dagny K. Krigbaum to complete an historic district survey for the McCormick Neighborhood in the City of Missoula. The term will be September 10, 2001 through May 31, 2002. The total amount shall not exceed \$10,000, and funding for this entire contract is provided from the State Historic Preservation Office.

Agreement – Chairman Evans signed a Sub-Recipient Agreement between the Missoula City-County Health Department and the Yellowstone City-County Health Department for the Healthcare for the Homeless Program, provided by the Partnership Health Center. The total amount shall not exceed \$212,500.00 (from Section 330, Public Health Service Act Grant Funds). The term will be April 1, 2001 through March 31, 2002.

Contract – Chairman Evans signed a Contract between the Missoula City-County Health Department and the Yellowstone City-County Health Department for the provision of early intervention services for HIV positive clients (Ryan White Program, provided by the Partnership Health Center). The total amount shall not exceed \$15,000.00. The term will be July 1, 2001 through June 30, 2002.

Professional Services Contract – The Commissioners signed and renewed a Professional Services Contract between Missoula County and Glenn A. Thane, Provider Network Development Consultant, to provide Partnership Health Center with the initial credentialing and electronic process for accreditation survey for the Joint Commission on Accreditation of Healthcare Organizations. The term will be July 1, 2001 through December 31, 2001. The total amount shall not exceed \$6,000, and will be allocated to a federal grant. .

Contract – Chairman Evans signed a Contract between the Missoula County and Horizons, Inc., for mapping and orthophotography services for the remaining portions of aerial imagery of Missoula County. The total amount shall not exceed \$89,000.00. The term will be as set forth in the Contract. The document was returned to Horace Brown, County Surveyor, for further handling.

Other items included:

- 1) Per the recommendation of the Projects Office staff, the Commissioners voted not to pursue the transaction of a land exchange between 929 SW Higgins (Lots 30 & 40, Farviews Homesites 8-A), and the Missoula Development Park. The cost of the land exchange would have been approximately \$830,000.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, SEPTEMBER 12, 2001

The Board of County Commissioners met in regular session; all three members were present.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution No. 2001-079 – The Commissioners signed Resolution No. 2001-079, dated September 12, 2001, a Budget Amendment for the Emergency Services 9-1-1 Department, for the Alpha Numeric Paging equipment and software in the amount of \$50,000, which will be supported by quarter money. This Amendment adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County

Resolution No. 2001-080 – The Commissioners signed Resolution No. 2001-080, dated September 12, 2001, a Budget Amendment for the Board of County Commissioners by Ann Mary Dussault, Chief Administrative Officer, for payment to the Missoula Rural Fire District from the Reserve Contingency Fund in the amount of \$15,737.00, adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County

At the Clerk and Recorder/Treasurer's Meeting, held on September 12, 2001, the Commissioners approved tax abatement requests for a waiver of penalty and interest for the following

- 1) Dorothy Pulliam, Missoula, Montana, for Mobile Home Tax Bill #90215600;
- 2) Jill Weaver, Lolo, Montana, for motor vehicle renewal;
- 3) Debbie Churchill, Clinton, Montana, for Real Estate Tax Bill #5823671;
- 4) Joyce VanPelt, Missoula, Montana, for Mobile Home Tax Bill #90274250;
- 5) Jayne Snow, Missoula, Montana, for Real Estate Tax Bill #2114300;
- 6) Vladimer & Irinia Shved, Missoula, Montana, for Mobile Home Tax Bill #90073000; and
- 7) Marcy Mills, Missoula, Montana, for motor vehicle renewal.

PUBLIC MEETING – September 12, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, Chief Civil Attorney Mike Sehestedt, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$636,509.44. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Re-roofing Missoula County Health Department Building (Building and Grounds)**

Doreen Culver, Bids Office, presented the staff report.

In August, 2001, Art Garner, Facilities Management Supervisor, contracted with Art & Architecture Studio PC in Missoula to do a study of the condition of the building roof at the County Health Department. They were also contracted to do the bid. The job was advertised and on Monday, September 10, 2001, the bids were opened with the following results: Western Sheet Metal, \$43,730; Miller Roofing, \$41,250; Truco, Inc., \$68,071; Missoula Sheet Metal, \$51,965; and Neu-Tech Roofing, \$65,955.

Miller Roofing was the lowest and most responsive bidder and it is the recommendation of Facilities Management to award the bid to them in the amount of \$41,250. This bid is approximately \$15,000 under budgeted amount. Art & Architecture Studio, PC, also recommended this bid be awarded to Miller Roofing.

Commissioner Curtiss moved that the Board of County Commissioners award the bid for re-roofing the Missoula County Health Department Building to Miller Roofing in the amount of \$41,250.00 as the lowest and most responsive bidder. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Roadway Construction and Riprap Protection near Johnsrud Park (Public Works Department)**

Greg Robertson stated that this project began approximately 5 years ago with an Interlocal Agreement between the Board of County Commissioners and the Bureau of Land Management for work on the BLM maintained road to the east and north of Johnsrud Park. This project is within Federal lands and the Interlocal Agreement specified the County's role to provide engineering technical assistance to the BLM in the development of the design as well as project oversight in terms of contract administration. The County is being reimbursed through the Interlocal Agreement. After design completion, the design documents were furnished to the BLM for their permitting process and review. The review was completed and the project went to bid with their permission. The work involves some slope stabilization along the road that has been the subject of scour in past flood events as well as the protection of an abutment on the Whitaker Bridge. Two bids were received, one from Pumco, Inc. in Lolo in the amount of \$72,805.00 and one from Price Construction in Missoula in the amount of \$58,495.00. The engineer's estimate for the project was \$95,500.

After reviewing the proposal and speaking with the contractor to assure the numbers were suitable, the Public Works Department is satisfied Price Construction can perform the work. It is the Public Works Department recommendation that the contract be awarded to them in the amount of \$58,495.00.

Chairman Evans asked for public comments.

Commissioner Curtiss stated a phone call received was to inquire if this work required a Floodplain Permit.

Greg Robertson stated the Interlocal Agreement between the BLM and the County Commissioners left the permitting responsibilities, as this is on Federal lands, to the BLM. In speaking with them, they have obtained their 404 Permit, which is a Federal Floodplain Permit, as well as a 124 Permit, a requirement from Fish, Wildlife and Parks. It is his understanding that both are in hand and work can proceed.

Horace Brown stated that he wanted to make it clear that this was not a County road. The road was built and owned by Champion for logging, including the bridge. The old County road did not cross the river. The County has no responsibility as far as permitting goes.

There were no further public comments.

Mike Sehestedt stated for the record that BLM has examined and reviewed the contract and design. The entire project is occurring on Federal ground.

Greg Robertson agreed with Mike Sehestedt's statement.

Brian Maiorano stated that no application had been received for a County Floodplain Permit. He learned of the project this week and did not know if one was required. He was informed originally that this was a County road, but Horace Brown has indicated otherwise. The determination should be made by the permitting agency rather than the applicant.

Commissioner Curtiss asked for clarification about the riprapping by the bridge to stabilize it. Was that in opposition to County standards regarding riprap?

Greg Robertson stated that was not in opposition to County standards. A scour hole has developed that is threatening one of the bridge abutments and this is the standard approach taken in protecting its integrity.

2000-2001

Brian Maiorano stated the bridge is outside the jurisdiction of County Floodplain Regulations and would not be an issue.

Commissioner Carey asked if the Board awarded the bid, does that impact the permitting question?

Greg Robertson stated his understanding was that County Floodplain Regulations do not apply to Federal lands, similar to controlling forest practices on Forest Service land. Permit scrutiny has been done by Fish, Wildlife and Parks and the Army Corps of Engineers. The BLM's opinion is they do not need a County permit to proceed. They have authorized the County to go ahead with the bidding process.

Michael Sehestedt stated it could be awarded contingent upon BLM giving the County direction to proceed.

Commissioner Carey moved that the Board of County Commissioners approve awarding the bid for construction of about 1,000 feet of roadway adjacent to the Blackfoot River about 1 mile upstream from Johnsrud Park, construct about 900 feet of riprap river bank protection and construct about 100 feet of riprap bank protection at one abutment of Whitaker Bridge to David J. Price Construction Inc., in the amount of \$58,495.00, contingent on BLM determination on obtaining all necessary permits for the required activities. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Braach Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 64A, COS 4994 in the southwest 1/4 of Section 16, Township 14 North, Range 20 West.

Robert and Dawn Braach have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 16 acres in size located off Highway 93. Mr. and Mrs. Braach propose to create one approximately 6 acre parcel for transfer to their son, Carl Braach, age 14, and one approximately 2 acre parcel for transfer to their son, Dylan Braach, age 11, and retain the remainder for their existing family home. The parcels created for their sons will be put into a trust for future home sites.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Parcel 77C, COS 2739	1982	Family Transfer and Boundary Relocation	John Lightner	Ruth Lightner
Tract 64, COS 1925	Before 1994	Parcel greater than 20 acres		
Tract 64A, COS 4994	1999	Boundary Relocation	Roger Hobbs	N/A

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Chairman Evans opened the public hearing.

Robert Braach was present and came forward to answer any questions the Commissioners may have.

Commissioner Carey stated that the purpose of Mr. Braach being present today was to determine if this request was an attempt to evade subdivision review. He asked if Mr. Braach had done any subdivisions in the County.

Robert Braach stated he did one 3 lot subdivision north of the airport in the Goodan Keil Estates. It was a 12 acre parcel split into three 4 acre lots, about 2 years ago. He would have liked to keep the property, but it did not fit the family's criteria. They have horses and are currently leasing ground and the Goodan Keil property was not large enough. This is not an attempt to evade subdivision. Had it been warranted, he would have proceeded on that path. The intent is to build on the approximately 9 acre parcel in a few years. The 6 acre and 2 acre parcels are roughly of the same value, the 6 acre parcel only lends itself to one potential building site. He hoped his sons would build homes on the property someday, but they could use the funds held in the trust if they chose to sell the property for their college needs. The trust has been established as if the children would retain the property.

Commissioner Carey asked if Mr. Braach had any pre-application meetings with the Office of Planning and Grants.

Robert Braach stated he had not had any such meetings.

Commissioner Curtiss stated that Mr. Braach bought the property this year and planned to build in the future.

Robert Braach stated he closed on the property in June of this year, and then submitted this request. He could not justify the price without making some allowance for the children.

Chairman Evans stated the difficulty with this process was to determine if it was a legitimate transfer to a family member, or an attempt to split the land without going through the planning process. She asked if this was really going to the children and be put in trust for them.

Robert Braach stated a letter from the attorney who created the trust was included with the application. He has provided, from birth, for his children to go to college. A Uniform Gifts to Minors was established for each child at birth, and has been contributed to since then. This is a continuation of those contributions. It is his intention to provide for his children.

There being no further comments, the public hearing was closed.

2002-09-04

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Robert and Dawn Braach to create new 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Darrow Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract C, COS 2290 in the south 1/2 of Section 5, Township 13 North, Range 16 West, P.M.M.

Harry and Elvera Darrow have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 4 acres in size located off Highway 200. Mr. and Mrs. Darrow propose to create an approximately 1.5 acre parcel for transfer to their son, Billy Lee Darrow, and retain the remainder for their existing family home. Billy Darrow intends to build a home on the new parcel.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 2290	1980	Family Transfer	Paul E. Toepfer	Unknown
COS 1098	1977	Occasional Sale	Floyd and Anna Cheff	N/A

According to the records kept by the Missoula County Surveyor, the Darrows used an occasional sale exemption in 1979.

Chairman Evans opened the public hearing.

Elvera Darrow was present and came forward to answer any questions the Commissioners may have.

Commissioner Carey asked Mrs. Darrow to assure the Board that this was not an attempt to evade the subdivision process.

Elvera Darrow stated it was not an attempt to evade subdivision review.

Colleen Dowdall stated that in the application packet, the reference in Steve Inabnit's letter to the Ibey Nursery was incorrect. The Ibeys have nothing to do with this transfer.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Harry and Elvera Darrow to create a new 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. The motion carried on a vote of 3-0.

Consideration: Green Acres Phase 2 (3 Lots) – off Wheeler Drive by Westview Trailer Park

Dale McCormick, Office of Planning and Grants, presented the staff report.

C & C Land, LLC, represented by Territorial Engineering and Surveying, Inc., is requesting approval of Green Acres Phase 2 Summary Subdivision, a 3 lot residential subdivision located between Interstate 90 and Wheeler Drive, immediately north of the Northgate Development Park. The subject parcel is 68.26 acres in size and the applicant is proposing to create one 22.34 acre lot and two 22.96 acre lots.

OPG is recommending approval of the variance request to not provide boulevard sidewalks on Wheeler Drive, approval of the variance request to create lots that have an average depth greater than three times their average width and approval of the Green Acres Phase 2 Summary Subdivision.

The original Green Acres Subdivision, south of this property, has a similar name but was not directly tied to this subdivision. The original subdivision was approved in 1994 and with further subdivision became the Northgate Development Park.

Access to the three lots is proposed from Wheeler Drive. Individual wells and septic systems are proposed to serve the lots. The property is located within the Urban Growth Area, Air Stagnation Zone, the Airport Influence Area and the Building Permit jurisdiction. The property is zoned C-RR3, Residential, with a maximum density of four dwellings units per acre.

The 1998 Missoula Urban Comprehensive Plan recommends a land use of residential with a density of six dwelling units per acre. The 1996 Butler Creek Area Comprehensive Plan Amendment recommends land use of Open and Resource with a density of one dwelling unit per 40 acres.

Some of the conditions include information relative to the Airport Influence Area, waiver of the right to protest a future RSID/SID for improvements to Wheeler Drive and for a public water system, \$100 per new lot to the Missoula Rural Fire District and a weed management plan. Additionally, a condition based on Public Works Department comments states that engineering plans, calculations and specifications for all subdivision public improvements, including roadway and stormwater improvements, shall be submitted to the Public Works Department for review prior to commencement of construction of those public improvements, or prior to final plat approval, whichever occurs first.

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Although in the application packet this is presented as a subdivision for the purposes of a real estate transaction, it is a residential three lot subdivision that potentially could have driveways accessing off Wheeler Drive and improvements made to Wheeler Drive.

Tim Wolfe, Territorial Engineering and Surveying, Inc., developer's representative, thanked Dale McCormick for his work on this project. Kirby Christian of C & C Development was also present. On Condition 6 regarding engineering plans and calculations for subdivision improvements, at this point no improvements are proposed. He asked if the condition could be reworded as it indicates they are to have plans approved, however no plans are anticipated. All improvements are already in place. He agreed that Public Works needs to review plans for construction or driveways, but none are proposed with this subdivision. If these remain single family residential lots, they will need an approach permit which will trigger a review by Public Works. The way the condition currently reads it assumes that Public Works will wait for some plans from the developer and none are forthcoming. He would like the condition clarified so it is not so hard to comply with.

Greg Robertson stated that because of some past difficulties, this standard boiler plate condition will be added to all future subdivisions. If there are no public improvements envisioned at the time, then the condition is not applicable, but things may change over time. There are requirements for drainage plans to be submitted for the overall development. Other than dealing with stormwater runoff, the condition is fairly benign.

Commissioner Curtiss stated if this was only being divided into three lots, the plans could be submitted that shows there is already a road, etc.

Greg Robertson stated the developer did not need to do that. There are requirements for drainage improvements and those plans need to be submitted.

Commissioner Curtiss stated that in the future if those three lots get developed, then there would be another subdivision review. Even though the wording is harsh, the condition has been met except for the drainage part.

Greg Robertson stated that the matter could be resolved between himself and Tim Wolfe. He wants this condition to remain, but there are no improvements planned at this particular point in time.

Colleen Dowdall stated she had a problem with leaving a condition that is not specific to the subdivision. The condition is appropriate for drainage plans, but if there are no roadways, there does not need to be a condition that roadway plans be reviewed. Everything may go smoothly, but more than likely this will cause a bump in the road when the plat gets to the Planning Office. In a few years, whoever reviews the plat could ask for reviewed and approved road plans. A condition not specific should not be required.

Jennie Dixon stated that she had met with both Tim Wolfe and Kirby Christian to discuss this condition. The language actually falls somewhere in-between. In many respects, this is a standard boiler plate condition that will be seen on almost all subdivisions. This one is somewhat unique in that there is no on-site road proposed. There is an adjacent road that was improved recently. Staff does not expect there will be a need to improve or change Wheeler Drive. However, that is not certain and it is left to Public Works to determine at the time final plans are reviewed. This subdivision would be approved with a one year deadline for final plat approval. It would be sometime within the next year the plans would be reviewed and approved by Public Works and County Surveyor. Their signoff on the final plat checklist assumes they are okay with all the road and stormdrain plans that have been presented by the applicant. The suggestion she made was to word the condition so that whatever plans are needed by Public Works at time of final plat approval be subject to review and approval. The way it is currently written assumes there are plans that are required and there may not be road plans required. She suggested the language as a middle ground.

Kirby Christian stated Wheeler Drive was recently improved by JTL and there were grading and drainage plans submitted. He wanted to figure out how to get three lots to allow them to do what they did with the other phase with the Wheeler family, buy it over a period of time through a series of independent transactions. This will be back before the Board within a year for a more expansive subdivision review with improvement and drainage plans, but not on this subdivision. His other question was on the condition that requires him to waive his right to protest an RSID for a public water system. He was not sure he would like to do that, because he may want to do his own water system and may not want to become part of the Mountain Water system. Additionally, he would like some clarification on the definition of a public water system.

Colleen Dowdall stated the issue of the water system is related to having a flow adequate for fire protection. If that is satisfied by a private water system, then the RSID waiver won't have to be acted upon. However, if a water system doesn't provide adequate fire flow for hydrants, then the RSID may be needed in the future. The RSID waiver condition should be left in.

Commissioner Curtiss stated the other subdivision the Board was hearing today stated the RSID waiver language was "water system adequate for fire protection, based on benefit." Should that be the same for this subdivision.

Colleen Dowdall stated the RSID waiver typically does say "based on benefit" and "for fire protection" as that is the only basis in the regulations.

Commissioner Carey stated that if the applicant already had their own system in place, they would not be part of the RSID as there would be no benefit.

Kirby Christian stated that was acceptable as long as that clarification was made.

Jennie Dixon stated "adequate for fire protection" should be added to the condition.



Horace Brown stated that he agreed with Colleen Dowdall that boiler plate conditions should not be used. There have been projects in the past that had requirements and years later it was difficult to figure out what was meant. This could lead to that same misunderstanding in the future. It might require something that was really not required based on the hearing.

Chairman Evans stated she did not want boiler plate conditions. She wanted the conditions to be specific to the subdivision. She thought Jennie Dixon's wording that says "if the plans were necessary, they would be required," was acceptable, but she did not want to see such a boiler plate condition on all subdivisions.

Commissioner Carey asked if the condition was not present, who would determine that Public Works would have to review proposed plans?

Greg Robertson stated in looking at the plans, there may be some public improvements necessary. That would need to be clarified with Tim Wolfe. If there are no public improvements necessary, he could give Tim Wolfe a letter to that effect which would not hold up anything.

Chairman Evans stated that was fine, but a letter could be lost. She did not want it on the record of subdivision approval that something was required that was not necessary. She asked for revised language so that what was necessary was required, but there was not a condition for something that was not necessary.

Jennie Dixon stated the condition could read: "Engineering plans, calculations and specifications for all subdivision public improvements including roadway and stormwater improvements shall be reviewed and approved by County Public Works Department prior to commencement of construction of public improvements or prior to final plat approval, whichever occurs first." That says that if any are required, those plans would be submitted to Public Works at which point they would determine if the plans are adequate, prior to final plat approval or commencement of construction.

Chairman Evans stated that she would like to see "if they are required" added.

Colleen Dowdall stated that at this point in the subdivision, it should be known if any public improvements are required and those should be a condition of approval. If there are not findings in the staff report that support the condition, then it should stay grading and drainage plans, or stormwater drainage plans, will be reviewed and approved by the Public Works Department. There is no public road proposed in this subdivision. It is accessed by an improved public road. If it is inadequate and it will be required that the developer improve it, that is the Board's job to do that, based on the findings and conclusions in the staff report which are based on the recommendations from Public Works. A condition in a subdivision report is the Board's prerogative and decision. She was not comfortable with leaving it as any plans that may be required because it takes the decision-making out of the Board's court.

Chairman Evans asked Colleen Dowdall to give the proper wording.

Colleen Dowdall stated the condition should read: "Engineering plans, calculations and specifications for all subdivision public improvements including stormwater improvements shall be submitted to the County Public Works Department for review prior to commencement of construction of the stormwater improvements or prior to final plat approval, whichever occurs first." If there are findings that state that there are no public roads and no other public improvements, then "for all subdivision public improvements" can also be removed. That would revise the language to be: "Engineering plans, calculations and specifications for stormwater improvements shall be submitted to the County Public Works Department for review prior to commencement of construction of the stormwater improvements or prior to final plat approval, whichever occurs first."

Commissioner Carey asked if that wording prohibited the applicant from building a roadway if the opportunity came up within a year.

Colleen Dowdall stated that on this plat, no public roadway is shown. They would have to undergo subdivision review again and show their public roadway in the new subdivision. That is the point at which plans would be discussed. That is the plan that Kirby Christian has presented will occur within the next year.

Chairman Evans stated the wording was satisfactory.

Commissioner Curtiss stated that if an approach to the road was desired, they would have to get an approach permit.

Greg Robertson stated that was correct.

Commissioner Curtiss asked if the subdivision was approved as shown right now, how many houses could be put on each of the lots.

Horace Brown stated only one house would be allowed per lot.

Commissioner Curtiss stated there would only be one driveway and one approach.

Chairman Evans asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations to not provide boulevard sidewalks on Wheeler Drive. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(15) of the Missoula County Subdivision Regulations to create lots that have an average depth greater than three times their average width. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

2002-09-07

Commissioner Carey moved that the Board of County Commissioners approve the Green Acres Phase 2 Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, with amendments to Conditions 3 and 6 as discussed. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Green Acres Phase 2 Summary Subdivision Conditions of Approval:**

1. The following statement shall appear on the face of the plat:

"This property is within the Airport Influence Area and subject to the requirements of the Airport Influence Area Resolution."

Prior to final plat approval, the applicant shall grant an avigation easement to the Missoula County Airport Authority. *Subdivision Regulations Article 3-1(2) and Airport Authority recommendation.*

2. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID improvements to Wheeler Drive, including, but not limited to, the installation of pedestrian walkways or bikeways, 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." *Subdivision Regulations Article 3-2(8)(A)(ii) and OPG recommendation.*

3. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water systems adequate 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." *Subdivision Regulations Section 3-7(2) and OPG recommendation.*

4. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of final plat approval. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
5. The applicant shall file a development agreement with Missoula County requiring future lot owners to maintain their lots in compliance with the Montana Noxious Weed Control Act, Title 7, Chapter 22, MCA, and the Missoula County Noxious Weed Management Plan. The development agreement shall also require lot owners to revegetate any areas disturbed by construction or maintenance with beneficial species as soon as construction or maintenance is completed. The development agreement shall be reviewed and approved by the County Weed Board prior to final plat approval. *Subdivision Regulation Article 3-1(1)(B) and Missoula County Weed District recommendation.*
6. Engineering plans, calculations and specifications for stormwater improvements shall be submitted to the County Public Works Department for review prior to commencement of construction of stormwater improvements or prior to final plat approval, whichever occurs first. *Subdivision Regulations Article 3-2(1)(B) and Missoula County Public Works Department recommendation.*

**Hearing: Henry's Estates, 2nd Addition (12 Lots) – Mullan Road west of Frenchtown**

Karen Hughes, Office of Planning and Grants, presented the staff report.

This is a request from Joseph Boyer, represented by Gordon Sorenson Engineering, to subdivide 14.94 acres of a 30.84 acre property into 12 lots, ranging from 1 acre to 1.6 acres in size and a 15.9 acre remainder. The proposed subdivision is located southeast of the intersection of Mullan Road and Houle Creek Road, between Frenchtown and Huson.

Staff is recommending approval of two variances, one for sidewalk installations and one for cul-de-sac length, and approval of the subdivision, subject to 14 conditions. Mr. Boyer owns three contiguous properties in the area for a total of 151 acres. In 1999, the Board of County Commissioners approved Henry's Estates Subdivision. It is located to the east of this subdivision. This created 5 lots on 6.33 acres of approximately 157 acres in Mr. Boyer's ownership. The overall density, including the remaining acreage, was one dwelling unit per 31.4 acres. The gross density of the current proposal is one dwelling unit per 9 acres, based on the acreage of the original 157 acre ownership. Although all the remaining parcels cannot be conditioned, they have been used as the basis for determining density. Any future subdivision would continue to look at the bigger holding of contiguous properties in the area.

The subject property is currently used as irrigated farmland. No areas of riparian resource are located on the proposed lotted area, but the remaining property south of the railroad grade includes areas of riparian resource for Roman Creek and the Clark Fork River.

The property is unzoned and the 1975 Comprehensive Plan designated the property as Open and Resource with a recommended density of one dwelling unit per 40 acres. Based on the land use designation and goals and objectives outlined in the 1975 plan, staff originally recommended approval of the subdivision with the condition that the number of lots be reduced from 12 to 6, and be on six to eight acres, and that impacts of the subdivision on agricultural land be mitigated. This would have resulted in a density of one dwelling unit per 14 acres, which is similar to the density approved on the River Ranch Subdivision directly west and southwest of this subdivision. After issuance of the original staff report and prior to the June 5, 2001 Planning Board public hearing, the applicant and his representatives met with OPG staff. The applicant proposed a density transfer as a mechanism to allow for the six additional units

beyond staff's recommendation, as well as a way to mitigate impacts to resource land, by preserving an area that has agricultural use and other resource value.

The proposal for doing a density transfer is outlined in two letters from Wally Congdon, dated June 19, 2001 and July 19, 2001, attached to the staff report. As a result of the new proposal, the applicant asked staff to revise the findings of fact and conclusions of law for the Comprehensive Plan section of the staff report. In an August 15, 2001 memo to Planning Board, OPG provided revised findings, conclusions and some changes to the recommended conditions of approval.

The proposed density transfer would be to transfer density from a 64 acre parcel located in the northeast corner of the Huson Activity Circle. Six units would be taken from that property and essentially be given to Henry's Estates, 2nd Addition property. That property is currently used for grazing area and wildlife such as deer, elk, bear and mountain lion visit the site. The property is fairly steep and slopes down to the Frenchtown Ditch on its southern boundary and to a forested draw on the west side. The property is designated as Open and Resource, but it is located within the Huson Activity Circle, which can allow for density of up to two dwelling units per acre, depending on constraints to the land. Although Henry's Estates, 2nd Addition is not an ideal location for development based on the land use designation and the goals and objectives, the proposed subdivision is adjacent to a paved road near Interstate 90 and Burlington Northern railroad tracks. It is also located within a mile of both the Frenchtown and Huson Activities Centers and has less value for wildlife. Staff has recommended approval of the 12 lot subdivision with the recommendation that a development agreement be filed that would reduce, by six units, potential development on Section 19, Township 15 North, Range 21 West. The development potential of that property, based on the entire section, has not been assessed at this time. Any future development proposals for that piece of property would be based on what is current in terms of the Comprehensive Plan and/or zoning in place at that time. The biggest issue is the concept of the density transfer, which is not done very often.

The other key issue for this subdivision is roads and access. The applicant is proposing to construct a road called Le Mazion Place to provide access within the subdivision. It is 1,124 feet long, shaped like a fish hook and intersects with Mullan Road and curves to the west. The applicant has requested to vary from the cul-de-sac length requirement and from the provision of pedestrian walkways. There are no pedestrian walkways in the area and an RSID waiver for any improvements to both Le Mazion Place and Mullan Road would take care of any future need for walkway installation.

Cul-de-sac length limitation was discussed many times with the Public Works Department and the Fire Department, and was finally left as is. It was thought to reconnect the road through to Mullan Road, but Public Works felt that would be too close to the intersection with Houle Creek Road. No other good ideas came out of any of the discussions, so the road was left as shown.

Other access issues have to do with providing a public access easement on the west side of this property that would mirror a private access easement on River Ranch. In the event that access was needed to the south, either to the river or property to the south, at some point in the future this may provide that kind of access. The private would have to match the public. Also, a conditional access easement is shown on the plat going from Le Mazion Place to the east that could potentially connect with Henry's Estates. It does provide a through connection in the future if the property in-between the two subdivisions is developed. Staff did recommend some changes in the conditional access language.

Other conditions include an RSID waiver for Le Mazion Place and road and drainage plans to be reviewed by the Public Works Department. The applicants have proposed cash in lieu of parkland dedication. Based on the Missoula County Parks Plan this makes the most sense for this area. There are other Frenchtown area parks which make more sense to invest in than having a small pocket park. The fire department requested provision of a water supply sufficient for fire suppression. They will work with the applicant to determine what that will be. Some changes were recommended to the covenants to address fire, wildlife and weeds. A phasing plan is also required.

Wally Congdon stated that Karen Hughes and staff visited the site when the density transfer concept was proposed. The idea presented makes very good sense in terms of where houses are built and where houses are not built. The Planning Board was frustrated because the Comprehensive Plan in this area is 20+ years old. What the applicant is proposing to do makes good sense but it was an incredible gyration to get there. The solution seems to be good and workable for everyone. The cul-de-sac variance is being requested because of the way the road is built. When the first subdivision was approved in 1999, an easement was required from Henry's Estates Phase 1 to access this property. If that road is every built, the cul-de-sac variance is not needed. The reason for the variance now is because the whole thing is not being developed. Detailed discussions about the density transfer were held with Colleen Dowdall. It was easier to describe all of Section 19 as well. There was a question on Condition 2 as to whether or not the remainder parcel had to go through subdivision review to be transferred. The 15.9 acre parcel is a stand alone piece of ground.

Colleen Dowdall stated it is a remainder parcel of other created subdivisions. It does not have a legal description. If it was to be included with this subdivision, review would have been wanted.

Wally Congdon stated there were two other items of concern. In Condition 5 it mentions a slough that bisects the property. There really isn't a slough on the ground, there is a low place that may hold water in the spring. The concern is not with it being a no build area, but the imaginary road, two driveways and one well are located in the area. As long as the "no build" area means "no buildings," there is not a problem. There are improvements that have been previously approved that go through that area. Both Planning Board and Karen Hughes have agreed and he wanted that to be clear to the Board. The second concern is on Condition 6. It reads in part, "no structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway." The understanding of that language was that there could still be utilities crossing or going under those roads as long as they did not interfere with public access. The power has to come from the west side of the property, across the 30 foot easement. Additionally, the phone line will probably cross the existing utility easements. A water pipe on the west side irrigates Mr. Boyer's other ground. He wanted it understood that the developer cannot interfere with traffic, but utilities may cross the easement. The conditions are acceptable to the developer. They are still working with the Fire Department to come up with a global solution to the water issue. The

recommendation originally was to drill a well for the 12 lots, which made little sense. They would like to make a cash contribution that is acceptable to the Fire Department so that at some point, they could create a high production well, similar to the O'Brien Creek Meadows situation. The Fire Department would have a key to the pump to turn it on to provide fire protection to hundreds of homes, instead of just a few. Those conversations with Scott Waldron are ongoing.

Chairman Evans asked why the density transfer was being used instead of developing some lots on both pieces of property.

Wally Congdon stated this site is on a public road and has ready access to all utilities. It is surrounded by other high density development. It made little sense to split high density development from the other site when it could be put on this site with ready access and utilities with no wildlife value, no visual value and no open space value. The density transfer was proposed to get within the density constraints of the Comprehensive Plan. Also, there are two areas in the other parcel that are significant wildlife corridors.

Chairman Evans stated that a neighbor brought in photos and a letter which address problems Mr. Lefler had when he was trying to subdivide. She wanted to know why people across from this development should be looking at this density when some of these homes should have gone elsewhere.

Wally Congdon stated this person bought their piece of rural Montana but do not want to look at the house that is going to be on the adjacent 4 acres. When a person moves to that 4 acres that has been cut out of a ranch, which is what the Leflers did, they are doing the very thing that this person said the people next door shouldn't be doing. It is an ironic twist. The Board's job is to make choices and Mr. Boyer's job is to make choices. The houses on the hillside that everyone will look at are worth a lot of money. His desire is to maintain cattle on that ground. In order to keep doing that, he needs to split other property to raise enough money to keep the cattle. The other difference between the Lefler division and this one is that the Leflers didn't take density from somewhere else to save one area in exchange for putting more density in another. This was a conscious decision on Mr. Boyer's part to save open space. It seems consistent for the Board to do this type of transfer as was done on Horseback Ridge, O'Brien Creek, the Rattlesnake, etc. This is nothing new, it has been done for 20 years. The neighbor who got their 4 acres, who commutes to work, burns gas, uses the highway, etc., does not want to look at a house next door. He wished the neighbor's 4 acres would have saved something on a hillside or some wildlife habitat, but it did not.

Karen Hughes stated staff felt it was a good idea to transfer development rights from an area that had access issues, more wildlife value, other resource value, viewshed value. It was quite reasonable. The location of Henry's Estates was not thought to be the ideal location to put the increased density, but all things being relative, it seemed more reasonable to have more density in that area than on the hillside in Section 19. The original recommendation of 6 lots was based on how River Ranch developed at its density. This proposal is similar. River Ranch chose to go in a different direction for mitigation. In this case, a density transfer is used for mitigation. In the case of the Leflers, they did some mitigation work on the property in question. She felt that moving the density adjacent to the road made sense rather than creating 4 to 5 acre lots which are in-between residential lots and agricultural tracts.

Colleen Dowdall commented on the Lefler project in comparison to this one. The Leflers did do significant mitigation because the County identified the impact of his subdivision on prime agricultural land. Mr. Lefler agreed to convert some of his land to prime agricultural land by doing mitigation work on the stream. He also moved the development close to Mullan Road. He wanted larger lots which he believed could be marketed in the Huson/Frenchtown area. That was his choice. In this case, the landowner has a different set of circumstances. He has the ground across the highway that is capable of being developed within the Activity Circle at a greater density but it is not desirable to have it developed at that density from the viewshed and access point of view. This is something that the County will struggle with as long as the 1975 Comprehensive Plan is being used and it tries to fit property within the Open and Resource designation.

Commissioner Carey asked where the language was that requires the developer to do what he says he will do.

Colleen Dowdall stated a document will have to be filed with the final plat that limits development on Section 19. The final plat cannot be filed until he enters into that agreement with Missoula County.

Commissioner Carey asked if the agreement limits development on the hillside?

Colleen Dowdall stated that it did not. It does take some of the density off of the area. It was not appropriate to do a specific analysis of that acreage as to what part of it was best for development. Some of the opportunity for density on that piece of property has been removed. That is why the whole section was described. If that comes in for subdivision review, then the standards in place at that time will determine where the houses go.

Commissioner Carey asked if it could be required that if homes are built they cannot be visible from the road.

Colleen Dowdall stated there are hillside standards in the Subdivision Regulations. Relying on those would be the best thing to do in this situation, in addition to removing some of the density.

Commissioner Curtiss asked if the document would be attached to Section 19?

Colleen Dowdall stated it would be a recorded document which would essentially be a lien or limitation on the use of that property.

Commissioner Carey stated this did seem to be a fairly creative approach and a good idea, but he was uncomfortable with an ad hoc arrangement, not knowing the real trade off which is left for the future. If someone can afford it, they can put more density of housing where somebody else who can only afford 4 acres is stuck with a higher density than what they thought they would be living in. This is something that should be addressed in the future.

Wally Congdon stated he had a similar concern as Commissioner Carey. Where these have been done in the past, they have not functioned very well. They have been large questions later of who did what and where did it go. In June when he first discussed this with Colleen Dowdall, the agreement was to come up with something that is more concrete than what had been done in other areas. This isn't just an ad hoc and who can remember situation. The language on this proposal will be approved by Colleen Dowdall and the Board, as well as the developer. The disadvantage to the developer with using all of Section 19 is that if anything happens in that section, it has to come before the Board for approval. There were similar concerns early on of what the deal would be. Based on conversations, the arrangement is to be something concrete, not "smoke."

Commissioner Curtiss stated that this proposal takes density from another parcel and applies it to this proposal, and it uses Mr. Boyer's contiguous ownership. The 15 acre remainder parcel would have to go through subdivision review as well if it were ever developed. Her concern is what if that property is sold and the density was based on the whole ownership, how does the new owner know that density was based on the big picture.

Colleen Dowdall stated the 15 acre parcel cannot be transferred without going through some kind of subdivision review, because it doesn't exist as a parcel. The density on this 15 acre parcel has not been used in the density calculation.

Karen Hughes stated that when a subdivision is done on a part of contiguous land, a master plan needs to be provided. The master plan shows possible future development being to the south of the railroad grade on the remaining acreage. In the application packet it states that any future development should be re-analyzed using the total acreage as that was the method used on the previous two subdivisions. It is not approved with this subdivision and there is a finding that says that any other future subdivision on this property is subject to further Comprehensive Plan analysis.

Colleen Dowdall stated she would like to make that point very clear. The submittal packet argues that the County should not be concerned about the density requirement because a master plan was submitted with Henry's Estates to begin with and it was known what was contemplated in the future. Because of that, the County is compelled to make a specific finding that it is not approving anything on that master plan so that any future development need not come in, making the argument that it was know what the plans were. The findings say specifically that the master plan is not approved.

Commissioner Curtiss stated for the record that she did not like the design of the road, but she knew that everyone had tried to come up with a better plan.

Chairman Evans opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Article 3-2(6) of the Missoula County Subdivision Regulations for a 1,000 foot cul-de-sac length limitation for Le Mazion Place, based on the findings of fact set forth in the staff report as amended by the August 15, 2001 memo to Planning Board. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(14) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve Henry's Estates, 2nd Addition Major Subdivision, based on the findings of fact set forth in the staff report as amended by the August 15, 2001 memo to Planning Board and subject to the conditions in the Request for Commission Action. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Henry's Estates, 2nd Addition Major Subdivision Conditions of Approval:**

##### **Comprehensive Plan Compliance**

1. An agreement shall be filed prior to final plat approval and subject to review and approval by the County Attorney's Office that states the following:

"Potential development on Section 19, T15N, R21W, P.M.M., shall be reduced by 6 units and future development shall be subject to the Comprehensive Plan and/or Zoning Resolution in effect at the time of development." *Missoula County Subdivision Regulations Article 3-1(1)(I), 4-1(11)(C)(i) and 4-1(12).*

2. The plat shall include the following statement in reference to the 15.9 acre remainder:

"The remainder is not transferable without subdivision review." *Missoula County Subdivision Regulations Article 3-1(1)(I) and County Attorney's Office recommendation.*

##### **Irrigation**

3. The subdivider shall provide irrigation easements to extend irrigation rights to proposed lots, subject to review and approval by the appropriate irrigation ditch company, or provide evidence that the lots have been removed from the irrigation district, subject to review and approval by the County Attorney's Office, prior to final plat approval. *Missoula County Subdivision Regulations Article 3-1(1), M.C.A. 76-3-504(9) and staff recommendation.*

##### **Roads**

4. The following statements shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Le Mazion Place, including, but not limited to, installation of

sidewalks and extension of Le Mazion Place, 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 depicted herein."

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Mullan Road, including, but not limited to, installation of sidewalks, 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 depicted herein." *Missoula County Subdivision Regulations Article 3-2 and staff recommendation.*

5. The road improvements and road signs shall be installed, or a guarantee filed, prior to final plat approval, subject to review and approval by the County. Final road plans and drainage plans for the site and the road shall be reviewed and approved by Missoula County prior to final plat approval. The slough that bisects the property and is identified as a drainage area for the site shall be designated as a no-build area, subject to review and approval by the County, prior to final plat approval. *Missoula County Subdivision Regulations Article 3-2(1)(J), 3-2(2)(F) and 3-4, County Surveyor's Office, Public Works Department and Frenchtown Fire Department recommendation.*

6. A 60 foot conditional public access easement shall be centered on the boundary line between Lots 5 and 6. The following statement shall be included on the plat and refer to the conditional public access and utility easement:

"The owners dedicate a 60 foot right-of-way for purposes of a public roadway centered on the boundary between lots located on the eastern portion of the subdivision, as shown on the subdivision plat of Henry's Estates, 2nd Addition, conditioned upon development of the property to the east and subject to review and approval of the County Public Works Department. The lot owners and future owners of lots in Henry's Estates, 2nd Addition, will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the east. It is further conditioned that no access of any type will be allowed across the easement until the area shown as a conditional public access easement is opened for public access, as required by the Missoula County Commissioners. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway." *Subdivision Regulations Article 3-2(1)(E), County Public Works Department and staff recommendation.*

7. A 30 foot conditional public access and utility easement shall be placed on the plat along the western property line. The following statement shall be included on the plat and refer to the conditional public access and utility easement:

"The owners dedicate a 30 foot right-of-way for purposes of a public roadway across the western boundary of Henry's Estates, 2nd Addition, as shown on the subdivision plat of Henry's Estates, 2nd Addition, conditioned upon the private access easement adjacent to the east of said right-of-way being dedicated as public right-of-way. The lot owners and future owners of lots in Henry's Estates, 2nd Addition, will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the south. It is further conditioned that no access of any type will be allowed across the easement until the area shown as a conditional public access easement is opened for public access, as required by the Missoula County Commissioners. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway." *Subdivision Regulations Article 3-2(1)(E), OPG, County Surveyor and Public Works Department recommendation.*

#### Park

8. Evidence of cash donation for the parkland dedication requirement shall be provided by the subdivider prior to final plat approval for each phase, subject to review and approval by OPG. *Missoula County Subdivision Regulations Article 3-8 and staff recommendation.*

#### Fire

9. The subdivider shall provide a water supply sufficient for fire suppression for this subdivision, subject to review and approval by the Frenchtown Fire District, prior to final plat approval. *Missoula County Subdivision Regulations Article 3-7(1) and Frenchtown Fire District recommendation.*
10. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water system, adequate 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." *Subdivision Regulations Article 3-7(2).*

#### Covenants

11. The proposed covenants shall be revised to include the following information:

- Covenants for Henry's Estates, 2nd Addition, shall be filed that are consistent with the proposal and the conditions of approval. *Missoula County Subdivision Regulations Article 5-2(4)(D).*
- A section shall be added that requires property owners to post reflective address signs. *Missoula County Subdivision Regulations Article 3-1(1)(F) and Frenchtown Fire District Recommendation.*
- A section shall be added that states that Montana law prohibits feeding of game animals. Artificial concentrations of game animals resulting from feeding (including placement of salt blocks) could attract mountain lions to the area. *Missoula County Subdivision Regulations Article 3-1(1).*

- Section 5(l) shall state that homeowners must obtain a permit from Montana Fish, Wildlife and Parks (MFWP) prior to stocking any outdoor pond with fish, and that this permit will limit what fish species can be placed in fishponds. Covenants shall further recommend that homeowners contact MFWP prior to construction of a fishpond. *Missoula County Subdivision Regulations Article 3-1(1)*.
- The "Living with Wildlife" brochure available from MFWP shall be attached to the covenants. *Missoula County Subdivision Regulations Article 3-1(1)*.
- Section 5(h) shall also list the Montana Noxious Weed Act. *Missoula County Subdivision Regulations Article 3-1(1)*.
- Section 7 of the proposed covenants shall be revised to address irrigation for this subdivision. *Missoula County Subdivision Regulations Article 3-1(1) and M.C.A. 76-3-504(9)*.

Revisions to the covenants shall be made, subject to review and approval by the County Attorney's Office and OPG, prior to final plat approval.

12. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation*.
13. The developer shall file a final phasing plan that includes deadlines for each development phase subject to review and approval by OPG prior to final plat approval. *Missoula County Subdivision Regulations Article 4-1(17)(B)*.

#### Utilities

14. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as "Utility Easement," to have and to hold forever." *Subdivision Regulations Article 3-5 (2)*.

There being no further business to come before the Board, the Commissioners were in recess at 2:50 p.m.

### THURSDAY, SEPTEMBER 13, 2001

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners and Peter Nielsen of the Health Department traveled to Thompson Falls to meet with the Sanders County Commissioners regarding Milltown Dam.

Claims List – The Commissioners signed the Claims List, dated September 12, 2001, batch number 1527 (pages 1-5), with a grand total of \$41,749.92. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated September 12, 2001, batch number 1532 (pages 1-2), with a grand total of \$23,251.46. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Form – Chairman Evans signed a National Register of Historic Places Nomination Form for the Evaro School in Evaro, Montana, waiving her right to comment on this proposed listing. The form was forwarded to the State Historic Preservation office.

Shoreline Permit – Pursuant to the recommendation of the Office of Planning and Grants, the Commissioners approved and signed an application by John Patterson, represented by Jeff Schroeder, to replace an existing dock and install a 96 square foot floating dock on Pierce Lake. The property is described as Lot 9 in the NE¼ of Section 22 of Township 19 North, Range 16 West. The document was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Resolution No. 2001-081 – The Commissioners signed Resolution No. 2001-081, condemning the cowardly and deadly actions of the terrorist events of September 11, 2001; supporting all efforts to defend against additional attacks and to find the perpetrators to bring them to justice; and recommending that citizens of Missoula County support relief efforts by giving blood at the nearest available donation center.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### FRIDAY, SEPTEMBER 14, 2001

The Board of County Commissioners met in regular session; all three members were present.

#### Election Canvass

In the forenoon, the Commissioners canvassed the City Primary Election that was held on September 11, 2001.

Claims List – The Commissioners signed the Claims List, dated September 13, 2001, batch number 1533 (pages 1-4), with a grand total of \$60,947.10. The Claims List was returned to the Accounting Department.



**Lease Agreement** – The Commissioners signed a one-year Lease Extension Agreement, dated September 18, 2001, between Missoula County and Don and Karen Luke for the operation of the Missoula Batting Cages at Fort Missoula. The lease will be extended until March of 2002. The total amount shall not exceed \$1,250.00, payable in five equal payments, per the schedule set forth in the Agreement.

Resolution No. 2001-082 – The Commissioners signed Resolution No. 2001-082, dated September 18, 2001, a Budget Amendment for Projects, in the amount of \$594,000.00, adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County. Revenue is from sale proceeds of Reserve Parcel "B" to complete Phase 1 Infrastructure (Missoula Development Park) and for Broker's commission

Resolution No. 2001-083 – The Commissioners signed Resolution No. 2001-083, dated September 18, 2001, a Budget Amendment transferring \$11,246.00 from the Contingency Fund to the General Fund for overrun costs on the Snowdrift Lane paving project. This Amendment adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County

Agreement – The Commissioners signed an Agreement, dated September 18, 2001, between the Missoula County Airport Industrial District ("MCAID") and Jolynn Montgomery, Buyer, for the purchase of Lot 1, Block 9, Missoula Development Park. MCAID agrees to assume responsibility for 2001 taxes that may be assessed against said Lot.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, SEPTEMBER 19, 2001

The Board of County Commissioners met in regular session; all three members were present. In the evening, Chairman Evans and Commissioner Curtiss attended the Chamber Banquet.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 18, 2001, batch number 1540 (pages 1-4), with a grand total of \$25,641.99. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated September 19, 2001, batch number 1541 (pages 1-5), with a grand total of \$80,877.61. The Claims List was returned to the Accounting Department.

### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Agreement between Missoula County and the American Federation of State, County & Municipal Employees (AFSCME), Montana State Council No. 9 (Juvenile Detention Center), for the purpose of promoting harmonious relations between the two parties, the establishment of an equitable and peaceful procedure for the resolution of differences, and the establishment of rates of pay, hours of work, fringe benefits and other conditions of employment. The Agreement will cover the period from July 1, 2001 to June 30, 2002. The document was returned to Steve Johnson in Human Resources for further signatures and handling.

Agreement – The Commissioners signed an Agreement between Missoula County and Local Unit Number One (Health Department) of the Montana Public Employees Association, for the purpose of defining the wages, hours and other working conditions of the employees of the Health Department who are represented by the Association. The Agreement will cover the period from July 1, 2001 to June 30, 2003. The document was returned to Steve Johnson in Human Resources for further signatures and handling.

### PUBLIC MEETING – September 19, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, Chief Civil Attorney Mike Sehestedt and County Surveyor Horace Brown.

Chairman Evans stated that the agenda would be different this week, in light of the recent terrorist attacks against the United States. There was an American flag in the Conference Room which has not been present prior to today. It had been borrowed from the Sheriff's Department for the meeting. There is no money in the current budget to purchase an American flag for the Conference Room. She asked for donations to help purchase one.

### Pledge of Allegiance

The Pledge of Allegiance was led by Charlie Brown. John Semmons then sang God Bless America.

Commissioner Carey read Resolution Number 2001-081:

"Whereas, on September 11, 2001, the United States was suddenly and brutally attacked by foreign terrorists, and;

Whereas, these terrorists hijacked and destroyed four civilian aircraft, crashing two of them into the towers of the World Trade Center in New York City, and a third into the Pentagon outside Washington, D.C., and;

Whereas, thousands of innocent Americans were killed and injured as a result of these attacks, including the passengers and crew of the four aircraft, workers in the World Trade Center and in the Pentagon, rescue workers and bystanders, and;

Whereas, these cowardly acts were by far the deadliest terrorist attacks ever launched against the United States and, by targeting symbols of American strength and success, clearly were intended to intimidate our nation and weaken its resolve, and;

Whereas, these horrific events have affected all Americans, it is important that we carry on with the regular activities of our lives. Terrorism cannot be allowed to break the spirit of the American people and the best way to show these cowards that they have truly failed is for the people of the United States and their counties to stand tall and proud.

**Therefore, be it resolved** that the Missoula Board of County Commissioners condemns the cowardly and deadly actions of these terrorists, and;

**Be it further resolved** that the Missoula Board of County Commissioners supports all efforts to defend against additional attacks and find the perpetrators to bring them to justice, and;

**Be it further resolved** that the Missoula Board of County Commissioners recommends to its citizens to support relief efforts by giving blood at the nearest available blood donation center.

Dated this 13th day of September, 2001.

Chairman Evans thanked those responsible for the flags on Higgins Avenue, including Charlie Brown, Jim McDonald from Norco, Palmer Electric, Montana Power, the City of Missoula, Montana Department of Transportation and several volunteers.

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$307,773.86. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Re-roofing Missoula (Old) Courthouse (Building and Grounds)

No information on this item was received, therefore, it was postponed to a later date.

**Hearing (Certificate of Survey): Hanson Ranch Agricultural Covenant Exemption**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create an agricultural covenant parcel by dividing that parcel described in Book 526 Micro, Pages 377-384, in Section 26, Township 14 North, Range 20 West.

Paul A. Hanson and his mother, Natalie L. Hanson, have submitted a request to create a parcel using the agricultural covenant exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 247 acres in size located off Butler Creek Road and Interstate 90. The Hansons propose to create one approximately 15 acre parcel for purposes of transfer to Ibey Sprinkler & Landscaping for the purpose of creating a nursery/tree farm that would not have a retail store on it, only greenhouses, and retain the remainder for their existing property.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Book 526 Micro, Pages 377-384	1997	Deed of Distribution	Estate of Paul Hanson	Natalie Hanson

Interest in the property was subsequently transferred to Paul Hanson by Natalie Hanson.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act on this parcel.

Tim Ibey, President of Ibey Sprinkler & Landscaping, stated they have been in negotiations with Paul Hanson for some time on this property. Their retail outlet is not large enough to plantation the trees and shrubs for the store or handle the commercial grow operations of native plants for retail and commercial use. They have entered into an agreement with Mr. Hanson to use this portion of the property to grow plants for the commercial operations. They will sell the plants grown on this property to both their retail and commercial enterprises and hopefully in the future, to other commercial operations throughout the area. They are not trying to circumvent the subdivision act as they already have their commercial operations in another location. This will be used for strictly agricultural purposes.

Chairman Evans opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by the Hansons to create a new parcel by use of the agricultural covenant exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Nolan Family Transfer

**Colleen Dowdall stated that the Nolan Family Transfer request has been withdrawn per the petitioner's request.**

Hearing (Certificate of Survey): Drake Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Parcel 2, COS 3936, Section 25, Township 12 North, Range 20 West.

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Delmar K. and Agnes P. Drake have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located in the area referred to as the McCullough Brothers in Miller Creek off Trails End Road. Mr. and Mrs. Drake propose to create one approximately 10 acre parcel for transfer to their son, Monte Drake, and retain the remainder for their existing family home.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Tract 2, COS 3936		Parcels greater than 20 acres	McCullough Brothers	Various

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Agnes Drake was present and came forward to answer any questions the Commissioners may have.

Commissioner Curtiss stated that the Board must determine if this is an attempt to evade subdivision review. She asked Mrs. Drake if this was truly a transfer to her son.

Agnes Drake stated it was truly a transfer. Her son wants a piece of land and hopes his career will eventually bring him back to Missoula. He loves the view from the property and would like to secure land now before costs increase.

Chairman Evans opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Curtiss moved that the Board of County Commissioners approve the request by Delmar K. and Agnes P. Drake to create a new 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.

Hearing: JTL-Allen Special Zoning District (1 mile west of Reserve Street on Mullan Road)

Jennie Dixon, Office of Planning and Grants, presented the staff report.

JTL Group, represented by WGM Group, is requesting to create a special zoning district to allow for phased sand and gravel extraction and processing on the northern 62 acres of their property at 4815 Mullan Road. The area of rezoning is located one mile west of Reserve Street, on the south side of Mullan Road and north of the old railroad grade. The entire property contains about 150 acres and the original request was to rezone the entire acreage. That request was modified to the current request for 62 acres which staff and various agencies have evaluated. The recommendation of the Planning Board to the Board of County Commissioners is to approve the rezoning as presented in the applicant's revised packet, with conditions.

There was no requirement for this rezoning application to conduct neighborhood meetings, however, several were held. The adjacent land uses include a gravel operation to the east, residential property to the west, situated primarily along Marie Drive, and residential across Mullan Road. The current mining activity encompasses an area of approximately 30 acres. The application contains a phasing plan that indicates how development on this site will occur. The first thing that will happen is preliminary site improvements to include removal of buildings and cleaning of the site, constructing berms, constructing fences and installing landscaping. Phases 1 and 2 of excavation involve mining the gravel then creating a pond where dredging will occur.

The property is zoned C-RR1 (Residential) and requires compliance with zoning regulations. Mining is not permitted in residential zoning. JTL is asking to create a Special District with standards that will ensure compatibility and minimal impact with the surrounding area.

The Comprehensive Plan designation for the majority of the area is Parks and Open Space, with a small strip of land along Mullan Road that is Suburban Residential, two dwelling units per acre. Staff has found substantial compliance with the Comprehensive Plan, given this proposal. The area that is designated Parks and Open Space is within the 100 year floodplain and residential development within that area would not be appropriate.

The Planning Board conducted their hearing on September 4, 2001. They voted 4-3 to recommend approval of the rezoning request. There were a few residents who spoke about their concerns at the hearing. Based on those comments, JTL has been working with the citizens and has requested that staff recommend some additional conditions with the zoning.

Condition 1 states that the zoning district as submitted will apply except that asphalt batching will not be permitted, due primarily to ground water concerns. Condition 2 requires that plans be submitted consistent with what is outlined in their packet and be attached to the zoning resolution. Condition 3 requires development of a lighting plan. Condition 4 relates to landscaping the berms. This condition was amended after the Planning Board hearing to address citizen concerns. Condition 5 requires a performance bond to guarantee the installation of the berms and landscaping prior to beginning Phase 1 excavation. Condition 6 is also in response to citizen concerns, that allows for a chain link fence along the western property boundary in compliance with Floodplain Regulations. A Floodplain Permit would be needed to do excavation or erect a fence in this area.

Other permits are required which the developer's representative will address. The Department of Environmental Quality will review the proposal and issue a reclamation permit if appropriate to ensure that environmental impacts are addressed.

Nick Kaufman, WGM Group, developer's representative, was present, as was Alrick Hale, General Manager of JTL Group. Also present was Malcolm (Mac) Long from JTL Group, Earl Hanson, chief legal counsel and Joel T. Long,

2002-0077

President of JTL Group. JTL Group is a company that stands by their word and reputation. He shared a letter from Target Range Public School to show what kind of company JTL is:

*"I'm pleased to write this letter to you regarding our long-standing good neighbor relationship with JTL. Two specific areas come to mind when I consider our track record with JTL – safety and support. JTL is located directly behind our school grounds. It shares a County road (40th Street) which borders our east property line. Thus, its heavy trucks drive by on a daily basis. One would correctly assume that this might be a safety concern for our school. However, it is no more a safety concern, and perhaps less of a concern, than the heavy traffic of South and Clements Avenues, or the intense parent traffic which frequents our front parking lot on a daily basis. JTL has been a consistent partner with us in advocating safety for kids. Probably the best example to come to mind is their concern about other vehicles illegally parking along the road and thereby blocking the view of students and their drivers. JTL worked with us in finding a solution – a solution provided by the County's posting of "No Parking" signs in the area of concern. Further, to the best of my memory, drivers enter and depart at a cautious speed, as well as maintain visual contact of people in the area. They often wave at me or others as they proceed by the school. JTL has additionally been a strong advocate for our children's well being by providing sand for our playground, consultation on various playground area projects, assistance in installing a track, and a resource for old asphalt, concrete and various other materials – all at either no cost or reduced cost. In short, JTL has been an exceptional neighbor to us. They maintain an open line of communications with the school, though we've had no complaints in my history of being here – only constant thanks for their support and safety consciousness. Please feel free to contact me should you have any questions. Thank you. –Michael Magone, Superintendent, Target Range Public School."*

A map of the riverfront area in Billings, Montana, is also shown. Along the northern portion is the Interstate and the Yellowstone River. On the north side of the river are ponds and trails. There are also individual photos of bridges, ponds and landscaping that is currently occurring on former JTL property. He shared another letter addressed to Tim Crennen, General Manager of the JTL Group Billings Operations:

*"You have asked me for a letter of support concerning the efforts of your company to establish a gravel pit in the Missoula area. As you know, Yellowstone River Parks Association is a 501(C)(3), all volunteer organization that builds trails along the Yellowstone River. We are 10 years old, have developed, with other as leaders, or us as leaders, about 18-20 miles of trails around Billings, along or close to the river. In all that, we also own, partner in management or joint venture in some fashion on about 1,000 acres of land. All of that land is or will be in the public domain or open to the public. That brings me to our relationship with JTL. In 1991 or '92, I wrote a letter of request to a local property owner, stating that if his 27+ acres of land were ever available, we would like to acquire his land, without money. In the fall of that same year, JTL bought that land and honored our verbal request of the seller, by giving us an option, to be exercised at the end of their use of and reclamation of that land, according to both State standards and our Master Plan for the site. In year 2001, we acquired title, at zero money, and are currently developing the site for public use, according to our Master Plan. 'Moosewood,' which is inside the 27 acres, is being dedicated tomorrow, September 15. For your further detailed information, I have enclosed a copy of our September 2001 YRPA newsletter, featuring Moosewood. –Earl Guss, YRPA Founder."*

The most important letter deals with the history of JTL Group on this proposed zoning request. In May of this year, WGM sent over 150 postcards to people in the vicinity of the proposed change. In addition, the mailing lists for the property owners associations on Mullan Road as far out as Golden West were obtained. A neighborhood meeting was held at Hellgate Elementary School. Four or five concerned citizens shared their issues about dust, noise, water quality, property values, etc. A second meeting was held where their views were reaffirmed. Since that time, a site visit was conducted at the Target Range property. Some requests were submitted to Mr. Hale. This letter, to the property owners on Marie Drive from Alrick Hale, memorializes the understanding of their concerns:

*"On September 6, 2001, you presented me with a number of requests to help mitigate our proposal to expand the permitted mining area at the former Harry Allen site. I am pleased that JTL Group is able to comply with most of the requests. For your convenience, we have listed the requests that we can agree to, below:*

- *Mounds to maintain 8 foot height measured from the highest point they cross.*

*The Office of Planning and Grants has modified Condition No. 4 to include the following sentence, 'All perimeter landscaped berms shall maintain a minimal eight foot (8') height above grade and shall be planted with a combination of deciduous and evergreen trees.'*

- *Start with older trees on the mounds and alternating deciduous and evergreen.*

*See the proposed OPG change to Condition No. 4 above. On our tour we showed you the height of proposed trees. Deciduous will be 6 feet high at planting and evergreens will be 3 feet high at planting. These tree heights are included in our landscaping plan and, therefore, are part of the zoning.*

*Contingent upon Missoula County approval of the JTL Special District and the Department of Environmental Quality issuance of an expanded Mining permit to include the 62 acres, JTL Group will do the following prior to beginning any mining on areas which have not previously been permitted:*

- *Water Quality and Water Quantity.*

*JTL Group will include in the DEQ Mining Plan, a Water Quality and Water Quantity Monitoring Plan. In JTL's mining plan filed with the DEQ, there will be included a plan for JTL to mitigate degradation of water quality or quantity to its adjoining neighbors. The mitigation will apply to degradation which is actually caused by JTL from its mining operations in the 62 acre area subject to the reclamation permit.*

- *Provide landowners with trees or allotment to use on their property to help block visually and audibly.*

*Provide landowners along Marie Drive with trees, which they may plant on their property to supplement the proposed plantings on the berms. JTL will provide a maximum of five, 6 foot high trees, to each homeowner on Marie Drive if requested.*

- *Pave Marie Drive and Driveways.*

*Pave Marie Drive and the driveways of property owners on Marie Drive who wish to have their driveways paved. This offer includes paving on existing base only.*

- *Install a dry-laid sewer line in the Marie Drive right-of-way. –Alrick Hale, General Manager, JTL Group"*

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The final issue of concern is the matter of a fence. The staff report has been modified to allow a six foot high chain link fence along the western portion of the property and along the railroad grade, so as not to interfere with the 100 year floodplain but to address the safety concerns of the residents.

Alrick Hale stated that in 1990 when the Phillips Pit was zoned, he was not directly involved. There were a lot of public comments and concerns about that proposal. About 3 years ago when JTL requested rezoning of the Wheeler Property, they met with the trailer park people to address their concerns. They were told at that meeting that they were not very good farmers. In 1990, some trees had been planted but were not properly maintained. When they reviewed the site, it was confirmed, the trees and grass had not been well maintained. They installed a sprinkler system and better trees to reduce the visual impact of the site. They worked with the trailer park residents on the landscaping plan for the Wheeler site. That has now been completed. Some of the trees have died and they have been replaced. In this process, they again wanted to speak with the neighbors to hear their concerns. They have tried to address those concerns and work with these people on a landscaping plan. The Phillips site currently has their asphalt and base gravel operations and will run out in about 5 to 10 years. The asphalt operation will be moved to the JTL Wheeler site. The Target Range site is currently their concrete operations. It is their intention to move that operation to the JTL Allen site. There is no intention to put an asphalt plant at the JTL Allen site.

Nick Kaufman stated this proposal started with 150 acres, which has been modified to 62 acres, which doubles the size of the currently permitted area. The permitted area now allows concrete, crushing and asphalt plants with no berms, no landscaping and no fencing. JTL has given up the right to put an asphalt plant at the site, it will include only a crusher and concrete plant. JTL has also given up the right to do fuel storage and handle any recycled materials, in direct response to neighbors concerns about water quality. The choice is to continue to leave the permitted area as is and operate for about 25 or 30 years. However, they would like to put in the berms, landscaping, fencing and other mitigation and mine the site with a dredge. This is much different than any other mine operations. In dry pits, the work is surface mined with machines and its related heavy traffic and dust. In a dredge operation, once the overburden is removed and the surface water is exposed, all that is in the pond is a dredge. The motor is underwater and the various resulting materials is separated. It is a quieter, cleaner operation. JTL is asking to expand operations that are limited compared to what is currently permitted. It also berms and mitigates the potential negative impacts of the operation.

Chairman Evans asked if the landscaping would have a sprinkler system to ensure survival of the vegetation.

Nick Kaufman stated that was correct. It will be a drip irrigation system.

Chairman Evans opened the public hearing.

Bill Dahlgren, 2008 37th Avenue in Target Range, read a letter of support:

*"This letter is written in support of JTL's request for rezoning to expand their gravel extraction operation out Mullan Road. As Missoula grows, the community needs high quality, inexpensive gravel. The need is obvious. I offer this letter of support from three perspectives, as a neighbor to JTL's operations in Target Range, as President of Westside Little League and as a member of the Big Sky Park Stewardship Committee. As a neighbor to JTL's operation in Target Range, I have appreciated their professionalism, safety and cleanliness. I have looked upon their operations with fascination and admiration rather than something negative in the neighborhood. They are truly a good and caring neighbor. As Westside Little League President, we are building three new baseball and softball fields on ten acres where JTL extracted gravel. Yes, a nice park in a gravel pit. As Chairman of the Big Sky Park Stewardship Committee, I appreciate the professionalism with which JTL extracted and transported the gravel in and through our neighborhood. I enjoy the improved character of the park as they left us with a sculpted, contoured landscape including sledding hills and ice skating ponds. Yes, they extracted the gravel resource and left Big Sky Park a better place. I think if we take a long term view of what is proposed, the community can realize many positives. In the short term we can benefit from the availability of the gravel resource while minimizing the negative impacts. In the longer term Missoula can benefit of a County park on the professionally reclaimed site. Please give JTL due consideration as positive and professional contributors in the community. Thank you."*

Tom Ward stated that he lived on Marie Drive. He was speaking on behalf of the Marie Drive neighbors. JTL has adequately addressed all their issues and concerns. They feel JTL will be a good neighbor and they will be good neighbors back. They no longer oppose the rezoning of the former Allen property. They would like to see the change to include the chain link fence on both the west and south sides as a precaution to protect the children.

Commissioner Carey asked Mr. Ward if Mr. Spurlock was in the neighborhood.

Tom Ward stated Mr. Spurlock was not a neighbor.

Commissioner Curtiss stated that Mr. Spurlock was across Mullan Road.

Pat Mangan stated he lived on the corner of Marie Drive and Mullan Road. He did not receive a notice of this action, he just heard about it. He wondered why the property owners did not receive notice of this action. JTL might do good work, but if they want to be good neighbors, they should notify the residents. When Harry Allen used the gravel pit, he was required to have a flagman on Mullan Road to get the trucks out. Will that still be required. It is difficult enough as it is to get onto Mullan Road.

There being no further comments, the public hearing was closed.

Nick Kaufman stated the requirements for public hearings are notification in the newspaper and posting on the property, which the Office of Planning and Grants did. Almost four months before the Planning Board hearing, WGM created a mailing list using the Polk Directory of all the neighbors in the area. Over 150 postcards were sent to every address on Mullan Road and all the homeowners associations on Mullan Road. Mr. Mangan was on that mailing list.

He did not know why Mr. Mangan did not receive anything, but it was mailed out. The reason that was done was to give the neighbors enough time to talk among themselves. All the other residents of Marie Drive attended one of the many meeting held. The neighborhood meeting was not a requirement. He apologized to Mr. Mangan. Several other companies have used the pit over the past years. If large numbers of trucks were pulling into traffic they would use a flagman at different times to assist them in getting their trucks out. Under normal operations of JTL, they will not need a flagman. South Avenue is the main access for JTL's concrete operation and is also a fairly busy road. If trucks were required to go down South Avenue, north on Reserve Street through the intersection of Mullan Road and Reserve to get to building sites down Mullan Road, the area where growth is going to occur, it would increase the vehicle miles traveled by over 6 miles and take the trucks by Target Range School, Big Sky High School and C.S. Porter School, through the intersections of South and Reserve and Reserve and Mullan Road. Placing the resource closer to where the growth will occur reduces vehicle miles traveled and congestion.

Commissioner Carey asked what the timeline was for moving the operation to this site.

Nick Kaufman stated it was about three years.

Commissioner Curtiss asked if JTL could do mining on the currently permitted area prior to installing any improvements such as berms, etc.

Nick Kaufman stated that technically they could, but the verbal agreement from JTL is that they will not start operations for three years.

Alrick Hale stated that their intentions are not to go back to the pit and mine right now. There are a few large piles of gravel and the need may arise for some of that on projects. They may go and remove some of the gravel that has already been mined, but their intention is to leave it closed and control the land until the landscaping is done.

Nick Kaufman stated the entire property is going to be rezoned. Per the conditions, before they can receive a zoning compliance permit all the landscaping must be installed. Another condition requires providing a performance bond for the berms and landscaping. Nothing can be done other than removing surface material without getting a zoning compliance permit.

Commissioner Carey stated that in Mr. Spurlock's letter his major complaint was dust on Marie Drive.

Nick Kaufman stated that paving Marie Drive will improve the whole area.

Commissioner Carey asked about the larger sense of an operation like this going into a residential area, negatively impacting property values.

Nick Kaufman stated that on the north side of Mullan Road across from this property is a linear trailer park. That trailer park is owned by the Spurlocks. He has lived in this area for 18 years. When Mullan Road was a narrow, two lane road, the driveways from this trailer park backed directly onto Mullan Road. Now they have the old Mullan Road as a frontage road. The mining operation is absolutely not in a residential area. The Comprehensive Plan immediately adjacent to Mullan Road, outside the floodplain, is Residential at two dwelling units per acre. The area on this property that is outside the floodplain is designated in the Comp Plan, south of Mullan Road, as Parks and Open Space. It absolutely does not call for Residential. Mining can be done in Parks and Open Space zoning, but not in Residential C-RR1 zoning. Zoning the entire floodplain C-RR1 would probably be done differently today. At the Planning Board meeting, this question was also raised. He asked Brian Maiorano to write a letter addressing the subject. Brian Maiorano basically said that, unequivocally, residences are not wanted in the area and the mining operation is supported. This is not on the terrace above Mullan Road where the Spurlock's are located, that is residential. This is down over the hill in the Parks and Open Space zoning and this operation is appropriate.

Commissioner Carey asked about the potential for mosquitoes from the big pond that would be created.

Nick Kaufman stated that if this property were put in irrigated alfalfa or grassland, the mosquito problems would be greater than in an open surface water area. The pond will have fish and other creatures that will eat the mosquito larva. He did not believe this would be any more of a mosquito problem than a normal lake. They are not creating a wetland, they are creating a lake.

Commissioner Carey asked how Mary Jean Gilman's concerns about easements were addressed.

Nick Kaufman stated that removing the southern portion of the property from the rezoning request addressed Ms. Gilman's concerns. The railroad grade area has issues of potential stream capture, floodplain issues, wildlife issues and trail issues which need a broader discussion before there are decisions about what happens with the remainder of this property. Ms. Gilman's issues are valid but outside the area proposed and needs to be dealt with in the future.

Commissioner Carey asked if there was any talk of JTL donating the lake to a governing body in 50+ years.

Alrick Hale stated that had been discussed. The original proposal for the 150 acres was to give it over to the public when JTL is finished with it. When things were scaled back, it was decided to readdress the issue in the future. He can say that the land around the lake will not be subdivided or have houses when JTL is finished with it. There is a very good chance it will be public. It is currently in the proposal to leave it either private or public.

Commissioner Carey asked if there was any way it could be turned over to the public. It will be a wonderful place for recreation and the public will need ownership to do that.

Alrick Hale stated he agreed with Commissioner Carey. JTL would like to reserve that designation until the plan for the entire piece of property has been completed. That is why they want to address it at a later date.



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Commissioner Carey asked if that could be made a condition.

Nick Kaufman stated the broad issue here deals with JTL's current lake by Target Range which adjoins Fort Missoula. JTL has been talking with public agencies about the future of that area. JTL has a history of converting their finished mines to the public. They should not be held to it as their history is to do that. They should be allowed to make those dedications as time and opportunity warrant.

Mike Sehestedt stated that the zoning could not be conditioned on that kind of requirement. It would be more productive if those possibilities were explored at another venue. At this point, at least half of the property could be mined under the existing permit. More than enough is being gained from the conditions imposed.

Commissioner Curtiss stated another concern from Mary Lou Gilman was what species of trees were used, ones that didn't spread, seed or sucker.

Nick Kaufman stated that a native tree in the area was the Black Cottonwood. They did not necessarily want to put native cottonwoods along the berms because they are pretty messy. They have looked at a Robusta Cottonwood from the Poplar family, it grows fast and has good crown. They have about a 30+ year life span. They don't produce seeds and don't sucker. These would be planted in combination with evergreen trees.

Commissioner Curtiss asked how many vehicle trips per day were expected with the trucks.

Nick Kaufman stated it was expected to use 75 trucks per day, with one trip in and one trip out, which is 150 average daily trips.

Commissioner Curtiss asked if this rezoning went all the way to Mullan Road and would gravel be mined all the way to Mullan Road.

Nick Kaufman stated that the reclamation plan calls for the excavation area to stop before the existing terrace is reached.

Commissioner Carey moved that the property located at 4815 Mullan Road, described as Parcel 1 on Page 41 of the application packet, be rezoned from C-RR1 (Residential) to the JTL-Allen Special District, as shown on Pages 34 and 35 of the application packet, and subject to the recommended conditions as amended. Condition 5 amended to read "Prior to adoption of the zoning resolution, the developer shall post a performance bond to guarantee the construction of berms and installation of all landscaping, to be completed prior to beginning Phase 1 excavation, as required by this special district." Condition 6 amended to read: "The western side of the area of rezoning and along the railroad grade may be fenced with a six foot high chain link fence, in compliance with Missoula County Floodplain Regulations." Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **JTL-Allen Special District Conditions of Approval:**

1. Section 6.11, The JTL-Allen Special District, shall apply to Parcel 1 as shown on Pages 34 and 35 of the application packet, except that asphalt batching shall not be permitted in this district. *OPG recommendation.*
2. JTL shall prepare and provide for OPG final plans consistent with the proposal in the application packet to attach to the zoning resolution regarding landscaping, berming, fencing, phasing and site reclamation. *OPG recommendation.*
3. The developer shall prepare a lighting plan to be reviewed and approved by OPG, prior to issuance of a Zoning Compliance Permit. All lighting shall be shielded so that all light falls within the property boundary and does not glare laterally or upward. *OPG recommendation.*
4. Landscaping of the Mullan Road berm shall be in accordance with Missoula County's Primary Travel Corridor landscaping standards in Section 3-14(3)(A) of the Missoula County Subdivision Regulations. All perimeter landscaped berms shall maintain a minimum eight foot (8') height above grade and shall be planted with a combination of deciduous and evergreen trees. *OPG recommendation and request of applicant.*
5. Prior to adoption of the zoning resolution, the developer shall post a performance bond to guarantee the construction of berms and installation of all landscaping, to be completed prior to beginning Phase 1 excavation, as required by this special district.
6. The western side of the area of rezoning and along the railroad grade may be fenced with a six foot high chain link fence, in compliance with Missoula County Floodplain Regulations. *Request of applicant.*

Hearing: Delight Subdivision (3 Lot Second Summary Subdivision of Lot 4 of Hooker Addition) – off Washoe and Hole-in-the-Wall Roads in Potomac

Karen Hughes, Office of Planning of Grants, presented the staff report.

This is a request from Richard and Emily Delight, represented by Territorial Engineering, for a second summary subdivision of Lot 4 of Hooker Addition and a Lease or Rent subdivision on proposed Lot 4B, for one additional residence. The property is located southeast of Potomac on Hole-in-the-Wall Road and Washoe Road. The request was advertised in the Missoulian. The property was posted and letters were sent by Certified Mail to adjacent property owners.

Three comment letters were received and are attached to the staff report. In their letters, adjacent property owners expressed concerns about the number of existing homes on proposed Lot 4B, impacts on roads from the increased traffic, impacts on the rural character, loss of agricultural land through subdivision and current management of agricultural and timber resources.

Staff has recommended approval of the four variance requests and approval of the second summary subdivision, subject to six conditions, and approval of the lease or rent subdivision on Lot 4B.

The Planning Board held a public hearing on September 4, 2001. They recommended approval of the four variance request and voted 6-1 to recommended approval of the second summary subdivision and the lease or rent subdivision on Lot 4B, both subject to staff's recommended conditions. Two neighbors spoke against the request. Their comments focused primarily on rural character and density.

The subdivision request would split a 146 acre parcel into three lots. Hooker Addition was approved by the Board of County Commissioners on March 17, 1999 and received final plat approval on April 15, 1999. According to the applicant, an old cabin and the ranch house have existed on proposed Lot 4B for many years. After the final plat for Hooker Addition was approved, a modular home was placed on this property and received septic approval in September, 1999, without being reviewed as a subdivision for lease or rent. This was done by the previous owner. All three homes on the property are currently occupied. There are only homes on proposed Lot 4B. Lots 4A and 4C are vacant.

A slide show presentation was made showing the various features of the property in question.

The key issues for this subdivision are Comprehensive Plan compliance, access and the riparian area. The property is currently designated as Open and Resource, with a maximum recommended residential density of one dwelling unit per 40 acres. Open and Resource designation for this site was meant to protect riparian area, agricultural resources and timber land.

Hooker Addition originally created 4 lots ranging in size from 20 acres to 146 acres in size, resulting in an overall density of one dwelling unit per 56 acres, in compliance with the Comprehensive Plan. As proposed with two additional lots and two additional homes, the overall density would be one dwelling unit per 28 acres. Staff has concluded that a reduction of density by eliminating either one lot or one dwelling unit would better comply with the Open and Resource land use designation, and the goals and objectives of the 1975 Comprehensive Plan, because of the importance of the rural character in the area, the location of valuable riparian area on the southern portion of the property and the amount of land that it covers, and the current agricultural and forestry resources on the site.

The property is accessed via Hole in the Wall and Washoe Roads. Neither road meets County subdivision standards for roads and the applicant has requested variances for road width for both roads and a paving variance for the portion of Washoe Road which runs across the property. Staff has recommended approval of those variance requests. The Greenough-Potomac Fire District felt that at this level of density it was okay to have the narrower roads. They are concerned with more development happening in the area and they know of another subdivision coming in the future. Washoe Road has a fairly narrow bridge and there are concerns about serving more and more houses in the area. For this subdivision, RSID/SID waivers for future improvements to the County roads would be sufficient.

The applicants are proposing to improve the existing access to the three homes on Lot 4B to meet County road standards. This access is technically considered a road as it serves three homes. They are proposing to widen the road to meet standards but do not have plans to pave the road and have asked for a variance for the paving requirement. Staff supports that variance request.

North of Washoe Road the land is hilly and timbered and used for a limited amount of pasture. Much of Lot 4A has over 10% grade. An area with slopes of 25% or greater has been identified as a "no build" area. The area has been selectively logged in recent years and there is a private access to Lubrecht Forest.

The property's open and pasture land and hay fields south of Washoe Road have been used for grazing and is protected by a Riparian Management Plan which protects Union Creek, Washoe Creek and an unnamed tributary. Riparian vegetation is scattered and especially dense along Union Creek. Washoe Creek and Union Creek are valued for their provision of West Slope Cutthroat Trout, a species of special concern. Fish, Wildlife and Parks supported the maximum protection of this riparian area. The Riparian Management Plan is included in the proposed covenants and staff has recommended some changes to the Plan based on comments from FWP. Staff has recommended the section on construction of roads and driveways be eliminated, based on the Subdivision Regulations.

The applicants are in agreement with the conditions with the exception of Condition 1. Their representative will speak to that issue.

Tim Wolfe, Territorial Engineering, Inc., developer's representative, was present, as were the developers, Richard and Emily Delight. He thanked Karen Hughes for her work on this project. The developer is fairly adamant about having Condition 1 removed in both the summary subdivision and the subdivision for lease or rent. From a common sense standpoint, the two small residences on the property and the newer modular home moved in by a previous owner create a developed area. Allowing the existing three homes to remain doesn't seem unreasonable. They are proposing to leave what already exists and create a 40 acre lot with one home site and a 79 acre lot with one home site. The density will increase by two homes. If the density is reduced as the staff recommends the it would be one dwelling per 32 acres as opposed to the proposed density of one dwelling unit per 29 acres. That is a minimal reduction for the impact it has on the Delight's. They ask that Condition 1 be eliminated on both the summary subdivision and the subdivision for lease or rent.

Chairman Evans opened the public hearing.

Emily Delight stated that she and her husband purchased the 150 acre parcel in March of 2001. They fell in love with the 80 acre parcel north of Washoe Road. Jodi Hooker, who sold the property, had already been looking at subdividing the parcel as they are now proposing. Ms. Hooker suggested purchasing the entire property and selling the other two parcels as a way to afford the 80 acres. They do not want to see a great deal of density increase in the area. They are only proposing to put one home on the 80 acre parcel and continue to use the land for hay and perhaps a few

horses. They would only do limited timbering to protect the health of the forest. They would sell the 40 acre parcel with one homesite outside the riparian area. They don't feel this would significantly change the character of the area.

There being no further comments, the public hearing was closed.

Commissioner Curtiss stated that one of the letters received in opposition to this subdivision said that when Jodi Hooker and her father lived there, the main old farm house was in great disrepair and no one lived there. What was the condition of the houses when the Delight's purchased the land.

Richard Delight stated that when they purchased the property, there had already been some remodeling done to them. There was new carpet in the old ranch house and it had been repainted. There were some electrical concerns when they first moved in and they did the electrical upgrade then. They also installed new kitchen cabinets and remodeled a lot of the interior. The log cabin had been renovated. From receipts obtained, about \$37,000 had been spent on that renovation. All the homes were occupied when they purchased the property.

Commissioner Curtiss moved that the variance request from Article 3-2 of the Missoula County Subdivision Regulations for Hole in the Wall Road to vary from the required 24 foot width to 18-24 feet in width be approved based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the variance request from Section 3-2 of the Missoula County Subdivision Regulations for Washoe Road to vary from the required 24 foot width to 16-24 feet in width be approved, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision be approved, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the variance request from Article 3-2 of the Missoula County Subdivision Regulations to not pave Washoe Road and the unnamed road serving Lot 4B be approved, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Delight Second Summary Subdivision be approved, based on the findings of fact in the staff report and subject to the recommended conditions of approval, with Condition 1 being deleted. Chairman Evans seconded the motion.

Commissioner Curtiss stated that her reason to remove Condition 1 from both the second summary subdivision and the subdivision for lease or rent is that it is not fair to punish the new owners for the existing houses on the property done by the previous owner. The septic permit and the other house being placed on the property slipped through the cracks and should probably not have been approved. The two new building sites on the 40 and 80 acre lots will not substantially change the nature of the area.

Commissioner Carey asked if the lease or rent was being done retroactively, to correct something that was not in compliance.

Karen Hughes stated the lease or rent subdivision needed to be done in order to bring the property into compliance with the regulations, to fix the problem created by the previous owner. Regardless of that situation, staff looked at the density and goals and objectives in the Comprehensive Plan for the area. Staff felt that reducing density by one would better comply with the goals and objectives of the Plan. They did not make the determination that the lease or rent in violation had to be removed, they left it at reducing the density by one, either removing one lot or one rental house. All three lots have a possible building site and there are already three houses on the property. It was left to the owners how they wanted to reduce the density.

Commissioner Carey stated that this did not seem like a punishment, it seemed like an attempt to maintain the Open and Resource designation.

The motion carried on a vote of 2-1 (Commissioner Carey opposed).

Commissioner Curtiss moved that the Delight Subdivision Lot 4B Subdivision for Lease or Rent be approved, based on the findings of fact in the staff report and subject to the recommended conditions of approval, with Condition 1 being deleted. Chairman Evans seconded the motion. The motion carried on a vote of 2-1 (Commissioner Carey opposed).

#### **Delight Second Summary Subdivision Conditions of Approval:**

1. The property owner shall provide evidence of a contribution of \$100.00 per new lot to the Greenough-Potomac Rural Fire District prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-7 and the Greenough-Potomac FSA recommendation.*
2. The plat shall be amended to show all areas with 25% grade or greater as "no build" areas. *Subdivision Regulations Article 3-1(2) and staff recommendation.*
3. The Riparian Resource Areas shall be shown on the plat and an attachment showing this area shall be attached to the covenants, subject to OPG review and approval, prior to final plat approval. *Subdivision Regulations Article 3-13 and staff recommendation.*
4. The Riparian Management Plan shall state that the Union Creek watershed is a potential West Slope Cutthroat Trout (species of special concern) conservation area and that both Washoe Creek and Union Creek support

populations of these trout at all life stages, including spawning and rearing. The Plan shall state that development of off-stream ponds and introductions of non-native aquatic species is prohibited. The section on development of roads and driveways through the riparian area shall be removed. The revised Riparian Management Plan shall be reviewed and approved by OPG prior to final plat approval. *Subdivision Regulations Article 3-13, Montana Fish, Wildlife and Parks and staff recommendation.*

5. Prior to final plat approval, the sections of the covenants addressing garbage shall be amended so this information is found in only one place in the covenants. The covenants shall also state that garbage cans shall only be put out for collection on the day of pick up. The weeds section shall be revised to state: "Lot owners shall maintain their lots in compliance with the Montana State Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate any ground disturbance caused by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is completed." These sections of the covenants shall be reviewed and approved by OPG and the County Attorney's Office. *Subdivision Regulations Article 3-1 and MFWP recommendation.*

#### **Delight Subdivision Lot 4B Subdivision for Lease or Rent Conditions of Approval:**

1. Final road and drainage plans shall be reviewed and approved by the County Public Works Department prior to final plan approval. The road shall be constructed according to the approved road plans prior to final plan approval. The road shall be named, subject to review and approval by the County Public Works Department, prior to final plan approval. *Subdivision Regulations Article 3-2, County Public Works Department and staff recommendation.*
2. The property owner shall provide evidence of a contribution of \$100.00 per new residence to the Greenough Potomac Rural Fire District prior to final plan approval. *Subdivision Regulations Article 3-7(2) and Greenough-Potomac FSA recommendation.*
3. If the final plat for the Delight Subdivision has not been approved, prior to final plan approval, the developer shall file the following sections of the covenants as a development agreement: Property owners responsibilities for living with wildlife, wildland residential interface standards and the Riparian Management Plan.

#### Other Business

Caroltta Grandstaff stated she was a reporter from the Independent and came to observe the meeting.

Chairman Evans stated she was happy to see the press at the meeting.

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

#### **THURSDAY, SEPTEMBER 20, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated September 20, 2001, batch number 1543 (pages 1-8), with a grand total of \$106,254.83. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Contract – The Commissioners signed a Contract, dated September 20, 2001, between Missoula County Building and Grounds and Miller Roofing for the purpose of reroofing the Missoula County Health Department Building (bid awarded on September 12, 2001). The work shall be fully completed within a period of 45 consecutive calendar days from the date of the Contract. The total amount shall not exceed \$41,250.00. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Request for Action – The Commissioners signed a Contract, dated September 18, 2001, between Missoula County and Mountain Water Company for the purpose of installing 100 lineal feet of fire hydrant lead pipe for two fire hydrants at Block 4, Lots 8 and 9, Missoula Development Park. The total amount shall not exceed \$5,000. The document was returned to Barbara Martens, Projects Coordinator, for further handling.

Request for Action – Chairman Evans signed a Contract, effective September 13, 2001, between Missoula County and Mountain Water Company for the purpose of extending the water line from the south side of Expressway into Phase 4 to serve Lots 12 and 13, Block 3, Phase 4, Missoula Development Park. The estimated contract amount totals \$45,500.00. Mountain Water expects to have the work completed by November 30, 2001. The document was returned to Barbara Martens, Projects Coordinator, for further handling.

Agreement – The Commissioners signed a one-year Lease Extension Agreement between Missoula County and the Backwoods BMX Club, based on the conditions that the Backwoods BMX Club meet the requirements of the Missoula County Health Department. Improvements made to the property, as set forth therein, will constitute the lease payment for this lease year. The term will be April 30, 2001 through April 30, 2002. In April of 2002, the Missoula County Park Board will ensure Health Department requirements have been met.

Other items included:

- 1) Lisa Moisey of the Parks Staff gave an update on the Fort Missoula Regional Park.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, SEPTEMBER 21, 2001**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Chairman Evans was out of the office all afternoon.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated September 21, 2001, batch number 1544 (pages 1-5), with a grand total of \$90,785.33. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated September 21, 2001, batch number 1548 (pages 1-2), with a grand total of \$13,037.25. The Claims List was returned to the Accounting Department.

**CONTINUATION OF ADMINISTRATIVE MEETING FROM SEPTEMBER 20, 2001**

At the administrative meeting held in the forenoon, the following items were signed:

Request for Action – Per recommendation by Ann Mary Dussault, Chief Administrative Officer, the Commissioners (“BCC”) approved a request regarding the Missoula County Employee Benefits (“MCEB”) Plan. The Commissioners 1) Acknowledge that the BCC has no standing under the MCEB Plan to act as a Board of Appeals; and 2) Directs appropriate staff to: (a) Settle the particular health claim in dispute and pay the settlement from the Risk Management Fund; not the Health Insurance Trust; (b) Develop more detailed and explicit language in the MCEB Plan clarifying that the BCC is not a course of appeal to the decisions of the Plan Administrator; and (c) Explore obesity and weight loss programs in the course of MCEB Plan review that is to take place starting October 2001.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and Missoula Aging Services for the planning, coordination, and delivery of Aging Services programs in Missoula County. The total amount shall not exceed \$190,656.00. The term will be July 1, 2001 through June 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and Montana Legal Services: The Family Law Advice Clinic to assist low income individuals in Missoula County who cannot afford to hire a private attorney and would not have access to the civil legal system. The total amount shall not exceed \$5,100.00. The term will be July 1, 2001 through June 30, 2002.

Request for Action – The Commissioners approved a request and authorized the Public Works Department to proceed with the implementation of Phase I improvements for the Lolo RSID # 901 Wastewater Treatment Plant expansion project. The estimated cost of the Phase I improvements is approximately \$1.27 Million.

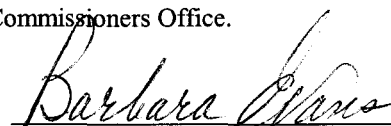
Decisions on Requests to 1) Authorize the Public Works Department to establish increased fees for new system connections, and 2) Authorize the Public Works Department to establish assessments at last fiscal year’s amount were delayed.

Letters – The Commissioners signed letters, dated September 20, 2001, to Joel Long of JTL Group, Inc. and Jim McDonald of Norco Products, thanking them for the U.S. and Montana State Flags donated to Missoula County for the Public Meeting Room.

Request for Action – Chairman Evans approved and signed a Change Order for JTL Group, Inc. to place a 36” culvert and construct an access road over the top of the culvert in the drainage swale east of Grizzly Auto within the Missoula Development Park. The road provides access to the City’s sewer lift station. The County will initially pay and then send the invoice to Paradigm Architects for reimbursement of the \$750.00. The Request was returned to Barbara Martens, Projects Coordinator, for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

**MONDAY, SEPTEMBER 24, 2001**

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Curtiss were in Glendive, Montana from September 24<sup>th</sup> through the 26<sup>th</sup> attending the MACo Annual Conference. Chairman Evans was out of the office all day.

**TUESDAY, SEPTEMBER 25, 2001**

The Board of County Commissioners did not meet in regular session.

Request for Action – Chairman Evans signed a Grant Award from the U.S. Department of Justice for the continuation of the Flagship Project in Rattlesnake Middle School and Hellgate High School. It will also allow the Missoula Forum for Children and Youth to educate the public about strategies to prevent youth drug and alcohol abuse and various ways it can become involved in Flagship Projects and other Forum activities. This is the fourth year of a five-year grant project. The County will receive \$70,493, the majority of which will be disbursed to Turning Point for continuation of the Flagship Project. The document was returned to Peggy Seel in the Office of Planning and Grants for further handling.

## WEDNESDAY, SEPTEMBER 26, 2001

The Board of County Commissioners did not meet in regular session.

The Weekly Public Meeting was canceled as two of the Commissioners were out of town.

## THURSDAY, SEPTEMBER 27, 2001

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners attended a Community Presentation by David Thompson on Co-op Housing held in Room 201 of the Courthouse.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated September 21, 2001, batch number 1545 (pages 1-5), with a grand total of \$88,125.90. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated September 21, 2001, batch number 1549 (pages 1-3), with a grand total of \$24,559.97. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated September 24, 2001, batch number 1547 (pages 1-5), with a grand total of \$31,332.15. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 26, 2001, batch number 1546 (pages 1-3), with a grand total of \$34,630.63. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 26, 2001, batch number 1552 (pages 1-3), with a grand total of \$24,337.49. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 27, 2001, batch number 1555 (pages 1-3), with a grand total of \$4,405.80. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 27, 2001, batch number 1556 (pages 1-4), with a grand total of \$148,119.50. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Lisa Gardipe as Principal, and Amber Rauch and Jeremy Rauch as Sureties, for Clerk of District Court Warrant #124440, Cause # DR99-46, issued August 28, 2001 on the Missoula County Trust Fund in the amount of \$300.00 (payment for maintenance), now unable to be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Geneva Van Horne as principal for Accounting-Payroll Warrant #268115 issued September 21, 2001 on the Payroll Fund in the amount of \$143.76 (payment for Election Judge). The warrant was deposited in the garbage and subsequently destroyed.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Hammond & Stephens, Milwaukee, Wisconsin, as principal for Missoula County Public Schools Warrant #48795 issued May 30, 2001 on the General Fund in the amount of \$2,621.90, now unable to be found. The payment was for student assignment books, wall charts, and lesson plan books.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 19 - Pay Date: September 21, 2001. Total Missoula County Payroll: \$866,716.74. The Transmittal Sheet was returned to the Auditor's Office.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-003 for the Public Works Department (RSID 8916 Fund, El Mar Water/Sewer), transferring \$10,000 from Contracted Services to Sewer System Maintenance and Repair. These funds are for cost overruns for sewer system maintenance.

Resolution No. 2001-084 – The Commissioners signed Resolution No. 2001-084, authorizing the submission of the Application and Agreement to Certifications for Application and Commitment of Funds for Montana Department of Commerce Home Investment Partnership Program ("HOME") on behalf of Turning Point/The Western Montana Mental Health Center. Missoula County has agreed to provide \$10,000 of local CDBG Program Income funds for the project.

Resolution No. 2001-085 – The Commissioners signed Resolution No. 2001-085, dated September 27, 2001, a Budget Amendment for the Sheriff's Department, in the amounts of \$570,000.00 and \$2,874.59, adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County. This amendment accepts a grant provided by the State of

Montana Department of Transportation for a mobile data computer system, and also accepts a grant from the U.S. Department of Justice for reimbursement for participation in the Bulletproof Vest Program.

Extension Request – The Commissioners signed a request from Ron Ewart of Eli & Associates for a six-month extension of the plat approval deadline for Hellgate Pines Addition No. 2, Lot 12, Block 1, Summary Subdivision, in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is April 4, 2002.

Request for Action – The Commissioners approved a request from the Director of Public Works to research the fee structure for sewer connections to Lolo RSID #901 Wastewater Treatment Plant and prepare a revised fee structure for presentation to the Commissioners. Phase 1 improvements will result in the possibility of several hundred new residential/commercial connections, which causes a review of the sewer connection fees to be timely. The request was returned to Greg Robertson, Public Works Director, for further handling.

Request for Action – The Commissioners approved a request from the Public Works Department that the Lolo RSID #901 Sewer Assessment be established at last year's level, based on the assessment by the Director of Public Works of the Phase 1 Expansion and 2002 Operating Budget. The Office of Financial Services will be informed of this decision. The request was returned to Greg Robertson, Public Works Director, for further handling.

Request for Action – The Commissioners approved a request from Doreen Culver, Bidding Officer, to award a contract for the Courthouse Roof Repair to Missoula Sheet Metal, per the recommendation of the architect, in the amount of \$169,635.00. One bid was received for the project.

Request for Action – Per the recommendation of the engineer, the Commissioners approved a request from Barbara Martens, Projects Officer, to award two (2) contracts for infrastructure improvements in Phase 4 of the Missoula Development Park to LS Jensen Construction and Paving. The contracts are for Schedule I, the Additive Alternate No. 1 and for Schedule II, for a total cost of \$440,596.60. Schedule II will be constructed next spring. Money is to be budgeted over this fiscal year and next to complete this entire infrastructure. The request was returned to Doreen Culver, Bidding Officer, for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, SEPTEMBER 28, 2001**

The Board of County Commissioners met in regular session; all three members were present.


Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated September 28, 2001, batch number 1553 (pages 1-4), with a grand total of \$17,522.29. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated September 28, 2001, batch number 1560 (pages 1-4), with a grand total of \$17,017.14. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated September 28, 2001, batch number 1561 (pages 1-8), with a grand total of \$18,782.58. The Claims List was returned to the Accounting Department.

Request for Action – The Commissioners approved and signed a letter and form for a grant from the Wallace Reader's Digest Funds for the provision of family learning opportunities in East Missoula and the Northside/Westside Neighborhoods. This grant is based on the Flagship and Family Resource models of service delivery. The County will receive \$295,084 for the first year of a four-year grant. The majority of funds will be disbursed to community organizations that provide services to children 6-10 years old and their families, which include WORD, Turning Point, City Parks and Recreation, The Art Museum, and the Library. The document was returned to Peggy Seel in the Office of Planning and Grants for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners



**MONDAY, OCTOBER 1, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out of the office all day due to illness.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 28, 2001, batch number 1563 (pages 1-2), with a grand total of \$26,335.99. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated September 28, 2001, batch number 1564 (pages 1-2), with a grand total of \$2,151.00. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending September 30, 2001.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending September 30, 2001.

Plat and Development Agreement – The Commissioners signed the Plat and Development Agreement for Sundown Ranch Estates Subdivision ("Subdivision"), located in the NW¼ NW¼ of Section 35, T 13 N, R 20 W, PMM, Missoula County, a total area of 4.79 acres, with the owners of record being Sundown Ranch Associates. The Development Agreement, dated September 5, 2001, between Missoula County and Sundown Ranch Associates, implements certain requirements of the Conditions of Approval (dated February 12, 2001) relating to the Subdivision, as per the items set forth.

**TUESDAY, OCTOBER 2, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated October 2, 2001, batch number 1565 (pages 1-5), with a grand total of \$41,658.04. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 2, 2001, batch number 1566 (pages 1-4), with a grand total of \$68,018.36. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 2, 2001, batch number 1567 (pages 1-3), with a grand total of \$47,431.27. The Claims List was returned to the Accounting Department.

Monthly Report - Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending September 30, 2001.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Request for Action – Chairman Evans signed award documentation for continuation of the Missoula County Rural Domestic Violence grant. This federal grant from the STOP VAWA Office of the Office of Justice Programs is in the amount of \$269,580. The contract documents were returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Proclamation – The Commissioners signed a Proclamation proclaiming October 2001 as Domestic Violence Awareness Month, urging all citizens to actively participate in the scheduled activities and programs sponsored by the Missoula Family Violence Council and the YWCA to work toward the elimination of violence against women and children.

Agreements – The Commissioners signed three (3) Memorandums of Agreement between the Missoula County Board of County Commissioners and Missoula Correctional Services, Inc., for the following:

- 1) Agreement for continuation of the Community Service Program, in an amount not to exceed \$91,884.00. The term will be July 1, 2001 through June 30, 2002;
- 2) Agreement for continuation of the Misdemeanor Service Program, in an amount not to exceed \$168,313.00. The term will be July 1, 2001 through June 30, 2002; and
- 3) Agreement for continuation of the Pretrial Supervision Program, in an amount not to exceed \$60,878.00, contingent upon receipt of Board of Crime Control Grant Funds. Missoula County will provide \$16,260.31 in match funds. The term will be July 1, 2001 through June 30, 2002.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Gary Rylander, d/b/a GP Systems, for the provision of County Attorney Case Management Software. The term will be October 19, 2001 through November 30, 2001. The total amount shall not exceed \$25,000.00. The County will also pay an annual maintenance fee of \$3,000.00 per year beginning July 1, 2002.

Resolution No. 2001-086 – The Commissioners signed Resolution No. 2001-086, dated October 2, 2001, a Budget Amendment for the Public Works Department to amend the Lolo RSID #901, in the amount of \$45,841.00. This amendment reflects an adjustment downward from what was previously approved, adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Contract – The Commissioners signed a Contract, dated September 28, 2001, between Missoula County (Building and Grounds) and Missoula Sheet Metal, for the reroofing of the Missoula County Courthouse. The term of the contract is as set forth in the contract manual. The total amount shall not exceed \$169,635.00. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Agreement – The Commissioners signed an Agreement, dated September 27, 2001, between Missoula County and David J. Price Construction, Inc. for roadway construction and riprap protection near Johnsrud Park. Work for this project is not permitted until the spring of 2002. Compensation is set forth in the Estimated Quantity Sheet of the Proposal attached as Exhibit A to the Agreement. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Resolution No. 2001-087 – Chairman Evans signed Resolution No. 2001-087 (superceding Resolution No. 2000-038), a Resolution of Intent to create RSID #8470, for the construction of a portion of a paved roadway known as Expressway Road from Butler Creek to DeSmet Road, and the closing of a railroad crossing. The hearing date is set for October 24, 2001, at 1:30 p.m. The RSID cost after contributions is estimated to be \$240,000.00 over a period of 15 years.

Request for Action – The Commissioners approved a Request to authorize the Chief Financial Officer to establish an interest bearing trust account for the El Mar Water/Wastewater RSID utilizing cash carry out from Fiscal Year 2001. This action will have a very small impact on investment pool and general fund interest earnings.

Extension Request – The Commissioners signed a letter to Dick Ainsworth of Professional Consultants, Inc., approving his request for a six-month extension of the final plat approval deadline for Many Rivers Summary Subdivision, in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is April 18, 2002.

Board Appointment – The Commissioners approved and signed a letter dated October 4, 2001, appointing Louie B. Knudsen as a member of the Missoula County Airport Authority to fill an unexpired term through December 31, 2003.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, OCTOBER 3, 2001

The Board of County Commissioners met in regular session; a quorum of members was present. Chairman Evans was in Great Falls participating in a Magistrate Selection Committee Meeting.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution No. 2001-089 – The Commissioners signed Resolution No. 2001-089, as follows (in full):

#### RESOLUTION NO. 2001-089 FIXING CORRECTED MILL LEVIES FOR MISSOULA COUNTY FOR FISCAL YEAR 2001-2002

WHEREAS, on August 9, 2001, the Board of County Commissioners adopted Resolution No. 2001-072 which set the Fiscal Year 2001-2002 budget and set mill levies based on certified mill values. Subsequent to that date, the Department of Revenue notified the County that the certified mill values were subject to change.

WHEREAS the Department of Revenue has now provided final mill values amounts;

WHEREAS clarifications related to the accounting for the passage of HB 124 effected the General Fund property tax and entitlement revenue estimates originally adopted in Resolution No. 2001-072;

WHEREAS additional information related to the fiscal year 2001 emergency declarations became available;

NOW, THEREFORE, BE IT RESOLVED that budgeted expenditures will not be increased from Resolution No. 2001-072.

BE IF FURTHER RESOLVED that the mill levies necessary to fund that budget will be as follows:

<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	72.69	A, B and C
Bridge Fund	4.19	
Poor Fund	4.00	
Fair Fund	0.31	
Museum Fund	1.51	
Extension Fund	1.49	
Weed Fund	2.07	
Planning Fund	2.76	
District Court Fund	6.35	
Mental Health Fund	0.48	
Aging Fund	1.13	
Park/Recreation Fund	1.03	
Risk Management	2.30	
Technology	1.18	

Child Daycare	0.28
Library	9.11
<u>SUB-TOTAL</u>	<u>110.88</u>

MISSOULA COUNTY-WIDE DEBT SERVICE

Jail	6.32
Risk Management Bond	0.60
<u>SUB-TOTAL</u>	<u>6.92</u>

TOTAL COUNTY-WIDE & DEBT SERVICE LEVIES 117.80

Road Fund	16.02
Health Fund	7.52
Animal Control	1.00

TOTAL COUNTY-ONLY LEVY 24.54

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-007 for the Fair Department, transferring \$12,000.00 from Temporary Salaries Fund to Permanent Salaries Fund. These funds are for the new Caretaker position and additional funding for the position of Accounting/Office Assistant.

Resolution No. 2001-088 – The Commissioners signed Resolution No. 2001-088, dated October 3, 2001, a Budget Amendment for the Public Works (Bridge Fund) Department for work relating to the Maclay Flats Bridge, in the amount of \$10,000, adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Other items included:

- 1) A discussion was held with Steve Johnson of the Personnel Department regarding pay exceptions. The Commissioners affirmed the exceptions discussed and requested a regular report of pay adjustments.
- 2) Discussions were held with Dale Bickell, Chief Financial Officer, regarding information from the Department of Revenue regarding Entitlement Share Calculation and Allocation. Also discussed was an emergency levy regarding the Value of Annual Certification.

Request for Action – The Commissioners approved a request from the Sheriff's Department to upgrade a support staff position, and for spending authority to make the promotion during the current fiscal year.

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Jean Curtiss. Also present were Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, Chief Civil Attorney Mike Sehestedt, County Surveyor Horace Brown and County Public Works Director Greg Robertson. Commissioner Barbara Evans was attending a Magistrate Selection Committee meeting in Great Falls.

**Pledge of Allegiance****Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$885,383.13. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Bid Award: Seed and Fertilizer for Blue Mountain Road Project (Public Works Department)**

Greg Robertson presented the staff report.

This is a bid award for a hydroseed contract which is the final touch on the Blue Mountain Road project. Bids were solicited from six local vendors. Three vendors responded, including Ibey Landscaping and Sprinklers in the amount of \$14,374.80; Caras Nursery and Landscape in the amount of \$13,223.00 and Valley Landscape in the amount of \$10,535.00. The apparent low bid is Valley Landscape. After discussions with them, their bid was found to be in order and it is the recommendation of the Public Works Department to award the bid to them in the amount of \$10,535.00. The seed mix of native grasses was developed by Jerry Marks of the Extension Office. The best time to apply hydroseed mix is in the fall so some germination takes places and it can then be watered and protected by the snow pack.

Commissioner Carey moved that the Board of County Commissioners award the bid for hydroseeding on the cut and fill slopes of the Blue Mountain Road Project to Valley Landscaping in the amount of \$10,535 as the lowest and best bid. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Placid Lake Properties Agricultural Covenant Exemption**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create an agricultural covenant parcel for that parcel described as GLO Lot 2 and Tract A, both on COS 3367, located in Section 21, Township 16 North, Range 15 West, PMM, Missoula County.

Placid Lake Properties, through Dick Ainsworth, partner, has submitted a request to create two parcels using the agricultural exemption to the Montana Subdivision and Platting Act. The current parcels are approximately 27.32 acres and 39.23 acres in size, located near Placid Lake off North Placid Lake Road. Dick Ainsworth, partner, proposes to create these two parcels for purposes of transfer to several individuals owning property adjacent to these parcels. The purpose of the agricultural transfer would be to prevent any development from occurring once the parcels have been sold. The adjacent property owners wish to keep this from happening and are willing to purchase the land in order to do this.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 3403	1987	Retracement of pre-existing leases	Placid Lake Properties	
COS 3531	1988	Relocate boundary	Placid Lake Properties	
COS 3599	1988	Occasional Sale	Tom Beers	Placid Lake Properties
COS 3681	1989	Retracement	Placid Lake Properties	
Placid Lake – East Shore Tracts #1	1990	2 Lot Minor Subdivision	Placid Lake Properties	
Placid Lake – East Shore Tracts #2	1990	2 Lot Minor Subdivision	Placid Lake Properties	

According to the records kept by the Missoula County Surveyor, the applicant has previously used exemptions to the Subdivision and Platting Act as shown above.

The Agricultural Covenant would restrict placing any buildings on the property that require sanitary services. The property cannot be developed unless the Agricultural Covenant restriction is lifted by the Board of County Commissioners.

Acting Chair Curtiss opened the public hearing.

Dick Ainsworth, partner in Placid Lake Properties, stated that this is a narrow strip of land in-between a County road and another road. The owners along the lake has asked several times over the years to acquire the property to prevent something being developed behind them. The process started out several months ago by trying to do several boundary relocations. That proved to be difficult. It was then decided to create the two parcels and have them purchased outright. Parcel A1 will be an Agricultural Covenant parcel for sure. The folks who are interested in buying Parcel A2 may want to attach it to their lot via a boundary relocation. It may be that only one agricultural parcel is created and a boundary relocation is done on the other. He would not know that definitely until next week sometime.

Michael Sehestedt stated that if approved, the Board finds that this is not an attempt to evade subdivision review. It does not obligate the petitioner to carry the action through.

Acting Chair Curtiss asked if the County road bisected the parcels from the lakefront lots.

Dick Ainsworth stated that was correct.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Placid Lake Properties to create two new parcels by use of the agricultural covenant exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Nelson Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create two family transfer parcels for that parcel described as Tract 1, COS 3758, located in the northwest 1/4 of Section 35, Township 15 North, Range 14 West.

Walt Nelson has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 25.8 acres in size located in the northwestern part of Montana, Missoula County, off Sperry Grade Road and Montana Highway 200 near the Blackfoot River. Mr. Nelson proposes to create two approximately 5 acre parcels for transfer to his son, Zachary Nelson, and to his daughter, Shannon Schmidt, and retain the remainder for his existing family home and existing commercial small business, Forest Service Catering.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 3758	1989	Parcels greater than 20 acres	Vannoy	

Mr. Nelson purchased the property in December of 1999 (12-28-99) from Sharon Nichols.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Walt Nelson was present and came forward to answer any questions the Commissioners may have.

Acting Chair Curtiss stated that the Board had to make a determination whether this was an attempt to evade subdivision review or not. She asked if Mr. Nelson was planning to give this land to his children?

Walt Nelson stated that was correct, he did plan to give this land to his children. He lives on the remainder.

Acting Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Walt Nelson to create two new 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. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Michael Sehestedt stated that this action simply approved the division of the property. It does not guarantee Health Department approval for septic systems, zoning approval, availability of utilities, access or any other public services.

#### **Hearing: Petition to Vacate a Portion of Guest Ranch Road (Condon)**

This is a petition to abandon "That portion of Guest Ranch Road lying north of Tract 4 of Certificate of Survey 123, located in Section 12, Township 20 North, Range 17 West, Missoula County, Montana."

The reasons for the request are as follows:

1. The portion of the road proposed for vacation serves a private facility at the end of the dead end road.
2. The owner of the property abutting the road maintains the road.

The following landowners have been notified: Mission Mountain Partnership LLP, P.O. Box 980, Condon, MT 59828.

Acting Chair Curtiss opened the public hearing.

Julie Titchbourne, WGM Group, stated that the 662 feet of the road on Mission Mountain School property is the portion to be abandoned. The reason for the request is that it is on their property and being maintained by them. They want to move their overhead gate to the end of the property and will continue to maintain the road and control access to the school.

Colleen Harrington stated that she was representing Mission Mountain School Partnership. The school is a private boarding school for teenage girls. When people drive up on the road, the only way they have to turn around is on school property. As this is a private facility, it is fairly distressing when people come on the property to turn around. She just wanted to emphasize the privacy of the facility and why this vacation is important to the school.

Horace Brown stated that it will be required that an easement be provided for a turnaround at the end of the County road, so maintenance equipment can turn around. That had been granted before, but it will probably need to be moved to a different location. That should be part of the vacation requirements.

Colleen Harrington stated that she understood a turnaround would be required. It was her understanding that the County had already been given an easement and the turnaround has been constructed at the point where the proposed vacation begins.

Horace Brown stated he was not sure the easement had been given. The turnaround has been constructed.

Michael Sehestedt stated that the site will have to be inspected and the decision will be postponed for a week or two until the inspection can be scheduled. That will be one of the things that will need to be resolved before action can be taken.

Acting Chair Curtiss stated that the hearing on the request was held today then a site inspection needed to be done by the County Surveyor and one Commissioner. The inspection will be scheduled and recording of the easement will be checked prior to the decision.

Michael Sehestedt stated the hearing on this matter would be continued and an inspection would be scheduled. Action will be taken in a week or two. The easement issue should be cleared up by that time.

Acting Chair Curtiss stated the hearing would be continued for two weeks and a decision would be made at the Public Meeting on October 17, 2001.

#### **Hearing: Petition to Change Two Road Names in Missoula Development Park**

Barb Martens, Projects Office, presented the staff report.

This is a request on proposed road name changes within the Missoula Development Park, Phase 1.

A petition has been received by the Clerk and Records Office for proposed road name changes. The road names proposed to be changed are described as follows:

OCTOBER 2002

"Tanager Way would be renamed Kestrel Drive and a portion of Kestrel Drive would be renamed Industrial Road. These roads are located within Missoula Development Park, Phase 1, in Section 35, Township 14 North, Range 20 West, Missoula County, Montana."

This request comes as a result of a road vacation and alteration that has already been approved within the Development Park. Two petitions were sent to the four property owners who are impacted by this change – Missoula County, USF Reddaway, Sheehan Majestic and Mergenthaler Freight. All have signed the petitions for the name changes. If approved, Tanager Way would be renamed Kestrel Drive and a portion of Kestrel Drive would be renamed Industrial Road. When the final plat was filed for Phase 1, Kestrel Drive was a loop street. Sheehan Majestic owned all six lots and requested that the road loop to the east. That request has already been approved. Industrial Road is an existing road within Momont Industrial Park and the name will continue to this property.

Commissioner Carey stated that Tanager Way would be eliminated completely. Was there any interest in renaming Industrial Road to Tanager Way.

Barb Martens stated there were quite a few existing businesses that already had addresses on Industrial Way.

Acting Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request on proposed road name changes as follows: "Tanager Way would be renamed Kestrel Drive and a portion of Kestrel Drive would be renamed Industrial Road. These roads are located within Missoula Development Park, Phase 1, in Section 35, Township 14 North, Range 20 West, Missoula County, Montana, as shown on the attached exhibit. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

There being no further business to come before the Board, the Commissioners were in recess at 1:50 p.m.

#### THURSDAY, OCTOBER 4, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated October 4, 2001, batch numbers 1568 and 1571 (pages 1-4), with a grand total of \$53,750.95. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated October 4, 2001, batch number 1570 (pages 1-4), with a grand total of \$211,030.47. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Western States Insurance as Principal for Warrant #35397, issued September 6, 2001 on the Frenchtown, Missoula County School District #40 Fund in the amount of \$77,956.00 (payment for insurance policy renewal), now unable to be found.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Cassie Clark as applicant for Missoula County Public Schools Warrant #99827 issued September 7, 2001 on the MCPS Payroll Fund (78-42) in the amount of \$42.38 (payment for wages), which was not received in the mail. No bond of indemnity is required.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Mirium Keffeler as applicant for Missoula County Warrant #268180 issued September 21, 2001 on the Accounting Fund in the amount of \$85.72, which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Amendment – The Commissioners approved and Chairman Evans signed Amendment Number Two to Task Order No. 01-07-5-21-021-0 between the Montana Department of Public Health and Human Services and the Missoula City-County Health Department, dated October 3, 2000. This Amendment increases the contract amount with discretionary money in the amount of \$2,808 (to be used for supplies and equipment), plus \$854.00 to cover the termination payout for Megan Gordon. The request was returned to the Health Department for further signatures and handling.

Memorandum – The Commissioners signed a Memorandum of Understanding between Child Care Resources and the Missoula City County Health Department for professional services related to providing a child care health program. The term will be through June 30, 2002. The total amount shall not exceed \$16,500.00, contingent upon the availability of local tax revenue from Missoula County. The document was returned to the Health Department for further signatures and handling.

Contract – The Commissioners signed a Contract, dated September 27, 2001, between Missoula County and Valley Landscaping, to provide hydroseeding services and fill slopes for the Blue Mountain Road Project. The total amount shall not exceed \$10,535.00. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Plat – The Commissioners, as owners, signed the Plat for Missoula Development Park, Phase 3D (gravel pit), a subdivision located in the SE¼ of Section 35 and the SW¼ of Section 36, T 14 N, R 20 W, PMM, Missoula County, a total of 23.45 acres, with the owner of record being the Missoula County Airport Industrial District.

Request – As per recommendation of Deputy County Attorney Michael Sehestedt, the Commissioners approved a non-exclusive easement request from the purchaser of the old county shops property, conveyed in three parcels.

2002-003

Mr. Manookian (purchaser) has requested through DJ&A a 25-foot access easement along the easterly edge of the center parcel to permit the construction of an asphalt alley serving the developed parcel.

Request for Action – Chairman Evans signed a request from the Sheriff's Department to accept a \$50,000 block grant for Missoula County from the National Highway Traffic Safety Administration for the implementation of the "Click It or Ticket" Program. This purpose of this program is to improve traffic safety with an enforcement and public safety advertising campaign to increase the use of seat belts and child safety seats. The document was returned to Don Morman in the Sheriff's Department for further handling.

Other items included:


- 1) Dale Bickell, Chief Financial Officer, gave an update on the status of the Miller Creek Trust. As of July 1, 2001, the balance is \$342,506.70.

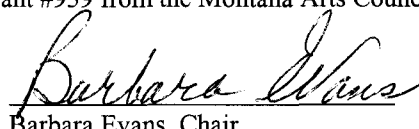
The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, OCTOBER 5, 2001**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Commissioner Curtiss participated in a tour of the Grant Creek area. Chairman Evans and Commissioner Carey were out of the office all afternoon.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and The Art Museum of Missoula for a Montana Arts Council (Coal Tax Funds) Cultural and Aesthetic Special Projects Grant. The total amount shall not exceed \$20,000.00. The term will be July 1, 2001 through June 30, 2003, contingent upon receipt of funds for grant #939 from the Montana Arts Council.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

**MONDAY, OCTOBER 8, 2001**

The Courthouse was closed for the Columbus Day observed holiday.

**TUESDAY, OCTOBER 9, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 20 - Pay Date: October 5, 2001. Total Missoula County Payroll: \$887,278.29. The Transmittal Sheet was returned to the Auditor's Office.

Final Plat Approval – At the Planning Status meeting with the Office of Planning and Grants, the Commissioners approved the final phasing plan as presented by the Miller Creek View Addition Subdivision for Linda Vista, Eleventh Supplement. The Commissioners also approved revising Miller Creek View Addition Subdivision Condition of Approval #20 to read: "The applicant shall mitigate the impact that the subdivision will have on Missoula Valley air quality in a manner to be approved by the Missoula City-County Health Department, prior to final plat approval."

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2001-090 – The Commissioners signed Resolution No. 2001-090, dated October 9, 2001, providing Notice of Redemption to the Bond Registrar, Davidson Trust (fka TrustCorp), Great Falls, Montana, calling all 1994A Workers Compensation Bonds. These Bonds were issued in 1994 to retire the MACo workers compensation bond obligation of Missoula County and to capitalize the County workers compensation self insurance program.

Resolution No. 2001-091 – The Commissioners signed Resolution No. 2001-091, dated October 9, 2001, providing Notice of Redemption to the Bond Registrar, Davidson Trust (fka TrustCorp), Great Falls, Montana, calling all 1994B Workers Compensation Bonds. These Bonds were issued in 1994 to retire the MACo workers compensation bond obligation of Missoula County and to capitalize the County workers compensation self insurance program.

Resolution No. 2001-092 – The Commissioners signed Resolution No. 2001-092, dated October 9, 2001, a resolution to submit the question of retaining the City of Missoula's existing jurisdictional area beyond the City Limits for the purpose of enforcing building codes. A mail ballot election will be held on December 18, 2001 by the record owners of real property in the jurisdictional area outside the City of Missoula's corporate limits within which the City of Missoula has enforced building codes.

Request for Action – As per recommendation by the Offer Review Committee on October 5, 2001, the Commissioners approved and signed a counter offer by Aldo and Niki Sardot for the purchase of Lot 9, Block 3, Missoula Development Park. The lot price is \$181,210.00. The counter offer is set forth in the amendment thereto. The document was returned to Barb Martens in the Projects Office for further handling.

Request for Action – As per recommendation by the Missoula Development Authority on September 20, 2001, the Commissioners rejected an offer for an amusement park on Lot 10, Block 9 and Lot 10, Block 12, Missoula



Development Park, because it does not comply with the Missoula Airport Development Park Master Plan. The document was returned to Barb Martens in the Projects Office for further handling.

Plat and Agreement – The Commissioners signed the Plat and Improvements Agreement for Linda Vista – Eleventh Supplement, a 7-lot subdivision located in the NW¼ of Section 13, T 12 N, R 20 W, PMM, Missoula County, a total area of 2.45 acres, with the owner of record being The Lloyd A. Twite Family Partnership. The improvements that remain to be completed are construction of streets, sidewalks, and storm water drains. The estimated cost is \$48,165.00. The improvements shall be completed no later than two years from the date of filing the plat.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, OCTOBER 10, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated October 9, 2001, batch number 1569 (pages 1-3), with a grand total of \$7,327.66. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 9, 2001, batch number 1573 (pages 1-4), with a grand total of \$150,858.96. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 9, 2001, batch numbers 1572 and 1577 (pages 1-5), with a grand total of \$36,643.91. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 9, 2001, batch number 1574 (pages 1-2), with a grand total of \$1,225.07. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 10, 2001, batch number 1576 (pages 1-5), with a grand total of \$33,455.77. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 10, 2001, batch number 1579 (pages 1-3), with a grand total of \$8,813.16. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming USI, Inc., Bridgeport, CT, as Principal for Warrant #45477, issued March 29, 2001 on the Missoula County Public Schools Warehouse Fund in the amount of \$374.60 (payment for overhead projector roll film), now unable to be found.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending September 30, 2001.

CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Office Rental Agreement between John H. Sytsma (Landlord) and SSTEP – OPG, Missoula County, for office space located at the Sytsma Law Office building at the corner of Highway 83 and Locust Lane in Seeley Lake, Montana. This lease, effective October 1, 2001, shall be in effect for a month-to-month term. Rent is \$100 per month, which is included in the VOCA grant from the Board of Crime Control.

Agreement – The Commissioners signed three (3) Memorandums of Agreement between the Missoula Board of County Commissioners and the following entities for Montana Arts Council (Coal Tax Funds) Cultural and Aesthetic Special Projects Grants:

- 1) The Swan Ecosystem Center, in an amount not to exceed \$2,800.00. The term will be July 1, 2001 through June 30, 2003, contingent upon receipt of grant #909 funds from the Montana Arts Council.
- 2) The Missoula Children's Theatre (MCT), in an amount not to exceed \$10,000.00. The term will be July 1, 2001 through June 30, 2003, contingent upon receipt of grant #919 funds from the Montana Arts Council. These funds will help support the *Rural Montana Tour Project*.
- 3) Rocky Mountain Ballet Theatre, in an amount not to exceed \$7,000.00, contingent upon receipt of grant #932 funds from the Montana Arts Council. Proposed is the creation and presentation of a new full-length ballet to add to the current repertoire of original work.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Ibey Nursery and Landscape for Missoula Development Park landscaping restoration work at USF Reddaway, Endobiologics, Spectrum Pool, CM Manufacturing and DeSmet School. The work shall be completed no later than October 31, 2001. The total amount shall not exceed \$15,004.25. The document was returned to Barb Martens in the Projects Office for further handling.

At the Clerk and Recorder/Treasurer's Meeting, held on October 10, 2001, the Commissioners approved tax abatement requests for a waiver of penalty and interest for the following

- 1) Jeffrey and Melaune Lazott, Missoula, Montana, for TaxPayer ID #90220500;
- 2) Suzanne MacKillop, Lolo, Montana, for TaxPayer ID #1790208; and
- 3) Wayde Whitmire, Missoula, Montana, for TaxPayer ID #1762101.

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**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Deputy County Attorney Colleen Dowdall, Chief Civil Attorney Mike Sehestedt and County Surveyor Horace Brown.

**Pledge of Allegiance****Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$503,105.95. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Annexation to Florence Rural Fire District (Frank Heston)**

Gordon Geiser, Florence Rural Fire District, presented the request.

A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Florence Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of the owners of the privately owned land in the area to be annexed and a majority of tax-paying freeholders within the area described, thereby meeting the requirements of 7-33-2125 MCA, for annexation of adjacent territory.

The area to be annexed is described as follows: "Tract 2 of Certificate of Survey 1578 located in the northeast 1/4 of Section 23, Township 11 North, Range 20 West, in Missoula County, Montana. (Tax ID Number 6003013)."

Frank Heston requested to be annexed into the district and was provided the proper paperwork to do that. It does not bear any undue burden on Mr. Heston, provides him with fire protection and firms the boundary line between fire jurisdictions. The Florence Rural Fire District Board has accepted the annexation.

Chairman Evans opened the public hearing. There being no comments, the public hearing was closed.

Chairman Evans stated that no written protests had been received.

Commissioner Curtiss moved that the Board of County Commissioners annex "Tract 2 of Certificate of Survey 1578 located in the northeast 1/4 of Section 23, Township 11 North, Range 20 West, in Missoula County, Montana (Tax ID Number 6003013)" into the Florence Rural Fire District. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Budget for the Local Law Enforcement Block Grant**

Sheriff Doug Chase: Chairman Evans, Board of County Commissioners, staff and audience members, I come before you today as required by those who authorize the Federal Block Grant monies to this local law enforcement agency. We have, as already required, held our citizen's review committee consisting of Mike Sehestedt from the County Attorney's Office, the Honorable Judge John Larsen, Jon Fimmel, Principal of the Frenchtown High School District and myself. Judy Wing from United Way was a representative, but was unable to attend that meeting. However, I met with her at a later date. The committee has recommended unanimously that our proposal is an excellent use of the \$55,938 granted in this Block Grant. You will note from your copy of the Action Request Form on where we plan to spend these monies. Our detective division is currently down four officers. We intend to use \$22,900 for a property clerk, one-half time position for two years. This will allow the detective presently doing this to return to full time investigative assignment. We would like to spend \$17,000 on a robot for our emergency ordinance disposal team primarily. We have been costing these out over the past years and the cost has risen to the neighborhood of \$125,000-\$150,000. A lieutenant in the Billings/Yellowstone County Sheriff's Department has, on his own, formed a business and has made robots and he was over and gave an exhibition of this robot's abilities and it was concluded by our staff and the emergency ordinance disposal team that this robot certainly would meet or exceed the needs presently that we have. It also can be used in other area and it's a phenomenal break on the price. We have been attempting to get a robot for the last 4-5 years and have been unsuccessful to do so through a Federal government agency. This robot is due on line here in another month. Training, the third expenditure, would be training in the area of \$10,000. The department has increased in its personnel line due to the new Detention and Corrections Facility on Mullan Road, plus our downtown area, to where we have a number of officers and we certainly put a strain on the training budget that the Personnel/Human Resources Department controls. So this would be used for the purpose of trying to alleviate the strain placed on their money line. The fourth would be overtime, to \$6,038. This is just for unanticipated events, however, now, with four of our officers being called into the military to include one up north of our resident deputies, we believe that the overtime expenses may grow exponentially beyond what we envisioned when we did the budget this year. In general, that is the amount of the \$55,000, that's the total that we would use in the areas that we plan to make the expenditures. If you have any questions, I'll try and answer them. If the audience has any questions, I'll try and answer them. And then, finally, I'd ask the Board of County Commissioners to accept the citizen's committee recommendation so that we may receive these monies.

Chairman Evans: Does this robot have a name? R2D2?

Sheriff Chase: Not yet. I make the mistake of giving it a male name yesterday when I spoke to somebody ...

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Audience Member: Shame on you.

Sheriff Chase: Yes, you're absolutely correct and I have been corrected, so, I don't know how we're going to decide whether this, what gender name this robot will have, but we certainly will examine all areas before making the decision.

Chairman Evans: Maybe we should just call it, "It." Thank you. This is a public hearing. Does anyone wish to speak on the use of this money or the application for the grant?

Norma Kaphammer: I'd like to say it is a very good thing. I am Norma Kaphammer from the Ponda Rosa. I think it is a very good thing that you do get a robot, because they're used in so many different things to help people, like New York, for instance, is one good example. And I hope you get it.

Chairman Evans: Thank you Norma. And he will tell us what he decides to name it when it's done.

Sheriff Chase: I think "It" may save me a lot of turmoil in my life.

Chairman Evans: There being no comment, we will close the public hearing. Do I hear a motion?

Commissioner Carey: I'll move that we accept the citizen's advisory council recommendation to expend the grant monies in the manner the Sheriff has just presented.

Commissioner Curtiss: I'll second that motion.

Chairman Evans: Any discussion? All those in favor, say Aye.

Commissioner Curtiss: Aye.

Commissioner Carey: Aye.

Chairman Evans: Aye. Motion carries.

#### **Hearing (Certificate of Survey): Cyr Family Transfer**

Michael Sehestedt presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as COS 2850 located in Section 34, Township 15 North, Range 22 West.

James Cyr has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 22.02 acres in size located in the northwestern part of Missoula County, off River Run Road and Interstate 90, near the Clark Fork River. Mr. Cyr proposes to create two approximately 9.75 acre parcels for transfer to his two daughters, R. Jolene Sherry and Amber J. Armitage, and retain the remainder for himself.

Mr. Cyr purchased the property in May of 2001 (5-1-2001) from Philip Cyr.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Chairman Evans opened the public hearing.

Jolene Sherry was present, as was her father James Cyr. They were available to answer any questions the Commissioners may have.

Michael Sehestedt explained that this exemption had been abused in the past. The Board needs to make a determination if this is truly a family transfer or an attempt to evade subdivision review.

Jolene Sherry stated she and her sister were both planning to build homes on the property.

Jim O'Toole stated he was from Ponda Rosa Acres. He did not hear an explanation of how this relates to the Comprehensive Plan. He applied for a similar exemption some time ago and was denied based on the one house per five acre limit.

Colleen Dowdall stated that from her recollection the family transfer in his case was not appropriate because family transfers are not permitted in platted subdivisions. Ponda Rosa Acres is a platted subdivision. In this case, the Cyr property is not within a platted subdivision. The Comprehensive Plan is not part of the inquiry in Missoula County as to whether a family transfer is appropriate. It is an exemption from subdivision review and that question is not asked.

There being no further comments, the public hearing was closed.

Commissioner Curtiss moved that the Board of County Commissioners approve the request by James Cyr to create two new 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated that Mr. Cyr would receive a letter approving this exemption. The approval is for the division of land only, it does not mean the County will put in roads. To build on the property will still require Health Department review for septic systems, etc.

**Hearing (Certificate of Survey): Maclay Boundary Relocation (2 applications)**

Colleen Dowdall presented the staff report.

The initial request is from Bruce and Mary Maclay represented by their son, Tom Maclay, for a parcel of land located on Lots 19, 20, 43 and 44 of Macintosh Manor Subdivision and the south half of Section 15, Township 11 North, Range 20 West. Mr. Maclay is requesting a boundary relocation, which are usually not heard at a Public Meeting. Because the result of the boundary relocation is five lots smaller than the original lots, it was decided to bring the request to the Board for review. Mr. Maclay owns five 10-acre tracts and he wishes to relocate the boundaries to make five 2-acre tracts, which would result in a remainder.

Chairman Evans opened the public hearing.

Tom Maclay stated that this relocation fits the landscape better than the lots that were created in 1913.

Gordon Geiser asked if these lots were on the west side.

Tom Maclay stated that was correct.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the boundary relocation for Tom Maclay as described. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Colleen Dowdall stated the second application is adjoining these five parcels, for Lots 17, 18, 19, 41 and 42. This area is part of the remainder after the smaller lots are created. Tom Maclay is requesting that this boundary relocation be approved for five parcels – 2 acres, 2.3 acres, 30 acres, 12 acres and 6 acres in size. Again, this starts with five 10-acre parcels and ends up with five parcels of varying sizes. This is all part of Tom Maclay's development plan for that area, not wanting to sell these in 10-acre parcels that are platted not taking into account the landscape.

Chairman Evans opened the public hearing.

Tom Maclay stated that his comments from the previous application applied in this case as well.

There being no further comments, the public hearing was closed.

Commissioner Curtiss moved that the Board of County Commissioners approve the boundary relocations for Tom Maclay as described. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Consideration: Ponda Rosa Acres Lots 23A and 23B (Near Alberton)**

Jennie Dixon, Office of Planning and Grants, presented the staff report.

She stated that she was presenting the report for Dale McCormick, the case planner, who was attending a seminar today.

This is a request from Terry and Ruth Burke to subdivide Lot 23 of Ponda Rosa Acres. The original Ponda Rosa Acres Subdivision was created by Certificate of Survey in 1966. Lot 23 is approximately 5.25 acres in size and the request is to divide it into two lots, 1.75 acres and 3.5 acres in size. The property is located almost to Mineral County on the west side of Missoula County near Alberton. It is accessed from Terrace View Drive. The subdivision is situated between the Clark Fork River and Interstate 90.

This area is unzoned and the 1975 Comprehensive Plan designates this area for Medium Density Rural Residential Use, which recommends a density of one dwelling unit per five acres. In March of 2000, a Subdivision for Lease or Rent was approved on Lot 23. At the time of that request, there were two existing homes on the property. The Burkes had an existing home and constructed a new home with the intention of abandoning the older house, which was how the septic permit was issued. They revised their intentions and sought approval of a Subdivision for Lease or Rent. They received septic approval and Subdivision for Lease or Rent approval in the spring of 2000. There are two septic systems and two dwellings on the property. This request is to survey a line in on the Subdivision for Lease or Rent to create two lots. Staff has recommended approval of this request with four conditions.

Access is from Terrace View Drive. There is a private driveway that crosses proposed Lot 23A that would be a shared driveway then onto Lot 23B for the home on the east side of the property. Terrace View Drive is a County maintained gravel road within a 54 foot right-of-way. The applicants have requested a variance from the requirement that Terrace View Drive have a 60 foot right-of-way. The applicants have also requested a variance from the requirement for sidewalks or pedestrian walkways in the subdivision. Staff has recommended approval of both variance requests.

There is a shared well and both homes have individual septic systems. The original staff report had five conditions of approval, but the Public Works Department felt that Condition 5 may be deleted because they can do a check on appropriate easement designation on the plat if it comes through for final approval. Staff is recommending approval of this request with four conditions.

Condition 1 is a waiver of the right to protest a future RSID/SID for a public water system for fire protection purposes. Condition 2 is that the Frenchtown Rural Fire District approve plans for a turnaround and driveway surface. Condition 3 is that the applicant file a development agreement which includes a Riparian Resource Management Plan. Staff has recommended that some changes be made to the Riparian Resource Management Plan, including a more detailed description of the vegetation; an attachment showing the boundaries of the riparian area; permitted or prohibited uses in the riparian area; specific maintenance activities such as weed control methods or vegetation removal; and

construction practices to minimize impacts to riparian vegetation. The riparian area is also shown as a no-build area on the plat. Condition 4 is that the applicant file a development agreement with Missoula County requiring lot owners to maintain their lots in compliance with the Montana Noxious Weed Control Act and the Montana County Noxious Weed Management Plan.

John Kellogg, Professional Consultants, Inc., developer's representative, was present, as were Mr. and Mrs. Burke and Zane Sullivan, their attorney. He thanked staff for their careful consideration of the proposal. This proposal is to physically split a lot that has already gone through the Subdivision for Lease or Rent process. The site is overlooking the Clark Fork River. The west half of the property is sparsely timbered and is where one residence is located. The east half of the property opens out to a meadow that overlooks the river, and is where the new residence is located. The steep bank to the Clark Fork River has a well established riparian area. The plat shows the steep bank, the riparian area and a 50 foot buffer strip as a no build area. The two residences share a gravel driveway and a maintenance agreement is included in the proposal. Petty Creek Fire Station for the Frenchtown Fire District is about 1.5 miles from the location down Terrace View Drive. The residences currently have pre-existing approval from the Montana Department of Environmental Quality for this proposal and they currently have approved septic permits for the two systems. The proposal conforms with subdivision regulations along with the recommended variances. It conforms with the previous County subdivision plat approval and as Jennie Dixon noted, with the Comprehensive Plan. The Comprehensive Plan provides guidance for the overall density but indicates allowances for flexibility and design that can be considered when no adverse impacts to resources would occur. The Comprehensive Plan is not a zoning resolution, it is a document to guide development. He emphasized that staff found this proposal to be in substantial compliance with the land use goals for this area. There are five parcels in the vicinity of this proposal that are under five acres in size. This proposal does not break new ground, it is pre-existing in the area. The impacts of this subdivision are minimal. Terry and Ruth Burke are aware of the staff's recommendation and conditions of approval. They are in agreement with them and will comply with them.

Chairman Evans asked for public comments.

Bill Wagner: Good afternoon Commissioners. My name is Bill Wagner and I'm an attorney with Garlington, Lohn & Robinson. I'm here to speak in opposition to the subdivision application. My clients are the immediate neighbors of Mr. and Mrs. Burke, Timm Vogelsberg and his wife Gail McGregor. I have been representing them for a number of years and, in fact, represent them in litigation concerning this particular matter, an area concerning the covenants in Ponda Rosa Acres Subdivision. I have prepared written comments with regard to this matter, I've got three sets for the Commissioners, one for OPG and also one for Mr. Sullivan. I thought it would be Mr. Tabaracci, but none the less I'll give one to Zane at this time. I am not going to read my comments into the record. I will be quite brief. As the Commissioners know, I'm usually on the other side of issue like this, I often represent developers and all I can say about that is that this development has occurred. It occurred in 1966. My clients, and others that will testify today, purchased property believing that the density would be as represented in the subdivision plat and that there would not be higher densities. The reasons for our opposition basically are the covenants that affect the real property, the Comprehensive Plan designation of one unit per five acres. As far as John Kellogg's comments are concerned, I agree with them. The Comprehensive Plan is a flexible guideline, not a fixed regulation. Nevertheless, Frank Kibbee, one of the owners of lots within this subdivision, but not subject to the covenants, tried to split his lot into three acre lots and he was denied because of the Comprehensive Plan and this plan should be treated no differently. The third reason for our opposition is the fact that there is a prior approval by this Board of this lot for two homes on one lot, virtually a Subdivision for Rent or Lease. In that regard, we believe there has been some bootstrapping here, and I think the record clearly will indicate that. The record indicates that when an application was made for the building of the second home, the matter was not thoroughly investigated. The second home was built and at that time it was discovered that the sanitation permit was needed. There wasn't even one for the prior home. That was probably an oversight, either it wasn't obtained or it wasn't recorded. Nevertheless, that matter was taken care of. Later, however, when the application for the second sanitation permit was obtained, it was obtained on the basis that, and with the representation that, the existing home and the existing septic system would be abandoned and no longer used. And we know that that did not occur. When this matter came to Colleen Dowdall's attention, she advised Mr. and Mrs. Burke that they needed to look at the matter and needed to hire private counsel. They did that. Nonetheless, the application for the permit through the City-County Health Department indicated again that the existing permit, existing drainfield, would be abandoned and it was not. Mr. and Mrs. Burke later came in with an application for Subdivision for Rent or Lease and that was approved by this Board and that is what has led us to today. After that happened, my clients filed a lawsuit against the Burkes alleging that they have violated the covenants and that lawsuit has been sitting in abeyance for some time but apparently will now be reactivated. Nonetheless, the situation is one of bootstrapping. We have heard that if there is a prior approval of this Subdivision for Rent or Lease that that gives the Commissioners little discretion to deny the application that's now before you. And I disagree. I think that the record will reflect that the prior subdivision application and also the prior application for the septic approval were done on the basis that the older home would be abandoned. I've told my clients, Timm and Gail, that they needed to be prepared to come and testify today. And I said also that my experience in dealing with the Commissioners is that you needed to talk to your neighbors and have them, if they're concerned about this, come to the meeting. I had no idea that I would have filled this room, but I didn't, my clients did. Gail and Timm have gone door to door, they've talked to people and a lot of those people are upset about this matter and therefore, I'm going to sit down and let them do their talking. I will say that my clients did elicit comments from various people. I've received a fax this morning from Ross and Janet Hays in the form of a letter that's included in my packet. It is dated yesterday and addressed to the Commissioners and they asked me to read this into the record and therefore, I will do so.

*"Dear Missoula County Commissioners:*

*We both wish to express our complete opposition to any and all requests for subdivision in the Ponda Rosa Acres, including the proposed subdivision of Lot 23. Unfortunately due to a serious illness in the family we are unable to live in Montana right now. However, we wanted to express our feelings on this subject. It has always been our understanding that per the covenants our property in the Ponda Rosa Acres could not be subdivided, and this is one of the reasons that we purchased our home. We felt that a log home on a 5 acre parcel with Clark Fork River frontage was a good investment and one that our family could enjoy for years to come. This is a special dream come true for us to own this property. We are dismayed to hear that someone is*

*trying to get approval for this subdivision, and feel that approval for this subdivision would set a dangerous precedent for our beautiful rural area. Our property means a lot to us and from living in other areas, we know what happens when people start subdividing. Once one property owner is allowed to subdivide this will be an open invitation for others to do the same. The next step will be for someone to ask to subdivide into 1/3 or 1/4 acre parcels. What was once a special place will become just another road with lots of houses on them. We feel that subdivision could adversely affect our property values and property taxes. In addition, subdivision will impact our resources. Some of us have water rights for our property. How would the water rights be subdivided? Our roads are narrow, and either dirt or with a thin layer of asphalt over them. Further subdivision would impact these roads, cause congestion and endanger our children. If every resident got permission to subdivide, this could create a big problem. What about the impact on Alberton's fire department, schools, well water, etc? Our suggestion to any property owner in Ponda Rosa Acres who no longer wants to own this amount of property is to sell the property as 5 acres per the covenant. Then they will be free to find another property with the acreage that they want or where there are no covenants limiting subdivision. Thank you in advance for taking time to really assess this situation (I believe they mean assess this situation) and to think about the negative impact subdivision could have for years to come on our community and families. We respectfully request that the Missoula County Commissioners vote NO to subdivision for Lot 23 or any other lot in the Ponda Rosa Acres. These lots were originally subdivided into 5 acre lots and sold as such with covenants. Voting yes would not be just voting yes for Lot 23, but inviting further unwanted development. Please let us keep our wonderful rural community the way it is. Thank you. – Sincerely, Janet and Ross Hays."*

Again, I've put my comments in writing, they're before you in the record. As far as other comments are concerned, nothing rehearsed. I did not expect this many people today. I'm going to let the people who live out there give you their comments and I'll be available later to answer questions. Thank you.

Chairman Evans: Thank you Bill. Anyone who would care to speak, either in favor of or in opposition to this, please come forward, give us your name and address.

Frank Kibbee: I'm Frank Kibbee from the Ponda Rosa. The wife and I and the children own Lot number 7 and Lot number 1. Lot number 1 was in part of the subdivision but was not included in the covenants when the subdivision was made. Three years ago I tried to subdivide it into three acres parts. It's a 16 acre lot, by the way. And the Planning Board told me that I could not do it because everything in the Ponda Rosa was five acres, so therefore we divided it into five acres. After here, when the new building on Lot 24 was being built, I went to the Planning Committee and Board and asked them what the situation was since I couldn't build or subdivide in three acres why there was two houses being built on that one and they assured me that as soon as the second house was being finished that the first house would be destroyed, that that was the conditions of building the second house. And now, all of a sudden, people are changing their minds and I can't understand this. If this happens, does this mean that we can take all of our lots and subdivide them in any way that we want to and all we have to do is come to the County Commissioners and get your okay to do this. I can't understand how this got started or what's going on. It seems very unfair to me. Thank you.

Chairman Evans: Thank you Mr. Kibbee. Anyone else who would care to speak.

Charlie Rock: Yes, I'm Charlie Rock and I own a five acre tract, 1022 Meadow Lane, and we have a fine well, one of the best out there and if we have a lot more people who subdivide this there will be a lot more wells in, people will run out of water, certainly. More septic tanks, drainfields and so forth. And I've owned this place since '73 and we keep good care of it and I'm against any kind of a subdivision. Thank you.

Chairman Evans: Thank you Charlie. Anybody else who would care to speak.

Karen Stephan and Kevin Allen: Hi, I'm Karen Stephan. And I'm Kevin Allen. We reside at 29805 New View Lane, also known as Lot number 43. And if I could just read this letter that I faxed you yesterday, because it states, and I'm too nervous to try ...

Chairman Evans: We don't bite.

Karen Stephan: Commissioners Evans, Carey and Curtiss: We appreciate the opportunity to address the request for a proposed subdivision of Lot 23 in Ponda Rosa Acres located near Alberton, Montana. As the property owners of Lot 43, we are writing this letter to object to the proposed subdivision and respectfully request that you consider our comments and those of other landowners in our community when making your decision. Purchasing our property was a huge decision and major investment for us and we looked long and hard for the perfect piece of land to buy and turn into our dream property. We found that in the 5.2 acres we purchased in Ponda Rosa Acres in July, 1997. Since that time, we have enjoyed the beauty and serenity of living in the woods, the view of the Clark Fork River from our living room couch and all types of wildlife. It is truly like living in paradise, and family and friends who visit our home tell us how fortunate we are to have found this property outside the hustle bustle of the city. We agree. Having lived and worked in Missoula all our lives, we appreciate the tranquility of living in Ponda Rosa Acres and look forward to many years of enjoyment on our property. We are concerned about the request to subdivide Lot 23 for several reasons. When we considered purchasing our property, one of our main concerns was the number of people living in the area. We were pleased to know that almost all of the lots were occupied and that future growth would be minimal or even nonexistent. Our reading of the protective covenants and the information we received from realtors and neighbors was, and still is, that all lots could only have one single family dwelling on them. This protective covenant was very instrumental in our decision to purchase this property. We also understood that Ponda Rosa Acres was already divided into approximately five acre lots so we never even had to consider the fact that there would be more than one single family dwelling on a five acre lot. Regarding the specific lot in question, we were surprised when someone began living in the older home because we were told by the Burkes when they were building their new log home that the house they had purchased with the property was in poor condition and that they were going to tear it down. This conversation took place when we met them while we were burning weeds on our property. They were on a family bike ride, they are a very nice family by the way, and we took that opportunity to introduce ourselves to our new neighbors.

We visited with them awhile and told them we admired the log home they were building and asked what their plans were for the other home because there was supposed to be one home on five acres. They advised us that the house was in poor condition and it was going to be torn down. We accepted that explanation even though as we took walks and rode our bikes past the property, we didn't think it was in that bad of shape on the outside, but we had never been inside. We also wondered when they were going to tear it down and if they were going to salvage any of the materials, decking, etc. However, it now appears as if it must be in pretty good shape because someone has been living in it for some time. We feel this is unfair to the landowners in the area because we all believed there could only be one single family dwelling on a lot. Additionally, we are very concerned that if the County allows this lot to be subdivided, it will set a precedent for others to attempt to do the same thing on currently developed and undeveloped lots. The current landowners who have worked hard to maintain their properties and enjoy the peacefulness of the area would end up paying the price, financially and emotionally, for further development in the area, which development would no doubt affect the desired tone and tranquility of the subdivision and would detract from the attractiveness and value of the other lots. As you may know, many residents in the subdivision are retired and have limited incomes and do not have the financial or emotional strength to deal with further development. We too do not have the financial or emotional strength to deal with further development which would likely include additional road and shared easement maintenance, a sewer treatment facility, the cost of building and maintaining a community water facility and other costs. We are very concerned right now with the water availability in this time of drought and further development would potentially lead to serious water problems for the residents. Additionally, there are many health considerations, including dust control, septic and sewer systems and drainfields and water quality. In summary, we are asking that you please carefully consider the Burke's request and deny the proposed subdivision. The residents of Ponda Rosa Acres have sought out this peaceful community to live in because of the tranquility it promises and would appreciate the opportunity to maintain the quality of life they are accustomed to in this beautiful undeveloped area. Thank you for your consideration of this letter and the concerns of our neighbors.

Chairman Evans: Thank you to both. I assume you agree.

Kevin Allen: Yeah.

Chairman Evans: Anyone else who would care to speak?

Dee Woods: Hi, I'm Dee Woods, also a Ponda Rosa Acres resident and echo their sentiments because we also purchased our land after studying the covenants stating that it was five acre parcels, one single dwelling per five acres. What one of my main concerns about this issue is is that the map doesn't really point out the uniqueness of this area. The river totally borders this land on one side and the Interstate borders it on the other. So we are very limited as to our road access. In fact, the one and only road into this whole development is Terrace View. This was pointed out to us during the chlorine spill as we only had one route to get out of there. Last week was another issue in point of the situation when a power line was installed over the river by Petty Creek and they set up their truck with their bucket on it, putting out their side level things and there was no way to get past that. Had there been a fire call, that fire truck would not have been able to respond to get out of that area. So, that's one of my concerns. According to Dale McCormick when I brought this up, he stated that had this division been brought up, had the Ponda Rosa Acres been brought up for approval under today's plan, it would not be approved because it does only have one road in and out of there. So, taking that into consideration, it is of grave concern to me to have any more development done up there so I also oppose this subdivision.

Chairman Evans: Thank you very much. Anyone else who would care to speak?

Joe Abramavage: My name is Joe Abramavage, I live on Meadow Lane in the Ponda Rosa. My wife and I own two pieces, two five acre pieces. We definitely do not wish to have any further subdivision in the area and mainly because of the precedent setting if this is allowed, because as other people have stated, once you start the ball rolling, it pretty damn hard to stop.

Chairman Evans: Thank you. Anyone else who would care to speak?

Timm Vogelsberg: My name's Timm Vogelsberg. My wife Gail and I own Lot 22 and I continue to be amazed that we're here. I've put all my comments down on paper for you, I'd like them entered into the record and I'll go over them as quickly as I can. The reasons that we shouldn't be here today include the Comprehensive Plan, the Ponda Rosa Acres covenants, the State/County conditions for approval of the new house and septic system, the promises of the Burkes to tear down the old house and the lawsuit concerning this very issue. Given all of those issues, it's surprising. One of things that we did when we found out about this and we actually had no opportunity to provide input into the Subdivision for Lease or Rent, but when we discovered there was an application for subdivision, we did a survey of the 50 original lot owners and we've got more than 80% response now in letters that have come into Planning and Grants as well as some to the Commissioners and some to other folks. So we have multiple letters of more than 80% of the lot owners who have responded and said they don't want a subdivision. We've also initiated the process to clarify the covenants. There's argument as to whether the covenants are clear in the denial of the ability to have a subdivision and that's a legal question. Clearly, we believe the intent of the covenants has always been one house per lot. So, we've initiated the process to clarify the covenants and change the language. The language will very clearly say no subdivisions. The second piece that I mentioned about concern is the State and County documents. I just want to briefly reference some of the documents and some of the information as quotes that we pulled out of these documents. The first one is from the State of Montana Department of Environmental Quality Certificate of Removal of Sanitary Restrictions for Lot 23. The quote says "that the lot shall be used for one single family dwelling." These aren't my words, these are County office words, or State office words. The second section I wanted to quote, "that the existing residence located on the west end of the lot shall be removed or destroyed before final approval of the new septic system and that the present sewage disposal system on Lot 23 shall be abandoned and its reuse prohibited." The third section from that same one that I wanted to quote was basically the one that says "that any departure from criteria set forth in these approved plans in said subdivision without department approval is grounds for injunction by the Montana Department of Environmental Quality." There's grave departure, there's no injunction. The second one, the Executive Summary from the Burke Subdivision for Lease or Rent. The quote, "the lifting of sanitary restrictions for the second dwelling requires that the original septic system be abandoned." The second quote



from that same document, "currently the applicant is in violation of the permit for the new house because of the failure to abandon the second system." The third one is a letter from the Burkes to the Environmental Health Specialist, dated July 14, 1998, "our intentions are to construct a new home and a new septic system and then abandon old house and old septic system. There will not be two systems on the property." Later correspondence the Burkes indicated that they did in fact abandon the older home for one year. They use a very different definition of abandon than I've been able to find in Webster's Dictionary. A letter from Colleen Dowdall to Terry and Ruth Burke, dated November 2, 1999, "I expressed surprise that you have been allowed to build the additional house without going through lease or rent subdivision." A letter dated December 23, 1999 from Environmental Health Division to Terry and Ruth Burke, the quote, "you currently have a new home that has an unapproved septic system. The documents submitted for the Removal of Sanitary Restrictions from the State Department of Environmental Quality and information submitted for obtaining a sewer permit from this office stated that you would abandon the old residence and septic system when the new house was completed. This has not been done, consequently you are in violation of your permit." The next one, Section F, the Missoula City-County Health Department, Sewer Permit and Application, Permit #98-289 Special Conditions, "existing septic system must be disconnected 6 weeks after approval of new system." Section G, Missoula City-County Health Department Individual Sewer System Inspection Report, "previous residence requires removal." That's just a short piece of some of the information within County documents indicating that the County conditions were not followed. How we got to a Subdivision for Lease or Rent and now a subdivision is beyond me. Another comment that actually supports comments other folks made, this comes from Montana Fish, Wildlife and Parks, letter dated August 10, 2001, "we wonder what is to preclude the sheds on Lot 23B, for instance, from being developed into cabins or guest houses and then subdivided again, further exceeding the Plan's density." That's our fear. I've heard the argument that in fact, one more house within these 50 lots won't make that much difference, but in fact an approval of the subdivision within these 50 lots will make a difference. And it will set the road, it will start the process of multiple new subdivision. Another major area of concern is inaccurate information that was provided to the County which I've referenced and also to neighbors. The Burkes promise to tear down the old home have been documented by at least 11 people. And some of the letters from them that I will read in the document in a minute, we've identified some of those folks and we're still finding others. People that were told directly by the Burkes that they would tear down the old home, include Beverly Ridenour, Bill and Cleo Mathews, John Hetzner, Sue Hagle, Jane Derleth, Karen Stephan, Kevin Allen, Marc Basque and Tom Barger. The Burkes themselves, within their letter to Tom Barger, indicated there will not be two systems on the property. However, after the Subdivision for Lease or Rent was approved, when I spoke to Terry Burke, he told me that he had always planned to have two houses on that lot. Another issue within misrepresentation of information to the Missoula County Board of Commissioners was a March 15, 2000 Subdivision for Lease or Rent, Section 5, "the property immediately west of the subject parcel has a guest house and a primary dwelling on a 5.214 acre site." That's our home. Section 6 of that same document, "the proposal is not consistent with the land use density designation for the area, but it is consistent with the existing use and density on a site that is directly adjacent to the subject property." This is a misrepresentation of our home. Our guest home that is referred to is in fact a large three car garage with a loft above it. It's attached to the home, it's not a separate multi room house, there's no separate septic system and there are no renters. The covenants, many people have spoken and will continue to speak, that it continues to be our belief that the intent of the covenants was that there should be one home per lot, one home per five acre lot. And now, I'll try to rush through, I just have some quotes I want to read from letters that are attached to this document. The first one from Marc Basque. He says, "In our conversation the subject of what he was going to do (referring to the Burkes) with his old home came up and he told me that he was going to either find someone to buy it and move it, or have it torn down when the new home was completed. I asked him, why not rent? He said, it was too old and he was worried about it burning down." A letter from John Hetzner, "When my wife and I visited the Burkes to introduce ourselves, I asked Terry what he planned to do with the older, existing house. He told me they were going to tear it down. I wasn't surprised, because in this subdivision only one home per lot is allowed." Letter from Sue Hagle, "I guess we should have all gotten up in arms when they started breaking ground, but they did claim they were going to tear the old one down and as bad as that house is, it rang true. It'll sure ruin the neighborhood if they get this permit to subdivide that lot. It would be pretty impossible to stop others from doing the same." Letter from Harry and Dani Sacks, "Before we came to the decision that we wanted to become citizens (and taxpayers) of Missoula County (the Sacks currently live in California and bought the home that John Hetzner and Sue Hagle owned, which is the lot on the other side of us) we went through our own process of due diligence. Our final step was to read the covenants protecting Ponda Rosa Acres. With this letter, we want it understood we are against what you are considering in any form. To tolerate the subdivision of these five acre parcels, or the building of more than one residential unit on any of them, is absolutely not what the covenants and restrictions allow or intend. No one who purchased property under these covenants should have ever believed they could redefine them for their own financial gain." Next, a letter from Kathryn Norman, "We believe that allowing subdivision of existing lots will not maintain the rural tone of the subdivision as originally platted, resulting in a detracting from the attractiveness of the lots and a decrease in the value of our investment." Another letter that I just received from Gary and Lacy Peterson, who live at 1051 Terrace View, "we do not want Ponda Rosa Acres subdivided. We purchased our property with the understanding that this area would remain rural. Please let it be entered into the record that we are strongly opposed to any subdivision."

Chairman Evans: Thank you Mr. Vogelsberg. Anyone else who would care to speak?

Zane Sullivan: Chairman Evans, Commissioners, staff, my name is Zane Sullivan, I'm an attorney with Sullivan, Tabaracci and Rhodes. I'm here today representing the interests of Terry and Ruth Burke, the applicants in the present proceeding. I am in the midst of a lot of opposition testimony. Thought maybe it would give you a break to hear a different version. I don't believe that this situation is nearly as onerous or as bad as the opponents lead you to believe. Actually, I think it probably reflects a couple of individuals who attempted to do certain things with their property that they ultimately found out maybe weren't quite as practical and as realistic as they thought they were, causing those intentions to change and try to determine what can we do with our property. The record before you I think is replete with indications that the Burkes originally contemplated removing the older structure from this property and building a new structure. That truly was their intention. It's been stated by them in letters and written materials that have expressed that intention to a number of agencies and representatives. There's no secret, no magic to that. That's what they intended to do. They had indeed observed and heard about other people selling existing structures and having them moved off of the property. They advertised this structure in the paper and attempted to sell it so that it could in fact be taken off of the property. They did cease using that structure as was their intention at the outset. They found that that idea wasn't nearly as realistic apparently as they had originally thought that it was and the sale of this

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structure and having it moved appeared very quickly to not be realistic. At that point in time and after not using that septic system on the older structure as per their stated intention, they regrouped, as I think all of us would. What are we going to do with this situation, we're a relatively young couple, we do not have unlimited means and circumstances, what are we going to do? This idea did not work out, which is not the County Commissioners problem, I recognize. But like a lot of us, I think the Burkes did what they thought was then logical, what else can we do, what other options are available to us relative to this property. They then came back to the appropriate entities and officials and asked for approval of a Subdivision for Lease or Rent. What we're hearing today, while I understand it, is not something that I think we can deal with at this point in time. I understand the neighbors frustration with the fact that they do not like the process. That is a process however that has already occurred. It is a process not only authorized by State law, but is mandated by State law. These people did in fact proceed down this path exactly as they are obligated and required to do in conformance with State law. They sought subdivision approval under the Lease or Rent provision. I want to commend Bill Wagner in his letter for his straightforward approach to some of the issues that have been raised to you folks by way of letters from the residents in the area. Bill, in his letter, acknowledges that the County cannot, and I would inject on his behalf, should not, enforce restrictive covenants. Little editorial license there, perhaps, he may not agree with that. Bill also is to be commended for his recognition, I believe, that there are certain limitations as to what this body's review can and should consist of. I think then, that what we agree with and the guiding point perhaps that is here needs to be addressed in Bill's letter, is the indication that the division, if you will, based upon the application for Subdivision for Lease or Rent, was conditioned upon the removal of or abandonment of the existing sanitation system. I want to point out to you that there seems to be some discrepancy perhaps between Bill's letter that suggests that a document that I could certainly provide to the Commissioners and I'm sure staff already has this document in it's file, this is correspondence from the Montana Department of Environmental Quality, dated April 18, 2000, addressed to Terry J. Burke, re: Ponda Rosa Acres, Lot 23, it has a file number for EQ and what it states and it has attached to it the State of Montana Department of Environmental Quality Certificate of Subdivision Plat Approval. And if you read this Certificate of Plat Approval, it states in its content, among other things, that the parcel shall be used for two single family dwellings. The developer and/or owner of each parcel will ensure that the sewage disposal systems (plural) will comply with Title 17, Chapter 36, Subchapters 1, 3 and 6 of the Administrative Rules of Montana. No where in this document do I see any provision or requirement that the other sanitation system be abandoned or removed. I think, again, what we have here is a situation that has changed over a period of years, from 1998 'til now. We started out with an intent to abandon a system and replace an old structure with a new one. That didn't work. The Burkes came back to the governmental entities and said we now ask for permission, under the law and in accordance with established procedures that existed at that time, please approve a request to, in essence, to subdivide this property for lease or rent. It went through the process, it was approved, the State has issued approval for two septic systems on this property, it's currently being used with two septic systems on the property. I do not believe that the Burkes have done anything wrong and as a matter of fact I believe that they have abided by the letter of the law. In certain instances, they made some errors in timeliness of applications. I won't argue with that. These are lay people, they are not subdivision experts. It is not unlikely that people in this circumstance may make some errors in procedure and process. But I think the key issue for the Commissioners today is the recognition that we have arrived here, here is a property that has been approved for use for two single family residential structures with two septic systems. There are letters that have been addressed to the Commissioners indicating that if this subdivision is allowed, we are going to have extreme traffic concerns, we are going to have increased dust, we are going to have this and this and this and this problem. Nothing different will happen on this property if this application is approved. The use that is currently being made is already there. The same use that is being made of this property today would exist tomorrow. The only distinction that we have is whether or not we have formally recognized a dividing line drawn on a map. The use is currently there, we will not be changing that. So I urge the County Commissioners, as I know you will, not to lose sight of where we are presently at. I understand the other residents do not like or appreciate the process. Neither I nor the Burkes created that process. Maybe State law does need to be changed, maybe there does need to be notice given to all residents in a subdivision of an application for septic permit, for subdivision for lease or rent, maybe that process does need to be changed, but that is not something we can address today. I'd be happy to answer any questions that you may have for me and Mr. and Mrs. Burke will probably speak to you yet.

Chairman Evans: Thank you Zane. Anyone else who would care to speak?

Larry Kaphammer: Yeah, I'm Larry Kaphammer from 1036 Terrace View Lane. We bought in the neighborhood primarily because it was five acres and no one building. And I do know that if I go down to the Planning Board and ask to do something and they gave me a permit to do the way I asked and then come back two weeks later and say I'm going to change my mind, can I do this, are they going to allow it. That's what I don't understand. How they allowed that septic system not to be condemned. That to me is wrong. And I understand the process that he was talking about. I understand that. Yeah, they pulling the process okay regardless of whose feet they step on. And me and my wife go against the proposal.

Chairman Evans: Thank you Mr. Kaphammer. Anyone else who would care to speak?

Gail McGregor: My name is Gail McGregor and I live at 1067 Terrace View Drive. This afternoon you have and I'm sure for a little bit longer will continue to hear the frustration of many of the homeowners living in Ponda Rosa Acres and I'm going to try not to repeat what you've heard already. I'll try to keep it short. I have my own little spin. There really are two issues that I wanted to raise. One I think is maybe unique. I guess the way I see this issue is that you're essentially having to weigh the interests of a lot of people who live, vote, pay taxes and really plan on making Ponda Rosa Acres their home for many years to come, versus the interest of the applicant, one family who, in their September 2nd letter to the County, has expressed their intent to sell this property as soon as they get the permission to subdivide. So that they're kind of the short timers versus those of us that plan on living in this community for awhile. People in this community will continue to speak out, you'll hear them for the rest of this hearing today, because we really feel that despite what Mr. Sullivan indicated, that this approval will change the character of our community, it will change the way we think about what can be done on our property. You've already heard that at least 40 families in this subdivision have gone on record to oppose this action. They've sent letters, I know we've sent quite a few letters, you've received a lot of letter from other people, because they're afraid that this is going to open the door to further activity. We are not lawyers, and while legal opinions vary about whether the covenants can be construed to allow subdivisions, I think that what you'll hear from people is that the common understanding of people who live and

purchased property in this area as well as you've heard letters from the Sacks who've just recently bought the property. There are other people here who have just recently in the past few months bought property in this area. They were told and they understand what the covenants require for this community. We recently looked at a house in the subdivision that was up for sale just out of curiosity and in fact we were told by the realtor representing that property that the covenants would protect the rural nature of the area. In response to what is happening here, as well as the fact that there is some legal question about what the covenants do and do not allow, we have started the process to add language to the covenants that specifically preclude further subdivisions in this property. We anticipate in the very near future, having an 80% approval rate of this amendment to the covenants which would further communicate to the Commissioners the will of the people who live in this area. The second point that I want to make, actually has been made by Mr. Sullivan, but I'd like to reiterate it. The policies and procedures that have guided the multiple steps that have led us to this hearing today are very frustrating for the individual homeowner. We found out that the Burkes had obtained an approval for a Subdivision for Lease or Rental after the approval had already occurred so we had no way of responding to that particular action. Of course we questioned that and it has been explained to us that there is no requirement for public notification and input into the process for Subdivision for Lease or Rent and we understand that it's actually a courtesy for you to be allowing us this time today and we do appreciate that. But you have to see from our side that this seems very, very unfair. When we further asked the County about what we saw as a conflict between the decision to approve the Subdivision for Lease or Rent and the restrictive covenants we were very consistently told and we understand very, very well, that the County is not in a position to actively enforce our covenants. But what we don't understand or what is hard for us to reconcile is if the County specifically takes actions that preclude our ability to act upon the protective covenants which we understand needs to be done privately and that's exactly why we retained Bill Wagner to represent us. Another thing that has been frustrating to us, Bill mentioned that we did file suit on this issue and through rather infrequent correspondence through some previous attorneys as well as the current attorney, we were told by the Burkes that they were interested in coming to a resolution about this situation. And in fact while we were receiving correspondence saying that they wanted to come to a resolution about this situation, they were in the process of applying for the subdivision for lease or rent. So once again, we feel that our opportunities to exercise the avenues that are available to us to respond to the situation have been shut off to us. Finally, in the face of the current request for property subdivision, we've been told by County employees, and I think it's been mentioned here, that an approval for Subdivision for Lease or Rent really is, not entitlement is too strong of a word, but it sort of logically flows then that a subdivision of the property as a whole will occur and so because we had no opportunity for input at the first step, and if the first step logically leads to the second step, we feel like our hands really have been tied in terms of being able to intervene in any kind of fair way in this process. So, like others here, I strongly urge you to hear the voices of the majority of homeowners and disapprove this application for subdivision and I would go even a step further and ask that you review the earlier approval of the subdivision for lease or rent because I think as you have heard today, and if you look very closely, you'll find that this approval was made on the basis of a record that was incomplete and somewhat misleading. Thank you for your time.

Chairman Evans: Thank you Gail. Anyone else who would care to speak?

Bill Mathews: My name is Bill Mathews and I'm on Lot 47 which is directly across the road from Lot 23 and I would like to encourage disapproval of this proposal. I bought my land in 1992 and we built in 1996. When we bought and was looking for the land we met with a realtor and the realtor was very clear that here's some property that has some restrictive covenants, you need to read this over and see if this is what you want to do. My wife and I read them over, we knew this was the last shot for us, this is all the dollars were going into this property and this house so we read them over and we were really pleased and we liked the five acres, we liked the openness, we felt the restrictions were very livable and that we were ready to follow them as we were building and follow them the rest of the time. And we plan on staying there until we can't maintain the place anymore. Now, when the Burkes started to talk about building, we had talked with them and we were really happy about it because we thought, well that will be nice, because they told us they were going to tear down the house. They have a beautiful home that they built, it's going to be great for them, they are a nice young family, it's going to be great for me, I'm right across the street, so my property value will hang in there. So, I mean, I was really excited about the whole situation for both of us. Well, I got a call from my son awhile afterward telling me, hey dad, did you know the people across the street are selling and they're selling both houses. And I said, well, no, they can't do that. It's my understanding is that they're going to abandon it and the owners told me, yeah, they're going to tear it down so that's what I was going by all that time. And I guess if I would have known that they were going through the process of subdivide to lease and rent I would have definitely been here to voice my opposition to it. I just feel that we're kind of in it for the long haul. I called my appraiser, the person that appraised my house in 1999 and said, okay, here's the situation, what do you think? And I told him the part about the rental, the subdividing, and I said is it going to affect my property. And he said, it's not going to help your property value right now, I'll tell you that. And so, I'm real concerned about that and I'm concerned about having it subdivided more in terms of my own property, my own lifestyle and everything else. We believed in that covenant that we had and we felt it fit our lifestyle and it was something that we could really live with. I guess I feel that as a community there's a lot of people here that feel the same way I do and as you look at this decision, you're looking at the impact on the community and you're also looking at someone that's going to get this subdivided and just ride out of Ponda Rosa and then we're going to be stuck with the burdens that result as far as this subdivision, it's going to be more crowded and whatever. But I just wanted to get my frustrations out. I appreciate the opportunity to express my views. Thank you.

Chairman Evans: Thank you very much. Anyone else who would care to speak?

Jane Derleth: My name is Jane Derleth, I live at 1009 Meadow Lane. I was also told by the Burkes that they fully intended to tear the house down either for parts or something. He said it was an electrical nightmare and unlivable. When the house was up for sale I asked them about that and they said, well, the commute was too much. And I thought to myself, well you knew that, coming into this. So after a period of time of visiting with them and actually telling me they had fully intended to abandon the house, I have to say I'm very disappointed in their approach to this process and in relationship to what Mr. Zane had said that we don't like the process, possibly, as a group, it's not the process that we dislike, it's actually the outcome that we're worried about and I consider that his argument and the argument that the Burkes might have or how he's represented them is kind of a manipulation of the facts. And when I say I'm disappointed, I feel as though the Burkes knew exactly what they were doing from day one. That's how it's washed up. And it doesn't appear that they didn't, that they're not aware at all. I think they did their homework and

just kind of blindsided all of us. And as I said, I don't appreciate that at all. I'm also concerned as to why Dale is not present and why another person is here representing the case for him. Can you speak to that at some point please?

Chairman Evans: He's at a conference elsewhere, so we have his supervisor here.

Jane Derleth: Great. And it is also my husband's and my understanding that when we bought the property that it was all limited to five acre parcels, one house, one septic system. And I think we too bought the property with the understanding that we would live there for a long period of time, so when the Burkes bought and decided that they were going to put the house up for sale immediately we were all kind of like well, what's the next step. And as you already know, they told several of us that they would be tearing the house down or selling it for parts or something of that nature. So, apparently the County Attorney, just to reiterate Mr. Wagner's comments, had written a letter that said that the process or what the Burkes were doing was an illegal action and I'm not a legal expert by any stretch, but it seems like something, some of the things that have taken place weren't exactly done properly. So, I'd just like the record to stand that both my husband and myself are adamantly opposed to the subdivision. Thank you.

Chairman Evans: Thank you. Anyone else who would care to speak?

Bert Blackmun: Yeah, my name is Bert Blackmun. I'm on Lot 28 in the Ponda Rosa Acres and I teach in Alberton, have taught there for 25 years and actually I'm going to burn the mortgage on my house next year, so I'm kind of one of the older residents out in that community. And, as I said, I teach government and I'm not up here to filibuster anything and I think all of my neighbors and friends have pretty much said everything that has to be said and I don't envy you people in your job either, this is a difficult thing for everybody, we're talking about finances, we're talking about lifestyle, we're talking about a lot of things. And, as I mentioned, I teach government and one of things that I try to get across to my kids is that the majority opinion in the American system is very, very dear to me and I want it to be very dear to them. And I also teach the rights of the minority, the minority as we know has a voice in the system also and my point here is, like I say, everything's been pretty much said, but you folks, please, please, consider the voice of the majority. And the voice of the majority is sitting right out here and please take that into consideration. Thank you.

Chairman Evans: Thank you sir. Anyone else who would care to speak?

Jim O'Toole: Jim O'Toole. My wife and I live on Lot 24, right next to Lot 23. We've been there about 15 years after retirement. When this project started nothing was every said to me that new structures were going up. I happen to be out mowing and saw the excavator show up and begin digging for the foundation and so I walked over to the fence line. The only thing between us and the Burke's property is a barbed wire fence. And I asked him what he was planning to, what they were planning to build here. And he said a pig farm. Factious answer but I thought well, it's either a secret government project or probably a scam. Anyway, the house went up and there was never any notice or posting and we didn't hear much about progress except through hearsay with the neighbors. But we did hear that, we were well aware of course that there was only one house allowed under the Comprehensive Plan and the covenants, per five acres, so when building continued without any notification, we did hear that the old house was going to be torn down so we took no action. We felt that was a logical course and it would proceed. But what evolved later on of course was just the opposite. Everything was retracted through some administrative mechanism that I don't know how many people here are aware of, I'm certainly not. What evolved then was a scenario that is based on lopsided truth. The initial party deals in good faith, what I'm referring to is the County officers and the State, deal in good faith. But the other party through the record that was shown here today obviously has faith in good deals. Now, this process, if it's not exposed, is going to happen again, you can bet, because they paved the way very neatly for getting around restrictions that no one normally would consider doing. And as I mentioned earlier, we applied, this was a defensive move, I wanted to find out just what the law stated when we applied for family transfer. I think now that maybe if we had something to abandon we might have been more successful.

Chairman Evans: Thank you Mr. O'Toole. Anyone else who would care to speak?

Ben Notti: My name is Ben Notti, I own the property at Lot 12, 1029 Terrace View Drive. It appears to me, after hearing Mr. Sullivan allude to the fact that this process has gone to all the government entities, it appears to me that the government entities up to this point have been thoroughly bamboozled, that's a term we had in Butte when I was a kid. And that really rankles me, because it was my understanding when I purchased this property in 1994, that there would be no further subdivision to what was already there and that really made me feel good because I had retired in 1994, came back home and was escorted around a place you might have heard of, called the Bitterroot Valley, by my brother who has lived there for quite some time. In fact, we've had family in the Bitterroot Valley for 70 years. And after we looked at 14 different places I finally told him one night, John, I can't live down here. And he said, why not? And I said, look around you, the place is dying. That was in 1994. Now, Mr. Sullivan has said this subdivision will not affect anything we have up here. Well, that particular one may not, but when you open the door, you're going to have another Bitterroot Valley and I'm here to tell you I'm against it. Thank you.

Chairman Evans: Thank you. Next person?

Nancy Bitterman: My name is Nancy Bitterman and when Ben spoke of Bitterroot Valley he is telling the truth. A little over three years ago we moved out of the Bitterroot because of the subdivision there and we bought a place at 1032 Terrace View Drive and we love it there and we would not like to see any more subdivision. Thank you.

Chairman Evans: Thank you. Next person who would like to speak?

Gary Fee: My name is Gary Fee. We are a minority in Ponda Rosa Acres, we've only been there since July. We're trying to find a place to retire, grow old and we've been looking for about 8 years. And we found the last best place, it's in Ponda Rosa Acres. We would hate to see that change from what we bought. It can be a beautiful place, we wouldn't want to see that change. Other than that, I can't add anything more than what's been said today and don't let this happen, please.

Chairman Evans: Thank you. Next person who would like to speak?

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Lillian Jensen: I am Lillian Jensen. I have been here 25 years in Ponda Rosa and I've loved it here every minute I've been here and I've had the same opinion, that the five acres, one home and this is the first I've heard anyone say they wanted anything different. I would like to know how, if this double population, double cars and double everything, traffic, everything coming here is going to make this a happier, nicer place than what we've had. Also, how is this subdivision land going to furnish all the septic absorption and how is it going to accept all the water that's going to be needed. Environmentalist will tell you it is impossible for this land to produce any more water or any more septic. We're going to be in trouble. The subdivision is going down the ...., there will be no subdivision. Now this subdivision is furnishing the County with a nice sum of taxes and we have given the County no problems, nobody's had to come out here. We have a crime free area and you have to admit we've been very quiet and very good and been contented. Why fix something that don't need to be fixed. It is already perfect and I say that I've been here 25 years and I'm getting to the age where I'm going to have to sell my property because, I'm not coming out of here because I want to, I'm going to have to go out by age. So, I'm worried about future generations, we should think about these future generations. They want the same thing we got, there's very few of us that got a heaven like this. Privacy and heaven like this is hard to find. Please do not spoil our heaven. Help us out.

Chairman Evans: Is there anyone else who would care to speak?

Ruth Burke: Well, my name is Ruth Burke and I'm obviously on the other end of things. I listened to all my neighbors speak and I hear three primary concerns. One is of the environment which I feel like the County looked at in an unbiased manner and they recommended that we get approved. The second thing I hear is that they're upset about the covenants. I don't feel like this is the area that you approach the covenants and I feel like when you say you've got 80% of the people who are willing to change the covenants, there's a reason why they're changing them, because the covenants currently don't say how many lots your acreage can have. So I can have a five acre lot based on the covenants, with five one acre lots, I can divide it 10 times, the covenants do not say how many times I can divide it. So, when everybody relies on those covenants to protect them from any subdivision, the covenants don't say anything about how big the lot size should be. So, you know, I think this is not the area where you approach that. You get a homeowners association and you pay homeowners dues and you have a group where somebody can come to them and ask for a difference, I would like you to look at my situation, I think it's different, and let an unbiased group of people look at it. Currently there is no unbiased group or any other place but the County to go and ask for an unbiased opinion. We went to the County, we asked for an unbiased opinion, we got the staff from the County who agree with us and now we're not in the popular vote, you can tell, we're not in the popular vote, but we feel like it's our legal right, we feel like we have the recommendations, we feel like the areas of covenants aren't appropriate here and we feel like the environment is covered by what the County looked at and that every single application would be looked at in the same manner and that there wouldn't be a poisoning of our environment because the County looks at it and makes a determination whether or not that one single house will poison the environment or not and if two houses down the road, it would, I don't think that they would give an approval. I respect the County's opinion and I don't think they were coerced into their recommendation that we be approved and so we've come to a place where we can get an unbiased opinion on whether that's fair and we've been recommended to be approved. The third issue that I hear people talk about is whether or not, I guess it goes to our honor and I can tell you and everyone in this room, we were not dishonorable when we applied for the septic permits, it was totally our intention to abandon that septic. We had plans and in fact advertised to ask people to come and purchase the home and remove it from there, we had a moving company come and look at the price it would take to move it there. If it wasn't our intention to do those things we wouldn't have paid for the advertising or the guy to come out and look at doing that. So, at one point you hear us saying it's our intention to remove the building, and it was our intention to remove the building. And at another point you hear something else, we would like to know, can we sublet or lease this piece of property, and we went through the proper channels to be able to do that, and now we're going through the proper channels to be able to divide it and not have covenant issues. I feel like this is not a popularity contest, it's a legal right and I would like to County to consider our legal rights in making their decision.

Chairman Evans: Thank you. Anyone else who would care to speak?

Terry Burke: My name is Terry Burke and I, Ruth and I totally agree on, you know, I agree on what she just presented and, you know, I guess, my concern, there's a lot of issues addressing the covenants and that seems to be a lot of the weight that I'm getting from feedback from these responses, you know, from the neighbors and so forth. It, during the time, back when we purchased the property, we started building, nobody's ever approached us with saying, you know, we have a homeowners association, this is the process we go through, you are doing something illegally according to the covenants, not, you're in violation of the covenants, not one party approached us with this and in fact, there is, it's our understanding there's no homeowners association, no vehicle out there exist to go to, to talk to, to address our concerns. So we did, as Ruth pointed out, we turned to the County to go through the process, what's legally our right as property owners out there and we followed that process and we followed the State law, we followed the local laws in meeting the requirements and I recommend, you know, I recommend that we, the County Commissioners look at it from the standpoint as property owners rights. We went through the process and I recommend that you approve this so we can move on with our lives.

Chairman Evans: Thank you. Anyone else who would care to speak?

Jo Burris: Hi, my name is Jo Burris and I'm a new kid on the block also, at Lot 26. We had just moved here when I found all this information and I spoke to the County Commissioner, I spoke to the environmental, and spoke to just about everybody I could think of and was told, yes, this was, we got to this point because we were told the house would be torn down, we were told the septic would be abandoned. At that point, I said, okay, now what. They said, well, in fact Mr. McCormick told me he wasn't real familiar with covenants and everything like that, and he said, it seems like just some mistakes have been made and, you know, there's nothing we can do about it. Now, he advised me to get a lawyer and sue. Didn't seem like that's very friendly thing to do, but, at this point, it seems like we've got to this point by mistakes being made and I don't think we should make one more. You know, we need to stop now. The talking on the covenants, don't, the covenants don't state, no the covenants don't state how large your parcel, it does state one dwelling, but the plat map does have five acre parcels. So, that point is kind of, is self explanatory. I just think we should not make any more mistakes. Thank you.



Chairman Evans: Thank you. Anyone else who would care to speak? One last call. Anyone else who would care to speak. Bill, I will allow you to rebuttal, yes.

**Bill Wagner:** Thank you for taking the time today. Just a few comments. A couple of corrections if I may. In Gail McGregor's testimony, she talked about the lawsuit being put on in abeyance while there was discussion about some type of resolution and she indicated that in the process, the subdivision for lease or rent application was made and that is not correct. When the lawsuit was filed, the subdivision for lease or rent had already been approved. I was contacted after that fact and I think she was referring to the process before you now, this particular subdivision application. Secondly, with regard to Jane Derleth's testimony, I don't believe that Colleen Dowdall indicated that the activity was illegal. In her letter, Colleen expressed surprise that the Burkes were able to build the home without going through the subdivision for lease or rent procedure. I don't think the word illegal was used and my client may disagree with me on that point, but I think Colleen's letter speaks for itself. With regard to the comments by Ruth Burke, I think we need to look at the covenant situation. There is no minimum lot size specified in the covenants, but as Zane and I have indicated, the Commissioners do not deal with enforcing covenants. With regard to what Zane had to say, I think we need to look at the situation. The problem started when the second home was built. That's what started all this, it wasn't the process, it wasn't the law, it was the fact that a second home was built on one lot being served by one septic system and that's the genesis of the entire problem. At one time there was one home with one septic system. Then there were two homes and at that time the Burkes were told that they needed to obtain septic approval. They went through the subdivision for rent or lease procedure and at that time they received approval. That put them in violation of the covenants. They had two dwellings on one lot. We filed a lawsuit. Now, they come before you with an application saying, we've changed our mind and we want two homes on two lots with two septic systems, it's been approved. But I think the record speaks for itself as to how it got approved, both by you and by the sanitation department and if you look at the history of this thing, it all started when the second home was built on the one lot. And that's what I meant by bootstrapping. Thank you.

Chairman Evans: Thank you Bill. Is there anyone else who would care to speak? Zane, yes sir, I will allow you to rebuttal as well, and then we're going to close the hearing.

Zane Sullivan: But the good part is, this is getting shorter and shorter as we go, so if Bill's got a sir rebuttal to the rebuttal, it might be short.

Chairman Evans: I think we're going to stop right here.

Zane Sullivan: I only have one comment in response to Bill's summary. Just want to make absolutely clear that maybe Bill is right, maybe the problem with the process, I'm alluding back to the process again, started with the construction of the second home, but I just want to make sure that the record is clear before the County Commissioners that the second home was built pursuant to a septic permit that did in fact call for the abandonment of the first system. So, it wasn't that we were totally out of synch with everything, it was not an illegal operation, per se, where there was authorization for this new system based upon the abandonment of the old system. Then we moved to the next step or stage of the game and again, I say these people are not necessarily wrong, I'm not saying their testimony is wrong, there were statements made to them that the house was going to be removed and abandoned. I'm merely pointing out that things changed and they're kind of stuck in this time frame and the Burkes moved forward with a different program and basically, at that point in time, the subdivision for lease or rent does contain the authorization and those materials for two separate systems, which is currently the situation in place. So, just a clarification point. Thank you.

Chairman Evans: If there's no one else that wishes to speak, yes, one last person.

Bert Blackmun: Yeah, yeah, Bert Blackmun, Lot 28. I'm confused in the legal ramifications here of this, and maybe one of the lawyers can explain it to me, what is the difference between getting a system approved for lease or rent or sale, I mean, is that a legal point or, to me there's something difference between leasing and rent and selling.

Chairman Evans: We will ask our attorney to explain that to you. Colleen?

**Colleen Dowdall:** The subdivision regulations for Missoula County allow us to review two kinds, well, many kinds of subdivision, but a distinction is made between subdivisions for lease or rent which means that you don't put a new property line in. It is triggered by adding a septic system for an additional house with a plumbed kitchen. And that's the definition that we came up with that defines what a subdivision is, that's a subdivision for lease or rent. We use the same rules in reviewing a subdivision for lease or rent that we use for any subdivision and I wanted to make this point, that someone asked about in terms of the notice. The notice requirements for a minor subdivision for lease or rent are, or the lack of notice requirements, are the same as for this subdivision. Missoula County has a practice of giving a courtesy notice by posting a poster on the site and it is not required by law because we only have to notice public hearing. So, lease or rent, or this subdivision, there was no specific notice requirement. We have the same standards for both. The net effect is with a regular subdivision, two lots are created, two properties descriptions are created so one house can be sold. With the lease or rent, you don't have a new property description so it can't be sold.

Chairman Evans: Okay, I'm going to close the public hearing now.

Colleen Dowdall: Could we call it “stop public comment.”

Chairman Evans: We can stop public comment, thank you, because legally it's not a required public hearing. Any questions or comments from Bill or Jean? Okay, then I will read a statement that I wish to read. And this is to Mr. and Mrs. Burke. I intend to vote no on your request and I'll tell you why. I feel that you have gotten to this place before the Commissioners using a series of incremental approvals. When you wanted to build a new house on this property, you asked the Health Department for a septic permit. You found that you could not have two septic systems on one parcel without going through approval for lease or rent subdivision, either that or you had to divide the land. You signed statements and I have them here, that you would abandon the old house and the septic system and that there would only be one house left on the property. When the Health Department found that you had not done what you

said, you applied for a family transfer exemption to create an additional lot. When you were told that you could not do that because you are in a platted subdivision, you requested a subdivision for lease or rent. We approved the lease or rent subdivision, presumably because the two houses were already there. That solved your problem with the Health Department. For what we have heard, you knew, or should have known, that two houses on a single lot violated the covenants and that the lease or rent approval did not solve the problem with your covenants which state that you can have only one house per parcel of land. I do not believe the Commissioners knew of the problem with your covenants at the time we approved the lease or rent subdivision. Now you are before us asking us to approve this subdivision, presumably because you already have approval of the lease or rent subdivision. We are not parties to your covenants and we are not able to help enforce them. Neither do I think we ought to help anyone violate them. Splitting your land will bring you back into compliance with the covenants and I just cannot do that. You've gotten here through a series of steps that would make it difficult to say no, but I will vote no. Perhaps approval of the lease or rent was not warranted. The staff report for that subdivision noted that the approval did not meet the requirement of the land use designation of the Comprehensive Plan. The findings of fact that were made were based upon a representation from the planner that other similar uses were in existence in the neighborhood. I do not believe that there was a basis for that finding. Based upon a finding that this subdivision is not in substantial compliance with the Comprehensive Plan, I intend to vote no. Are there any comments or motions from the other members of this Board.

Commissioner Carey: I'll just very briefly say that for me this isn't about covenants, because we don't have any business enforcing private covenants. And it's not about intentions. For me, this is about conditions and basically, misinformation that we got which led me, at least, to vote for the lease or rental. The Health Department put a condition on that second septic, the first one had to go. That condition wasn't met and in my view, that set this whole thing in motion where it should have stopped right then and there. So, and then we got to the lease and rental thing, if I had known that the existing property wasn't a separate home and wasn't what it was set out to be, I wouldn't have voted for it, I don't think, because we were told basically that even though the proposal was not consistent with the land use density designation for the area, it was consistent with the existing use and density on a site that is directly adjacent to the subject property. Had you folks been here during that lease or rent hearing or discussion, you would have made it very clear that wasn't in fact true, and I think that would have been grounds to deny that lease or rental. So, I'm in agreement with Commissioner Evans on this and will vote no.

Commissioner Curtiss: I really appreciate the concerns of the neighbors and we've been discussing this, believe me, ever since your letters started coming in. I have a hard time figuring out whether we can legally vote against it. It seems that the Burkes have misled a lot of people in this process but at this point I have a hard time seeing how the Board of County Commissioners can force them to remove a house that we already approved for lease or rent. That may have been possible last year, before the lease or rent was approved, but right now, even if we disapprove this, the lease or rent is legal and it's sitting there. The power to control the future in this subdivision lies with you guys. You can enforce the covenants, we can't. You can establish a citizen initiated zoning district. Zoning is designated to protect resources and establish density and can restrict development. The Comprehensive Plan is only a guide and is designed to be flexible as long as there's no adverse impact from the use. The covenants have to be enforced by the homeowners. I feel that it is our, that we are charged with making decisions based on laws and findings of fact. I believe there were some mistakes made in the past, but I don't know how we can vote against what we already made legal the last time.

Chairman Evans: Did you wish to make a motion that will not be seconded or voted on?

Commissioner Curtiss: No.

Chairman Evans: Do you wish to make a motion?

Commissioner Carey: I'll move that we deny approval of the Ponda Rosa Acres Lots 23A and 23B Summary Subdivision based on the finding that our previous decision to approve a lease and rent for this property was not founded on correct information and that ... should I stop there?

Colleen Dowdall: No, then a further finding of whether you think it's in compliance.

Commissioner Carey: Thank you. And that therefore the proposal is not in compliance with the Comprehensive Plan.

Chairman Evans: I'll second that motion. Any discussion? All those in favor signify by saying Aye.

Commissioner Carey: Aye.

Chairman Evans: Aye. Those opposed?

Commissioner Curtiss: I'll abstain.

Chairman Evans: Okay. This subdivision request has been denied. Is there any other business to come before the Commission. There being none, we are in recess.

There being no further business to come before the Board, the Commissioners were in recess at 3:35 p.m.

**THURSDAY, OCTOBER 11, 2001**

The Board of County Commissioners met in regular session; all three members were present. After work, the Commissioners participated in the "Day of Remembrance" ceremony sponsored by the Employees Council and held on the Courthouse lawn.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated October 11, 2001, batch numbers 1585 and 1581 (pages 1-5), with a grand total of \$72,277.33. The Claims List was returned to the Accounting Department.



Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated October 11, 2001, batch number 1582 (pages 1-5), with a grand total of \$32,737.87. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated October 11, 2001, batch number 1586 (pages 1-3), with a grand total of \$55,147.94. The Claims List was returned to the Accounting Department.

Certification of Acceptance – Chairman Evans signed a Missoula County Public Works Department Surveyor's Office Certification of Acceptance for County Maintenance for ACM. No. 2001-0005, Sandalwood Court, Road No. L 0356-W, T 13 N, R 20 W, Section 08. The limits of acceptance are .096 miles from the intersection with Kona Ranch Road thence southerly 507.16 feet to the center of a 50-foot radius cul de sac, 24 foot of asphalt within a 60-foot right of way, Riverwood Meadows. The document was returned to the County Surveyor's Office.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Contract – The Commissioners signed a Contract, dated October 11, 2001, between the Missoula County Airport Industrial District and Montana Materials Inc. dba LS Jensen Construction and Paving for construction of a sewer main across and along Expressway, and construction of a sewer main, drainage structure and gravel road down Sandpiper Drive. The term of the contract is set forth therein. The Contract Price is set forth in the Unit Price Schedule of the Bid Form attached as Exhibit A to the Contract. The document was returned to Barb Martens in the Projects Office for further handling..

Agreement – The Commissioners signed an Agreement, dated October 11, 2001, between Missoula County and Professional Consultants, Inc., for engineering, surveying and construction management services for Missoula Development Park, Phase 4, Schedule II. The estimated date of completion for this work shall be August 1, 2002. The cost for construction management estimates to complete the sewer and road construction is \$35,466.00, and the water extension is \$10,148.00.

Agreement – Chairman Evans signed a Renewal Grant Agreement between Missoula County and the United States Department of Housing and Urban Development (HUD) for the Supportive Housing Program grant, a three-year renewal of funding for three units of the YWCA Transitional Housing Program. HUD's total fund obligation for this project is \$105,729.00 (no County match dollars are required). The term will be October 1, 2001 through September 30, 2004. The document was returned to Nancy Harte in the Office of Planning and Grants, for further handling.

Easement – The Commissioners signed a Grant of Easement to North Reserve Business Center, LLC for a non-exclusive easement for access along a portion of easterly boundary of Tract 2 C.O.S. 5081 (County Shops property), which was approved on October 4, 2001. The original document was mailed to Paul Druyvestein at DJ&A.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

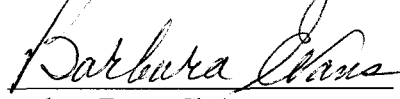
#### **FRIDAY, OCTOBER 12, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated October 11, 2001, batch number 1578 (pages 1-3), with a grand total of \$30,026.52. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated October 12, 2001, batch number 1584 (pages 1-5), with a grand total of \$12,897.68. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

#### **MONDAY, OCTOBER 15, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated October 15, 2001, batch number 1587 (pages 1-5), with a grand total of \$98,229.55. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 15, 2001, batch number 1589 (pages 1-3), with a grand total of \$15,803.67. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 15, 2001, batch number 1593 (pages 1-4), with a grand total of \$17,392.61. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Sportime, Milwaukee, Wisconsin, as Principal for Warrant #49188, issued May 31, 2001 on the Missoula County Public Schools General Fund in the amount of \$29.90 (payment for a plug remover), now unable to be found.

**TUESDAY, OCTOBER 16, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Site Inspection

In the afternoon, Commissioner Curtiss accompanied County Surveyor Horace Brown for a site inspection of Guest Ranch Road in the Condon area regarding the petition to vacate a portion of the road.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated October 16, 2001, batch number 1594 (pages 1-5), with a grand total of \$63,450.28. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter – The Commissioners signed a letter, dated October 15, 2001 to Senator Conrad Burns, thanking him for his support of the Missoula Aging Services' building project.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and North Missoula Community Development Corporation to complete a community profile for the area surrounding the former White Pine Sash Mill (provided by a grant from National Association of City and County Health Officials). The profile is to be completed by January 15, 2002. The total amount shall not exceed \$3,500.00. The document was returned to the Health Department for further signatures and handling.

Resolution No. 2001-094 – The Commissioners signed Resolution No. 2001-094, a Resolution of Intent to rezone property located at 4815 Mullan Road, containing approximately 62 acres located between Mullan Road and the old Milwaukee Railroad grade (known as the "Harry Allen Site") from "C-RR1" (Residential) to the JTL-Allen Special District, subject to conditions. The public hearing was held on September 19, 2001.

Amendment – Chairman Evans approved and signed Amendment to Task Order No. 01-07-5-21-055-0 to the Missoula County Master Contract that covers the period of July 1, 1998 through June 30, 2005 (Bunker Hill Lead Program). This Amendment extends the term through September 30, 2001 for the medical monitoring program. The request was returned to the Health Department for further signatures and handling.

Amendment – Chairman Evans approved and signed Amendment Number One to Task Order No. 02-07-5-21-007-0 between Missoula County and the Montana Department of Public Health and Human Services, dated October 7, 1999. This Amendment provides an additional year for the childhood lead poisoning prevention program (through June 30, 2002). The request was returned to the Health Department for further signatures and handling.

Contract – The Commissioners signed a Contract and Petition between the City of Missoula and the Missoula County Airport Industrial District for the extension of City Public Sanitary Sewer within Phases 3, 4 and 5 of the Missoula Development Park. A \$100.00 Contract Sewer Committee fee is charged. The document was returned to Barb Martens in the Projects Office for further handling.

Resolution No. 2001-093 – The Commissioners signed a Notice of Hearing and Resolution No. 2001-093, a Resolution of Intent to consolidate the Office of County Surveyor with the Office of Clerk and Recorder/Treasurer. A public hearing was set for October 31, 2001, at 1:30 p.m. in Room 201 of the Missoula County Courthouse.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, OCTOBER 17, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was in Helena attending a Growth Policy Forum.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated October 16, 2001, batch numbers 1595 and 1596 (pages 1-4), with a grand total of \$20,598.96. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated October 16, 2001, batch number 1597 (pages 1-2), with a grand total of \$3,120.45. The Claims List was returned to the Accounting Department.

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Chief Civil Attorney Mike Sehestedt and County Surveyor Horace Brown. Commissioner Jean Curtiss was attending a conference in Helena.

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

2000-2001

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$421,682.86. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Decision: Petition to Vacate a Portion of Guest Ranch Road (Condon)**

This is a petition to abandon "That portion of Guest Ranch Road lying north of Tract 4 of Certificate of Survey 123, located in Section 12, Township 20 North, Range 17 West, Missoula County, Montana."

The reasons for the request are as follows:

1. The portion of the road proposed for vacation serves a private facility at the end of the dead end road.
2. The owner of the property abutting the road maintains the road.

The following landowners have been notified: Mission Mountain Partnership LLP, P.O. Box 980, Condon, MT 59828.

The public hearing on this matter was held October 3, 2001. The public hearing was continued until today to allow time for a site inspection. A site inspection was conducted by Commissioner Jean Curtiss and County Surveyor Horace Brown on Tuesday, October 16, 2001.

Horace Brown stated that the people who own the school want to vacate this portion of the road. Last year they gave the County an turnaround easement. He and Commissioner Curtiss want to make them aware that the portion of the road to vacate is to the west side of the turnaround only, as the rest of the road is needed for County vehicles to turn around. There is an easement on part of the school's land and also the easement for the turnaround.

Commissioner Carey asked if there was a gate.

Horace Brown stated there was not a gate, but the school did plan to install an arch with a sign so the public is aware that this is private property. He and Commissioner Curtiss agreed that the vacation was acceptable.

Chairman Evans asked for public comments.

Woody Germany, WGM Group, stated his company was representing Mission Mountain School in this request. They support what Horace Brown has proposed.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request to abandon "That portion of Guest Ranch Road lying north of Tract 4, Certificate of Survey 123, located in Section 12, Township 20 North, Range 17 West, Missoula County, Montana."

Horace Brown stated that the Board needed to reserve a section of the road north of the turnaround and the easement for the turnaround. He would like the map provided to be part of the record to clarify the vacation.

Michael Sehestedt stated the text of the motion should be to vacate that portion of the road lying west of the turnaround along the north edge of Tract 4, etc., as more specifically shown on the attached exhibit.

Commissioner Carey amended the motion that the Board of County Commissioners approve the request to abandon "That portion of the road lying west of the turnaround along the north edge of Tract 4, Certificate of Survey 123, located in Section 12, Township 20 North, Range 17 West, Missoula County, Montana, as more specifically shown on the attached exhibit." Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Caitlin's Estates (10 Lot Residential Subdivision) – South of El Mar**

Dale McCormick, Office of Planning and Grants, presented the staff report.

The applicant, Tim Creighton, is requesting approval to divide a 50.4 acre parcel into 10 lots, ranging in size from 5.0 acres to 5.8 acres. The property is located approximately three miles west of Reserve Street, south of Mullan Road and 0.25 miles west of Cote Lane.

A PowerPoint computer presentation was shown of the various views of the parcel.

The property is zoned C-RR1 (Residential) and Kona East Residential District with a maximum residential density of one dwelling unit per acre. The 1998 Missoula Urban Comprehensive Plan designates Residential land use with a density of 2 dwelling units per acre. The property was once part of the Kona Ranch.

Hillside Design Standards apply to the subdivision. A portion of the site is over 25% slope and is designated as a "no build" zone.

The property is accessed via Mullan Road to Cote Lane to Haven Heights Road, a paved, 24 foot wide County maintained cul-de-sac road within a 60 foot right-of-way. Staff is recommending the same 24 foot wide road section for the extension of this road.

Variances are being requested for paving Haven Heights Road less than 26 feet; not providing pedestrian walkways on Haven Heights Road; and permitting a cul-de-sac in excess of 1,000 feet. The existing Haven Heights Road is 1,100

feet, which is 100 feet over the maximum cul-de-sac length. The applicant is proposing to extend it another 1,900 feet, which would bring it to a total of 3,000 feet. Staff is recommending approval of the three variance requests.

In 1992 the Rivercrest Subdivision, later renamed River Heights, was approved to the east of this proposal. A condition of approval for the subdivision was a 20 foot pedestrian easement being established between Lots 2 and 3 with an improved 8 foot walkway and the remaining 12 feet landscaped. Improvements for the walkway would be triggered at such time as land to the west is subdivided. A recommended condition of approval for this proposal is that a 20 foot wide public pedestrian easement containing a 5 foot wide gravel path connect with the existing 20 foot pedestrian easement.

Lot A of COS 4779 is a 98.37 acre parcel of land to the west of the proposal. Currently access to this parcel is from Warbler Lane and Cusker Lane. There is no immediate access. There is a recommended condition of approval for a conditional public access easement that comes off the end of the proposed extension of Haven Heights Road.

Other recommended conditions of approval are an RSID/SID waiver for improvements to Haven Heights Road and water and sewer systems. Another condition recommended is that either a well with a 350 gallons per minute pump and 2,000 gallon storage tank, or a 5,000 gallon tank/cistern with an attached fire hydrant, be required prior to final plat approval. Staff is recommending that the covenants be amended to include driveway design and maintenance standards that meet the requirements of the Rural Fire District. They had concerns that since the drainages in the area primarily run to the east and west, driveway would be created coming off that and go up the slope and because of the clay soil, it would be slippery for emergency vehicles. The Fire District wanted to ensure driveways would be safe for emergency vehicles.

Staff is recommending approval of the subdivision. The Planning Board voted 6-2 to recommend denial of the subdivision, due primarily to concerns about the impact to agricultural lands and wanting to see the subdivision designed as a cluster.

Chairman Evans noted that Hillside Standards apply to this subdivision. It was not her intention when those standards were designed for them to apply to a parcel of land where only one small section had slopes in excess of 25%. She felt those standards still need some work.

John Kellogg, Professional Consultants, Inc., developer's representative, was present. The applicants are in agreement with the recommendations of staff and have been working for some time on how to develop this property. They had looked at something similar to River Heights to the east, but found that due to limitations of the soil, that pattern could not be extended into this development. Therefore, they looked at alternative layouts that would still meet the goals they had for this development. They settled on the idea of larger, 5 acre lots, where lot owners could keep horses if they wanted to. Early on in the process, a meeting was held with some of the neighbors. At the Planning Board, Diane Beck pointed out that they were remiss in contacting everyone. That has subsequently been done, per her suggestion. The property owners to the south encouraged the clustering of development. On the other hand, the neighbors from River Heights were concerned about more dense development occurring right over their fence. The proposal presented today is in conformance with both zoning districts, Kona East and C-RR1, and also in conformance with the Comprehensive Plan. In response to the concerns of future development should sewer come to this area, which appears likely, the pattern of development could change and that type of development is something to be anticipated in the future. Any proposed redivision of these lots will have to be reviewed by the Board after further subdivision review. Mr. and Mrs. Creighton had envisioned, in response to the concerns about future connections to the north and south, that individual proposals for each of these five acre tracts would be able to address that by potentially creating a new north/south connections. In response to staff's request, they looked at an alternative that may respond to that and may enable future development to follow that pattern. Copies of the alternative for north/south connections were presented. The proposal shows the boundaries of the four lots on the west end of the property adjusted, with a reservation similar to what staff is recommending off the end of the cul-de-sac. The slant of the adjusted lot line follows similar contours and maintains each lot at over five acres. If the line were straight, it would reduce two of the lots to under five acres. The grid pattern has not been initiated in this area yet, so it was felt that it was not necessary to establish a grid pattern where one does not already exist. They also looked into the concerns regarding water storage. They are looking at placing a buried water storage tank on one of the first two lots in the development or at the discretion of the Fire Marshall, somewhere else. The loss of agricultural land has been an ongoing discussion as development occurs in this area. The Comprehensive Plan anticipates that development will occur on the margins of existing development. With the efforts underway to extend sewer, there is encouragement for more dense development. This proposal, at the fringe of existing development, allows flexibility but will reach an existing market.

Chairman Evans stated that the covenants have a provision that does not allow for further division of the lots.

John Kellogg stated that was correct but the covenants could be changed.

Jennie Dixon stated that the new proposal for a future north/south connector road has a short stretch where the slope is between 10% and 20%, but only for about 50 feet. That is about the maximum distance acceptable from an emergency access perspective. Based on this drawing, it looks like it would be something that OPG would support. There is also language for changes to the covenants that allows for further division of the lots with governing body approval and staff supports that as well.

John Kellogg stated that after contour grading of the proposed north/south connector road, the overall grade would be 3%-5%.

Horace Brown asked what would be done with the cul-de-sac?

John Kellogg stated there were three possible steps. The first would be to build the cul-de-sac. For the near future, it is anticipated to build the road ending in a cul-de-sac. If at some point in the future development occurs to the west, it would follow the conditional easement from the end of the cul-de-sac and the bulb may remain. This is in the middle

of a drainage flowing from the southeast to the northwest. Extension from the cul-de-sac would include a fairly large culvert to adequately address the drainage.

Horace Brown stated that by leaving the cul-de-sac, it might encourage motorist to make a U-turn and run the risk of being hit. If the road is ever extended, the bulb of the cul-de-sac should be eliminated.

Michael Sehestedt stated that he did not disagree with Horace Brown, but that should be a condition of approval of the future subdivision. They would be required to construct that road and would also probably petition to vacate the right-of-way for that portion of the cul-de-sac bulb. This also raises the question of what happens with the existing cul-de-sac bulb at the end of Haven Heights Road.

Commissioner Carey asked about the timing of removing the existing cul-de-sac bulb on Haven Heights Road. Did that need to be a condition for this subdivision.

Michael Sehestedt stated that could be handled through engineering review and approach permit approval.

Jennie Dixon stated that the conditional public access easement makes construction of the road the responsibility of the developer to the west. This subdivision is providing the right-of-way or easement, but the future adjacent subdivider becomes the responsible party for construction. She agreed with Michael Sehestedt that it would be addressed when future lands are subdivided.

Michael Sehestedt stated the best approach is to leave to each the problems thereof. The problem of what happens to the bulb when land to the west is developed is a problem for the future. The problem for today is what happens to the existing cul-de-sac bulb on Haven Heights Road when this new road is constructed. The existing cul-de-sac should be addressed with this subdivision and let future development deal with future problems.

John Kellogg stated that Horace Brown pointed out the hazard that could be created with the cul-de-sac bulb and the possible future north/south connector road. The existing cul-de-sac bulb on Haven Heights Road would be more of an issue with the neighbors in Haven Heights.

Michael Sehestedt stated that the Highway Department does feel that cul-de-sac bulbs or broad accesses encourage U-turns. It is not a large problem, but it should be addressed in the conditions.

Chairman Evans opened the public hearing.

Jim Valeo stated that he and his wife own 100 acres of land south of this project and share a 2,300 foot boundary with it, and also share a boundary with River Heights Subdivision to the east. He has mixed emotions about this proposal. This 50 acres is part of another 100 acre tract similar to his. A few years ago a subdivision was approved of the 100 acre tract into four 25 acre tracts. At that time, the applicants stated there were no further plans for subdivision. Based on that, they purchased the 100 acres to the south. In barely two years, this proposal has come in to split two of those 25 acre tracts into 10 lots. He feels betrayed by this proposal but the Commissioners don't deal with betrayal. On the other hand, he does commend the proposed development because the property is zoned for much higher density. His intention is to keep his property undeveloped and possibly in a conservation easement. He would rather have 10 houses to the north than 50 houses, which is the potential for the land with the zoning. At the neighborhood meeting he expressed his preference for clustered housing. The reason the Planning Board voted 6-2 to deny this subdivision, and encourage cluster housing, was so that the remaining acres not developed could be at some point in the future. He would prefer to see development the way it is proposed. He does support this proposal although he does feel betrayed by the actions of the Board over the last few years. He quoted from the application: "Normal lawn irrigation will interrupt the spread of grass fires through the area." There is no evidence in the application that there is adequate water supply to irrigate five acre tracts. The one acre and two acres tracts in the area are not properly irrigated now. He did not know if that was due to inadequate pumping or inadequate water supply in the ground. He would expect that some demonstration and commitment to providing adequate water to irrigate these properties would be provided and that is not done in the application. The applicant represents: "That noxious weeds are not a problem on this site." If that's the case, then he was not sure why he spent \$3,000 over a year ago to spray his property for weeds. He drove this property today, and it is loaded with noxious weeds. He understood the requirement that there be a Weed Board approved revegetation plan, but more that that was needed. There needs to be some plan to eradicate and prevent weeds. He suggested some additional recognition of the need for weed control and adequate water. One of the conditions is a waiver to opposition to sewer connection should it arise. He has heard of other subdivisions requiring not only stub ins to the internal streets, but that the main be put in all the way to the property line so when the sewer does arrive there is immediate hook up. He felt that now would be the time to do that as the cost could be added to the price of the lots. It would be far cheaper to do it now then wait until all the improvements and utilities are in. He did not know if that could be a requirement, but sewer infrastructure in place to the property line would make good sense. The covenants are normally beyond the scope of the Commissioners review, but in the staff report there are several requirements for changes to the covenants. Two things trouble him. First, that each lot could have two large animals – cattle, horses, llamas – per acre. With the 50 acres, that would be 100 cattle, horses or llamas. This could end up to be a large "McDonald's Farm." That land cannot sustain anything close to that many animals. On nearby three to five acre tracts with two or three horses, the ground is bare. That land cannot support 100 animals. It is also permitted to have two dogs per site, that's 20 dogs. The applicants states that the land south of this property is deer habitat. This property is deer habitat too. Deer don't respect property lines. Any fencing that is permitted should allow deer to migrate which would put owner's vegetation at risk. There should also be requirements that dogs be kenneled or restrained to protect the wildlife.

Cult Belts, Assistant Chief, Missoula Rural Fire District, stated that regarding the existing cul-de-sac, part of the District's agreement with the variance was that cul-de-sac would stay as an emergency turnaround. The road will be a 3,000 foot dead end. Uniform fire code calls for a 1,500 foot dead end. He would not support abandoning the cul-de-sac at this time.

Diane Beck, 8190 Haven Heights Road, stated that she and her husband, Bob, support this development in its current form. However, they do not support any future division of the lots. The covenants say there will not be any future division, but she was unsure if they were the covenants that would be used for the subdivision. They are concerned about the extension of the City sewer and how it will impact the neighborhood. The dollar figures that they have heard are way more than many can afford. They wondered how this 50 acre parcel would be included in the cost. If the intent is to further divide the lots, they would obviously be required to share in some of those costs. They selected the neighborhood seven years ago for its rural character. Many people enjoy having 1 to 5 acres and some room between their neighbors. Their biggest concern is how will this share in the cost of the extension of sewer and what is the requirement for having these lots further divided. Was that a proposal from the planning office?

Chairman Evans stated the Planning Board wanted more density because the Comprehensive Plan allows two dwellings per acre and zoning allows one dwelling per acre. Growth is being channeled to this area and the Planning Board felt there should be more density in the area. They also preferred clustering versus the 5 acre lot sizes. She would ask someone else to speak about the sewer costs and what control there could be on the number of livestock and dogs.

Diane Beck stated her two main concerns were about future division and how they would be impacted by the sewer. She would also like to go on record to say they like their cul-de-sac bulb.

Michael Sehestedt stated this development would be charged on a per acre basis for the backbone of the sewer system. Each acre will be charged roughly \$3,000. County ordinance makes it unlawful for dogs to run at large off their owners property. The enforcement is a problem in rural areas, however. If it is felt the animals will have an impact on wildlife, some provisions can be adopted that might also tend to control them. The covenants that require dogs to be kept fenced or chained may have some impact. If it is found there could be potential impact, the County could ask for mitigation. The same goes for water quality and air quality issues. Two per acre of large hooved animals on these soils would produce a "dust bowl" and would adversely impact water and air quality which would require mitigation. A finding could be made to amend the covenants to restrict the number of animals. He could not imagine anyone having five acres and 10 horses. This area has been zoned one dwelling per acre for 25 years, it seems unreasonable to expect that it would develop at a lower density.

Chairman Evans stated that common sense and the growth that is being experienced indicates that at some point there will be much higher density, regardless of where someone lives. She asked if the idea of dry lay sewer and sewer stubs had been discussed with the applicant.

John Kellogg stated that had been discussed and discussions were ongoing with the Health Department.

Michael Sehestedt stated that dry lay makes sense on this proposal. It is a long way down the road for the final design for the interceptor system and if dry lay is installed now, it will be known which way it will drain, etc. That would not be a bad requirement for this subdivision.

Chairman Evans asked if specifications for such a dry lay sewer were known.

Michael Sehestedt stated that because the interceptor system for this area has been pretty well designed, the developer will know where to install the dry lay system. This area is expected to gravity feed to an area just below the existing ponds.

John Kellogg stated the Health Department has criteria for when the requirement kicks in for dry laying sewer.

Chairman Evans stated that the cost would ultimately be passed to the buyer and the Board needed to decide if they wanted to impose this as a condition at this time. The specifications would come from the Health Department. State law has requirements for control of noxious weeds, but that doesn't mean that everyone does.

Michael Sehestedt stated he did not think it would be possible to require landowners to irrigate. The question of adequacy of the water system gets approval from the State Health Department. They would look at the availability of each site to get water from wells. He was not sure there was any effective way to address that concern.

Chairman Evans asked Mr. Kellogg if the applicant had given any consideration to limiting large animals or controlling dogs?

John Kellogg stated that he could work with the Creightons and NRCS to look at the capacity of the soils to see what limits are reasonable so it isn't turned into a dust bowl. He assured the Board that a reasonable number per lot or per acre could be developed.

Chairman Evans asked about requiring irrigation if a landowner was going to keep large animals to prevent it from becoming a "dust bowl."

John Kellogg stated that would make sense.

Commissioner Carey stated that in Article 5, Section 6 of the covenants, there was an attempt to address both issues. In part it reads: "Horses, cattle and llamas must be kept in such manner so as not to overgraze the lots." It also says: "Up to two dogs and two cats per lot may be kept in accordance with the rules of the association, provided they are not bred or maintained for commercial purposes. All household pets shall be kept within the lot of their owner and shall not be allowed outside their lot unless under the immediate control and supervision of their owner or a member of his immediate family."

Chairman Evans stated that State law and County regulations say that dogs must be under the control of their owner at all times. It doesn't say they have to be leashed. She understood the concerns of dogs at large chasing wildlife.

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John Kellogg stated that he could work with the Creightons to come up with a number that would fit into these covenants that is reasonable. It would likely be less than two large animals per acre.

Michael Sehestedt stated that two or three per lot would be a reasonable number for large animals.

John Kellogg stated that if the land was irrigated and adequately maintained, more might be possible, but it would require quite a lot of work on the owners part. The usable portion of these lots will not be five acres, it would be more like three acres, after placing the house and driveway, etc.

Jim Valeo stated that the covenants currently do state two animals per lot acre, or 10 animals per lot.

John Kellogg stated the covenants could be revised to address that number per usable acre based on soil type as recommended by NRCS.

Michael Sehestedt stated the covenant regarding large animals could be revised based upon usable acreage of the lot and the recommendation of NRCS.

Chairman Evans asked about requiring dry lay sewer and if that would be acceptable to the applicants?

John Kellogg stated the applicants may not be happy with the requirement. With large lots, it is a substantial distance. He anticipated that should future development happen, it would necessarily require resubdivision with a number of steps to complete. There may be a market for people who would not want to resubdivide but keep larger tracts. He understood there would be a waiver of the right to protest an RSID/SID for sewer.

Michael Sehestedt stated it would be fairly likely that buyers may not want to resubdivide. These are similar to the Golden West lots immediately to the east. There has been no inclination of the part of the homeowners there to further subdivide. He would suspect this area would be quite similar.

Jim Valeo stated the reason there is no further subdivision at Golden West is that the existing lagoon system is capped out. He was unsure what would happen when sewer came to the area. He is supporting this proposal because he believed owners would not want to further subdivide.

Commissioner Carey asked if Mr. Valeo had seen the alternative language to the covenants regarding future resubdivision of these lots.

Jim Valeo stated he had just seen the language and it was acceptable.

Chairman Evans stated she could support not requiring dry laying of the sewer.

Diane Beck stated that she read the alternative language differently than Mr. Valeo. It says that if someone buys a five acre parcel on speculation and waits for the sewer, then the five acre parcel can be resubdivided as long as it is presented to the Board for approval.

Chairman Evans stated that was correct, as long as it passed subdivision review.

Diane Beck stated that two years ago Mr. Valeo was told these would be 25 acre parcels, assuming there would be no further subdivision. This language says that these five acre parcels could be further divided, provided it goes through the proper process. She has a problem with that. She would like to see a covenant in place that no further subdivision can be done. This language leaves the door open for future development. Mr. Valeo said he does not want to see any further development as well.

Chairman Evans stated she understood those concerns but as counsel said, the zoning out there is one dwelling per acre and the Comprehensive Plan is two dwellings per acre. The Board cannot promise anything except that this valley is going to continue to grow and it is likely there will be more growth in this specific area.

Diane Beck stated she understood that, but the intent of the applicant was to have these five acre parcels remain intact.

Michael Sehestedt stated that was the applicants intention. The Planning Board denied approval of the subdivision on the grounds that it would achieve that. This language is an attempt to find a way to let the applicant go forward with the subdivision while addressing the Planning Board's concerns.

John Kellogg stated it was the intent of the applicants to do five acre tracts. The Creightons understand there will be a lot of pressure due to potentially being surrounded by development that may be more dense. They understand that covenants are changeable in the future. He is a little concerned about changing the current language that says it can't be subdivided. That would take the decision out of the hands of the homeowners association that would control the remainder of the covenants.

Chairman Evans stated one thing to consider was the extreme costs of the sewer coming out there. That can be reduced by the number of people who participate. While it may not help right now, the more people who contribute to a system, the less it costs everyone. It can't be done both ways, less costs but no people.

Jim Valeo stated if the developers and neighbors agree they would like to preserve the five acres, the easy way to do it would be to put restrictions on the lots that go with the deeds, never mind the covenants. If that is what the Creightons want and they want to respond to the desires of the neighbors and what potential buyers want, deed restrictions would work.

Jennie Dixon stated that restrictions are seen in covenants similar to this. Staff does not like to see it, however, particularly when it is contrary to zoning or the Comprehensive Plan. Missoula County does make sure that they are



not party to covenants that are contrary to zoning or the Comp Plan. If the covenants do restrict development the homeowners may come before the County to request a change, but it is reviewed relevant to zoning and the Comp Plan, not the covenants. It can create disputes between neighbors. Staff definitely supports the revised language so that if somebody wanted to subdivide per the zoning and Comp Plan, they wouldn't be in conflict with their covenants.

Michael Sehestedt stated that he wrote the revised language very carefully so that there would not be any resubdivision until sewer service is actually available to the lots. The existence of the backbone system alone would not allow resubdivision. The subdistrict to serve this area would actually have to be constructed. That is a fairly expensive option and it is not anticipated to happen any time soon. The language does address the fact that the covenants will exist forever and the current development will not exist forever. This is the area to which growth is being directed as a result of a long public process. This area is included within the sewer service area boundaries. Growth is anticipated in this area and it would be foolish to prohibit it on these lots into the future. That is also ultimately a policy question for the Board of County Commissioners.

Chairman Evans stated that anytime there is subdivision, it comes before the Board or City Council as a public hearing. Subdivisions don't happen in a vacuum. There would be opportunity for public comment at that time to influence the decision of the governing body. However, the zoning and the Comprehensive Plan for the area does allow for more dense development and the channeling of growth.

Diane Beck stated that she knows she can't have her cake and eat it too. She did participate in some of the discussions on growth management. This whole discussion today underscores the need to complete a plan for the Wye/Mullan area and allow the people who own large parcels to have a say in what their areas will look like. That process was started over three years ago and is not complete yet. She hoped it would be completed soon. Today's discussion would not be taking place if the large landowners had been able to complete the plan they started. If there was a clear vision of what was going to happen in the area, there would be no opposition. To say that it has been zoned for 25 years at one dwelling per acre is great, but today is today and a new plan is needed.

Commissioner Carey stated another matter that Mr. Valeo raised was noxious weeds. The covenants states that noxious weeds shall not be allowed to accumulate on any property. However, noxious weeds already exist. Is there a way to address eradication.

Michael Sehestedt stated the subdivision can be conditioned to address adverse impacts. One adverse impact of large lot subdivisions like this is frequently the spread of noxious weeds. To mitigate that impact on agriculture and wildlife, the Board could require that as part of the covenants, a requirement could be imposed for not only revegetation of disturbed areas, but that a weed control plan be implemented for the entire property and have it binding on the developer or subsequent purchasers. Imposing a condition that a noxious weed control plan be developed is not outside the Board's powers.

Commissioner Carey stated in light of the recent Mill Levy to combat noxious weeds, that condition should be imposed, otherwise this battle may be lost.

Michael Sehestedt stated this is particularly relevant in large lot subdivisions.

There being no further comments, the public hearing was closed.

Commissioner Carey stated he would like to be able to impose a condition regarding the noxious weed situation.

Jennie Dixon stated she had a list of those items for potential conditions and the topics included dry laying of the sewer, changing the covenants to allow for further lot division as drafted by Michael Sehestedt, the north/south conditional public access and utility easement as presented by John Kellogg, restrictions on livestock and/or dogs, removal or not of cul-de-sac bulbs and a weed management plan for the entire site. After discussion, the dry lay sewer may not want to be done. The motion could include the revised language from Michael Sehestedt. Possible wording for conditional access could be: "The north/south conditional public access and utility easement as presented by John Kellogg to be subject to review and approval by Public Works, the Fire District and OPG for exact location." Possible wording for a weed management plan could be: "The covenants shall be revised to include development of a weed management plan for the entire site, to be reviewed and approved by the Weed District." Possible wording for animals could be: "The subdivider shall revise the covenants to limit livestock based on recommendations from NRCS as to usable lot area and soil capacity for supporting such livestock, subject to review and approval by OPG." The discussions on the cul-de-sac bulb could affect the variance request on cul-de-sac length.

Horace Brown stated if the cul-de-sac bulbs were to be left in place, they could be controlled by a sign that states no U-turns except by authorized vehicles. He was worried that someone could make a U-turn while someone else was going straight through. If there is a restriction to authorized vehicles, that problem could be avoided.

Chairman Evans stated she has never agreed with having a road of a specific length, 1,000 feet. She did understand that if someone were on a long dead-end road, they may need to turn around. If there is a cul-de-sac bulb, that should be used instead of someone's driveway. She was willing to leave the cul-de-sac bulb in place based on the recommendation of the Fire District.

Michael Sehestedt stated that people would make U-turns, with or without signs, but by placing the signs the County has taken care of the liability issue.

Chairman Evans stated that with regard to the dogs, they should be under the control of their owners at all time. She did understand the concerns about dogs and wondered if the covenants could be strengthened in that area.

John Kellogg stated that was already in the covenants as to harassing livestock and they could add wildlife as well.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact set forth in the staff report; approve the variance request from Section 3-2(3) to provide a paved surface of 26 feet in the subdivision, based on the findings of fact set forth in the staff report; and approve the variance request from Section 3-2(6)(C)(i) which permits a maximum cul-de-sac length of 1,000 feet, based on the findings of fact set forth in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve the Caitlin's Estates Preliminary Plat Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report with the following changes: 1) Add a condition to accept the alternative language proposed to Article V, Section 4 of the covenants regarding limitation of further division; 2) add a condition to accept the alternative north/south conditional public access and utility easement as provided by the developer, subject to the review of OPG, County Public Works and the Fire District; 3) that a Weed Management Plan be developed, subject to review and approval by the Weed District; and 4) that the number of livestock be limited based on recommendations from NRCS as to usable lot area and soil capacity for supporting such livestock, subject to review and approval by OPG. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

#### **Caitlin's Estates Preliminary Plat Subdivision Conditions of Approval:**

##### **Roads/Driveways**

1. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Haven Heights Road including, but not limited to, the installation of pedestrian walkways or bikeways, 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." *Subdivision Regulations Article 3-2(E), 3-2(8)(A)(ii) and OPG recommendation.*

2. The on-site portion of Haven Heights Road shall be built to a 24 foot paved width within a 60 foot right-of-way and shall meet minimum County standards for paved roads, subject to review and approval by Missoula County Public Works Department. *Subdivision Regulations Article 3-2(1)(E), Public Works Department and OPG recommendation.*

3. A 60 foot conditional public access and utility easement centered on the boundary between Lots 5 and 6 beginning at the end of the Haven Heights Road cul-de-sac and extending west to the western boundary of the subdivision shall be shown on the plat. The following statement shall appear on the face of the plat and refer to the conditional public access and utility easement:

"The owners dedicate a 60 foot right-of-way for purposes of a public roadway over and across Lots 5 and 6 of the Caitlin's Estates Subdivision as shown on the subdivision plat of Caitlin's Estates, conditioned upon said right-of-way being used as roadway at the time that it is needed to serve future subdivision on the parcels to the west of Caitlin's Estates. The lot owners and future owners of lots in Caitlin's Estates will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the west. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway." *Subdivision Regulations Article 3-2(1)(E), Public Works Department and OPG recommendation.*

4. A 60 foot north/south conditional public access and utility easement between Lots 4 and 5 and Lots 6 and 7 as proposed by the developer shall be shown on the plat, subject to review and approval by OPG, County Public Works and the Fire District. The following statement shall appear on the face of the plat and refer to the conditional public access and utility easement:

"The owners dedicate a 60 foot right-of-way for purposes of a public roadway over and across Lots 4, 5, 6 and 7 of the Caitlin's Estates Subdivision as shown on the subdivision plat of Caitlin's Estates, conditioned upon said right-of-way being used as roadway at the time that it is needed to serve future subdivision on the parcels to the north or south of Caitlin's Estates. The lot owners and future owners of lots in Caitlin's Estates will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the north or south. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway." *Subdivision Regulations Article 3-2(1)(E), Public Works Department and OPG recommendation.*

5. Engineering plans, calculations and specifications for all subdivision public improvements including roadway and stormwater improvements shall be submitted to the County Public Works Department for review prior to commencement of construction of public improvements or prior to final plat approval, whichever occurs first. *Subdivision Regulations Article 3-2(1)(B) and Public Works Department recommendation.*

##### **Non-Motorized Facilities**

6. The plat shall be revised to show a 20 foot wide public pedestrian access easement and the subdivider shall construct a 5 foot wide gravel path connecting with the existing 20 foot pedestrian easement between Lots 2 and 3 of the River Heights, Phase 2 Subdivision, generally centered on the boundary between Lots 9 and 10 of this proposed subdivision connecting Crest Haven Drive to the proposed extension of Haven Heights Road. The applicant shall amend the covenants to include a maintenance plan for this pedestrian easement, subject to County Attorney Office and OPG approval, prior to final plat approval. *Subdivision Regulations Article 3-1(E) and OPG recommendation.*

##### **Sewer / Water**

7. The following statement shall appear on the face of the final plat:

“Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public sewer and water systems, based on benefit. The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.” *Subdivision Regulations Article 3-1(1)(D), 307(2) and OPG recommendation.*

#### Fire

8. The Missoula Rural Fire District shall review and approve plans for a well with a 350 GPM (gallons per minute) pump and 2,000 gallon storage tank or a 5,000 gallon tank/cistern with an attached fire hydrant, prior to final plat approval. *Subdivision Regulations Article 3-7(1), Missoula Rural Fire District and OPG recommendation.*

#### Weeds

9. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and OPG recommendation.*

#### Covenants

10. The applicant shall amend the covenants, subject to County Attorney Office and OPG approval, prior to final plat approval, to require that:
- Driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus, an all weather surface width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches. The all weather surface and unobstructed clearance shall be maintained by individual lot owners that use the driveway. Maintenance shall include dust abatement. Driveway design, location, grade, surface type and turnaround or turnout locations shall be approved by the Missoula Rural Fire District prior to any construction and building permit issuance. The driveways shall run generally parallel to drainages and shall meet the requirements of Subdivision Regulations Article 3-15(5) (Hillside Design Standards).
  - A maintenance agreement for shared portions of private driveways shall provide for snow removal, grading, drainage and maintenance of the all weather surface and unobstructed clearance. Maintenance shall also include dust abatement.
  - Grading, drainage and erosion control plans for site development shall be approved by the County Public Works Department prior to issuance of building permits for the lots.
  - Covenants related to driveways are enforceable by Missoula County by any action required to compel performance, including injunction, suit for damages or by refusal to provide fire protection and emergency service, until driveways are brought to these standards.
  - Each lot owner shall properly control noxious weeds on the property and shall follow the requirements of the Revegetation Plan for Disturbed Sites.
  - A Weed Management Plan shall be developed for the entire site, subject to review and approval by the Weed Board.
  - Article V, Section 4, Limitation on Further Division, shall be revised to read: “No lot or lots shall be subdivided into smaller lots without review by the governing body having jurisdiction of the area encompassed in Caitlin’s Estates. In any event, no lot shall be subdivided into parcels of land containing less than the area shown on the recorded plat of Caitlin’s Acres unless each parcel so created shall be served by a municipal or similar sewage disposal system providing off-site treatment and disposal of sewage. Notwithstanding any provision of these covenants, Article V, Section 4 may be amended only with the consent of the Missoula County Board of County Commissioners.
  - The number of livestock shall be limited based on recommendations from Natural Resource and Conservation Services (NRCS) as to usable lot area and soil capacity for supporting such livestock, subject to review and approval by OPG.

*Subdivision Regulations Article 3-1(1)(B), 3-2(10), 3-2(1)(G)(v), 3-4(3), Missoula Rural Fire District, OPG, County Surveyor and County Attorney Office recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:58 p.m.

**THURSDAY, OCTOBER 18, 2001**

The Board of County Commissioners met in regular session; all three members were present.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2001-095 – The Commissioners signed Resolution No. 2001-095, as follows (in full):

**RESOLUTION NO. 2001-095  
FIXING TAX LEVIES FOR MISSOULA COUNTY  
FOR FISCAL YEAR 2001-2002**

WHEREAS, the Board of County Commissioners of Missoula County, Montana, has approved and adopted the budget for Fiscal Year 2001-2002, as required by law; and

WHEREAS, budgets have been received from various taxing entities; and

WHEREAS, hearings have been held in compliance with State law and in reference to the number of mills levied; and

WHEREAS, the value of a mill has been determined as \$145,789 County-wide, and a value of \$72,873 outside the City limits, with other values as stated and certified by the Department of Revenue, State of Montana;

NOW, THEREFORE, BE IT HEREBY RESOLVED by this Board of County Commissioners that the Resolution be adopted for Fiscal Year 2001-2002 as moved, seconded and passed by the board and as detailed below:

<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	72.69	A, B and C
Bridge Fund	4.19	
Poor Fund	4.00	
Fair Fund	0.31	
Museum Fund	1.51	
Extension Fund	1.49	
Weed Fund	2.07	
Planning Fund	2.76	
District Court Fund	6.35	
Mental Health Fund	0.48	
Aging Fund	1.13	
Park/Recreation Fund	1.03	
Risk Management	2.30	
Technology	1.18	
Child Daycare	0.28	
Library	9.11	
<u>SUB-TOTAL</u>	<u>110.88</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail	6.32	
Risk Management Bond	0.60	
<u>SUB-TOTAL</u>	<u>6.92</u>	
<u>TOTAL COUNTY-WIDE &amp; DEBT SERVICE LEVIES</u>	<u>117.80</u>	
Road Fund	16.02	
Health Fund	7.52	
Animal Control	1.00	
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>24.54</u>	

Other items included:

- 1) As per recommendation of the Office of Planning and Grants (OPG), the Commissioners approved a request to pay Missoula Ravalli Transportation Management Association (MR TMA) the sum of \$5,000, the balance of its \$10,000 contract for a special needs transportation coordination program. The Principal Grants Administrator will include a letter with the payment advising MR TMA of its original contract agreement, areas of deficiency, and future expectations. The request was returned to Cindy Wulfekuhle in the OPG for further handling.
- 2) The Commissioners authorized the sale of a small landlocked parcel of land in East Missoula donated by Marie Battle. Deputy County Attorney Michael Sehestedt will prepare a contract and deed for said sale.
- 3) A discussion was held with Public Works Director Greg Robertson regarding the Canyon River Subdivision. The Commissioners approved the delay of developers of Canyon Creek to redo the Highway 200 intersection in concert with the Public Works Department reconstruction of said road.

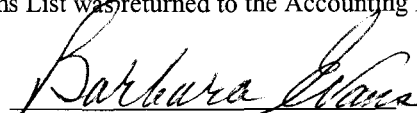
The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, OCTOBER 19, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in Hamilton attending a Mental Health Board Meeting. In the forenoon, Chairman Evans and Commissioner Curtiss attended the Museum of Mountain Flying Ceremony.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated October 18, 2001, batch number 1599 (pages 1-5), with a grand total of \$48,838.92. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

**MONDAY, OCTOBER 22, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioner signed the Claims List, dated October 19, 2001, batch number 1603 (pages 1-4), with a grand total of \$7,102.76. The Claims List was returned to the Accounting Department.

Claims List – The Commissioner signed the Claims List, dated October 19, 2001, batch numbers 1604 and 1605 (pages 1-2), with a grand total of \$4,690.17. The Claims List was returned to the Accounting Department.

Claims List – The Commissioner signed the Claims List, dated October 22, 2001, batch number 1601 (pages 1-5), with a grand total of \$27,749.18. The Claims List was returned to the Accounting Department.

Claims List – The Commissioner signed the Claims List, dated October 22, 2001, batch number 1602 (pages 1-6), with a grand total of \$64,781.69. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 21 - Pay Date: October 19, 2001. Total Missoula County Payroll: \$843,018.77. The Transmittal Sheet was returned to the Auditor's Office.

**TUESDAY, OCTOBER 23, 2001**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners toured the new Missoula Aging Services building at 337 Stephens.

Claims List – The Commissioner signed the Claims List, dated October 23, 2001, batch number 1598 (pages 1-3), with a grand total of \$6,484.54. The Claims List was returned to the Accounting Department.

Claims List – The Commissioner signed the Claims List, dated October 23, 2001, batch number 1607 (pages 1-5), with a grand total of \$118,665.99. The Claims List was returned to the Accounting Department.

Claims List – The Commissioner signed the Claims List, dated October 23, 2001, batch number 1608 (pages 1-3), with a grand total of \$17,157.62. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Contract – The Commissioners signed a Missoula County Employment Contract between Partnership Health Center (PHC) and Michael Curtis, M.D., for professional services as primary care staff physician at PHC. Employment services commenced on July 1, 2001. The total amount shall not exceed \$80,000.00 for 30 hours per week (0.75 FTE). The County will also pay full-time benefits to Dr. Curtis, as well as costs set forth in Addendum C to the contract.

Shoreline Permits – Pursuant to the recommendation of the Office of Planning and Grants, the Commissioners approved the applications and Chairman Evans signed permits for the following on Big Sky Lake:

- 1) For Karl Ingebrigtsen to replace an existing dock and install a 504 square foot fixed dock. The property is at 1801 North Perimeter Road; and
- 2) For Anthony Luke, Jr. to replace an existing dock and construct a 128 square foot fixed dock. The property is described as Lot P-1 of the Shull Addition.

The Permits were returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Request – The Commissioners denied a request via a memo from Kathleen D. Breuer, Clerk of District Court, to reclaim the space on the landing in the Old Courthouse, formerly occupied by the Crime Victim Advocate.

Certification – Chairman Evans signed a Certification of Selection of Jury List. The selection was made at a meeting at the office of the Clerk and Recorder on October 23, 2001. The Jury List was returned to the Clerk of Court's office.

Other items included:

- 1) A discussion was held on the issue and request of the Interlocal Agreement with MUTD. The request was not approved. Ann Mary Dussault, Chief Administrative Officer, will notify MUTD via e-mail of the decision.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, OCTOBER 24, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Judith Johnson as applicant for Missoula County Public Schools Warrant #100173 issued September 14, 2001 on the MCPS Payroll Fund (78-42) in the amount of \$97.22 (payment for wages ), which was not received in the mail. No bond of indemnity is required.

**000-0720**

CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

**Certification of Acceptance** – Chairman Evans signed a Missoula County Public Works Department Surveyor's Office Certification of Acceptance for County Maintenance for ACM. No. 2001-0006, Grizzly Court, Road No. L 0726-W, T 13 N, R 20 W, Section 01. The limits of acceptance are .117 miles from the intersection with Expressway thence southerly 620.00 feet to the center of an 80-foot radius cul de sac, 37 foot of asphalt within an 80-foot right of way, curb and gutter on both sides, sidewalk on right side, Missoula Development Park Phase 8. The document was returned to the County Surveyor's Office.

**Agreement** – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and Western Montana Addiction Services – Turning Point, for the purpose of employing two Youth Development Coordinators to staff Hellgate High School and Rattlesnake Middle School as part of the Flagship Project. The total amount shall not exceed \$45,007.36. The term will be October 1, 2001 through September 30, 2002, contingent upon receipt of Juvenile Justice Grant Funds by Missoula County.

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, County Public Works Director Greg Robertson, Chief Civil Deputy County Attorney Mike Sehestedt, County Chief Administrative Officer Ann Mary Dussault and County Surveyor Horace Brown.

### Pledge of Allegiance

## Public Comment

None

### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$295,470.87. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Price Family Transfer**

Michael Sehestedt presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Parcel C, COS 2111 located in Section 8, Township 14 North, Range 14 West.

Edgar and Eleanor Price have submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 5.18 acres in size located in the northern part of Missoula County near the Missoula and Powell County lines, off Highway 200 near the Old Chicago Milwaukee St. Paul Railroad. Mr. and Mrs. Price propose to create two approximately 2.59 acre parcels for transfer to their two sons, Edward L. Price and Kenneth J. Price.

The history of the parcel is a follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 2111	1979	Occasional Sale	James and Grace Geil and Warren and Betty Stone	N/A
COS 4495	1995	Boundary Relocation	Edgar and Eleanor Price	

Mr. and Mrs. Price purchased the property in August of 2000 (8-3-2000).

According to the records kept by the Missoula County Surveyor, the applicant has previously used exemptions to the Subdivision and Platting Act as listed above.

Chairman Evans asked for an explanation of the fact that Mr. and Mrs. Price did a boundary relocation on this property in 1995, yet it says they purchased the property in 2000.

Colleen Dowdall stated that in preparing the application, research is done to get the last deed to the property. Mr. and Mrs. Price may have purchased the property on contract.

Michael Sehestedt stated that the search only shows the exemption has been used by the Prices, it may not have been on this piece of property.

Chairman Evans opened the public hearing.

Edgar Price was present and came forward to answer any questions the Commissioners may have.

Chairman Evans asked if Mr. Price intended to give this land to his children?

Edgar Price stated this was an attempt to get his affairs in order. The family has owned the property for about 10 years. His sons will inherit the property anyway. He would like to give the land to his sons now so they can enjoy it. This is not an attempt to evade the subdivision act.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Edgar and Eleanor Price to create two 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 Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Intent to Create RSID #8470 (Construction of a Portion of Paved Roadway known as Expressway Road from Butler Creek to DeSmet Road and the Closing of a Railroad Crossing)**

Jesse Sattley, Public Works, presented the staff report.

This is a request for the creation of RSID #8470 – Construction of Expressway Road from Butler Creek to DeSmet Road, Missoula County, Montana.

A Resolution of Intention to Create RSID #8470 was adopted on October 2, 2001 and set the public hearing date for the Board of County Commissioners to hear the proposed improvement district and decide the merits of the creation of the RSID. Notices for the public hearing were mailed to all affected properties within the district and were published and posted as required. Missoula County staff and RSID Bond Counsel have reviewed the method of assessment, district boundary and benefit of the district. Bond Counsel will issue the opinion on the sale of RSID Bonds to finance the improvements.

Tom Hanson of Professional Consultants, Inc. will be the district construction engineer and Missoula County Public Works will provide the design engineering.

Two letters of protest were received that represent approximately 20% of the cost.

Staff recommends creation of RSID #8470 for the Construction of Expressway Road from Butler Creek to DeSmet Road.

Chairman Evans opened the public hearing.

Rex Woods, 5175 Goodan Lane, stated he was in opposition to the creation of the RSID. There are 150 homes in the area and another 240 that are being created next to him, plus the future development of the Hanson Ranch and Circle H Ranch. It makes no sense to close an exit to the highway.

Chairman Evans stated that the railroad crossing in question was the DeSmet crossing, not the Butler Creek crossing.

Richard Reep stated he was an attorney representing the Gary J. Gallagher Irrevocable Living Trust. The trust owns a parcel of property not contiguous to this plan but is included in the RSID as Parcel B. He submitted a letter of protest on October 16, 2001 that outlined his reasons for protesting the creation of this RSID. The improvement may be necessary but the manner in which it is being created is, in their view, both illegal and inequitable. If there could be some apportionment of the cost of this project, his client may reverse his position. Until then, the apportionment worked out is inequitable and unfairly shifts the burden of the cost of access to the proposed and preliminary approved subdivision to non-contiguous and non-beneficial owners. Until this is resolved, they are also opposed to the closure of the DeSmet Crossing. It is the only access for heavy trucks to this parcel.

Tom Beers stated that he is representing George and Dianne Grutsch, also non-contiguous landowners affected by this RSID. He has filed a protest on their behalf which spells out their reasons and it is on file. It is not necessary to enter that into the record. He was available to answer any questions if necessary. He appreciates the efforts of Commissioner Evans, staff and Bond Counsel to meet with them to try to work out a resolution. He agreed with Mr. Reep that if the parties could have some time to try to work out some of the issues raised, perhaps a solution can be reached to allow the project to go forward. There is some inequitableness in the RSID that needs to be worked out.

Pat Cohen stated she lived in the Goodan Keil area. She wanted clarification that Butler Creek Road would remain open as it currently exists and that Expressway would be extended to DeSmet Road.

Chairman Evans stated that there were no plans to make any changes to Butler Creek Road at this time. This RSID is for the extension of Expressway. Her vision for the future would be for Expressway to continue across this land and connect back to the Interstate at some point, so there is an additional access in and out of that area. That may take years to accomplish and may or may not happen. She also stated that the Board has given their word to the railroad that this crossing will be closed. It is very unsafe and rates high on their index of dangerous crossings. There had been discussions that at some point in time if it is warranted, the crossing on Butler Creek Road may be considered for closure. With all the growth in area, it was her guess that was unlikely to happen.

Bryce Bondurant stated he was a Real Estate Broker representing Robert and Ernest Johnson, who are participants in this proposed RSID. He has been working with the County for over a year and half on this project. The Johnsons wish to proceed with this RSID because of the opportunity of three sources of funding. Montana Rail Link has made some funds available, as has the State of Montana. The County has made funds available for engineering. It is an opportunity to get the road extended, the railroad crossing closed and provide a benefit to adjacent properties in the form of better roads and better access.

There being no further comments, the public hearing was closed.

Commissioner Curtiss stated an RSID for this area was considered last year which included the portion of Expressway from the creek back to Butler Creek Road. There seems to be some confusion as to why the numbers have changed. That part of the road was on County property and the road needed to be completed. It was done at County expense. Therefore, the County is no longer a party to the current RSID being proposed. It is unfortunate that no agreement has been reached



yet. According to Mr. Reep's letter, the value appears to be different but if the Johnson Brothers land value is looked at as a whole piece of property, they are paying 62%. The reason the value of that land looks higher is because of the proposed subdivision of that land. The benefits to all the landowners would be that sewer and water would be extended, all paid for by Johnson Brothers. The right-of-way is being provided by the Johnson Brothers. There is \$150,000 from the Montana Department of Transportation and Montana Rail Link that all go to reduce the cost of this project. If the parties cannot agree to accept the RSID as written, it cannot be changed, it must be terminated. Once the Resolution of Intent has been filed, no adjustments to payment terms can be made. The whole process must be started over. If the parties cannot agree, this RSID dies and the Johnson Brothers would have to fund it themselves.

Michael Sehestedt stated that once advertised, the project can only be done and assessed on the basis described. There is not sufficient protest to kill it and if the Board decides not to proceed with it, another RSID could be initiated to spread the cost for a similar project on a different assessment basis. However, a new method of assessment cannot be used on this RSID. As Commissioner Curtiss stated, the first RSID and manner of assessment was met with strong protest. That included a fairly heavy County contribution for the whole project. The County had their own needs and built, on their own, the portion of this project that was necessary. This RSID is now for the remaining portion of the road, without County participation, but with some money from the Department of Transportation and Montana Rail Link. He emphasized the money was for the road project. The actual cost of closing the DeSmet crossing is only about \$2,000-\$3,000, not a significant amount of money. The crossing can be closed and the money could be utilized for other road improvements. They have been trying to create a situation where everybody wins, with good long-term road access and significant contributions from MRL and MDT. The road to serve the County's Development Park has been built and paid for and is not part of this RSID. His recommendation is to close the DeSmet crossing in the near future and leave to the interested parties the manner in which they want to resolve the access issues. No assessment formula has been suggested that makes all the parties happy. The County's direct public interest is to close the unsafe railroad crossing. He would suggest to the Board to return the RSID situation back to the parties involved and do what they have to do with regard to the railroad crossing.

Chairman Evans asked if the attorneys and the Johnson Brothers representative could come up with a solution to this impasse.

Michael Sehestedt stated that even though the Johnson Brothers subdivision is platted showing this road, there is a possibility they could do their development in phases and simply extend the road into their development as the market dictates.

Chairman Evans asked if the parties were willing to work together to come up with a solution to provide this road extension. If that was the case, she was willing to delay action of the creation of this RSID for one month. As to closing the railroad crossing, the County has given their word that it will be closed and she intended to keep that word.

Richard Reep stated that on behalf of his client, the Gallagher Trust, he would appreciate some time to work this out. It will take some interaction with the Johnson Brothers and the fact that they want this road built so they can access these parcels. Was this offer still valid?

Michael Sehestedt stated there were three possible actions. First, the Board could create the RSID and go forward with it as stated. Second, the Board could kill it outright and the parties involved could begin the process to recreate it at some point in the future. The third option is to postpone action to see if the parties can come to agreement after further discussion. If they come in with a new formula for spreading the cost, this RSID could be killed and the process could be restated based on the new formula. Chairman Evans proposed to postpone action on this RSID for one month to give the parties involved time to reach agreement on this assessment. In one month, the Board will make the final decision to either go with this proposal or kill it and take the MDT and MRL money and spend it on other improvements. That leaves the parties involved to solve the Expressway issue by themselves over time.

Richard Reep asked if this would extend the protest period.

Michael Sehestedt stated it did not, the protest period closed Monday, October 22, 2001.

Tom Beers stated the Grutschs are in favor of postponing the decision to give them an opportunity to further evaluate and discuss this matter. They have set up several meetings to try and make this work for everybody.

Bryce Bondurant stated this postponement would be for this RSID and in 30 days, it would be given a yes or no by the County Commissioners. If the parties involved negotiate something else, then the whole process starts again.

Michael Sehestedt stated that is correct, but based on current work load, the new process would likely not begin until after the first of next year. If another assessment method is agreed on by the parties involved, the RSID creation process is about four weeks. It would not significantly delay construction even if the Board acted today.

Bryce Bondurant stated that time is the main concern. At a meeting back in February, they were told there would be significant activity and answers within two weeks. That two weeks extended into September. The work load is always the problem. The parties might reach agreement in 30 days, but it could potentially take six to eight months for action.

Michael Sehestedt stated the problem has been to try and come up with something that reasonably apportions the cost based on benefit. If an agreed upon assessment method can be reached, recreating the RSID process won't be that time consuming. If the parties don't reach an agreement, the Board will make a decision in 30 days on the current proposed RSID.

Commissioner Carey stated he was not in favor of imposing this RSID on the parties involved as there is not agreement among themselves. He is also opposed to spending any money on litigation should this RSID be imposed today.

Commissioner Carey moved that the Board of County Commissioners postpone a decision on the creation of RSID #8470 for one month to November 28, 2001. Commissioner Curtiss seconded the motion.

Commissioner Curtiss stated that the parties need to consider that the Johnson Brothers have been quite patient in waiting for their project to get done. This is not an illegal subdivision. The Johnson Brothers have not filed their final plat. When they do file, they will have two years to complete the infrastructure. The parties need to realize that their project is being delayed while they try to accommodate everyone else. It would be hard to deny that the road would provide better access to everyone because the DeSmet intersection with Butler Creek Road is not very workable. The moving vans that Gallaghers speak of would have much easier access from Expressway. And the railroad crossing will be closed. The parties need to look at this again and realize that if, in a month's time, there is no agreement to what this RSID says, those numbers cannot be manipulated. If private funding is arranged, the \$150,000 will not be available. Petitioning for another RSID would also slow the entire process even more.

Chairman Evans stated that even though the Board was postponing action for one month, they could still vote to impose the RSID at that time. If the process needs to be started over, it could not be done until after the first of the year. The Johnson Brothers did not bring this request to the County, she asked them several years ago. The County needs road that go from here to there, not that just stop. She would someday like to see Expressway join with the Interstate somewhere west. She would support delaying action today. She would also ask the Board, based on the attorneys advice, to set a date certain for the closure of the DeSmet railroad crossing.

Ann Mary Dussault stated that one month from today, on November 28, 2001, the Board of County Commissioners will either adopt this RSID and its assessment methodology or not. The Board cannot amend this Resolution of Intent for a different assessment methodology. In the event the Board denies this resolution, it would then be incumbent upon the parties, according to County policy, to initiate a new RSID that would be reviewed by staff, but no earlier than January of 2002.

Chairman Evans stated that was correct.

Chairman Evans called for a vote. The motion carried on a vote of 3-0.

Chairman Evans stated that if the parties involved don't like this particular RSID they need to see if they can come up with something else. They need to let the County know, preferably before November 28, 2001, how things are going and what needs to be done.

Commissioner Curtiss asked if the Board can officially notice at this meeting the closure date for the DeSmet railroad crossing.

Michael Sehestedt stated it should be noticed on the agenda for next Wednesday.

Greg Robertson stated he could draft a simple resolution for that and attempt to notify all surrounding landowners and publish a notice in the newspaper.

Michael Sehestedt stated the crossing can be closed for safety purposes at the discretion of the Board. He will review the procedures involved.

Chairman Evans stated that a hearing regarding the closure of the DeSmet railroad crossing would be on the agenda for next Wednesday's meeting.

There being no further business to come before the Board, the Commissioners were in recess at 2:12 p.m.

#### THURSDAY, OCTOBER 25, 2001

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Commissioner Carey participated in the interviews for Travelers Rest held at the Lolo Community Center.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated October 25, 2001, batch number 1609 (pages 1-3), with a grand total of \$11,681.22. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated October 25, 2001, batch number 1610 (pages 1-5), with a grand total of \$46,898.51. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated October 25, 2001, batch number 1611 (pages 1-4), with a grand total of \$86,728.67. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming John W. O'Bonnon, Stevensville, Montana, as Principal for Warrant #14612, issued October 16, 2001 on the Missoula County Payroll (Lolo School District #7) Fund in the amount of \$4,406.08 (payment for October 2001 Payroll), now unable to be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Peggy Miller, Huson, Montana, as Principal for Accounting Warrant #396975, issued August 31, 2001 in the amount of \$300.00 (payment for judging services) now unable to be found.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Quit Claim Deed – The Commissioners signed a Quit Claim Deed, dated October 25, 2001, unto Janie A. Tripp, Zane P. Raser and Kelly K. Raser of 4125 Spurgin Road, Missoula, Montana, for Lot 2 of Raser Commercial Tracts No. 1, a platted subdivision in Missoula County, Montana. This document deeds back property taken for tax deed in April of 2000. The Rasers redeemed the property to retain ownership. The Deed was returned to Debbe Merseal, Recording Supervisor, for further handling.

Agreement – Chairman Evans signed an Agreement between Missoula County and the Montana Historic Preservation Office, Montana Historical Society, Helena, Montana, for the purpose of receiving grant funds for the ongoing Travelers' Rest Project. The total amount shall not exceed \$5,500.00. The term will be October 10, 2001 through November 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and The Missoula Indian Center for the provision of substance abuse prevention, intervention and treatment services for prioritized populations in Missoula County. The total amount shall not exceed \$3,801.82. The term will be July 1, 2001 through June 30, 2002.

Request for Action – The Commissioners approved and signed JTL Change Orders to complete the drainage work and pathway construction within Phase 1, Missoula Development Park. The existing contract price will be increased by the sum of \$7,530.00. The documents were returned to Barb Martens in the Projects Office for further handling.

Extension Request – The Commissioners signed a letter to Dick Ainsworth of Placid Lake Properties, LLP, approving his request for a 180-day extension of the plat approval deadline for Placid Lake – South Shore Tracts, Phase 5 (Lots 12 and 14), in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is June 30, 2002.

Request for Action – The Commissioners approved and signed a request by The Meadows West Land Owners Association for a change to the *Meadows West Declaration of Restrictive Covenants*. The amended language is set forth in *Covenants* (Article II, Section 1: Land Use). It was also voted upon that Meadows West Homeowners must now collect signatures to amend the covenants.

Resolution Nos. 2001-096 and 097 – The Commissioners signed Resolution Nos. 2001-096 and 2001-097, dated October 25, 2001, for the Office of Planning and Grants, for the following:

- 1) Resolution No. 2001-096 in the amount of \$5,500.00 for a State Historic Preservation Grant expended for Contracted Services; and
- 2) Resolution No. 2001-097 in the amount of \$10,000.00 a United Way – Substance Abuse Prevention Grant expended towards permanent salary, fringe, and outreach advertising.

These resolutions reflect their adoption as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Other items included:

- 1) A discussion was held with Public Works Director Greg Robertson regarding the monitoring of Sunset West Well. Mr. Robertson presented a letter, dated October 17, 2001 written to the Meadow West Land Owners, advising them that a Notice of Completion required by the State Department of Natural Resource and Conservation (DNRC) assures compliance with the Water Right Permit.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

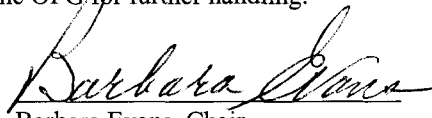
#### FRIDAY, OCTOBER 26, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated October 26, 2001, batch number 1612 (pages 1-5), with a grand total of \$26,933.59. The Claims List was returned to the Accounting Department.

Amendment – Chairman Evans signed Amendment Number Two to Contract No. 00-341-74402-0 between the State of Montana, Department of Public Health and Human Services, Addictive and Mental Disorders Division, and the Missoula County Office of Planning and Grants (OPG), dated October 1, 1999. This amendment continues community activities proposed for year three (through September 30, 2002) as required by the State Incentive Grant, Federal Cooperative Agreement Grant No. 1-U1F-SP09197-01. The contract's purpose is to reduce the age of on-set of substance use. The request was returned to Peggy Seel in the OPG for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

#### MONDAY, OCTOBER 29, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated October 29, 2001, batch number 1613 (pages 1-5), with a grand total of \$8,632.00. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 29, 2001, batch number 1618 (pages 1-2), with a grand total of \$12,073.50. The Claims List was returned to the Accounting Department.

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Plat and Agreements – The Commissioners signed the Plat and two (2) Agreements for Ram Addition, a subdivision of Missoula County located in the NE¼ of Section 21, T 14 N, R 20 W, PMM, MT, a total area of 12.54 acres, with the owners of record being Richard A. Rostad and Robert C. Massey.

Agreements – The two Agreements signed pertaining to Elk Watch Estates are as follows: 1) Improvements Agreement and Guarantee for improvements that remain to be completed within two years of filing the plat of Ram Addition (per items set forth in the Agreement) in the amount of \$98,020.00; and 2) Development Agreement intended to meet requirements of the Missoula County Weed Control Board and the Missoula County Subdivision Regulations regarding Private Roadways and Approaches, Storm Water, Fire Protection, Travel Corridor, and Weed Control Standards.

Resolution No. 2001-098 – The Commissioners signed Resolution No. 2001-098, dated October 29, 2001, a resolution annexing to the Florence Rural Fire District a parcel of land located in Missoula County, described as follows: Tract 2 of Certificate of Survey 1578, located in the NE¼ of Section 23, T 11 N, R 20 W, Tax ID No. 6003013. A public hearing was held on October 10, 2001 in the Missoula County Courthouse; no protests were made.

Resolution No. 2001-099 – The Commissioners signed Resolution No. 2001-099, dated October 29, 2001, a resolution to rename Tanager Way to Kestrel Drive, and Kestrel Drive to Industrial Road, in Missoula Development Park – Phase 1, Block 4, as shown on the attached Exhibit “B” to the Resolution. A public hearing was held on October 3, 2001 in the Missoula County Courthouse; no protests were made.

#### Deed Restriction Agreement and Subordinate Deed of Trust

Chairman Evans signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and Darliss S. Balentine in the amount of \$5,000.00 for the property located at 2036 Kensington, Missoula, Montana 59808, for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with down payment, closing cost and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth therein. The documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

### **TUESDAY, OCTOBER 30, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated October 30, 2001, batch number 1619 (pages 1-4), with a grand total of \$51,784.03. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 30, 2001, batch number 1623 (pages 1-3), with a grand total of \$14,963.75. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated October 30, 2001, batch number 1624 (pages 1-2), with a grand total of \$5,891.11. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Connie Croonenberghs as Principal for Warrant #101438 issued October 17, 2001 on the Missoula County Public Schools Fund 78-42 in the amount of \$241.92 (payment for wages), now unable to be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Rachel Grimes as Principal for Accounting Warrant #268828 issued October 19, 2001 on the Missoula County Payroll Fund in the amount of \$158.20 (payment for payroll), now unable to be found.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Joclynn Snyder as applicant for Accounting Warrant #398159 issued September 21, 2001 on the Missoula County 2250 Fund in the amount of \$3,525.00 (first payment for contract services), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and McCulley, Frick & Gilman, Inc. to provide fueling facility inspection and sampling services to insure compliance with the Oxygenated Fuels Program. The total amount shall not exceed \$2,250.00. The document was returned to the Health Department for further signatures and handling.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula County Board of County Commissioners and the Missoula City-County Health Department for the provision of services to increase public awareness of Alliance activities through Missoula County. The Juvenile Justice Grant funds this Agreement, in the amount of \$7,125.00. The term will be October 1, 2001 through September 30, 2002. The document was returned to the Health Department for further signatures and handling.

Request for Action – Chairman Evans signed Task Order No. 02-07-3-21-005-0 to the Missoula County Master Contract that covers the period July 1, 1998 through June 30, 2005 (Missoula County Oral Health Community Network Development Program). This is a Task Order with the Montana Department of Public Health and Human Services for a plan to improve the oral health of children. The term will be September 1, 2001 through March 31, 2002. The total amount shall not exceed \$6,000.00. The document was returned to the Health Department for further signatures and handling.

Request for Action – Chairman Evans signed a Change Order for landscape restoration work by Ibey Nursery and Landscape at DeSmet School. This Change Order will increase the base bid by \$2,950.00, for a new total cost of \$17,954.25, plus the cost of sprinkler repair to be determined later. The document was returned to Barb Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved amendments to the Missoula Development Park Phasing Plan for Phase 3, as per the items set forth therein. The document was returned to Barb Martens in the Projects Office for further handling.

Other items included:

- 1) A discussion was held on the issue of a Community Development Block Grant and Missoula Children's Theatre.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, OCTOBER 31, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated October 31, 2001, batch number 1621 (pages 1-5), with a grand total of \$95,031.05. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated October 31, 2001, batch number 1626 (pages 1-2), with a grand total of \$28,494.91. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Elk Meadows, Lot 47, located in the NE¼ of Section 13, T 15 N, R 22 W, PMM, Missoula County, a total area of 11.87 acres gross and net, with the owner of record being Clare J. Whitcomb.

### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Big Brothers Big Sisters of Missoula, Inc., to provide mentoring services as set forth in the Board of Crime Control grant entitled: "Connections: An Early Intervention Mentoring Program." The term will be July 1, 2001 through June 30, 2002. The total amount shall not exceed \$30,150.00.

### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, County Public Works Director Greg Robertson, Chief Civil Deputy County Attorney Mike Sehestedt, County Chief Administrative Officer Ann Mary Dussault, County Clerk and Recorder/Treasurer Vickie Zeier and County Surveyor Horace Brown.

### Pledge of Allegiance

### Public Comment

None

### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$360,617.45. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

### Hearing: Request to alter Graves Creek Road (off Lolo Creek Road – Highway 12 area)

This is a petition to alter "Graves Creek Road from the east-west mid section line of Section 20 to the north line of Section 19 in Township 12 North, Range 22 West, Missoula County, Montana."

The reasons for the request are as follows: 1) The physical location of the road is not where it is shown in Road Plat Book No. 1 or identified in the original G.L.O. notes.

The following landowners have been notified: Paul O. Rossignol and USDA Forest Service-Northern Region.

Chairman Evans opened the public hearing.

Paul Rossignol stated he was the property owner most affected by this request. The existing road is in a different location from where it is shown on the G.L.O. notes from 1901. That shows the road across the creek. No one he has talked to has ever seen the road in that location. The request is to have the right-of-way where the road actually exists. He is doing just the portion that affects his land but he would like to see the whole thing corrected through Forest Service and Plum Creek land as well.

Horace Brown stated that this request puts the right-of-way where the road is. The right-of-way is now on the east side of the creek and the road is on the west side.

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Michael Sehestedt stated this procedure is the same as closing a road.

Chairman Evans stated that before a decision can be made on the request, a site inspection by the County Surveyor and one Commissioner must be done. That will be scheduled and the decision will be made at the public meeting next week, November 7, 2001. Action will be postponed for one week.

Paul Rossignol asked if action could be taken on the rest of the road.

Chuck Wright stated that the petition is only for one particular section of the road. The Board needs to act on that petition. If anything else needs to be done, it needs to be a separate petition and can be solved that way.

Michael Sehestedt stated that Mr. Rossignol was asking if there was any interest on the part of the County to pursue this relocation.

Chuck Wright stated the County would have no problem with the relocation.

Michael Sehestedt asked if the County should notify the other parties involved to begin the process.

Greg Robertson stated that it is always advantageous to have the road where the right-of-way is located.

Commissioner Curtiss asked if the right-of-way had to be abandoned then created in the correct location.

Horace Brown stated that the request was to alter the right-of-way.

There being no further comments, the public hearing was closed.

**Hearing: Intent to Consolidate the Office of County Surveyor with the Office of Clerk and Recorder/Treasurer**

Ann Mary Dussault presented the staff report.

In 1996, Missoula County's Management Team was tasked to make a recommendation on whether the County should create a Public Works Department by appointing a public works director to supervise the functions now entrusted to an elected County Surveyor, as well as other appropriate functions such as sewer and water operations, weed control and parks maintenance.

In 1997, the Management Team recommended that "Missoula County should create a Public Works Department by appointing a Public Works Director to supervise most of the functions now entrusted to an elected County Surveyor." In addition, the implementation recommendation from the Management Team was to retain the Office of County Surveyor for one more term, to expire December 31, 2002, and assign full time legitimate and necessary surveying duties to the position. Beginning in January, 2003, those functions would be transferred to the Public Works Department.

In 1998, the County did an initial recruitment for the Public Works Director that was unsuccessful. In 1999, a Memorandum of Understanding was executed between the Board and the County Surveyor. In 2000, Missoula County executed a successful recruitment for the Public Works Department and a director was hired and the Department of Public Works was created.

In 2001, budgetary and administrative authority for roads, bridges, engineering, RSID development and oversight and administration of sewer and water RSIDs were transferred to the Department of Public Works.

On October 16, 2001, the Board passed a Resolution of Intent to consolidate the Office of Surveyor with the Office of Clerk and Recorder/Treasurer. If, after today hearing, the Board makes the decision to do this, they must issue an order within 5 days. The order has to be entered into the Board's minutes of proceeding and published for a period of two successive weeks. In the event the order is made and entered, the County needs to do two things to complete the cycle.

In 2002, the Board and the Clerk and Recorder/Treasurer should enter into a Memorandum of Agreement so that the surveying functions as described are transferred to the Department of Public Works. The subsequent action is that the Survey Division of the Department of Public Works must be created and a licensed professional land surveyor will be recruited to head the division. At that point, the budget and administrative authority for surveyor functions will be transferred to the Department of Public Works.

The action requested today is step one of the process. The Board will consolidate the offices but then must agree through a Memorandum of Understanding to transfer the actual authority from the Clerk and Recorder/Treasurer to the Department of Public Works. The current Memorandum of Understanding with the County Surveyor will remain in effect through the end of his term.

Chairman Evans opened the public hearing.

Vickie Zeier, County Clerk and Recorder/Treasurer, stated that she is in support of this as long as the Memorandum of Agreement is signed. She does not wish to retain the duties of the County Surveyor.

Ann Mary Dussault stated that the model the County has followed for this procedure is one that was executed in Flathead County. They consolidated the two elected offices and then delegated the duties and responsibilities to the Department of Public Works.

There being no further comments, the public hearing was closed.

Commissioner Curtiss moved that the Board of County Commissioners adopt the resolution to order the Office of County Surveyor be consolidated with the Office of County Clerk and Recorder/Treasurer at the expiration of the current County Surveyor's term of Office. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

The Board of County Commissioners then signed **Resolution 2001-100**, Order Consolidating the Office of County Surveyor with the Office of Clerk and Recorder/Treasurer.

**RECITALS:**

1. The Board of County Commissioners is authorized by MCA § 7-4-2301 to consolidate County offices.
2. The Board of County Commissioners is authorized by MCA § 7-4-2305 to initiate the consolidation of County offices.
3. The Board of County Commissioners has exercised the authority granted by MCA § 7-4-2305 to initiate the consolidation of the Office of County Surveyor with the Office of County Clerk and Recorder/Treasurer by adopting on October 16, 2001, Missoula County Resolution 2001-093 stating their intention to consolidate the Office of County Surveyor with the Office of Clerk and Recorder/Treasurer.
4. Notice of hearing on the Resolution of Intent to Consolidate the Office of County Surveyor with the Office of Clerk and Recorder/Treasurer was published in the Missoulian on October 21, 2001 and October 28, 2001.
5. A public hearing on the question of consolidating the Office of County Surveyor with the Office of County Clerk and Recorder/Treasurer was held on October 31, 2001, at the time and place specified in the published notice.
6. It appears to the Board of County Commissioners based on their knowledge of County operations and on the testimony received at the public hearing that it is in the best interests of the residents of Missoula County to consolidate the Office of County Surveyor with the Office of County Clerk and Recorder/Treasurer.

**ORDER:**

**IT IS HEREBY ORDERED** that the Office of County Surveyor be consolidated with the Office of County Clerk and Recorder/Treasurer at the expiration of the current County Surveyor's term of Office. County staff is directed to take such steps as are necessary to provide for an orderly transition and may recommend transfer of duties and responsibilities prior to expiration of the County Surveyor's current term of Office.

**Dated this 31st day of October, 2001.** *Signed by Barbara Evans, Chairman, Missoula County Commissioner; Bill Carey, Missoula County Commissioner and Jean Curtiss, Missoula County Commissioner.*

**Hearing: Closing DeSmet Railroad Crossing**

Greg Robertson presented the staff report.

This is a request to sign a resolution directing the Public Works Department to close DeSmet Railroad Crossing; and further authorize the Director of Public Works to notify affected landowners as well as the public at large of this crossing.

In 1994, an environmental assessment was prepared for the Airway Boulevard/Interstate 90 Interchange project to evaluate the impacts this project would have on the surrounding road network. One of the issues addressed by the assessment was an evaluation of the safety of existing railroad crossings. The evaluation looked at the safety of each crossing taking into consideration the accident history, sight visibility and related geometrics. The method used was consistent with Montana Department of Transportation policy. The analysis resulted in a recommendation to close two crossings: Momont Crossing and DeSmet Crossing. These recommendations were adopted by the Federal Highway Administration as a condition of allowing the Airway Boulevard/Interstate 90 Interchange project to proceed forward. Momont Crossing was closed during construction of the Interchange. Closure of the DeSmet Crossing was a commitment made by the Board of County Commissioners. Closing this crossing will complete this commitment.

Closing of the DeSmet Crossing was delayed pending the outcome of an RSID for the extension of Expressway Boulevard. However, regardless of the outcome of the RSID, the time has come to move forward with the closure of the DeSmet Crossing.

The proposed Resolution orders the Public Works Department to close the DeSmet Crossing on January 1, 2002 and notify the landowners in advance, through direct mail, of the closing, as well as the general public, through ads in the local newspaper.

It is the recommendation of the Public Works Department to execute the resolution to close the DeSmet Crossing. The Public Works Department will take responsibility for closure of the crossing and fund it through the Road Department.

Horace Brown stated there were actually five crossing that were slated for closure, two private and three public. The two private crossing have already been closed. The three public crossings included Momont, DeSmet and Butler Creek.



Momont has been closed and this action is to close DeSmet. Butler Creek is to be left open until it reaches a hazard rating of 200, which could be a long time in the future.

Chairman Evans asked if Montana Rail Link has leases with Lefarge and others so that when the crossing is closed they will still be able to access their property.

Steve Warner, Montana Rail Link, stated that Lefarge leases from MRL and they will be able to still service their facility. In some ways, this may be better for Lefarge, their track may be extended.

Horace Brown stated the crossing is not being vacated, only closed and the tracks are being removed. The County road right-of-way will still exist.

Steve Warner stated that MRL supports this closure and is happy with the cost share that has been arrived at. It would be a crossing of convenience once the extension of Expressway is constructed. Crossings of convenience are targeted for closure by the railroad and the Federal and State Departments of Transportation as well.

Chairman Evans asked about the \$75,000 MRL contribution and that it needs to be done so as to take it off their taxes. If the proposed RSID does not occur, what happens to the \$75,000?

Steve Warner stated that MRL would like it to appear on their tax bill.

Greg Robertson stated he would check on the details of how the contribution should be handled.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners sign the Resolution directing the Public Works Department to close DeSmet Railroad Crossing and further authorize the Director of Public Works to notify affected landowners as well as the public at large of this closing, to occur on January 1, 2002. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

The Board of County Commissioners then signed **Resolution 2001-101** ordering the closure of the DeSmet Railroad Crossing.

**WHEREAS**, Missoula County prepared an Environmental Assessment for the Missoula I-90 Airport Interchange Project; and

**WHEREAS**, the Environmental Assessment performed a safety analysis on railroad crossings in the vicinity of the interchange; and

**WHEREAS**, the Environmental Assessment recommended closing of the DeSmet Crossing; and

**WHEREAS**, the Federal Highway Administration accepted this recommendation through its adoption of the Environmental Assessment binding Missoula County to close the DeSmet Crossing.

**BE IT RESOLVED THAT** the Board of County Commissioners directs the Public Works Director to close DeSmet Crossing on January 1, 2002.

**BE IT FURTHER RESOLVED THAT** the Board of County Commissioners directs the Public Works Director to provide adequate notice to affected landowners and the public of this closure.

**Dated this 31st day of October, 2001.** *Signed by Barbara Evans, Chairman, Missoula County Commissioner; Bill Carey, Missoula County Commissioner and Jean Curtiss, Missoula County Commissioner.*

There being no further business to come before the Board, the Commissioners were in recess at 1:53 p.m.

**THURSDAY, NOVEMBER 1, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. Chairman Evans was in Great Falls attending a meeting of the Judicial Standards Commission held November 1<sup>st</sup> and 2<sup>nd</sup>.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated October 31, 2001, batch number 1622 (pages 1-7), with a grand total of \$195,640.71. The Claims List was returned to the Accounting Department.

Indemnity Bond – Acting Chairman Carey examined, approved, and ordered filed an Indemnity Bond naming Sandra L. Earling as Principal for Warrant #14572, issued October 16, 2001 on the Missoula County Payroll Fund (Lolo) in the amount of \$330.00 (payment for October 2001 Payroll), now unable to be found.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Agreement for Professional Engineering Services between Missoula County and WGM Group, Inc., for an Airport Interchange Access Modification Study. This study will be funded by the Missoula Development Park engineering budget in an amount not to exceed \$6,396.00. The study is to be completed no later than January 1, 2002.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-010 for Justice Court #2, transferring \$1,301.00 from MIP Court Screener Fund to Temporary Salaries Fund. These funds are to pay for additional clerical support while the Office Manager recovers from heart surgery.

Resolution No. 2001-102 – The Commissioners signed Resolution No. 2001-102, dated November 1, 2001, a Budget Amendment in the amount of \$3,200.00 for Capital Improvement – Motor Pool, adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-009 for the Detention Department, transferring \$17,650.81 from Salaries Fund to Contract Services Fund. These funds are to upgrade a vacant Secretary I position to Senior Secretary and eliminate the nurse Practitioner employee position in favor of a contract with a Nurse Practitioner.

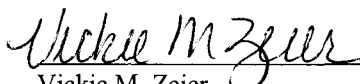
Change Order – Acting Chairman Jean Curtiss approved and signed Change Orders for LS Jensen Construction and Paving for Phase 4, Schedule I Sewer and Drainage Construction, Missoula Development Park. The description and reasons for the Change Orders are stated in the attachment from PCI. The existing contract price will be increased by the sum of \$3,891.76.00. The documents were returned to Barb Martens in the Projects Office for further handling.

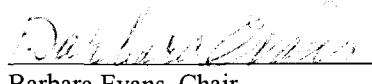
Deed Restriction – The Commissioners approved and signed a Deed Restriction, dated November 1, 2001, waiving the right to protest an RSID/SID for financing the design and construction of a public sewer benefiting property owned by Missoula County at Big Sky Park (Equestrian Park property). The document was returned to Rita Baumgardner of the Missoula Horsemen's Council for her signature.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, NOVEMBER 2, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Carey was out of the office all afternoon.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

**MONDAY, NOVEMBER 5, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated November 2, 2001, batch number 1627 (pages 1-5), with a grand total of \$156,088.68. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending October 31, 2001.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending October 31, 2001.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending October 31, 2001.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 22 - Pay Date: November 2, 2001. Total Missoula County Payroll: \$818,986.33. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 2001-103 – The Commissioners signed Resolution No. 2001-103, dated November 5, 2001, a resolution to abandon Guest Ranch Road West of the cul-de-sac shown on Certificate of Survey No. 5091 located in the SE¼ of Section 12, T 20 N, R 17 W, PMM, Missoula County, Montana. The abandonment is because the right-of-way serves a private facility and is not needed.

Plat and Agreement – The Commissioners signed the Plat and Aviation Agreement Missoula Development Park Phase 3D, a subdivision located in the SE¼ of Section 35, and the SW¼ of Section 36, T 14 N, R 20 W, PMM, Missoula County, a total area of 23.45 acres, with the owner of record being the Missoula County Airport Industrial District. The Aviation Agreement provides an assignable easement and right of way for the free and unobstructed passage of aircraft in, through and across all of the airspace above an elevation of 3315 feet mean sea level over above the property.

Request for Action – Pursuant to the recommendation of the Office of Planning and Grants, in a letter to John Kellogg of Professional Consultants Inc., dated November 5, 2001, the Commissioners approved his request for a plat amendment for the driveway serving Lot 52 in Phase 1A of Invermere Subdivision. The release of the "No Access" strip on the west side of the driveway easement serving Lot 52 will allow Lot 51 to use this access easement for a driveway.

#### **TUESDAY, NOVEMBER 6, 2001**

The Board of County Commissioners met in regular session; all three members were present.

#### Site Inspection

In the forenoon, Commissioner Carey accompanied County Surveyor Horace Brown on a site inspection for the request to alter Graves Creek Road.

Claims List – The Commissioners signed the Claims List, dated November 6, 2001, batch number 1630 (pages 1-5), with a grand total of \$110,437.38. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 6, 2001, batch number 1633 (pages 1-3), with a grand total of \$13,827.72. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond Linda Cordial as Principal for Warrant #81173, issued June 9, 2000 on the Missoula County Public Schools Payroll Fund 78-42 in the amount of \$12,765.22 (payment for wages), now unable to be found.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Agreement and Addendum – The Commissioners signed an Agreement between the Missoula County Youth Detention Center and Missoula County Public Schools for the provision of an educational program at the Detention Center. The total amount shall not exceed \$60,000.00. The term will be July 1, 2001 through June 30, 2002.

The Commissioners also signed an Addendum One to the above-mentioned Agreement that sets forth the budget for the teachers at the Youth Detention Center for the 2001-2002 school year. The documents were returned to Mike McMeekin at the Detention Center for further signatures and handling.

Contract – Chairman Evans signed a Contract between the Montana State Department of Public Health and Human Services (DPHHS) and the Missoula County Domestic Violence Program for the provision of funding to provide services to victims of domestic violence. The total amount shall not exceed \$55,000.00, subject to terms and conditions set forth in the Contract. The term will be October 1, 2001 through September 30, 2002. The document was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and The YWCA of Missoula for the provision of services to victims of domestic violence funded by the aforementioned contract with DPHHS (Family Services Division). The total amount shall not exceed \$55,000.00. The term will be October 1, 2001 through September 30, 2002, contingent upon receipt of DPHHS Domestic Violence Program Grant Funds by Missoula County.

Agreements – The Commissioners signed two (2) Memorandums of Agreement between the Missoula Board of County Commissioners and the following:

- 1) Child and Family Resource Council for the employment of the coordinator for the Healthy Start Council of the Missoula Forum for Children and Youth. The total amount shall not exceed \$6,000.00; and
- 2) Missoula Youth Homes for the employment of staff to teach Teenage Health Teaching Modules in its Learning Lab. The total amount shall not exceed 14,000.00.

Funding for both Agreements comes from the Missoula County Community Incentive Project provided by DPHHS (Addictive and Mental Disorders Division) in the amount of \$273,975.60. The term for said Agreements is October 1, 2001 through September 30, 2002.

Shoreline Permit – Pursuant to the recommendation of the Office of Planning and Grants, the Commissioners approved the application and Chairman Evans signed the permit for William Roberts to place rip rap and fill along the Placid Lake shore. The property is at 415 Enchanted Forest Road, legally described as Lot 40, Placid Lake Southshore Tracts in Section 28 and 29, T 16 N, R 15 W. The Permit was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Request for Action – The Commissioners approved and signed an Addendum to extend the Buy-Sell period by the Canadian Hockey League for the purchase of Lots 1-6, Block 5, Missoula Development Park, from October 31, 2001 to November 20, 2001. The document was returned to Barb Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved the purchase of three vehicles from Bison Ford and three vehicles from Karl Tyler Chevrolet for the Sheriff's Department, in the total amount of \$140,460.80. These items were previously approved in the 2002 budget. The document was returned to Dan Morman in the Sheriff's Department.

Other items included:

- 1) The Commissioners approved the payment of NACo 2002 Membership Dues for Missoula County.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, NOVEMBER 7, 2001

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners attended the Lolo Land Use Public Meeting held at the Lolo Community Center.

Claims List – The Commissioners signed the Claims List, dated November 6, 2001, batch number 1634 (pages 1-4), with a grand total of \$20,108.76. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 6, 2001, batch number 1635 (pages 1-2), with a grand total of \$5,081.42. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 7, 2001, batch number 1636 (pages 1-3), with a grand total of \$7,348.70. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 7, 2001, batch number 1637 (pages 1-4), with a grand total of \$122,584.39. The Claims List was returned to the Accounting Department.

### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, no items were signed.

Discussion items included:

- 1) Action scheduled on the Annual Budget Agreement between Montana State University and Missoula County (Extension Office) was delayed for one week in order that Dale Bickell, Chief Financial Officer, can meet with a representative from the Extension Office.
- 2) An update was given on the Lolo Regional Plan.

### PUBLIC MEETING – November 7, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Michael Sehestedt and County Surveyor Horace Brown.

### Pledge of Allegiance

### Public Comment

None

### Routine Administrative Actions

*Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$659,612.67. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.*

### **Decision: Petition to alter Graves Creek Road (off Lolo Creek Road – Highway 12 area)**

This is a petition to alter "Graves Creek Road from the east-west mid section line of Section 20 to the north line of Section 19 in Township 12 North, Range 22 West, Missoula County, Montana."

The reasons for the request are as follows: 1) The physical location of the road is not where it is shown in Road Plat Book No. 1 or identified in the original G.L.O. notes.

The following landowners have been notified: Paul O. Rossignol and USDA Forest Service-Northern Region.

The public hearing on this matter was held October 31, 2001. A site inspection was conducted by County Surveyor Horace Brown and Commissioner Bill Carey on Tuesday, November 6, 2001.

Horace Brown stated there are two roads in the area. The old road is on the other side of the creek, but it is only a one lane road. The newer road which the County widened and graveled about 12 years ago is where the right-of-way will be relocated. The County is in favor of altering the right-of-way.

2000-2001

Commissioner Carey concurred with Horace Brown's assessment.

*Commissioner Curtiss moved that the Board of County Commissioners alter "Graves Creek Road from the east-west mid section line of Section 20 to the north line of Section 19 in Township 12 North, Range 22 West, Missoula County, Montana." Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.*

There being no further business to come before the Board, the Commissioners were in recess at 1:33 p.m.

**THURSDAY, NOVEMBER 8, 2001**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioner Curtiss traveled to the Double Arrow Lodge in Seeley Lake to attend the Seeley Lake Historical Museum and Visitors Center Update and Brainstorming meeting.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Easement – The Commissioners signed a Water Line Easement, dated November 8, 2001, from Missoula County to Rory Evan Indreland for construction and maintenance of a private, family water line to serve the Indreland's home. The document was returned to Horace Brown, County Surveyor, for further handling.

Addendum – The Commissioners signed an Addendum to the License Agreement with Black Mountain Software, Inc. for the implementation of the accounting system that was approved during the Fiscal Year 2002 budget process. Due to the addition of the accounts receivable module, the project exceeds the allocated budget by \$2,362.00, which can be recovered from savings in the annual maintenance costs. The documents were returned to Dale Bickell, Chief Financial Officer, for further signatures and handling.

Agreements – The Commissioners signed two (2) Memorandums of Agreement between the Missoula Board of County Commissioners and the following:

- 1) Family Basics/WORD for the coordination, facilitation, development and evaluation of the Flagship Project in Missoula County. The total amount shall not exceed \$33,553.00; and
- 2) Western Montana Mental Addiction Services – Turning Point, for the coordination and facilitation of targeted activities and evaluation of the CIP Project in facilitation in Missoula County. The total amount shall not exceed \$125,085.67.

Funding for both Agreements comes from the Missoula County Community Incentive Project provided by DPHHS (Addictive and Mental Disorders Division) in the amount of \$273,975.60. The term for said Agreements is October 1, 2001 through September 30, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and The Missoula Symphony Association for Montana Arts Council (Coal Tax Funds) Cultural and Aesthetic Special Projects Grants. The total amount shall not exceed \$5,000.00. The term will be July 1, 2001 through June 30, 2003 contingent upon receipt of grant #924 funds from the Montana Arts Council.

Agreement – The Commissioners signed a Tap Application Agreement with Mountain Water Company for three water service lines serving Lots 12, 13, and 14, Block 3, Missoula Development Park, Phase 4. The total amount shall not exceed \$3,300.00. The document was returned to Barb Martens in the Projects Office for further handling.

Request for Action – Chairman Evans signed a Landlord's Consent form requested by First National Bank for Don and Karen Luke, lessees of the Batting Cages at Fort Missoula. Missoula County consents to become the lessee in the event the Lukes default on their loan. The document was returned to Lisa Moisey in the Parks Office for further handling.

Agreement – The Commissioners approved and signed an Agreement between the Missoula County Airport Industrial District and Fred Harbinson and John Turcasso for the purchase of Lots 1-6, Block 5, Phase 3-D, Missoula Development Park. The Commissioners also approved an increase in the sales price from \$150,000.00 to \$165,000.00. The document was returned to Barb Martens in the Projects Office for further signatures and handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Missoula Electric Cooperative for 1) the installation of backbone power to Block 3, Lots 4 and 13, Phase 4, and 2) bore under Trumpeter Way to provide backbone power to Block 9, Lot 2, Phase 3A, Missoula Development Park. The target date for completion of the project is the end of May, 2002. The total amount shall not exceed \$14,550.00.

Other items included:

- 1) The Commissioners approved (with Chairman Barbara Evans abstaining) an Amendment to the Engineering Agreement with HDR Engineering, Inc. for the Mullan Corridor Sewer Project (Phases II and III of Professional Engineering Agreement), contingent upon review of Chief Administrative Officer, Ann Mary Dussault.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, NOVEMBER 9, 2001

The Board of County Commissioners met in regular session; all three members were present.

Election Canvass

In the forenoon, the Commissioners canvassed the City General Election, which was held on Tuesday, November 6, 2001.

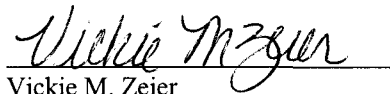
Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 8, 2001, batch number 1639 (pages 1-5), with a grand total of \$32,525.57. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 8, 2001, batch number 1640 (pages 1-5), with a grand total of \$44,152.05. The Claims List was returned to the Accounting Department.

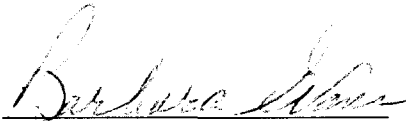
Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 8, 2001, batch number 1643 (pages 1-2), with a grand total of \$24,189.53. The Claims List was returned to the Accounting Department.

Certification of Acceptance – Chairman Evans signed a Missoula County Public Works Department Surveyor's Office Certification of Acceptance for County Maintenance for ACM. No. 2001-0007, Farm Lane, Road No. L 0602-W, T 12 N, R 20 W, Section 35. The limits of acceptance are .226 miles from the intersection with Lewis & Clark Drive thence easterly 151.53 feet to the end of paving, 28 feet of asphalt within 60 foot right of way, curb and gutter both sides. The document was returned to the County Surveyor's Office.

Amendment – Previously approved by the Commissioners at their Administrative Meeting on November 8, 2001, Acting Chair Curtiss signed Amendment Number One to Agreement for Engineering Services between Missoula County and HDR Engineering, Inc. for the provision of engineering services for Mullan Road Corridor Sewer – Phases II and III. The scope of services and compensation schedule are outlined on the attached "Exhibit A" to the Amendment.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chair  
Board of County Commissioners

SATURDAY AND SUNDAY, NOVEMBER 10 &amp; 11, 2001

On Saturday, November 10<sup>th</sup>, Commissioner Curtiss participated in the Veterans Day Ceremony which was held on the Courthouse lawn; and on Sunday, November 11<sup>th</sup>, she attended the Veterans Ceremony at Rose Park.

MONDAY, NOVEMBER 12, 2001

The Courthouse was closed in observance of the Veterans Day holiday.

TUESDAY, NOVEMBER 13, 2001

The Board of County Commissioners met in regular session; all three members were present.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – Postponed from action on November 8, 2001, the Commissioners signed the annual Budget Agreement between Montana State University and Missoula County, which includes the approved FY 2002 County Extension Budget. The total amount shall not exceed \$408,425.00. The term will be July 1, 2001 through June 30, 2003. The document was returned to Gerald Marks in the County Extension Office.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and Missoula County Public Schools to provide for the introduction of the Life Skills and Reconnecting Youth Curricula into the school's curricula. The total amount shall not exceed \$117,749.42.00; funding is from the Department of Public Health and Human Services (Addictive and Mental disorders Division). The term will be October 1, 2001 through September 30, 2002 contingent upon receipt of Community Incentive Grant Funds by Missoula County.

Agreement and Addendum – The Commissioners signed an Agreement and Addendum, dated November 9, 2001, between Missoula County and Nurture, Inc. for the purchase, extraction, and reclamation of gravel reserves located at Missoula Development Park. Missoula County will pay Nurture \$0.85 per cubic yard for gravel removed; payment will increase by \$.05 a yard in each succeeding year, as outlined in the Agreement. The Addendum modifies the Agreement to delay marketing of the property until at least May 31, 2002.

Agreement – Postponed from action on November 8, 2001, the Commissioners signed an Agreement between the Missoula County Airport Industrial District ("Purchaser") and the Missoula County Public Works Department (the "Department"). The Department agrees to sale to Purchaser gravel needed to complete the infrastructure within the

remainder of the Missoula Development Park. The purchase price will be \$7.50 per cubic yard of gravel; the total cost of the gravel shall not exceed \$300,000.00. The estimated date of completion is March 1, 2002.

Request for Action – Postponed from action on November 8, 2001, the Commissioners approved a request from Auditor Susan Reed for an addendum to Policy # 00-13 (Travel Policy) to strengthen the Policy and reduce costs. Added is the sentence: "If the employee chooses to use a personal vehicle, but public transportation is less, mileage reimbursement will not exceed the cost of airfare." The document was returned to Susan Reed for distribution to all departments.

Other items included:

- 1) The Commissioners voted not to hold an election for SB 242. A press release will be written by Chief Administrative Officer Ann Mary Dussault and Deputy County Attorney Michael Sehestedt.
- 2) The Commissioners acknowledged receipt of a petition for the creation, organization, and incorporation of the Spring Meadows Water District and miscellaneous election of Directors, and authorized forwarding the Petition to the Clerk & Recorder for checking signatures.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, NOVEMBER 14, 2001

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Curtiss was in Billings attending a MACo Health & Human Services Committee Meeting.

Claims List – The Commissioners signed the Claims List, dated November 13, 2001, batch number 1638 (pages 1-4), with a grand total of \$31,462.68. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 13, 2001, batch number 1641 (pages 1-5), with a grand total of \$43,693.79. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 13, 2001, batch number 1644 (pages 1-3), with a grand total of \$5,181.01. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 13, 2001, batch number 1645 (pages 1-4), with a grand total of \$24,887.54. The Claims List was returned to the Accounting Department.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending October 31, 2001.

### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Memorandum – The Commissioners approved and initialed a memorandum to Clerk and Recorder/Treasurer Vickie Zeier stating that, in light of the Attorney General's revised Opinion 49-11, it is no longer possible to conduct an election based on Section 8 of SB 242. SB 242 addresses the question of continuing city jurisdiction to enforce building codes outside its corporate limits.

Letter – The Commissioner signed a letter to the Meadows West Land Owners Association, verifying their approval of an amendment to the Meadows West Declaration of Restrictive Covenants (Article II, Section 1: Land Use) to read as follows: "No water wells or water lines shall be developed for use outside the boundaries of the Meadows West Properties except as needed now, or in the future, for provision of water to the Sunset West water system, according to the provisions of RSID 8458."

Other items included:

- 1) The Commissioners approved a request for a salary increase for the Director of the Historical Museum at Fort Missoula.

### PUBLIC MEETING – November 14, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Chief Civil Deputy County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, County Public Works Director Greg Robertson, County Chief Administrative Officer Ann Mary Dussault and County Surveyor Horace Brown. Commissioner Jean Curtiss was attending a MACo meeting in Billings.

### Pledge of Allegiance

### Public Comment

None

### Routine Administrative Actions

*Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$206,092.17. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.*



**Hearing: Bumgarner Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 316, Page 518 Microrecords, located in the southwest 1/4 of Section 36, Township 11 North, Range 20 West.

Kelly Bumgarner has submitted a request to create one additional parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10.002 acres in size located in the Lolo area, near Squaw Creek and Chief Looking Glass Road. Mr. Bumgarner proposes to create one approximately 5 acre parcel for transfer to his daughter, Donn Lee Carver, for residential purposes and keep the remaining parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Book 45, Page 684 Micro	1969	Parcel greater than 10 acres	Moore	Starcher

Mr. Bumgarner purchased the property in August of 1990 (8-13-90).

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Chairman Evans opened the public hearing.

Kelly Bumgarner was presented and came forward to answer any questions the Commissioners may have.

Chairman Evans stated the purpose of the hearing was to determine whether this was an attempt by the applicant to evade the Subdivision Act. The Board may ask questions of the applicant to make that determination. She asked if Mr. Bumgarner did intend to give a piece of this land to his daughter.

Kelly Bumgarner stated that was correct.

There being no further comments, the public hearing was closed.

*Commissioner Carey moved that the Board of County Commissioners approve the request by Kelly Bumgarner 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. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.*

Chairman Evans stated that the approval was for the division of land only. It did not guarantee adequate access, installation of utilities or availability of public services, nor did it obligate the County to provide road maintenance. Other approvals may also be needed from the State or local Health Department. He would receive an approval letter stating those facts.

**Hearing: Tinkle Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 1 of COS 4549, located in the north one-half of Section 10, Township 12 North, Range 20 West, Missoula County.

Wayne Tinkle 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 11 acres in size located near Hayes Creek and Cochise Drive off Highway 93 South. Mr. Tinkle proposes to create one approximately 6 acre parcel for transfer to his wife Lisa J. Tinkle for residential purposes and keep the remaining approximately 5 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1306	1977	Retracement of 40 acre parcel	Ray Stoddard	N/A
COS 2244 dividing 40.66 acres into 23.73 parcel and a 16.94 acre remainder	1980	Parcels greater than 20 acres	Vern H. & Suzanne B. Horton	N/A
COS 4453	1995	Family transfer of remainder of COS 2244	Vern H. & Suzanne B. Horton	Clayton Horton
COS 388 of 33.13 acres	1974	Retracement	Unknown	N/A
COS 4549 dividing COS 388 into an 11 acre gift and 15.31 acre remainder	12/14/95	Family Transfer	Vern H. & Suzanne B. Horton	Peter Horton

Wayne and Lisa Tinkle purchased the property in December of 1995 (12-29-95) from Peter Horton. In March of 2000, Wayne and Lisa Tinkle quitclaimed the eleven acres to Wayne Tinkle. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Chairman Evans opened the public hearing.

Wayne Tinkle was present and came forward to answer any questions the Commissioners may have.

Chairman Evans stated the purpose of the hearing was to determine whether this was an attempt by the applicant to evade the Subdivision Act. The Board may ask questions of the applicant to make that determination. She asked Mr. Tinkle to explain why he and his wife had this property then quitclaimed it to him alone and now he wants to give part of it back to her.

Wayne Tinkle stated he started this process when he was spending time in Europe. He wanted to establish that if something happened to him, the land would be retained by his family. He thought that was the process that he needed to do to ensure that. His parents also live in the area and this could provide a place for them to build a house in the future so they can be closer to him.

Chairman Evans asked if Mr. Tinkle did intend to keep the land in the family ownership?

Wayne Tinkle stated he definitely intended to keep the land. He is the youngest of 11 children and they all wanted to make sure the parents were provided for. The land will stay in the family.

Commissioner Carey stated that seeing the property quitclaimed to him and now being transferred back to his wife was a little strange. It was not what the Board usually saw with family transfers and raised some concerns.

Wayne Tinkle stated that it was possibly a mistake on their part, they may have used the wrong procedure to protect the land for their family.

There being no further comments, the public hearing was closed.

*Commissioner Carey moved that the Board of County Commissioners approve the request by Wayne Tinkle 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. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.*

Chairman Evans stated that the approval was for the division of land only. It did not guarantee adequate access, installation of utilities or availability of public services, nor did it obligate the County to provide road maintenance. Other approvals may also be needed from the State or local Health Department. He would receive an approval letter stating those facts.

**Consideration: Carlton Subdivision (5 lots) – Old U.S. Highway 93 between Lolo and Florence**

Karen Hughes, Office of Planning and Grants, presented the staff report.

This is a request from Bruce and Mary Maclay, represented by Nick Kaufman at WGM Group, to create Carlton Summary Subdivision. This would be a five lot commercial subdivision located between Lolo and Carlton.

It would divide three lots from a 28.6 acre parcel located between Old U.S. Highway 93 and U.S. Highway 93, leaving a 24 acre remainder. Two lots would also be divided from a 153 acre parcel located on the west side of Old U.S. Highway 93, leaving a 148 acre remainder. Both properties are currently vacant.

Staff is recommending approval of the two variance requests to road width for Old U.S. Highway 93 and for installation of sidewalks or walkways. Staff is also recommending approval of the summary subdivision subject to 9 conditions.

The properties are unzoned. The 1975 Missoula County Comprehensive Plan land use designation for the site is Open and Resource, which recommends a maximum residential density of one dwelling unit per 40 acres.

Commercial uses were not anticipated by the 1975 Comprehensive Plan for this site. The nearest activity center identified in the 1975 Plan as appropriate for higher intensity residential and commercial uses is located approximately one mile south of the area proposed to be developed in this subdivision.

The subdivision review process focuses primarily on the division of land and allows only a limited inquiry into the use of the land. The proposed subdivision is located outside the building permit jurisdiction, so the use is not subject to review for comprehensive plan compliance.

The proposed subdivision is part of a larger master development plan that is included in the application packet. Subdivision regulations require the developer to provide, for contiguous land, a general idea of what their plans are. It describes a residential neighborhood and golf course on the east side of U.S. Highway 93. A residential and commercial mixed-use neighborhood is contemplated for the development area (Carlton Meadows) that includes this proposed subdivision.

Staff has reached the following conclusions in terms of Comprehensive Plan compliance. The overall density of the proposal complies with the land use designation of the 1975 Missoula County Comprehensive Plan and the creation of the lots substantially complies with the goals of the 1975 Plan. This proposed commercial use does not comply with the land use designation and the goals and policies of the 1975 Plan. However, subdivision review does not include a review of uses. The proposed master development plan satisfies the requirement that the developer show his plans for property that is not subject to this subdivision review. The master development plan is not approved as a basis for any future development. Any future subdivision, whether or not it is in compliance with the master plan as shown by the developer, would be subject to separate subdivision review.

The property is accessed by traveling south on U.S. Highway 93 from Missoula and turning east on Rowan Road and south on Old U.S. Highway 93. Old U.S. Highway 93 is a County maintained road paved to a 22 foot width within an 80 foot right-of-way. The applicants are not proposing any improvements to Old U.S. Highway 93 at this time. An RSID/SID waiver for future improvements to Old U.S. Highway 93 is included on the proposed plat. The applicant has

requested a road width variance. Staff has some discussions with the Public Works Department as to whether approval of this subdivision should trigger widening of the road for turn lanes or improved traffic circulation. It was determined that at this time, this 5 lot subdivision was not enough to justify making road improvements of that nature. The RSID/SID waiver does allow those types of improvements if additional development occurs in this area. Staff is recommending approval of the variance request for road width.

The master plan shows a street grid system arranged in a semi-circle around a central traffic circle on Old U.S. Highway 93 and access to properties on the west side of U.S. Highway 93.

The subdivision plat shows a 35 foot wide road easement between Lots 1 and 2 on the west side. On the east side of Old U.S. Highway 93 there are gaps shown for future access between Lots 3 and 4 and between Lots 4 and 5. Other than the area shown between Lots 3 and 4, which is for a potential future roundabout, the access areas do not meet County road standards, which is typically a 60 foot wide easement. Some time was spent with the Public Works Department looking at future access. Staff felt that lots on either side should have at least a 60 foot wide road easement, to allow for any future development that would happen.

Staff recommends that lots located on the east side of Old U.S. Highway 93 be connected and that a minimum 60 foot wide private road easement or public right-of-way be shown centered on the lot lines between Lots 3 and 4 and Lots 4 and 5. Staff also recommends that a minimum 60 foot wide access easement be shown on the plat between Lots 1 and 2.

There are no sidewalks or pedestrian access facilities in the area near the proposed subdivision. The applicants are not proposing to provide walkways in this subdivision and they have requested a variance from the sidewalk or walkway requirement.

A walkway along U.S. Highway 93 is located east of the subject property located between Old U.S. Highway 93 and U.S. Highway 93. Lots 3 through 5 are limited because they would not have immediate legal access to the walkway as it goes through the remainder.

Old U.S. Highway 93 has a relatively narrow road width, no shoulders and traffic travels at high speeds through this area. Installation of sidewalks or walkways would increase public safety. However, the amount of non-motorized traffic anticipated to be generated or received by this subdivision is relatively little and staff is recommending approval of the variance request.

To address the potential future need for non-motorized transportation facilities in this subdivision, an RSID/SID waiver for improvements to Old U.S. Highway 93 is included on the proposed plat.

Individual wells and septic systems are proposed. Solid waste disposal is provided by BFI. No parkland dedication is required because this is a minor commercial subdivision.

This subdivision is currently not part of the Missoula Rural Fire District, however, they would respond to emergencies in this area. The Fire District recommended that the subdivision be annexed into their fire district. Curt Belts also stated that a water supply is necessary for this subdivision. There is a condition of approval that the Fire District approve plans for a water supply prior to final plat approval.

Police protection will be provided by the Sheriff's Department. No significant impacts to the natural environment, wildlife or wildlife habitat are anticipated. Impacts to the natural environment can be minimized if the recommended conditions are imposed.

Nick Kaufman, WGM Group, developer's representative, stated that Karen Hughes was very thorough in her presentation. He had no additional comments on the proposal but was available to answer any questions the Commissioners may have.

Karen Hughes stated there were letters received with concerns after the staff report was issued and copies of those letters had been distributed to the Board.

Chairman Evans asked for public comments. There were none.

Commissioner Carey asked counsel about the fact that subdivision review did not look at uses.

Colleen Dowdall stated that subdivision review primarily looks at the division of the land and certain standards that can be associated with that, such as protection of resources and placement of infrastructure. Controlling the uses is a zoning issue and the County does not have the ability, after the land is divided absent zoning, to control what goes onto the land. If a developer proposes something that they say is commercial, the County will require the appropriate infrastructure but cannot review or control what is an appropriate use on the property through subdivision review.

*Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow for a reduced road width from 32 feet to 22 feet for Old U.S. Highway 93, based on the findings of fact in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.*

*Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(8) (iii) of the Missoula County Subdivision Regulations to not provide non-motorized transportation facilities in the subdivision, based on the findings of fact set forth in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.*

*Commissioner Carey moved that the Board of County Commissioners approve the Carlton Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.*

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**Carlton Summary Subdivision Conditions of Approval:**

1. The plat shall include the following statement in reference to the two remainders:  

“The remainders are not legally created lots and are not transferable without subdivision review.” *Subdivision Regulations Article 3-1(1)(I) and County Attorney’s Office recommendation.*
2. Prior to final plat approval, the development agreement shall be revised, subject to review and approval by OPG, to state that driveway plans shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(10)(E) and Missoula Rural Fire District recommendation.*
3. The road easement shown between Lots 1 and 2 shall be widened to 60 feet and the plat shall indicate whether this is a public right-of-way or private access easement. *Subdivision Regulations Article 3-1(E), 3-3(2)(A) and OPG recommendation.*
4. The plat shall be revised to show Lots 3, 4 and 5 as connected lots. Public rights-of-way or private road easements, each a minimum of 60 feet wide, shall be shown on lot boundaries between Lots 3 and 4 and Lots 4 and 5, subject to review and approval by OPG, County Public Works Department and Montana Department of Transportation, prior to final plat approval. *Subdivision Regulations Article 3-1(E), 3-3(2)(A) and OPG recommendation.*
5. Drainage plans shall be reviewed and approved by the County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4(3)(F) and County Public Works recommendation.*
6. The subdivider shall provide evidence that a petition for annexation into the Fire District has been received by the Missoula Rural Fire District prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-1(1) and Missoula Rural Fire District recommendation.*
7. Final plans for water supply for fire protection purposes shall be reviewed and approved by the appropriate fire jurisdiction prior to final plat approval. The development agreement shall be amended to include the following language:  

“Water supply for fire protection purposes shall be provided by one of the following mechanisms and approved by the appropriate fire jurisdiction prior to final plat approval:

  1. Municipal water system with 1,000 gallons per minute (gpm) minimum;
  2. Wells with 350 gpm and 2,000 gallon minimum storage;
  3. Storage tanks/cisterns with fire hydrants attached; or
  4. Residential sprinkler systems. In the event that residential sprinklers are an acceptable alternative for fire protection, as recommended by the appropriate fire jurisdiction, the development agreement shall be amended to include the requirements of installation, subject to review and approval by the appropriate fire jurisdiction.” *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*
8. The following statements shall be incorporated into the proposed protective covenants to address property owners responsibilities for living with wildlife:
  - Lot owners must accept the responsibility of living with wildlife and be responsible for protecting their vegetation from damage, or they should plant only non-palatable vegetation.
  - The developer is obligated to inform homeowners of the potential problems associated with the occasional presence of bears, mountain lions, etc.
  - Fences should be no higher than 3.5 feet at the top rail to facilitate wildlife movement, with the exception that different fencing may be needed in some cases for security or to comply with screening of outdoor storage.
  - Garbage should be picked up on at least a weekly basis to avoid potential wildlife problems. Garbage, pet and/or livestock food and other potential attractants should be properly stored in secure animal-proof containers or inside buildings to avoid attracting bears, lions, raccoons, skunks and other species.
  - Bird feeders and compost piles attract bears and should be discouraged within this subdivision. Ripe fruit fallen from fruit trees is attractive to bears and lot owners should be encouraged to keep fruit picked and off the ground in order to avoid attracting bears.
  - Montana law prohibits supplemental feeding of game animals. Artificial concentrations of game animals resulting from such illegal feeding can attract mountain lions and also result in damage to gardens, ornamental shrubs, etc.

Article VIII, Section 5. Domestic Pets should be amended to read: “however, ~~no~~ domestic pets shall not be allowed to run at large and shall at all times be restrained and leashed or otherwise contained on the pet owner’s property lot Owners Village.”

The covenants shall be reviewed and approved for these changes by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(10), 4-1(12) and Montana Fish, Wildlife and Parks recommendation.*
9. The covenants shall be amended to include only those provisions specifically applicable to this subdivision. The covenants shall be reviewed and approved for these changes by OPG prior to final plat approval. *Subdivision Regulations Article 5-2(4)(D) and OPG recommendation.*

**Hearings: Interlocal Agreement between the City of Missoula and Missoula County with Respect to the Design, Construction, Operation and Maintenance of the Mullan Road Corridor Sewer Project and Interlocal Agreement between the City of Missoula, Missoula County and Missoula County Airport Authority regarding Participation by the Airport Authority in the Mullan Road Corridor Sewer Project**

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Ann Mary Dussault stated that other members of the Project team were also present today, Dan Harmon, HDR Engineering; Mike Sehestedt, Deputy County Attorney and Greg Robertson, Missoula County Director of Public Works. The County has been in the process of looking at developing a project called the Mullan Road Corridor Sewer. The project is approximately \$7.4 million. It includes interceptors, forced mains and pumping stations to service the area to the north and south of the Mullan Road Corridor, extending from just west of Reserve Street out to the El Mar development on the south and the Deschamps/Washington development properties on the north. One of the exhibits displayed shows the boundaries of the proposed Rural Special Improvement District (RSID). The exhibit also shows where the major infrastructure of the sewer project is located. This project has been worked on for several years, but during the last year several public meetings were held in the Mullan Road area with various neighborhood groups and homeowner associations. It was indicated at that time that the Interlocal Agreements would be ready for adoption about three months ago, so the project is actually behind schedule. The proposed schedule shows November 21, 2001, next Wednesday, as the date when the Board will discuss the Resolution of Intent to Create the District, which is the legal document that begins the creation process. Assuming the Board adopts the Resolution on that date, the following Friday the County will mail notices to every property owner within the boundaries of the RSID. The County will publish notice of the Resolution of Intent to Create for two consecutive Sundays. That would make November 25, 2001 the date of first publication of notice. The important thing to understand in this process is that begins the protest period by which property owners in the district can protest the creation of this RSID. The end of the protest period would be December 10, 2001. There is a 15 day protest period allowed by statute. The letter the property owners receive will have instructions on what to do, essentially send or fax the Board a letter of protest. The protests will be calculated and on December 12, 2001, the Commissioners will hold a public meeting again to determine the sufficiency of protest. If there are sufficient protests, the district cannot be created except by a unanimous decision of the Board of County Commissioners. If there is insufficient protest, it still requires an action of the majority of the Board to create the RSID. Today's meeting on the two Interlocal Agreements is necessary because they are referred to in the Resolution of Intent to Create the District. It was necessary to hold these hearings and have the Board act on the Interlocal Agreements before the Resolution of Intent to Create the District is acted on.

Much of the City-County Interlocal Agreement language is boiler plate and is modeled after the East Missoula Interlocal Agreement or the Linda Vista Interlocal Agreement. There are some significant provisions particular to this project. Three particular issues relative to this project had to be negotiated with the City. The first provision, in Section 5.05, has to do with what happens when people who are outside of the district want to hook onto this interceptor. The second provision, in Section 7.03, has to do with Sewer Development Fees. The third provision, probably of most concern, has to do with annexation provisions and is outlined in Section 11.02.

Pages 1 and 2, and part of Page 3, essentially set out the description of public policy. Section 1 is the Recitals. Section 2 is the Purpose, which states: "It is the purpose of this Agreement to delineate the responsibilities between the County and City with respect to the financing, construction, ownership, operation and maintenance of the Project, and to set forth the rights, duties and obligations of the owners of property within the Project Area wishing to connect to the Project, as depicted in Exhibit A." Exhibit A is the official Project Description which is the Project area as well as the Project Infrastructure. There are two areas within the boundaries of the district that are not included in the district. Both of those areas, the school and Pleasant View Homes, are currently on City sewer. The rest of the properties within the District are not connected.

Mike Sehestedt stated that about 10 to 12 years ago when Hellgate Elementary had it last construction program, a force main was connected from Tina Avenue to the school. In return for dedicating the easement, the property owner got a certain number of connection rights to the force main. That facility is fully committed and cannot provide service to any other area, but is adequate to serve those particular excluded areas.

Ann Mary Dussault stated that Sections 3.03a, 3.03b and 3.03c deal with the estimated sources of funding for the construction of this Project. The majority of this Project will be financed by the proceed of bonds issued against the RSID. The estimated amount of those bonds is \$7,442,000. In addition to that, there will be a contribution from the Missoula Airport Authority in the amount of \$137,000. Finally, a contribution from the City in the amount of \$767,000 will be used to oversize the lines for future capacity.

Section 4, Design and Construction of the Project, lists Greg Robertson, Director of Public Works, as the Project Manager and the Project will be constructed by the County, not the City.

Section 5, Operation, Control and Ownership of the Project, indicates that upon completion of the project, the infrastructure will be turned over to the City, who will have the responsibility for maintaining the infrastructure.

Section 5.05 explains the extension of facilities beyond the district boundary. For example, what would happen if the Kona Ranch area, in 10 years or so, wanted to hook onto this interceptor financed by an RSID and paid for over a 20 year lifetime of the bonds? This agreement says that any of the properties in the extended service area, if they hook on to this interceptor built by this RSID, will pay to the RSID account an amount equal to what they would have been assessed had they been in the RSID. The difference is the amount will not be financed, it will be a cash contribution to the RSID, less a 10% administration fee by the City. That money goes to the RSID and would enable the County to retire the bonds earlier than the 20 year life span anticipated. The benefit negotiated with the City is directly to the residents in the RSID.

Section 7 delineates what the City requires in terms of connecting to this infrastructure. Section 7.02 explains the Sanitary Sewer Connection Contract, wherein the property owner enters into a Sanitary Sewer Connection Contract with the City for provision of sanitary sewer. It details that the cost for this is \$25 per contract and will include those items talked about in Section 11.01. Section 7.03 explains the Sewer Development Fee. The City is in the process of changing their development fee to \$1,850 and would most likely offer a reduction in that fee to people who connect to the sewer within a certain period of time. City Ordinance 3186 sets the new Sewer Development Fee at \$950 for existing plumbed properties. The problem was that the ordinance fee could be changed at any time. However, the negotiations with the City, outlined in Section 7.03.a, will not allow an increase in the fee until December 31, 2008.

Section 11 outlines rates and annexation. Section 11.01.a delineates the number of connections authorized per parcel. Section 11.01.b is an agreement that the property owner will pay to the City the uniform charges, rates and fees for

sanitary sewer services as established by the City. Section 11.01.c is a waiver of the right to protest municipal annexation. Section 11.01.d is a petition to annex in accordance with this Interlocal Agreement, which has to do with undeveloped properties not currently sewered.

Section 11.02 is the provision negotiated with the City relative to using the sewer contracts to be able to annex existing plumbed properties. The City agrees that it will not exercise that right for 15 years, until 2016, or until 50% +1 of the existing plumbed properties in the entire RSID have been sold and changed owners. That is a mirror of the agreement that the City and County entered into in the Linda Vista area. The City was requesting the ability to begin annexation after three years, however, the County negotiated for this provision.

The Airport Interlocal Agreement, between the City, County and Airport, is that the Airport will contribute \$137,000 in exchange for permission to develop 50 acres and connect those 50 acres to this interceptor. They are essentially paying their assessment up front. In the event the Airport wants to add additional acreage within the life of the bonds, they would be subject to the same extended service agreement. They would have to pay into the district anything in excess of the 50 acres. This agreement was needed because the Airport is in the process of expanding their acreage and they do not know which acreage they want to designate for development, it may be on their currently owned property or their future owned property. The intent of this agreement is that they pay their fee up front, they get 50 acres and if they want more than that, they pay just like anybody else outside the district for hookup. There was a misunderstanding that this payment was the only one the Airport would pay for sewer. That is incorrect. The Airport pays the same delineation of fees that any other property owner has to pay. They also have to enter into a Sewer Connection Contract, they also pay a sewer development fee, they also pay for licensed contractors to do the excavation work, and they also pay sewer service rates like everybody else.

Mike Sehestedt stated the Airport, with this payment, is just buying access to the interceptor. The agreement is also very specific that laterals, collection lines, etc., are solely the Airport's responsibility. The agreement says they can use the interceptor to provide service to this property but they will have to build their own collection laterals and lines to get it to the backbone infrastructure. Because of the timing, these are being dealt with on a parallel track with the Resolution of Intent to Create and actual creation of the district. Both of these Interlocal Agreements have provisions in them that if the project is not constructed, the agreements will terminate. The Interlocal Agreements and the RSID go hand in hand, one cannot exist without the other. He wanted it understood that the decision on the RSID is not compromised by approving these Interlocal Agreements.

Ann Mary Dussault stated that the project being discussed is the RSID for the backbone of the system. There are also subdistricts and the infrastructure necessary for the subdistricts to connect to the backbone. Those are not being created at this time. This is only for the backbone. If this occurs, it is anticipated that the backbone system will be in the ground and operational sometime in mid-2003. Some of these subdistricts will probably not be created during our lifetimes. The Interlocal Agreements pertain to the backbone system only. When the Resolution of Intent is posted on the County's website, it will include an exhibit that will show an owner by owner maximum estimated assessment. The estimate is based on a square footage assessment of the assessable area of the property at 0.0725 cents per square foot. If the property has floodplain delineated by a FEMA map or the most recent DNRC description of Grant Creek, that area has been deducted from the assessable area. Other areas have been deducted as well.

Mike Sehestedt stated that public rights-of-way, areas platted as cemeteries and areas platted as parks have been deducted. One area that is a conservation open space easement has also been deleted, except that one part is included, by the terms of the conservation easement, that is subject to development with a maximum of two residences. The non-developable portion has been excluded but included the balance. Also, those areas that are currently being served by an existing municipal sewer line have been excluded, specifically Hellgate Elementary School and Pleasant View Homes.

Dan Harmon stated that parcels that are involved with either public sewer or stormwater are excluded, as well as the golf course.

Ann Mary Dussault stated that after working with bond counsel, any facilities to be used by the public were excluded from the accessible area. Two numbers will appear on this exhibit. The first is the square footage of the parcel and the second is the assessable area. The 0.0725 cents per square foot was multiplied against the assessable area.

Mike Sehestedt stated he included the golf course under parkland, but requires further discussion. This must be a public golf course and there is a proposal for a golf course in the district. This property is being assessed for all of the homesites and the clubhouse site. The area that is actually preliminarily platted as the golf course is excluded from assessment. If that changes, if the golf course is made smaller and more of the property is in homesites, the assessment will correspondingly go up. The total effect would probably be very small and undetectable to rest of the district. There is a parcel of land, about 300 acres, with development plans for 160 acres to be used for a golf course. The balance will be subdivided into residential lots. The assessment on that 300 acres is based on the square footage of the residential lots and will also include the clubhouse area. The part of the project that will actually be in greens, fairways, tee boxes, cart paths, etc., will not be assessed. The theory is that it is dedicated to a public purpose, much like parks and common areas, which are also excluded.

Chairman Evans stated the Board is concerned about the cost. She has been to Washington, D.C., to speak with the Montana Congressional delegates. Letters have also been sent to them to try and find some way to secure Congressional financial help to reduce the costs to the property owners. Given the events of September 11th and the resulting uncertainty of where money can and should be spent, there is little hope of getting any money for this project this year. The Board will continue to work with the Montana delegates to try and ease the costs. She then opened the public hearing.

Vickie Bostick asked about the 50 acres for the Airport, was that acreage they currently had or acreage they are intending to expand on.

Ann Mary Dussault stated the Interlocal Agreement recognizes that the Airport is likely to acquire new property. The 50 acres is floating, it could be on their existing property or it could be on a future acquisition.

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Vickie Bostick asked how many acres the Airport is using now.

Dan Harmon stated the Airport's total acreage is in excess of 700 acres. He was not sure how much of that they were currently using. All their development is on the east side of the runway and they do currently receive sewer service from the City of Missoula.

Chairman Evans stated the Airport is currently in a master planning process and drafts have been prepared for the layout as expected in the future.

Vickie Bostick asked if they do currently have sewer access to the property they are using now.

Dan Harmon stated that was correct.

Mike Sehestedt stated the County extended sewer through an RSID into the Momont area. The current Airport terminal facilities are connected to that under a contract agreement with the City which authorizes them to do about 2,900+ gallons per day. That capacity is about 100% used. If there is further development, the Airport will require sewage service from other facilities.

Claudia Gaska stated she had sent a letter to the Board and would like to read that letter.

Chairman Evans stated that her letter was inaccurate and she would receive a response from the Board.

Ann Mary Dussault stated that Snowdrift Lane is not included in this district.

Claudia Gaska stated she realized that but down the road they would be a part of this. She is actively participating in the process. She read her letter: *"With the fear of retribution being a real possibility, we acknowledge the following. Being a new resident of Snowdrift Lane as of October 9th, we have been informed through word of mouth the Commissioners plan to unnecessarily develop water and sewage service to various County areas with the intent of incorporating County lands into the City limits. We as a working family cannot incur the additional financial burden of this tax grab disguised as an environmental necessity. The lack of information of this project can only be interpreted as a deceptive and underhanded move on the part of the mayor and the majority of our public servants. Further to this, our newly built home passed on all City standards with regards to water and sanitation. If we had known of the City's hidden agenda, we would not have purchased land or built our dream home in Missoula County. If this tainted agenda passes, you have our promise we will use what financial resources that we have and an overly generous amount of energy to fight against all political figures involved in this tax grab. Hidden and deceptive plotting does not sit well with the American people as well as the residents of Missoula County."*

Chairman Evans read her response to Ms. Gaska's letter: *"Dear Mark, Claudia and Robert Gaska. I have received your letter and wish to respond to you. You have said that you are new residents of Snowdrift Lane, as of October 9, 2001, and you have just learned about the El Mar Sewer Extension. There are several problems in the Mullan Road area with failing septic systems. It is especially critical for the El Mar area, as they are under an edict from the Department of Environmental Quality to repair their failing system. There are also other areas and homes that have failing systems and seriously need connection to a sewer system. The soils in the Mullan Road area are very deep clay and septic systems often fail because of it. As new residents, you may not know that that area is often referred to as "the Clay Hills." The Mullan Trail subdivision also has had serious problems and would benefit from the City sewer. This sewer extension project has been in process for over a year and has been very public. You state that the lack of information on this project can only be interpreted as "a deceptive and underhanded move on the part of the Mayor and the majority of our public servants." I am surprised your Realtor did not inform you of this project and I assure you that this has been very, very publicly discussed at numerous public meetings, with virtually every subdivided area, and has also been extensively covered in the Missoulian. HOWEVER, SNOWDRIFT LANE IS NOT INCLUDED IN THIS DISTRICT, AND THEREFORE WILL NOT AFFECT YOU. Sometime in the future other areas, (perhaps including yours), may choose to be on the City sewer, but for the time being, it is not included in the proposed district. I would suggest that your letter is accusatory, unfair and untrue. There has been no hidden or deceptive plotting. I would also suggest that sending a copy of your letter to the Missoulian is also not fair, since none of your accusations are true. I hope you enjoy your new home and suggest that if you have questions on County issues, you give me a call."*

John Deal stated he was an attorney representing the Mullan Trail Subdivision. By way of background, he felt everyone was aware of the problem in the subdivision. There is a floodway designation which prohibits rebuilding or new construction for 44 homes. There is a proposed sewer system in the area, from his understanding, that is designed to be shut off during times of high water. There is not a solution to protect the families and homes in the Mullan Trail area. The residents are concerned about the assessment. It was his understanding they will not be assessed because of the floodplain designation, but the designation only goes through part of the subdivision. Those residents outside that designation will be assessed.

Ann Mary Dussault stated the exclusion from the floodplain is for undeveloped parcels. Plumbed parcels in Mullan Trail in the floodplain will be assessed because their system will be hooked to the interceptor.

John Deal stated that with that in mind, he would again like to raise the concern that the proposal to be assessed is designed to not work during periods of high water. He has been told by the Floodplain Administrator that when the sewer connection is below the floodplain line, a shut off provision is necessary. Because this is now designated a floodway and is in the floodplain, this system will not be able to service the residents at all times. Additionally, there is a sewer system going in to a subdivision that has a massive water problem. There is no solution yet although they have been working with the County. There is no legally permissible, financially feasible solution to protect the families and homes. He encouraged County officials to revisit the proposed RSID because there is a much larger problem affecting the residents of the area.



Greg Robertson stated the assertion that the sewer system will be automatically shut off during high water times is absolutely false. The system will be designed in such a manner to be flood proofed. There are certain design features that will be added to protect that. He did not know where that rumor started. That simply won't be the case.

John Deal stated he was not making any accusations, but had been at meetings where that had been addressed. The flooding problem in the subdivision, paramount to sanitary sewer, needs to be addressed.

Chairman Evans stated that the County had also asked Congress for money to study the relocation of Grant Creek to try and prevent further flooding. They may have an answer this week on the request. Previous to September 11th, they were assured the money.

Debbie Brault stated that Mullan Trail has questions about this because they were originally told that their sewer system, in the event of high water, would function and it did not. They had been told in the beginning that their community system would not have any problems with high water and that wasn't the case. When there was flooding, they system had to be shut off so they were without sewer.

Greg Robertson stated that any permitting through the State, given the known problems, will require the system be flood proofed.

Sabe Pfau stated that at one of the first meetings he attended the matter of the waiver of protest was raised. It was his understanding that he could not protest the sewer because that right was signed off when the subdivision was platted.

Chairman Evans stated it was signed off by those who purchased land. When they bought, they agreed to waive their right to protest. It was a condition of subdivision approval. When someone purchases property, they are agreeing not to protest.

Ann Mary Dussault stated that was correct.

Sabe Pfau stated it would not do him any good to protest because it would not be counted. Was that the same with 44 Estates.

Ann Mary Dussault stated that was also correct.

Sabe Pfau stated in Section 7.02 it talks about a \$25 connection fee. Is that for each single home or for the subdivision.

Mike Sehestedt stated that would probably vary. If individual connections were done, it would be per connection. He was not sure how the City would treat an existing system like Mullan Trail, where the system is switched from its drainfield and connected to the main. He did not know it that would be one fee or a fee for however many homes were in the subdivision. His assumption would be that it would be treated as one contract with multiple connections, but he was not absolutely sure. He would check with the City to find the answer.

Sabe Pfau asked if the \$950 connection fee was per home? Is there any variance for low income families.

Ann Mary Dussault stated that discussions will be held with the Water Quality District for a contribution from them toward that \$950 fee per household. Nothing have been negotiated yet, because that comes with the subdistricts, not with this backbone. She felt that some reduction could be expected. Historically, it has been done as a per household gift and has not differentiated on the basis of income. The Water Quality District is a local government entity created for the purpose of protecting the Missoula aquifer. There is a fee to them on each tax bill. It is administered by the City-County Health Department.

Sabe Pfau asked, per Section 11.02, if there was a further split on Flynn Lane or Pruyn wanted to split his land, what would that mean for them.

Ann Mary Dussault stated that Section 11.02 is an agreement relative to existing plumbed properties.

Sabe Pfau asked if the City could automatically annex that land if it were split.

Mike Sehestedt stated that if the land is subdivided and wishes to hook the units in the subdivision to this sewer system, then the developer has to waive the right to protest and petition for annexation. Whether that will happen immediately or at some later point is not know. The potential for immediate annexation exists. There is the option to develop it at a density that did not require sewer and everything would remain the same. However, if connection to the municipal sewer is required for subdivision approval, then those lots could be immediately annexed into the City.

Sabe Pfau stated that today's discussion was regarding the trunk line only. Who would negotiate any other assessment or RSID for his subdivision.

Ann Mary Dussault stated that based on the presumed schedule, assuming this RSID is created, the backbone system will be operational by summer of 2003. The County would then be most interested in looking at those neighborhoods that have existing operating systems to be considered as the first subdistricts. The idea is to convert those systems onto the new backbone. That includes El Mar, Golden West, Mullan Trail and Katoonah Lodges. Probably fairly rapidly after this is created, discussions would start with each of those four subdivisions, designing what needs to be done to connect the existing system to the backbone. A subdistrict RSID would be created for those particular costs.

Sabe Pfau stated that the people just voted him another \$40 tax increase for the school. It looks likes this will cost about \$50 to \$60 per month for his place. If he has to look at another \$25 or \$30 for the subdistrict, that is an awful lot of money and Social Security does not go up that fast. He appreciated the answers he received.

Greg Turnis, 1480 Crest Haven, stated that it disgusts him and wondered if the County has thought about the families that will be put out with this financial burden, him being one of them. He has two children and bought his house last spring. It is a beautiful area but there is no way many families out there can afford even \$50 extra dollars a month. He can't believe the Commissioners do not take into consideration the amount of families that are going to be displaced because of this. He has no problem with his septic. His house is six years old. Everybody in his area has not had a problem with their septic systems. He did not understand the environmental issues and how this will pollute the river and affect the aquifer. He did not see that. If that was the case, Kona Ranch Road is closer to the river than he is, but they are not part of this plan. He really wanted the Board to feel the families pain, they will be have to sell their dream homes. He just moved to the area for the simple reason that he was not in the City. He probably spent too much on the house, but it was what his family wanted, and he is struggling. If this goes through, he will have to sell. He urged the Commissioners to get out and talk to the people and see how many are going to be displaced.

Jack Jergens stated he lived in El Mar Estates at 9225 Grouse Drive. They have a sewer system now and some people say it is failing. He has to take their word for it. There were problems with it several years ago when there was all the rain and snow, but has been working quite well since then. There are 485 homes on the sewer system, it is the largest system out there. This will charge everyone a \$25 fee for the paperwork, then \$950 to hook up to a sewer that they already have. He thought all that was needed was to put in a pumping station to the main line. He did not know how much the fee to the City would be after they were hooked up, plus the RSID cost per month and they are already paying a water and sewer fee. He is almost 80 years old and his retirement money doesn't go very far with interest rates at 2%. This needs to be looked at very carefully. Even if he wanted to sell, before when a home was listed in El Mar Estates, it sold in a month. Since this has come up, there are houses that have been for sale for three months with no interest. His son sold his house in a day, but that can't be done now.

Chairman Evans stated that the El Mar sewer system was put in many years ago and done with the best technology available at the time. Over the years it has failed, it has leaked. During the winter months, the soil does not absorb the affluent. It is a failing system according to the Department of Environmental Quality. To help fix El Mar's system, they originated the idea of getting it hooked to City sewer.

Jack Jergens stated he is not opposed to the project, but the cost was his main concern.

Chairman Evans stated that in order to help El Mar, it made sense to include the other systems that were having problems. With this RSID, even though El Mar is the farthest out, it would pay the least because they already have a system in place that could be hooked to the backbone. It is ironic that what was started to help El Mar gives them the least cost and other get higher costs. El Mar's system does need work. There are other houses, due to the clay soils, that are having trouble. The County is trying to do the responsible thing. They do understand the financial situation.

Jack Jergens stated it was his understanding that the Homeowners Association owns 80 acres of land. What will be done with that 80 acres now that the County has taken over the sewer system.

Greg Robertson stated that some folks in El Mar may not be aware of the fact that the Homeowners Association does own 40 (not 80) acres of land known as the GG Tract. There is also approximately \$110,000 in reserve funds that will be used to buy down the cost of the RSID to the El Mar residents. It is also proposed to sell the GG Tract and using those proceeds to buy down the cost of the RSID. In addition, there is a \$230,000 EPA grant that was received last year that will also be used to buy down the cost of the RSID to the El Mar folks. That is a substantial reduction, in fact, El Mar residents are probably in the best position.

Ann Mary Dussault stated the 40 acre Tract GG is currently being used to irrigate from the lagoons. The Homeowners Association holds title to that land, so it is up to the Homeowners Association if they want to sell it and apply the benefit of the sale to El Mar's cost of the RSID.

Jack Jergens asked if there would be more than one hookup to the main line from El Mar's system?

Greg Robertson stated that because the collection system is already in place, the residents in El Mar have already paid the lion's share. The subdistrict that would need to be created would be minimal and would involve eliminating the three lagoons and putting in minimal infrastructure to tie in the collection system.

Lou DeMarois stated he owned the corner lot on Homestead and Frey Lane. Like others, he moved out there to get away from closer homes in town. It was his understanding that the current zoning in the area was for a one acre lot.

Mike Sehestedt stated if someone wanted on-site septic and a well, State and County Health standards require a minimum one acre lot.

Lou DeMarois asked if there were plans to change the zoning to less than one per acre.

Mike Sehestedt stated the growth management process completed a couple years ago directs Missoula's growth into the area west of Reserve Street. There is ongoing Wye/Mullan Comprehensive Plan study, which will probably lead to a change in the zoning density in some of those areas. There is an anticipation that there will be some areas in which zoning densities change significantly.

Lou DeMarois asked if there was the possibility of having homes on a quarter acre.

Mike Sehestedt stated that was a definite possibility, it would depend on the area. The planning process is not yet completed, but an example would be Pleasant View Homes. That is an example of the higher density housing that will be called for in some area.

Lou DeMarois stated that the sewer system is being planned for with the idea that the zoning will be changed later. He and others bought property out there so they wouldn't have someone living three feet away. The development that goes in out will have to have some restrictions. The development on Flynn Lane is very poorly planned. It worried

him how densely populated the area will be if the zoning changes. There will also be more bond issues for Hellgate Elementary to handle all the new families. On top of the sewer costs, there will be added more bond issues for education and the school. The cost of this RSID is only a small portion of what could be charged for this area. If homes are allowed to go in out there on quarter acre tracts, that will affect people on one acre who bought to have some privacy. Those property values will drop if the zoning is changed. Would there be a way for people to prove their septic has been pumped and is working properly and be exempt from this RSID. That should be an alternative to adding this high sewer cost to everyone. He would not be able to afford this. He is not against sewer if it can be done economically. He does have a problem with property values dropping and higher school bond issues to expand Hellgate Elementary. Those things should be taken into consideration and it is not shown in any of the materials presented.

Norm Schmautz stated he lived on Haven Heights. He asked if the El Mar system had been expanded in the past?

Greg Robertson stated the New Meadows Subdivision was added to the El Mar system. The system was re-certified several years ago for increased capacity and is now at capacity.

Norm Schmautz stated it was his impression that it was at capacity when the other subdivision was added. Why was it allowed to expand if it had problems.

Greg Robertson stated there was not an easy answer to that question. Some time ago a re-certification process for the plant's capacity was done by a local consulting firm and submitted to the State for approval. Based on the approval, additional connections were added to the system. Subsequent to that, water quality issues arose because of management practices. An analysis was done and it was determined that the facility was leaking. Some repairs have been made, but the leaking still occurs. The simple fact is that the system is at its maximum capacity.

Norm Schmautz stated that El Mar was allowed to go beyond capacity. There was a big addition added behind them in the last five or six years.

Dan Harmon stated there were two expansions of the El Mar Estates facility. The first was the New Meadows Subdivision. Recently, within the last five years, there was an additional 7 lots that were allowed to connect. The decision to allow that to occur was made at the State level. At the time of their review, they were given information from a consultant and checked out with the standards at that time. Since that time, the City and County has adopted new land application regulations, plus there is more known about the flow generated from that facility. There is a need to expand the facility.

Norm Schmautz asked for an explanation of the troubles at Mullan Trail.

Dan Harmon stated there are number of homes that have been flooded due to the rising of Grant Creek. Also, the land application area was inundated with floodwater. That is about all he knows about the Grant Creek situation. The statement Greg Robertson made about the connection of that system to the backbone was correct. The design of the backbone system would not preclude that system from working if there were floodwaters. The reason for putting in a regional system would be to address water quality problems like that. This has been discussed with the State and they are in favor of systems like Mullan Trails being connected to a regional system. It is a more responsible water quality action to take.

Chairman Evans stated that the when Mullan Trail had their problems it was an especially wet year and the soil was inundated and would not accept any more water.

Mike Sehestedt stated there were a variety of problems with Mullan Trail. The floodplain of Grant Creek was mis-identified, there was a house under construction with a floor drain open and other components of the system were not adequately waterproofed, which caused the pumps to work constantly pumping effluent and floodwaters into the raised drain field, eventually resulting in a partial failure. In the long-run, Mullan Trail is better off connecting to a regional system as the correctly defined floodplain may include part of the raised drainfield area. There are also a whole variety of other issues at Mullan Trail, of which the sewer is one of the smaller ones.

Norm Schmautz asked why any of this was permitted in the first place and what assurance is there that what is being done now will address those issues. Will another proposal be brought forward in 5, 10 or 15 years to address what is being done today.

Chairman Evans stated that the Board does not have a crystal ball. If they did, none of these things would have happened. Putting in City sewer so the discharge does not reach the aquifer is likely to work better than anything else.

Greg Robertson stated that the smaller systems such as El Mar are higher maintenance and have a higher degree of failure. Community septic systems were a reflection of maintenance practices and design standards at the time. A regional collection system is not foolproof but it is certainly less likely to fail than smaller community systems.

Norm Schmautz stated he has two acres in Haven Heights and asked what it would cost him to hook up.

Mike Sehestedt stated it would be approximately \$6,358, for the backbone system.

Ann Mary Dussault stated that to be precise, Mr. Schmautz maximum estimated assessment, meaning it cannot go up but could go down, is \$6,312.44. That is for the backbone system. A subdistrict for his area was not anticipated until other development drives it. In that particular area, the cost of the subdistrict was very high. There are others interested in developing property to the west of him. As those properties are developed, it will bring the infrastructure closer. The original figures he saw were definitely a worse case scenario.

Norm Schmautz asked what the cost would be for a one-third acre lot in El Mar Estates.

Ann Mary Dussault stated that the assessment for properties in El Mar Estates ran from \$800 to \$900 per home. The assessment is based on the 0.0725 cents per square foot of assessable area.

Norm Schmautz stated he would pay over \$6,000 to get rid of the same amount of effluent as someone in El Mar who is paying \$900. Is that equitable?

Greg Robertson stated that was an issue that was discussed at length when the method of assessment was established. One of the issues raised was dealing with whether a property could be subdivided to recover the cost of assessment. The State and County regulations allow for further subdivision once water and sewer are provided. In consultation with Bond Counsel, the square footage basis was the only reasonable methodology, not using the amount of effluent generated.

Ann Mary Dussault stated that when the original methodologies were looked at, a property's value was one of the legal methods of assessment. The first look used a mixture of square footage plus assessed value. That cost was dramatically higher than the method being used. The reason for that is the undeveloped parcels are assessed as agricultural land which is very low. Under that scenario, the undeveloped parcels were paying about one-third of the cost and developed parcels were paying two-thirds of the cost. This assessment is structured so that undeveloped properties are paying 66.4% of the cost and developed parcels are paying 33.6% of the cost. The assessments were structured so that undeveloped parcels would pay the lion's share of the cost of this project. It is a very difficult question. In Mr. Schmautz's house there could be two adults and eight children. A house in El Mar could have one adult and three children. It was extremely difficult to make sure the calculation of effluent would be equitable.

Mike Sehestedt stated that to do this on a per hookup basis gave the development land and developers an absolutely free ride, since there are no hook ups and the minimum density would have to be considered. If the area was 100% built out it would work to do a per hook up basis, but with the undeveloped land, it gave the developers a free ride. The assessment would have been fixed, then they could develop and ride on the rest of the people. That did not seem reasonable.

Norm Schmautz stated his goal was to not divide his two acres. Most of the people around him with one acre could not subdivide for a variety of reasons, one being the house is centrally located. These people are being held to the cost assessed without being able to sell land. Haven Heights has about 100 acres in 25 acre lots. How many houses can be put on 25 acres once the sewer is in? How high a density can be put on 25 acres?

Mike Sehestedt stated that would depend on what happens with the Wye/Mullan Planning and what happens with zoning changes. In the absence of zoning, it would support one house per acre. With zoning changes, depending on how the changes occur, it could allow two houses per acre or it could allow four houses per acre. That is an unresolved question at this point. If the owner wants to develop right now at anything greater than one per acre, they will be responsible for bringing the sewer in, right to the boundary of Haven Heights, which makes the subdistrict much more affordable.

Dan Harmon stated that the boundary Mr. Schmautz was shown for the Haven Heights subdistrict was an early draft. There is not a lot of interest for the creation of a subdistrict in the Haven Heights area immediately. There is a difference between the types of properties that were in the original subdistrict. Some were developed parcels around the Haven Heights/Lazy H Trail area and some were large parcels. If a subdistrict were to be formed, it would include more like properties in the area.

Ann Mary Dussault stated there are waivers of the right to protest on homes abutting Lazy H Trail. There are one or two other individual waivers below that area.

Norm Schmautz asked if someone could show him where he signed a waiver of the right to protest.

Ann Mary Dussault stated the language of the waiver of the right to protest is on the plat.

Norm Schmautz stated that the vast majority of people have no knowledge of signing such a waiver.

Mike Sehestedt stated that a waiver of the right to protest is usually done as a condition of approval for a subdivision. It gets recorded and appears on a title policy. People have a tendency to blow by their title policy so it is also required that the waiver be printed on the face of the plat. If someone doesn't go through their title work or look at the plat when they purchase property and the real estate doesn't inform them, it is difficult to figure out any other way to get the information to the buyer. By putting the language on the plat, it makes sure the information is not buried in the covenants or the conditions of subdivision approval. He understood what Mr. Schmautz was saying and it is a problem. There has been a comment that this has been a sneaky, underhanded, no public notice process. He personally attended 10 public meetings in the Mullan Road area and that was less than half that were held. Sometimes people just don't pay attention. It is frustrating.

Norm Schmautz stated someone should not have to be a lawyer or realtor or rocket scientist to know that they just waived their right to protest. It should be obvious.

Mike Sehestedt stated he understood that and it is very frustrating.

Norm Schmautz asked if the land behind his subdivision were to be developed today, would that force him to go on sewer.

Dan Harmon stated that there is not significant interest in Haven Heights to hook to sewer at this time. The larger parcels to the west would be developed separately and would most likely not affect Haven Heights. Those larger parcels could be connected to sewer without running lines through Haven Heights. They would be served from the west, but sewer would be brought right to the Haven Heights property line.

2000-2001

Ann Mary Dussault stated that there would not be an attempt to create a subdistrict for the whole area. It was more likely that over time the sewer system will come to his subdivision. There are also not sufficient waivers of the right to protest in this area and if a subdistrict were to be attempted, it would very likely be overridden with protests. The County would not waste its time or Mr. Schmautz time in trying to do that. The same thing is probably true in the Frey/Homestead area. Neither of these areas is included in the subdistrict planning that goes through 2006.

Ann Mary Dussault informed the audience that because it is anticipated that there will be a large group at the Public Meeting next week, that meeting will be held at the Missoula Public Library public meeting room, beginning at 1:30 p.m. The only item on the agenda will be the hearing on the Resolution of Intention to Create the District. This information will be posted on the County's Internet site and will be sent to the media as well.

Dan Harmon stated that he had run out of maps. He left his business card and if people will give him a call, he will see that the maps are made available to them.

Paul Fredricks, 1839 Frey, asked if maps would be part of the notification sent to property owners.

Ann Mary Dussault stated she did not believe so.

Paul Fredricks stated the Airport gets a substantial discount square footage wise. Others are paying 7.25 cents, they are paying 6.3 cents. He wanted to know how he could get a deal.

Ann Mary Dussault stated the reason for the difference in the per square foot cost was because the Airport was paying its fee up front. They are not included in the RSID. Creating the RSID has its own set of costs, so only those within the boundary of the RSID are assessed the costs associated with creating the RSID. If someone has an assessment of \$6,000 for the backbone system, it is possible for that person to pay in one lump sum and not take advantage of the financing over twenty years, and receive the same benefit.

Chairman Evans stated that when Linda Vista was in the same situation, the banks joined together to make low interest loans available. The banks have been contacted again to ask that they do the same thing this time. A homeowners may want to make a lump sum payment and not take advantage of the 20 year financing. The banks might potentially have low interest loans available.

Paul Fredricks asked if the low interest loans were for the backbone or the subdistricts.

Chairman Evans stated that at the time it was for the subdistricts.

Paul Fredricks stated he could see the banks doing that for subdistricts that would benefit the property owner, but he could not see them doing it for the backbone. He wrote to the Commissioners back in June and had not received any comments back. One of his comments was that if the landowners on Mullan Road came to the City of Missoula and requested to be annexed, he could see the City responding that they liked the idea but there were a number of costs they would want the homeowners to incur, including hooking up to the municipal sewer district. He understood that it is assumed that this area will be annexed at some time. The trigger will be hooking up to the City sewer. The Mayor had stated that at recent City Council meetings. If someone receives City benefits, they must be part of the City. He is assuming that whatever protest happens, it will be overridden and folks will be forced to hook up to the City sewer system. In essence, the County is saying homeowners will be paying for City sewer and then the City will annex them and be assessed more taxes to pay for their great services. He felt there was some backward logic involved. If the City wanted to annex this area, the City should provide the backbone. He would like to see the City finance the backbone as it is their trigger for annexation. Then the homeowners would receive benefit for the taxes they will pay.

Chairman Evans stated that when Linda Vista was under direction to fix their system and the protest was overridden, there was an agreement with the City that they would not be annexed until the bonds were paid off, or 50% of the homes changed ownership. Following that same logic, that is what the County has done here. The City will not annex any of the plumbed houses in the District until 2016, or until 50% +1 of the houses in the whole District have changed ownership.

Paul Fredricks asked if the 50% included the existing houses today?

Ann Mary Dussault stated it was 50% +1 of the existing plumbed units in the District. If the Washington Corp. brings in 300 new houses, those do not count in the formula. Newly created subdivisions do not count in the formula.

Jim Burkee, 529 Blaine Street, stated he was present as a member of the Five Valleys Land Trust. He asked about the extended project area boundary and why there is such a boundary and what the meaning was to be just outside that boundary.

Ann Mary Dussault stated one of the maps shows the area of the proposed RSID that is to be created to finance the backbone system. The other map shows contiguous properties that theoretically could be served by the backbone system without additional significant infrastructure. The County wanted to avoid that and was concerned that in ten years, for example Kona Ranch, was to develop and hook to this interceptor, they would do that and pay a fee to the City. That did not seem fair. The agreement says that if Kona Ranch or any of these other properties are developed in such a way to hook on to that interceptor during the life of the bonds, they will pay a fee as if they had been in the RSID, roughly \$3,157 per acre. They will pay it to the RSID account that those in the District are paying into and the bonds will be paid off sooner. It may shorten the amount of time people in the District pay off this RSID. Kona Ranch, depending on how it develops, could pay up to \$1,000,000.

Jim Burkee stated that boundaries of the extended project area were because they were contiguous parcels and their infrastructure costs would be minimal.

Mike Sehestedt stated that the people in the District are buying an improvement. The County wanted to make sure that none of the neighbors could suddenly say that it was a great idea and want in on it for free. If those in the District are buying an improvement and other that don't contribute to it would get the benefits, those people should have to buy into the improvement like the people already in the District. Kona Ranch is a good example, they did not want to see them get a free ride, that would not be fair. The west boundary of the RSID is also the boundary of the current wastewater treatment facilities plan for the City of Missoula. For anyone to the west to take advantage of the sewer they would have to get the City to agree to extend the wastewater treatment boundary and make a payment to the RSID. Then their own laterals and connectors could be built and hooked on.

Jim Burkee stated it sounds like this may require another Interlocal Agreement to those in the extended boundary area.

Mike Sehestedt stated that would not be necessary, but it would require independent action by the City and interest in sewer service to extend beyond the wastewater treatment boundary. The City's current plan is good through about 2015.

Jim Burkee asked if the agricultural land within the RSID boundary would be assessed the same.

Mike Sehestedt stated the cost was assessed acre by acre, square foot by square foot.

Jim Burkee asked if any agricultural land owners had said how they would deal with those costs.

Mike Sehestedt stated that he felt they have recognized the City is coming to them and the horizon for agricultural use between the Airport and Reserve Street is no longer viable. All of the large landowners are on board with the project.

Ann Mary Dussault stated that they have heard from some agricultural landowners that have concerns about this project.

Jim Burkee asked about granting an easement for agricultural or open space purposes. Would that be exempt.

Ann Mary Dussault stated that would not be exempt. They tried to figure out a way for this to be prospective, but it was not possible. One landowner is looking at a conservation easement and his theory was he had two opportunities with his parcel, a conservation easement or development. He did not object to his assessment because even if it was put in a conservation easement, the value would be increased and his tax benefit would be comparably increased.

Jim Burkee stated his understanding was there could be substantially higher density even in areas classified as floodplain.

Mike Sehestedt stated that was incorrect. The floodplain is excluded from the assessable area because it is specifically recognized as non-developable.

Jim Burkee stated that undevelopable land in the floodplain either inside or outside this boundary was not included.

Mike Sehestedt stated that floodplain lands as identified on the most recent floodplain map are not assessed as they are recognized as not developable.

Jim Burkee stated his question was not about how things were being assessed, but essentially how this changes what potentially could happen on lands in the extended area.

Dan Harmon stated that in talking with the Department of Environmental Quality and those who would be involved with the State Revolving Fund, they have some significant concerns with the attempt to develop currently undeveloped parcels that are in floodplain. Because they are the reviewing agency, they will not promote that at all.

Jim Burkee stated his concern was not for areas in the floodway, but areas that are subject to high ground water levels during wet seasons and spring runoff.

Mike Sehestedt stated that the floodplain includes floodway and flood fringe, the land is not developable under this proposal. The boundary of the district is basically along the floodplain of the Clark Fork River. The floodplain on the extended district is not anticipated to be developed, but if land is established to not be in the floodplain, it would be assessed.

Ann Mary Dussault stated that there are parcels within the RSID boundary where the total square footage is not assessed; floodplain was excluded. Bond counsel advised that even though the entire parcel was not going to be assessed, the entire parcel had to be included in the RSID. That would be true of the extended services boundary also. The entire parcel has to be included in the event that part of it was developed and assessed. It looks as if there is a bunch of floodplain in there. The reason is simple. In the event someone defaults on their payments to the RSID, the entire parcel had to be within the RSID boundary.

Jim Burkee asked how, down the road, this sewer extension affects the density of development farther and farther out on Missoula's edge. He acknowledges that density is necessary to accommodate increases in population, but the question has to be asked as to where that density should be. Many people have said they moved to this area because they didn't want to live in an area with high density. This parallels his interest in where the focus should be to protect open space. They want to work in concert with the City and County. He asked if the proposed golf course on the Washington property would be public, on privately owned land, accessible to the public for a fee.

Ann Mary Dussault stated that was correct.

Jim Burkee asked if that is how the distinction was made between public and private.

Ann Mary Dussault stated it was similar to the platted property in Sunset Memorial Gardens. It is private property for a fee, but platted for a public purpose.

Jim Burkee asked if that property's situation could change, once it is platted. Could the size of the golf course be reduced and more homes built.

Ann Mary Dussault stated that if they would choose to do that within the life of the bonds, the land that they would add to the housing stock would be assessed similarly to the extended service boundary. He should also know that Sunset Memorial Gardens owns a couple of parcels that are not platted and they are being assessed. There is a fine distinction between those lands that could be identified with a public purpose.

Mike Fellows requested that his written testimony be entered into the record as he had to leave. It reads: *"Good afternoon Chair and Commissioners. For the record, my name is Michael Fellows and my address is Box 4803, Missoula, 59806. I'm here to speak against this proposed sewer agreement between the City and County. I think the County is selling those Mullan area residents down the road. As a libertarian I don't like this type of agreement that's really an end run around annexation protests by residents. If the issues here are health and our aquifer, then voluntary contracts by those residents with the City for sewer service is the way to go. We know the City is having revenue problems with its wastewater plant and needs new customers to pay for its upgrade. One solution for the City is to privatize the plant. A late-1999 report by the City of Indianapolis examined the success of the White River Environmental Partnership (WREP) in running the City's sewer collection system and wastewater treatment plants since 1994. The report measured performance in three crucial areas: Employee Treatment. Employee wages and benefits have risen between 9 and 28 percent, accident rates have dropped 91 percent and grievances are down 99 percent. Environmental Compliance. WREP has improved on the City's record of environmental compliance in exceeded permits and effluent discharges. Cost Savings. Over five years, privatization saved the City \$78 million – surpassing the expected savings of \$65 million. In 1997, after three years of contract performance that exceeded expectations, the City decided to replace the existing five year contract with a new 10 year contract extending through 2007. Total savings from the contracts from 1994 to 2007 are expected to total \$250 million. To date, the City has used most of the savings for capital improvements in the sewer system and treatment facilities and for rate reductions. In conclusion, there are better options than the one being proposed here. Thank you for your time."*

Jim Mocabee, 1540 Topaz Drive, stated that one of the things that seemed to be missed is whether there truly is a need for this project. The amount of need isn't there. The test wells out there haven't shown an increase in any problems. If there isn't a true current need and if the other component is a new zoning plan, then he can't see how anyone could support this project. Without a plan it is unknown how big the main should be. The City is increasing the size of the line, but is it known that is big enough. The zoning and densities are not known. There is no guarantee when an area has to be connected if that area is annexed, that very day or when. Those costs are substantial. He would have to move. The \$3,000 an acre, even though he gets no benefit, is not too bad, but the other costs are outrageous. This is irresponsible planning. People need this information and until all these things are put together, a decision is difficult. The zoning needs to be known so the increased density is known so the size of the main is known. If that information is known, please share it. If it is not known, then why is this even being done. It makes no sense.

Dan Harmon stated that HDR was involved with the initial planning beyond the City of Missoula's current facilities plan. They have been doing all the sewer planning in the area. To address the question of whether the pipes are sized appropriately to serve the ultimate development of the RSID, the answer is yes.

Jim Mocabee stated that if the density is not known, how can the question be answered. From an engineering standpoint, that can't be answered.

Dan Harmon stated he was trying to address the question. The design of sewers is done in a couple of different ways. This project is done on a hydrographics model, where the planning densities are overlaid on the wastewater collection system, to determine the sizing of the pipes. Certain criteria developed by the State for minimum grades has to also be met. Because this area is quite flat, the lines end up being oversized because there needs to be a really flat grade on the pipeline to be able to serve the area and keep the pipeline at the proper depth. The pipe ends up being larger than expected. That in conjunction with the hydrographics model that includes some population densities that are being used for planning in the area, this is consistent with all the other planning that is occurring. HDR was questioned early on with this same concern. The City's biggest fear was if the pipes were being adequately sized for the ultimate buildout or carrying capacity of the property, if all this area was developed at its ultimate density, would the pipes be large enough. Because of the criteria that has to be followed with grades to comply with DEQ, the pipelines are sized appropriately, even though the densities that were evaluated will never occur. He is comfortable saying the pipelines are sufficient to handle the carrying capacity of the property within the RSID boundary.

Jim Mocabee stated that the other side of the question was if the density was not known without a zoning plan, then perhaps the system was being overbuilt. If that is the case, then there could be undue cost. That is not known, there is no zoning plan. Some have said that the owners of undeveloped property already have a plan. That is great, but what is that plan. There should be a zoning plan so people know what to expect and can do what really needs to be done. He asked when his subdistrict would be required to connect.

Ann Mary Dussault stated there are currently properties within the City limits that are not hooked to sewer. In the draft subdistrict development schedule, through 2006, his area is not included.

Jim Mocabee stated that he felt the cart was being put before the horse with this project. Until it is known how this property will develop, this seems very inappropriate.

Debbie Brault, 7020 Mullan Road, stated she was not in any subdivision. When this was proposed early this year, she was included with Country Crest because her property backs to that subdivision. She has a really problem with all of this. She built her house 13 years ago. She has not signed any waiver and is not in any subdivision.



Mike Sehestedt stated that she would not have a waiver on her property unless she had replaced her septic system in the last 5 or 6 years.

Debbie Brault asked how many homes in the District have waivers.

Ann Mary Dussault stated she did not have that figure as she had not added them up. There are waivers on the properties on either side of Lazy H Trail in Haven Heights. In the Country Crest subdivision, about 80%-85% have waivers. There are waivers in Mullan Trail, Katoonah Lodges and 44 Ranch Estates. There are a few other isolated waivers as well. She could get the actual number after the meeting and get the information to Ms. Brault.

Debbie Brault stated that she has seen a lot of development move into this area during the last 13 years. Her house was built at a cost of \$75,000. It will be paid off in seven years and her payment is \$1,000 a month. She cannot afford \$38,000 for sewer which is what Greg and Dan told her she would pay. That is over half of what she paid for her home and her septic system has worked fine for 13 years. It is really hard for people like her to understand why they need this plan. She is not against the City or sewer. She just cannot afford the cost. It is ridiculous. Jim Morey cannot believe the cost of the subdistrict. He said no sewer should cost over \$1,200. This is already at \$3,000, but then to add subdistricts, another \$16,000 onto the \$3,000, and paying the City and connect fees on top of that. When does it end, \$25,000 to \$30,000 later.

Chairman Evans stated she would likely vote no on this process, not because she did not support sewer. The reason the sewer is needed is to protect the ground water. Given the high costs to the homes and the fear of people losing their homes, she is likely to vote no. That doesn't mean this won't pass and she could change her mind. At this point it is likely she will not vote for it.

Debbie Brault is not against City sewer. She is also a realtor and sees the development. She is not against development. It is needed but not at these costs, \$8,000 to \$10,000 might be okay and some people might lose their homes, but \$18,000 to \$21,000, that's too much. That is more than half the cost of her home. She will never recoup that cost. She would not get \$38,000 more for her home just because it has sewer. The City made her put in a sump pump when she built her home. Now, she is being told she has to do this and pay more for the sewer when her septic works just fine. It's frustrating.

Harriet Spurlock stated she owned property in the Tipperary Way area. She asked about some of the land to the south in the expanded service area. Wasn't that floodplain and included in a 50 year plan for a gravel pit and pond. Would any of that ever be pulled into paying for this?

Ann Mary Dussault stated that this was an attempt to hedge the bet of what might happen in the future within the life of the bonds for the RSID. That line was drawn from an engineering perspective, who said it is possible for these properties to hook to the interceptor without additional significant pumping stations. If that is true and those folks decide to hook to the interceptor, they should pay their share of the RSID. This was a way to guarantee to the folks in the RSID that if others came onto this in ways not currently anticipated, they would pay their fair share. A lot of the southerly boundary are parcels that have a great deal of floodplain.

Harriet Spurlock stated she had a small mobile home court in the Tipperary Way area, built in 1961. There is limited room, each lot and mobile are small. The Health Department holds them to a limit on the total number of people for the whole court. They put in a new system on all but two spaces in 1995 for just under \$50,000. They rent to retired and disabled and occasionally a student. They could not pass that cost on to them. She did not think they would be able to pass the cost of this new sewer system on to them either, or the subdistrict cost should it every be created. When the new system was put in, it was anticipated that City sewer may come out and they made two connections available at that time for 11 spaces. Will each mobile home renter have to pay the same monthly charge. Even though they have not passed any of the large costs on to their renters, they would have to pass any monthly charges to them. They have one renter who is retired and disabled. Would he have to pay the same amount for sewer as a home on the hill with 5 or 6 people. Would the hookup be the same to him as to a five bedroom house.

Chairman Evans stated that she suspected it would be the same unless a way can be found to provide some assistance.

Greg Robertson stated the determination of how their connection fee is established for individual residents is contained in the City Ordinance, based on water usage. It gets more complicated in her situation as the common ownership is hers yet she is renting to other individuals. Even if there is no meter, they are being served with water and there is a formula that is used to figure the usage. Specific questions as to how that might be established could be answered better by Steve King, City Engineer, or Bruce Bender, City Director of Public Works.

Dan Harmon stated there were other questions that had been raised regarding trailer parks that have a community type system. The City does have that defined in their Ordinances and they are the final decision maker on the number of equivalent residential units. Steve King had provided him with those Ordinances and he could provide a copy to Mrs. Spurlock. It is based on either the size of the water meter or on a fixture count of the property itself. It doesn't take into consideration the number of people in the residence, it is really based on the number of fixtures connected.

Harriet Spurlock stated for the record that her property was not out in the clay hills, but they feel they are being made to pay for the failures in the clay hills.

Don Schmutz stated that he lived at Lazy H. He did not agree that the lack of a sewer system would affect the aquifer. He has to go through 158 feet of clay to get into the water table. He lived in Seattle for 40 years and has lived in Target Range and Orchard Homes. They started talking about a sewer system 40 years ago and they still haven't got one. He did believe that if El Mar was not there, this would be not even be brought up. He did not think that the County had it all figured out yet. They are charging way too much and about two-thirds of the people out there are going to lose their homes. This will really upset the apple cart if it is pushed through. Some folks who will be paying for this will not be able to use that line for many years. His mother lives one block off Reserve Street and still does not

have sewer, and that is right in town. It seemed like everything was ahead of itself and required some more thinking before this burden is placed on the residents.

Chairman Evans asked if anyone would like to speak on the Airport Interlocal Agreement.

Jim Mocabee, 1540 Topaz, stated that income producing property, whether it's the Airport or a golf course, should be paying their fair share amount. Whether it's a public golf course or not, it is still a profit making opportunity for whomever owns it. Same thing with the Airport. He did not believe that if this goes, they should get 650 acres exempted nor should Washington get exempted for the golf course. That doesn't seem right. His property doesn't produce income, why should it pay more than income producing property.

Ann Mary Dussault stated that the hearings on the two Interlocal Agreements should be closed but no action would be taken today. The City is also in the process of looking at these. There should not be any substantive changes, but there might be some minor language corrections to make before adoption.

There being no further comments, the hearings on the two Interlocal Agreements were closed.

Chairman Evans stated that the City would be discussing these Interlocal Agreement on December 19, 2001. Mr. DeMarois was told that the hearing had been closed but would be allowed to ask his question.

Lou DeMarois asked if the zoning changed, would that go to a vote. If the zoning is changed to put more homes on the golf course, how does that come about. Does the County vote on that, does it go to a vote during an election period to change the zoning.

Chairman Evans stated by that time it would very likely have been annexed into the City so it would go before the City as a subdivision review.

Mike Sehestedt stated he would hate to guess on that. He explained the procedure for zoning changes in the County. The Comprehensive Plan, technically a growth policy under the statutes, will be adopted, including the Wye/Mullan Plan. There will be further public hearings and zoning proposals developed that will call for what is indicated. Those proposals will go to the City-County Planning Board which will conduct a hearing on them. The Planning Board will make such changes as they deem appropriate and forward them to the Board of County Commissioners. The Board will hold another public hearing, make changes as they deem appropriate, then will adopt a Resolution of Intention to Rezone. That is published and there is a 30 day protest period beginning on the first date of publication for people within a particular zoning district or classification. A 40% protest would defeat the proposed zoning change. City procedure is similar, except it goes to a Council vote. The protest period is prior to Council action adopting the zoning and can be overwritten by a three-quarters majority of the Council. It is a multi-step process. First the plan, then the Planning Board on the zoning proposal and then their recommendations to the governing body, and there is a possibility of protest in either of the procedures.

Chairman Evans stated there would be a meeting on November 21, 2001, next Wednesday, at the Missoula Public Library, at 1:30 p.m.

Ann Mary Dussault stated the Library will be available at 1:30 p.m. but is closing at 5:00 p.m., so they must exit the building by then. To clarify, the subject for that hearing is the Resolution of Intention to Create the RSID.

There being no further business to come before the Board, the Commissioners were in recess at 4:30 p.m.

#### THURSDAY, NOVEMBER 15, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 15, 2001, batch number 1648 (pages 1-3), with a grand total of \$5,827.34. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 15, 2001, batch number 1651 (pages 1-4), with a grand total of \$130,160.10. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Signature Page – Chairman Evans signed the Signature Page for States Self-Insurers Trust Agreement authorizing Risk Manager Hal Luttschwager to continue to represent Missoula County. The County purchases excess liability and excess environmental impairment insurance from States Self-Insurers. The document was returned to Mr. Luttschwager for further handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-004 for the Office of Planning and Grants, in the amount of \$2,014.00. These funds were carried over from Fiscal Year 2001 and incorrectly budgeted in Contracted Services in the Fiscal Year 2002 Budget (Juvenile Justice Grant).

Board Appointments – The Commissioners approved the following Board appointments:

- 1) Reappointment of E.E. "Buck" Smith to a two-year term as a member of the Missoula County Fair Commission. Mr. Smith's term will run through December 31, 2003;

- 2) Reappointment of Julie A. Gemar-Williams to a two-year term as a member of the Missoula County Fair Commission. Ms. Gemar-Williams' term will run through December 31, 2003; and
- 3) Reappointment of Beth Metzgar to a three-year term as a member of the Missoula City-County Health Board. Ms. Metzgar's term will run through December 31, 2004.

Other items included:

- 1) The Commissioner declined a request from the Salvation Army to participate in the Media Day Kettle Campaign Kick Off. Commissioner Curtiss will be out of town, and Chairman Evans and Commissioner Carey sent their regrets.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, NOVEMBER 16, 2001**

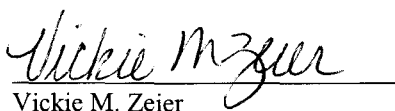
The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioner Carey attended a Mental Health Board Meeting held at the Child Development Center at Fort Missoula.

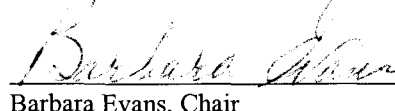
Claims List – The Commissioners signed the Claims List, dated November 15, 2001, batch number 1649 (pages 1-2), with a grand total of \$1,339.20. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 15, 2001, batch number 1652 (pages 1-4), with a grand total of \$26,360.24. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 15, 2001, batch number 1654 (pages 1-4), with a grand total of \$59,290.12. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated November 16, 2001, batch number 1658 (pages 1-5), with a grand total of \$77,294.84. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

**MONDAY, NOVEMBER 19, 2001**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Curtiss was out all afternoon due to illness.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 23 - Pay Date: November 16, 2001. Total Missoula County Payroll: \$854,787.83. The Transmittal Sheet was returned to the Auditor's Office.

**TUESDAY, NOVEMBER 20, 2001**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out all day due to illness.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 19, 2001, batch number 1658 (pages 1-3), with a grand total of \$27,225.76. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 19, 2001, batch number 1659 (pages 1-4), with a grand total of \$107,826.19. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 19, 2001, batch number 1661 (pages 1-3), with a grand total of \$32,976.39. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 20, 2001, batch number 1657 (pages 1-4), with a grand total of \$179,973.58. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 20, 2001, batch number 1662 (pages 1-2), with a grand total of \$1,536.18. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 20, 2001, batch number 1664 (pages 1-5), with a grand total of \$13,671.20. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 20, 2001, batch number 1666 (pages 1-2), with a grand total of \$19,849.44. The Claims List was returned to the Accounting Department.

**000-0153**

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 20, 2001, batch number 1667 (pages 1-2), with a grand total of \$2,231.89. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 20, 2001, batch number 1670 (pages 1-2), with a grand total of \$2,901.77. The Claims List was returned to the Accounting Department.

## ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

**Correction Letter** – The Commissioner signed a letter to the Meadows West Land Owners Association, correcting their letter of November 14, 2001, and verifying their approval of an amendment to the Meadows West Declaration of Restrictive Covenants (Article II, Section 1: Land Use) to read as follows: “No water wells or water lines shall be developed for use outside the boundaries of the Meadows West Properties except as needed now, or in the future, for provision of water to the Sunset West water system, subject to conditions of the Water Rights Permit and provisions of RSID 8458.”

**Agreement** – Chairman Evans signed an Agreement between Missoula County Public Schools (“MCPS”) and Missoula County Youth Court for services provided by Deputy Probation Officers for School Year 2001-2002. The total amount shall not exceed \$45,694.00. The term will be October 1, 2001 through September 30, 2002. The document was returned to Bruce Moyer at MCPS for further signatures and handling.

**Quit Claim Deed** – The Commissioners signed a Quit Claim Deed, dated November 20, 2001, unto Harold Jack Strain, 742 Kensington, Missoula, Montana, for Lot 1 of Carline Addition, Block 14, Lots 17-20, amended, a platted subdivision in Missoula County, Montana. Mr. Strain bought back the property taken for tax deed. The Deed was returned to Debbe Merseal in the Recording Office for further handling.

Lease Agreement – Per recommendation by the Park Board, the Commissioners signed a trial Lease Agreement between Missoula County and Community Medical Center for the lease of eighty (80) parking spaces located within the parking lot along South Avenue at Fort Missoula. Rent for the real property will be \$1.00, and other good and valuable consideration. The term will be November 1, 2001 through May 31, 2002. The document was returned to Lisa Moisey, Parks Office, for further signatures and handling.

Closing Documents – The Commissioners signed Closing Documents between the Missoula County Airport Industrial District and TucassoHarbinson, LLC, (Canadian Hockey Rink) for Lot A, Block 5, Phase 3D, Missoula Development Park, in the amount of \$165,000.00.

**Board Appointment** – The Commissioners approved the reappointment of Bob Tutskey to a three-year term as a member of the Historical Museum Board. Mr. Tutskey's term will run through December 31, 2004.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, NOVEMBER 21, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated November 20, 2001, batch number 1660 (pages 1-4), with a grand total of \$36,814.68. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 21, 2001, batch number 1668 (pages 1-4), with a grand total of \$179,445.88. The Claims List was returned to the Accounting Department.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

**Agreement** – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and Volunteer Action Services, University of Montana (“U of M”), for the employment of an AmeriCorps Volunteer to recruit and place U of M tutors in the high schools. Funding comes from the Addictive and Mental Disorders Division of the Department of Public Health and Human Services. The total amount shall not exceed \$1,711.00. The term will be October 1, 2001 through September 30, 2002, contingent upon receipt of Community Incentive Project Funds by Missoula County.

Interlocal Agreement – The Commissioners approved (2-1, with Chairman Evans voting no/abstain) an Interlocal Agreement between the City of Missoula and Missoula County for the Mullan Road Corridor Sewer Project, contingent upon review by the County Attorney. The estimated sources of funding and other conditions are set forth therein.

Interlocal Agreement – The Commissioners approved (2-1, with Chairman Evans voting no/abstain) an Interlocal Agreement between the City of Missoula/Missoula County and the Missoula County Airport Authority regarding participation by the Airport Authority in the Mullan Road Corridor Sanitary Sewer Project, contingent upon review by the County Attorney. The estimated sources of funding and other conditions are set forth therein.

Other items included:

- 1) Lisa Moisey of the Parks Office gave an update on the Veterans Cemetery. The Commissioners gave her authority to proceed with negotiations;
- 2) The Commissioners approved a request from Justice of the Peace Karen A. Orzech to use additional donated sick time for an employee of Justice Court #2 who has exceeded the cap allowed;
- 3) A discussion was held on the County Shops property (August 7, 2000 Contract for Deed). Deputy County Attorney Michael Sehestedt and Chief Financial Officer Dale Bickell will converse with the attorneys for North Reserve Business Center.

At the Clerk and Recorder/Treasurer's Meeting, the following items were considered:

- 1) The Commissioners approved a tax reduction to Dorothy Pulliam, Missoula, Montana (TaxPayer ID #90215600) to her 2000 and 2001 tax bill to the amount that would have been charged had she received her low-income credit. The Commissioners will pass a Resolution authorizing this reduction and a refund will be sent within the next few weeks;
- 2) The Commissioners approved a tax abatement request for a waiver of penalty and interest for a 1999 delinquent tax bill for Michael V. Epstein of Flame Enterprises, Inc., Canoga Park, CA (TaxPayer ID #3273101).
- 3) The Commissioners approved the cancellation of a transaction wherein a check was written for \$291.91 from Amy Thomason to Collection Bureau Services ("CBS"), for a registration fee on a repossessed motor vehicle. A letter will be sent to CBS from the Commissioners.

#### **PUBLIC MEETING – November 21, 2001**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, County Public Works Director Greg Robertson, County Chief Civil Deputy County Attorney Mike Sehestedt, County Chief Administrative Officer Ann Mary Dussault, Director of City-County Environmental Health Department Jim Carlson, City Public Works Director Bruce Bender and Dan Harmon of HDR Engineering. The meeting was held at the Missoula Public Library, 301 East Main in the Lower Level Meeting Room.

#### **Public Comment**

None

#### **Routine Administrative Actions**

*Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$725,278.92. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.*

#### **Hearing: Resolution of Intention to Create Rural Special Improvement District (RSID) No. 8471 for the Mullan Road Corridor Sewer Project**

Chairman Evans opened the public hearing.

Ann Mary Dussault stated that the hearing today is extremely important as it pertains to the Resolution of Intention to Create the District. The point at which the Commissioners adopt the Resolution of Intent begins the legal process and the timetable for protesting the creation of the District. The Mullan Road Corridor Sewer Project is inclusive of 2,358 acres. There is also an exhibit of the District boundary included in the packet that was distributed. Included in the acreage are 1,046 individualized parcels. Exhibit B in the packet is the list of properties, individual parcels, included in the RSID and the assessment for each parcel. The figure shown is the maximum allowable assessment for the backbone system. The assessment could go down, but it cannot go up, it is the maximum legally allowed. The assessable amount is based on 0.0725 cents per square foot. The larger the parcel, the more the assessment. The purpose of the RSID is to bring the backbone sewer to the Mullan Road area. This assessment and RSID is only for the backbone, composed of the interceptor, the mains and the pumping stations. Those are identified in the packet on Exhibit A. Exhibit C is a cost detail of each of the parts of the backbone system. The Resolution of Intent also documents certain facts. The design and construction of these improvements is \$7,378,000. By the Interlocal Agreements which the City and County have adopted, the City's contribution to the backbone, an upsizing of the pipes for future development, is \$767,000. The Airport Authority contribution is \$137,000. The amount to be financed by the bonds through this RSID is \$7,442,000. The district is composed of subdivisions, under developed parcels and undeveloped parcels. The developed parcels, meaning subdivisions or where there is a house on five acres or less, pay 33.6% of the \$7.4 million assessment. The undeveloped parcels pay 66.4% of the \$7.4 million. The copy of the Resolution included in the packet is a draft, there will be some minor changes prior to adoption and publication, but nothing substantive will be changes. A revised schedule for the adoption of the Resolution and protest period was also distributed today. It is different from the proposed schedule distributed last week, by one week. The Board will take oral testimony today and will leave the record open for further written testimony until next Tuesday, November 27, 2001, at 5:00 p.m. On November 28, 2001, the Board will make their decision on the adoption of this Resolution of Intent. If the Resolution is adopted on Wednesday, the following Friday the County will mail to every property owner listed in Exhibit B the notice of the Resolution of Intention. In addition, the letter will show what each property owner's assessment will be. The mailing list was prepared from the Department of Revenue's information on the owners of record. The legal notice will be published on Sunday, December 2, 2001 and Sunday, December 9, 2001. The publication on Sunday, December 2, 2001, is the official beginning of the protest period. If a property owner wants to protest the creation of this RSID, it must be done in writing to the Board after December 2, 2001. The easiest thing to do would be to take the letter received with the property address, description and SUID on it and return it to the County with "I Protest" written on it. That will allow clear identification of the property and owner(s) who are protesting the creation of the RSID. The protest period ends December 17, 2001. The protest

period allowed by law is 15 days. The following Wednesday, December 19, 2001, the Board will be informed as to whether there was sufficient protest to stop the creation of the District. The Board will then make a decision whether or not to proceed with the District. In order to determine the Sufficiency of Protest, every plat of the subdivisions within the proposed RSID were reviewed to determine if a waiver of the right to protest had been gathered. In some cases, when a subdivision was platted, a waiver of the right to protest was gathered at the time of platting. One of the maps displayed in the front of the room today shows those areas where waivers have been verified. When originally investigated, it was shown that there were waivers for Haven Heights and Kona East, Phases I, II and III. That is incorrect, there are not waivers on those parcels, except for three individual waivers. Staff will be available to answer any additional questions.

Chairman Evans stated that the letters that have already been received from people in the proposed district with comments regarding the creation of the RSID do not qualify as official protests in this matter. By law, a protest must be sent after December 2, 2001 in order for it to count. If someone has already sent in comments regarding this proposal, that does not count as an official protest to the creation of the RSID.

Mike Sehestedt stated that by law, if a protest is made by those property owners bearing 50% or more of the cost to be assessed for the RSID, that is sufficient to kill the RSID. In the case of an RSID for sanitary sewer, that protest could be overridden by a unanimous vote of the Board of County Commissioners. Sufficient protest is 50% or more of the cost. It is not a head count, it is by how much each person would pay. In this case, the cost is being spread per acre, so it would take a majority of the area of the district, or 50% of the area of the district, to constitute a sufficient protest.

Bruce Parks asked if that 50% included a person who has signed a waiver of the right to protest.

Mike Sehestedt stated the question asked was if a person has signed a waiver, would a protest by them be counted. All of the area, both those with and without waivers, is included in determining the whole district. If a person has property subject to a waiver files a protest, that protest would not be counted.

Bruce Parks stated that his question was not whether the protest would be counted, but whether that person would be counted as among the 100%, if they were unable to protest.

Mike Sehestedt stated that even if a piece of property has a waiver, it is included in the district.

Bruce Parks stated that if there were 100 people in a district and 25 of them signed waivers, then would those 25 be considered as yes votes.

Mike Sehestedt stated that they would be considered as not no votes.

John Stahl stated that when he signed a waiver, his subdivision, Kootanah Lodges, had the sewer already set out so all that needed to be done was connect into it, no digging was required into the property. Now, it has been said that the first recommendation is no longer valid. Does that null and void the waiver.

Ann Mary Dussault stated that she did not know where Mr. Stahl was getting his information that the system in the ground cannot be connected to the backbone.

John Stahl stated they were told that 8 lines were going to be put in and they have 6 inch coming out.

Dan Harmon, HDR Engineering, stated that there were a number of dry lay systems in the study area. It was uncertain whether the City of Missoula would allow connection of those systems to the backbone. Since April, they had been telling those folks that it was uncertain and giving them a "worst case" scenario, assuming gravity sewer would have to be run to the facilities. Since then, it has been learned from the City that those active community systems that were set up to connect in the future, would be accepted, provided they are reviewed under the City's current standards. Based on what he knows of the Kootanah Lodges system, without a visual inspection, in all likelihood it would be accepted.

Todd Dvorak asked about the sufficiency of protest issue. He understood that the amount of property subdivided amounts to about 33% of the financial burden of the project. The attorney said that there needs to be a protest from 50% of the financial burden to stop the creation of the district. There are not enough people that have subdivided at this point to block the creation of this district.

Ann Mary Dussault stated that is correct. If every single residence protested, that value does not equal 50%. It would require that some of the large landowners also protest. It is her understanding that there are some large landowners who will protest.

Todd Dvorak stated that no zoning plan had been seen for this area outside the parcels already subdivided. There is a fear that those that own large tracts of land will subdivide and build homes at a density of eight per acre. He owns one acre and those covenants don't allow him to subdivide any further. He feels it is an undue burden to those with one home on one acre who cannot further divide. Someone who has 20 acres and could build 100 to 200 houses would be able to recoup some of the cost. The financial burden is the biggest issue. How will that impact the residents. He is not against the project if the cost is not unduly burdensome.

Bill Holt stated the packet shows that he will owe about \$3,000, but in previous conversations, the figure was \$18,500, if this goes through. He assumed the numbers in the packet were just for the backbone, they did not have anything to do with Country Crest.

Ann Mary Dussault stated that was correct, this RSID is for the backbone only.

Bill Holt stated he would like this put before the people and let them vote on it. Then it would be known if they wanted to do this or not. That will not happen, but he would like to see it. He does not have a protest. This is unfair to him and his neighbor, who will pay \$27,000. He built a new home out there and put in a step tank. He received two sewer permits, one from the County and one from the City and had to pay a licensed excavator to put in the step tank. Now he is being

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told it will cost him \$18,500 for a sewer system. He hasn't even moved into the house yet. He does not have enough money to pay for this.

Mike Flynn, 2275 Roundup Drive, asked if the totals on Exhibit B added up to \$7,378,000?

Dan Harmon stated that Exhibit B added up to \$7,442,000. The difference, as has been mentioned, is the construction cost and RSID fees associated with the creation and administration of the district.

Mike Flynn asked how many acres this encompassed?

Ann Mary Dussault stated the total acreage was 2,358.

Mike Flynn stated the Flynn family share of this is over \$1,000,000. It looks like the Flynn family is paying one-seventh of the cost of this project.

Ann Mary Dussault stated that for the whole Flynn family, that could very well be true.

Mike Flynn stated there was no doubt that he would be protesting this RSID. His great grandfather homesteaded the ranch about 160 years ago. The Flynnns have always elected to be in agriculture. He elects to continue to be in agriculture but he could not pay the interest at 4.5%. Where has everyone been since September 11th. Interest and everything has gone to hell. He cannot generate 4.5% interest to pay this off without selling property. He is not in the subdivision business. They own some rental houses and a small trailer court. They try to keep them nice and keep the rent low so people can afford to live there. He elects to be agriculture. He was told if he wants to be in agriculture he should sell his land to pay for the RSID and be in agriculture somewhere else. Yes, he is protesting.

Bonnie Snavelly stated that she was a native to the area and is fourth generation ranching. She is an owner of Kona Ranch. At the risk of being highly unpopular, but in the hopes that logic and assistance prevail for the explosive growth that has happened in the area, she implored each person to change their no vote to a yes vote and support this RSID. An anonymous letter was recently brought to her attention that was sent from Snowdrift Lane. She couldn't believe it was a legitimate letter because Snowdrift Lane is not included in this RSID. In that letter, there was a statement that Kona Ranch was not a participant. That is not correct. Unlike Mike Flynn, she does have a financial problem of how to pay for this and she is behind the project. She commended the Commissioners who voted for this RSID and the sanitarians who have been involved in the project. She has been involved in meetings with the EPA and the Department of Environmental Quality about the El Mar Estates system. More than half of the 1,050 homes that are involved have sanitation systems in failure. Her system is not in failure and she will have to do some substantial budget adjustments. She will have to sell some property to finance this RSID. She has been in Real Estate for 22 years in both Washington and Montana. There have been disagreements within her family about what is happening. No one would ever disagree about the value of clean, potable drinking water and an appropriate sewage facility. Her Real Estate career began in Missoula in 1980. At that time, the community was upside down financially. People were losing their homes to foreclosure. Fathers were working on the pipeline in Alaska and sending money back to keep homes from being foreclosed. It was sad. The area started to come out of that shadow in 1986. The area has been discovered. As native Montanans, the resources and assets can either be respected or they can be destroyed for individual well being. She believed everyone could come together and benefit from this. Having been in Real Estate for many years in Montana and nationally, this was like repairing a leaky roof. When a roof leaks, it is replaced. If not, the structure collapses ultimately. This is more than a leaky roof, there has been sewage running across her family's ranch property. They did not create the problem but are trying to collectively work through this. She does not have a home that will be connected to this system. She does have a substantial amount of property that is impacted by this, she will have to adjust her budget, but for her well being and the well being of those 500+ homes that have failed sewage systems, she wanted to be certain that this area was not landmarked as an area that has major sanitary failures. She spoke with a local Real Estate agent who does not show certain properties in this area because he knows there are problems with the sanitation systems. That is a tremendous impact on a property. There is a marked requirement for disclosure on any property owner who is selling. Everyone is going to bear the burden of this and enjoy the economic benefit of it. Every property owner will retain their current property value and even see an increase. The value of Wapikiya and Bellecrest went up after they were connected to sewer. She asked that everyone support this project as cash in their pocket. The interest rates could not be less expensive. Nobody wants to bear this burden. She does not want to lose her home because the value has been destroyed by lack of sewage facilities. Please think to the future. Please think as a whole. She felt that the public officials who have been working with this difficult situation deserve thanks for their efforts. This isn't easy but it is something that has to be done.

Greg Turnis, 1480 Crest Haven, stated that a lot of people in the room were thinking of redoing their budget or shifting funds from other places, some people are actually at the point of bankruptcy. There is no way people can afford this. They are for sewer at a reasonable cost. He cannot shift his budget to different areas and everyone will be affected. This is not shifting budgets, this is about forcing people out of their homes.

Lisa Turnis stated that this morning she did her budget. She figured out how much she made, how much the Federal government takes, how much the State government takes and her share of this RSID. She would be at over 50% taxation. Over 50% of her income would go to the government. She has two children and brought their pictures today because that is who this affects. She cannot afford this. She tries to do a good job and be a good mother. She takes good care of her children and tries to teach them to do the right thing. She agrees with Bonnie that there should not be sewage running across the street, but there needs to be a price that can be paid. This needs to be affordable. She would be willing to give the Board her checkbook and have them figure out where she would get the money for this. Like many other Americans, she uses her credit cards every month to pay bills. It is a stupid cycle and now she must pay the credit card bill, plus interest, every month. She doesn't have any more money and she did not know where she was expected to get it from. The only solution she could think of was to give up her health insurance. If she gives it up, she could pay this RSID. Is that what people are supposed to do? She would like the Board to take a year to find another way to fund this project. She would like the Board to have another public meeting in their area in the evening so people don't have to leave work. She felt it really didn't matter if people protested because they could not come up with over 50% of the tax burden. She felt she was talking to a wall.



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Lex Herndon stated he was born and raised in Montana. There are developers in the Kona Ranch area and in the Deschamps area that want to put in a golf course and they need a sewer in order to do these developments, to make the money they want to. He bought over an acre and the law says that one acre is adequate for a drain field, septic system and well. He has been there for 23 years and has never had any problems. Why is he being forced to pay for a sewer when according to State law and codes, he has already done what he is supposed to. He did not remember on any of the businesses that he has purchased or built in Missoula City and County forcing everyone in the area to put a main line in so it was easier for him. He does remember having to do three test wells and provide water samples just to get approval for a one acre building site. It seems like this is being done to cater to certain people, not the majority of the people who live out there. He owes a little over \$3,000 for the backbone but this needs to be multiplied by about six because that is what the cost has been stated to him, \$18,000 to hook up to this. If this RSID is for \$7 million, that should be multiplied by a lot to get an actual figure of what it will cost residents.

Tyler Jourdannais, 1455 Topaz, stated he too would like to see a zoning plan in place before a project of this scope is pushed forward. People in this area also recently voted for the acquisition of 21 acres adjacent to Hellgate Elementary School to expand the school. That vote passed just for the acquisition of land and did not include the cost of the buildings. That is another cost that will be coming. He hoped the Board was aware of that. All these things will blow everybody's budgets, that has already been said. Beyond the school plans, there are costs for the sewer and new school buildings. There is not a zoning plan for the area. He would like to demand another public hearing opportunity before the protest period window of December 2-17, 2001. He would like an answer to his request for another hearing that is not held the day before a holiday when people are traveling and in the afternoon. It is illogical.

Charlie Nau stated he lived at El Mar Estates. He is with all the other people here. He has been at El Mar for almost 20 years. As the last speaker said, they have voted in another bond issue at Hellgate School. His taxes are about five times more than when he first bought out there. Add that to a house payment and then add this additional cost, it isn't feasible for people to do this. All of them are working to try and make ends meet. He appreciated Bonnie Snavely's situation with sewage. When El Mar was turned over to the County a few years ago, everything was in fine working condition. Doyle Riley kept things working very well. The County has let it go to hell and now the residents have been told they have to pay for. What is wrong with this picture. As a contractor, if he does something that causes problems, then it is his neck that is in the noose. Why should he pay for someone else's problem. It doesn't make sense. Bonnie Snavely said that values were down in 1980 and then they came back in 1986. He can remember in the early 1990s when people were losing their houses because the market took a dive. He did not care how big or little this RSID was, it is not going to make a home any more valuable. It is only going to be worth what it's worth in that area, it's never going to be like a University property. Realtors tell people not to put big additions on their houses because it would not improve the value that much. Everyone out there are common working people, and a lot are raising kids. There are only so many dollars to go around. People will be hurt if this goes through. It doesn't sound like it matters if people protest because even if they do have a sufficient amount of protests, the Board will make the decision anyway. It sounds contradictory. He hoped the Board could do something to spare a lot of people the misery and agony this will bring upon them.

Jack Jurgens stated he lived on Grouse Drive in El Mar Estates. Everyone has told him that the sewer treatment facility needs work done. He knew Doyle Riley very well and he had said it was going to need work done on it. If folks spend money on the sewer treatment plant out there it would be throwing money away when there is the chance to put City sewer out there. By hooking up to the City sewer, the problems are over forever. That was his opinion about the situation.

Darrell Beckwith, 1800 Homestead, stated he owned the first piece of property ever purchased at Homestead, his was the first house built there. He is a single parent raising his 15-year-old son on his own. His wife passed away in 1999. It takes two weeks of his paycheck to make his house payment. His taxes are \$2,300 a year. As another gentleman said, he purchased his piece of land because it was the right size to have a drainfield and septic system. Now the County is changing that. No one ever told him it would be changed. He hasn't been able to attend other meetings as he works 60 hours a week. He has not seen any documentation on any problems in the Homestead area, he has heard of only one. He believed in the theory of "if it's not broke, don't fix it." If there are problems down the road, maybe look at it then, but this is forcing people to change their budget and change their land to accommodate this project. He would like to see some documentation on some other areas that have been assessed into the sewer system and see what they paid. He would like to see if Linda Vista or Miller Creek had been assessed for this and what they paid so he could compare it to their assessment. If they paid \$2,000 or \$3,000 and he is going to pay \$18,000, that is ridiculous. He would like to compare the figures. He has no problem with his septic system. That land is his, "not yours." As soon as he gets help making payments on it, he will be happy to do what is being proposed, but until then, he won't allow it. To come on his land and dig into his system is trespassing in his opinion. He believes that if someone trespasses on his land, he has to resist that. He protests this. He will not be able to afford it, he would have to sell his house. He was not sure why he was even here, he felt he was looking at the judges and panel. If he does have to sell his land, he would raise the cost \$20,000 to \$30,000 just to pay for this. The idea of having a sewer system to raise the property value will not happen. The area you live in has nothing to do with a sewer system.

Dalton Tessier stated he was a fourth generation native Montanan. He is going to be critical and is a "no" vote. There is an arrogance on the part of the Commission as far as justifying what is going on. He would like to see some priority. There is no such thing as a Mullan Road aquifer, there is a Missoula aquifer, which is quite large. He was curious about what the priorities were for the whole valley or County as far as what's going to happen in the future and where Mullan Road fits into that. There is fairness and ethics for the whole thing. Right now, he thinks this is what is easy and somebody is making out and getting paid. He did not know who. He is disappointed in that. It has been said in the City that growth should pay for growth. He has two acres and is not growing. He doesn't think he should pay for the rest of the growth. He can't sell 25 acres to pay for this. \$36,000 for a sewer he doesn't need is not good. The City pays on a per unit basis and this is on a per acre basis. County-wide or valley-wide on a per unit basis might make it a little more palatable for everyone, instead of a hose job now and one for someone else later. He suggested that this be prioritized and justified because that hasn't been done.

Curt Bowler, 1775 Frey Lane, stated that when this process started he attended a couple of meetings at Hellgate Elementary. He was told then that the Topaz, Frey Lane, Homestead areas probably had the ideal conditions for septic drainfields. The septic systems in that area would probably never fail. They were told at that time that the concern should be protecting the drinking water that is being pulled from the ground because of the El Mar Estates area, because of the

sewage problems they are having. He is having a hard time justifying the cost of this, digging up and running pipes down to Frey, Homestead, Topaz, when they have been told by the engineers that they will not necessarily need it in their area. That is added expense to this whole project that maybe doesn't need to be considered. That cost could be eliminated so the main can continue further down Mullan Road, beyond El Mar to Kona Ranch and Snowdrift Lane, where there are potential drainage problems. This is a lot of burden on him. He bought his property so he would have some space. Now he is being penalized for that space and doesn't have the option to sell some land for another home. Those who may not be able to afford this and are forced to sell their homes will have a hard time doing that if this RSID is added.

Vicky Bostick, 2051 Flynn Lane, stated that she lives across from a 100+ acre piece of property. It concerns her that there is not a zoning plan in place that will tell her exactly what might happen with that property. That property is currently zoned for four houses per acre, but what could happen from a light industrial or commercial point is unknown. It disturbed her that the Wye/Mullan Plan was started years ago and is still not complete, yet the sewer is now being proposed. It does not appear that the Commissioners have exhausted all possibilities for outside financing. Has the Federal government been contacted to let them know of the needs. It is disappointing that there is such an urgency that this has to move forward with only a day's notice to people. The residents just began finding out the exorbitant costs not more than six months ago and yet it is at a point where they now have only days to react. She did not understand the urgency. She does know a sewer system is needed in the area, it makes sense that it must be done, but does it has to be done this fast. Is it such a situation at El Mar that it can't wait a short time more. Are there large landowners that are forcing this decision to be made more quickly. It was stated at the City meeting that one of the reasons for the urgency was a large piece of land, Washington Corp., wanted to develop and if they were lost as part of this system, it could not afford to go forward. She did not know if that was true or not. She has talked to a number of people and they are frustrated over how this process has come about. The Commissioners have not kept the people very informed about what is being done, why the Wye/Mullan Plan is not finished, why the zoning is not in place. She implored the Board to stop and take a little more time. If everyone in the room put their energies toward helping to find funding, it could make this process a more win/win situation. Everyone is going to have to help with this, anyone who moved out there in the last 10 years should have realized that. She did feel it would displace many people who cannot afford it. Some other ways to fund the project need to be found. If that has taken place already, she was not aware of it. The process needs to be slowed down. Please don't move this quickly and look for outside help to make this more affordable for everyone.

Brian Miller, 1620 Crest Haven, asked if the Board would answer some of the questions just raised by Vicky Bostick.

Chairman Evans stated that she had personally been to Washington, D.C. and presented a packet to Senator Burns, Senator Baucus and Congressman Rehberg asking for help for this project. The presentation was too late for this year's appropriations. They hope in some conference committee there may be a small amount of money available. That was before September 11, 2001. She was in D.C. on September 5th and returned to Missoula on September 10th. Things have changed since then. How much money may be available is unknown. She would like to continue the efforts. She was at Senator Baucus' office a week ago to reinforce the desire for this. She does want to try and find congressional or other help if possible as she would like to reduce the cost to the individuals. She has no problem waiting a year while they try to get funding, but that is her personal opinion.

Claudia Gaska stated she lived on Snowdrift Lane. She has very strong feelings about this project. She felt it would be advantageous to the homeowners for the Commissioners to take their time to look at alternatives. She asked if any studies had been done as to the average age or average income of the homeowners in the proposed district. Have any studies or surveys been performed to see how many of these homeowners would be displaced by this project. She expressed her deepest concerns to the Commissioners on this project. Many of those involved have reached a point in their lives when they should be able to afford their own homes, have children, save for their children's education, save for retirement and perhaps a vacation. Please consider what will happen to these families should this project pass. There will be no savings, no vacations, no retirement and no education for the children. She moved to the County because she did not want to be in the City.

Rick Kamura, 1715 Homestead Drive, stated that the Board needs to back up and look at the City treatment plant now. From what he understood, it is near capacity right now.

Bruce Bender, City Public Works Director, stated the current treatment plant right now is averaging flows of 8 million gallons per day. It has a capacity of 9 million gallons, so it is 1 million gallons below capacity. They are currently in the process of designing an expansion of the plant that will begin construction in the spring of next year and take about two years to complete. That will expand the plant by the end of 2003 to 12 million gallons per day, basically expanding the plant 50% beyond what it currently treats.

Rick Kamura asked at what cost and who pays for that?

Bruce Bender stated one-third of the cost is being funded by an EPA grant and the remaining two-thirds will be funded through sewer rate increases.

Rick Kamura asked if the water that was being released from the sewer plant now was up to Federal EPA standards?

Bruce Bender stated that was correct, actually it is quite a bit below the permit required levels.

Rick Kamura stated that back in April when he attended his first meeting, it sounded like the water issue was one of the main reasons of why the sewer needed to come to this area, as there were nitrate elevations in certain areas.

Bruce Bender stated that was true.

Rick Kamura stated he had asked for a map and documentation on these issues but has not received anything.

Jim Carlson, City-County Health Department, stated the reasons, from a water quality standpoint, for this project and the extension of sewer in other areas of the Missoula Valley revolve around two issues. One is aquifer protection. In most of the Missoula Valley, people live over what is called an unconfined aquifer, meaning that there are no intervening layers

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between the top of the aquifer, sands and gravels down to about 150 feet, and the lower portions of the aquifer where water is withdrawn. There are two issues with septic waste, biologicals, virus and bacteria, and the other is primarily nitrates and other inorganics that are generated as a result of the breakdown of the waste. There are problems in some portions of this area with nitrates in the ground water. There are some fairly high levels at the end of Cote Lane and there are problems in some homes with biological contamination. It is not widespread. The water moves parallel to the river coming from around the Orange Street area and moves westerly out to the Homestead area. It goes under the clay which is lake bed sediments on top of the sand and gravel as a result of Glacial Lake Missoula. As there is growth and the water moves westerly and houses are built, approximately 250,000 gallons of sewage for every 1,000 homes, is added to the drinking water supply. It is good public health practice and is practiced throughout the country and the world, that as communities grow, sewer is extended with that growth. There are not widespread violations of standards in the area, there are some problems, but as the water moves westerly, if public sewer systems are not in place, eventually the water will get worse and worse. It is a good thing the City of Missoula has sewer between Orange Street and Reserve Street. If they didn't, what every goes into the ground there, by the time it get to this area it would be mixed fairly deeply in the aquifer and they would be drinking a portion of that water. The other reason has to do with the rivers. Whatever goes into the aquifer, particularly the nitrates, eventually return into the river. The river is losing water between the Milltown Dam and Reserve Street. From there on, the Clark Fork River and the Bitterroot River gain the water back that goes down through the septic systems. The entire Clark Fork River, from its headwaters in Butte to its confluence with the Flathead River has been designated as a damaged river with regard to nutrients. Many who use the upper Clark Fork are familiar with the increasing instances of heavy algae bloom. It is uncharacteristic and inappropriate for a mountain stream. That threatens the general ecology of the river. Below the confluence with the Bitterroot, then the river has diatomaceous algae. That causes problems with the invertebrates and spawning beds. Those large algae mats in the summer at low flow take a good portion of the oxygen out of the river. There is a basin wide agreement to reduce the amount of nutrients going into the Clark Fork River. Butte, Deer Lodge and Missoula are doing some things to meet that reduction. Bruce Bender did not mention that the sewer plant extension will also include a biological nutrient removal plant which will remove the nitrates. There are aquifer protection reasons for this project and some long term important ecological reason as well, in combination with treatment systems that can remove nutrients.

Rick Kamura stated that needs be taken care at the City plant prior to going a step further with this proposal.

Jim Carlson stated the treatment plant at the present time is removing some nitrates, but will expand that capability. The expansion will be in place at approximately the time sewage starts flowing from this area.

Rick Kamura stated that landowners now should be grandfathered in to be protected from further growth on Mullan Road and this sewer system. He strongly opposed the proposal.

Michelle Stosich, 2175 Bluebird, stated that the County has not maintained the El Mar system, that can't be disputed. She did not get notice about the meeting until Saturday night and when people are working, this is a hard time of day to attend a meeting. She heard that the Missoula sewer plant is at 8 million gallons per day and the capacity is 9 million gallons per day. She would like to know if it has been figured how many gallons of sewage would be coming from Mullan Road with all the residences up there.

Bruce Bender stated if all 1,000 homes out there were connected at once, which will not happen, it would be about 250,000 gallons per day. It is estimated that 225 gallons are generated per day per household.

Dan Harmon stated the capacity of the entire system is over 1 million gallons per day, including the ultimate buildout of this RSID area.

Michelle Stosich stated the Missoula sewer is almost at capacity. What about the project in East Missoula, is that project finished, has their generated amount been added to the capacity of the sewer.

Bruce Bender stated the Missoula plant is in the process of beginning their construction and it would be about two years before it was ready. The Missoula sewer plant expansion will be near completion prior to East Missoula being ready.

Michelle Stosich stated the rush for this RSID is so that they can also pay to help expand the City sewer.

Commissioner Curtiss asked Bruce Bender to explain how long the expansion project will last.

Bruce Bender stated the expansion, to be completed by the end of 2003, is estimated to take the sewer plant through the year 2015 for capacity. It will be increasing their service ability by 50%. The sewer rate increase to help pay for the expansion are already in effect, for a single dwelling house, it is approximately \$70 per year.

Kandi Matthew-Jenkins, 1211 Cooper, stated she lived within the City limits. She had a concern for her neighbors. She asked how many people in the audience knew about the City Council meeting last Monday evening. Not many people responded affirmatively. This was something that aggravated her. The collusion between the City and County is incredible. This is not to improve property values, it is to get people off their property so developers can come in and buy it. Anything that is said is just a spin to get people to believe they are trying to do this in the people's best interest. If this is the new growth area, people can believe they have it all planned out. Stand up for yourself and speak out and vote in some honest people.

Kristy Ellis, 2190 Tipperary Way, stated the notice she received on Saturday evening was the first notice of any meeting that she had received. There are 13 residents on Tipperary Way and it is a private road and maintained by the residents. No County maintenance has ever been seen on the road. She is opposed to having to hook up and buddy up with the County that has not helped them with anything else.

Lou DeMarois stated he owned the corner lot on Homestead and Frey. He asked if the output of the current sewer plant was within State regulations.

Bruce Bender stated that is was within State regulations.

Lou DeMarois stated that Commissioner Evans had said she could not vote for this based on the price at this time. He would like to hear from the other two County Commissioners as to what their intentions are. When this was proposed last April, the cost was \$6,097,000. In six months it has gone up \$1,344,000. He wanted to know how the County could say the cost is fixed. In the initial paperwork it does show the backbone at \$3,000. In the papers received at the meeting last Wednesday, in reference to estimates of the subdistricts, that cost is not known right now, because in 2016 the City will take this over. The year 2016 means absolutely nothing. The City, once it controls the outer parts, can annex any of these people in. He did not understand where the County was helping the property owners here when that annexation can happen and the people cannot control the cost. The people can oppose it all they want, but they can't control the cost. This cost can't really be fixed to get sewer to Homestead and Frey. After the meeting Monday, he estimated his tax increase on a piece of ground where he doesn't even have a house yet, would be \$35,000. By the time the lines have been run down Frey and Homestead, based on the April estimate, the increase in taxes would be \$1,458. That payment includes interest. If that is taken over 20 years, it comes to roughly \$29,160. He called three different excavation companies today and asked what they would charge to run a 50 foot pipe to hook him up to sewer. All of them said it would cost \$5,000 to \$7,000. He did not want to talk about percentages and averages. That was made clear Monday night, they don't apply here. There are a lot of people with real numbers that have a much bigger effect. Mr. Flynn is a good example. In the Interlocal Agreement, Section 11.02 says the City can do anything they want, once any rights are given up. Another question he had was why is the City only contributing one-tenth of the cost of the project. Linda Vista got \$5 million worth of help, or perhaps it was Target Range.

Bruce Bender stated that Linda Vista received no assistance from the City. Wapikiya/Belvue had a grant.

Lou DeMarois stated that from the City's point of view, it is an inexpensive investment to make for sewer.

Bruce Bender stated that was not quite true. The connection costs are reduced by about 30%, so every household will be receiving a deduction of the cost to connect from the City, about \$450 per household.

Lou DeMarois stated he would be looking at roughly \$36,000 on his property. The packet distributed in April showed positives and negatives to the project. The very first disadvantage listed was the high cost and no immediate need. He has only heard one person say they are for this project. This is being done to fix El Mar Estates and he hasn't heard anyone from El Mar that is in favor of it.

Commissioner Curtiss indicated that Jack Jurgens from El Mar Estates had spoken in favor of the project.

Lou DeMarois apologized to Mr. Jurgens. He thinks this needs to be researched more. There have been questions about alternative ideas. No feedback has been received on those ideas. Rick Kamura asked for a plat map of the test wells done regarding the nitrate issue. That has not been received. Ann Mary Dussault had been asked for a list of people who could oppose this, who had not signed waivers. That has not been received. A lot more research still needs to be done. He would like to hear from the other County Commissioners on this and he would like to hear before the end of the day.

Commissioner Curtiss stated Mr. DeMarois had heard from her as she spent her lunch hour talking to him on the phone, but she will say it again. As to the RSID numbers being fixed, now that they have been researched and this document is adopted, the numbers cannot be changed, or rather, they cannot be increased. They could be reduced if the cost of the project is lower. It may be true that there is no particular need in his area, there is only one home in the Frey/Homestead area that has a waiver. If his area ever reaches the point where it does have an immediate need, it would take four years to complete the project and fix the problem. This RSID is for the backbone only. All the numbers given previously showed the worse case scenarios for the individual subdistricts. It is expected that only three or four subdistricts will need to connect as soon as possible, El Mar Estates, Golden West, possibly Mullan Trail, only the ones that do have problems. The other areas won't need to connect and develop their subdistrict RSIDs until there is a need for it. In regard to the City not contributing as much as he thinks they should, the City, through their sewer fees, collect from people like her who live in town and pay sewer fees on a regular basis. A certain amount of that is set aside to maintain and expand the plant. They are only putting up \$767,000 for the pipe, but they have other money invested in the facility. Another thing that has been mentioned is the Wye/Mullan plan and the fact that there is no zoning. As it works out, they are in a good place with the Wye/Mullan plan. People like Vicky Bostick and Diane Beck and several others have been involved in the planning process. Until it is known that sewer will exist in the area, everything that would be written would have to say, "if the sewer comes, then..." That could affect the densities. Planning staff has focused on the Lolo plan for the last year. The final plan has been presented and will go before the Planning Board soon. The Commissioners will consider it after that. The Wye/Mullan plan is the next thing on their agenda. After the first of the year, that will be their focus. She felt it was good timing. As Commissioner Evans mentioned, she has been to Washington, D.C. looking for Federal dollars, but before the events of September 11th. A lot of money has been diverted to homeland security right now so there is no guarantee of Federal dollars. The Board has been looking at the big picture for the last nine months or so and it seems to her that the Federal dollars would be more advantageous to those whose budgets can't handle the cost of the subdistricts. The backbone cost should not affect anyone too deeply. To have the subdistricts supplemented by Federal dollars would benefit the residents more. That would also give more help to the small homeowners rather than the large landowners who may develop. The large landowners will carry 66% of the cost of the backbone. If all the Federal dollars are put in the pot now, it would benefit them more than the small homeowners. There are not any other methods available right now to help reduce the cost. If this is put on hold for six months, one year, two years, those large landowners who have plans in the works and are paying companies to help them design subdivisions and golf courses are not going to wait. They will find another way of dealing with their wastewater problem, whether they design their own system or figure out a way to contract directly with the City and run their own lines. If that happens, that reduces the number of people who are paying for this system. At this time, she felt this project needs to go forward.

Commissioner Carey stated that he agreed with Commissioner Curtiss on all the points she made. There is a tendency to shoot the messenger when the messenger brings bad news, but growth is headed this way and in our lifetime it is going to look like a city in much of that area. He would like to do something about that. Boards of County Commissioners administer State laws and the rules set in Helena. When the rules are set on how to create an RSID, they have to follow them. In his view, the Board has done all the work that could be done to find the most efficient, practical and effective way to bring the sewer that is needed to this area. He believed what Jim Carlson said about the water quality issues. What

the future holds with more septic systems going into that area cannot be ignored. It is in the public interest and in the residents' interest to do the backbone now. That is what people are being asked to pay for, the backbone. This is not forcing people to hook up to the sewer if they don't have problems. That may happen in the future, but the time frame is not known. The Board's job is to look at the big picture and do whatever they can to protect everybody. If this backbone does hurt some people financially, they will find the resources to help them. He felt the Board has gone the extra mile on this project. He had been to over a dozen meetings on this. Over 20 meetings were held in the area. They have heard consistently that people can't afford this and that it is not needed. Those are the two themes that he has heard. He asked that everyone reject the notion that those working on this project are dishonest. He has never worked with people who are more honest than Commissioner Evans and Commissioner Curtiss. There is no dishonesty in this group. There is no arrogance or collusion. The Board battled with the City for quite a while. The County did not get everything they wanted nor did the City, but the County got more than he expected in terms of annexation. By State law, the City can annex areas and there is nothing the County can do about it. What has been done not only protects the present, in terms of water quality and the way growth happens, but also protects the future. That is his job.

Pat Hasty stated he had lived in El Mar Estates for about 16 years. As far as he knows, the sewer plant has been working good. There was one problem with it about five years ago when there was a big snowfall. Outside of that, there hasn't been any trouble. The water quality out there is the best. It says the City won't annex until 50% +1 homes change hands, but if this project goes through, a lot of homes will be sold and the whole area will be annexed within three years. Half the people in El Mar alone will be selling their homes.

Jim Carlson stated that it was important that everyone in the El Mar and Golden West areas understood that those two treatment systems are under orders by the State of Montana to correct some very severe deficiencies that have been ongoing for many, many years, outside of the fact that several years ago a million gallons of sewage had to be hauled to the City for treatment during a large storm event. The Commissioners and residents in those two subdivisions are under standing orders from the State Department of Environmental Quality to correct deficiencies in the treatment and disposition of sewage from those systems. Research done by engineers over the past four years indicate that the cheapest solution for those systems is the construction of this backbone system. Other solutions are more expensive than this. People in El Mar and Golden West should understand those facts.

Diane Beck, 8190 Haven Heights, stated she was not representing any groups or organizations, she was speaking as a taxpaying resident. She asked Jim Carlson if, in fact, El Mar's system is failing and they are under orders from DEQ to correct the problem, how much time has been given to fix the problem.

Jim Carlson stated the first order ended a while ago and they were granted an extension, as they understand that the process of building public sewer takes time.

Diane Beck asked how much longer they have.

Dan Harmon stated the order ended in June, 2001 and an extension was requested. That was the second extension that was received. The State has given them until about June, 2002, to select an alternative and be in the process of implementing repairs.

Chairman Evans stated that DEQ has been contacted recently and said that as long as the County keeps working at the problem, they can go about one year.

Diane Beck stated she would like to read her testimony: "The Missoula community is growing at a very fast pace. There is an affordable housing shortage in the State, and Missoula is at the top of the list. The number one reason we have affordable housing problems is due to the lack of land, so the large landowners, such as Bonnie Snavelly, if they were to have the sewer in to develop their land, at least it would be beneficial from the terms of the affordable housing crunch. But right now, at this time, we don't have any zoning that would allow any additional housing to be built there, the zoning out there is one home per acre at the minimum. We need to see the sewer expanded into areas such as Orchard Homes and Target Range also. I understand that those are a high priority area as stated in the Voluntary Nutrient Reduction Plan or the VNRP. Those neighborhoods also need to be able to rely on a plan and I don't believe that they have a plan. In April of 1997, a project was started called the Wye/Mullan Road plan. Missoula County, and I understand from the other evening, Missoula City, hired consultants from Berkeley, California, to come to Missoula and hold a series of meetings. Many residents, such as Vicky, Bonnie, many people in this room, Mike Flynn, participated for many, many meetings. Over about a period of about a year, year and a half, I believe, at least \$80,000 to \$100,000 was spent on that planning project. We don't have a plan. The Office of Planning and Grants has not completed that. Jean, I appreciate knowing that we're next in line but I think a growth policy in Missoula County would be a little bit more important than an area plan, because at this point in time we are not in compliance with State law. We do not have a growth policy and I think all the work that's being done on the Lolo plan could be for nothing if we don't have a growth policy in place which would allow us to adopt that area plan."

Commissioner Curtiss stated that was in the works as well.

Diane Beck: "Great. Well, we have the cart before the horse in my opinion. In 1998, the Commissioners held some public meetings in the El Mar Estates and Golden West areas and were told by Dan Harmon at that time that studies show their systems were failing and they needed to get the sewer out there right away. Well, that was three years ago. Obviously the cost to those homeowners was astronomical, because the whole burden was being placed on two subdivision. So basically, here we are now and we're talking anywhere from \$100 to \$300 a month for additional payments depending on how much land you own. Almost everyone in this room, I would say almost without the exception of a doubt, we're all middle class working folks trying to better our futures by making investments in our home. We have provided water systems and sewage systems as per Montana State and Missoula County, that are for most of us functioning properly and for many of us relatively new. My family lives in a house on a acre. We have four people in our family and my neighbor next door is single. We're going to pay the same \$15,000. That does not seem fair that one person's fee would be the same as four people. And I think there's got to be some way to calculate the use of the system or at least by bedrooms, bathrooms, there's got to be a little bit more equitable way in which to assess this. There is not any way that my acre could ever be split unless all of my neighbors agreed to put a road down the middle of the backs of

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all of our yards, which I don't think is going to happen. So therefore, I don't have any land that I can sell to pay for this. It's a fairness issue. I think that it's just really important that every good project starts with a plan. Give us a road map to give us some directions to complete and have some predictability for what might be coming along the way. The future of this area depends on a good plan. Existing homeowners and new owners need to be proud of this area and not look back in twenty years and say, wow, did we mess that up. The large landowners have a pretty good idea right now what they want to do. Either they're in or they're not. Either they're going to put their lands into conservation easements, continue to farm and ranch or they may choose to develop it. It's up to them what they do. It's their land, it's their choice. I guess I will just kind of finish up by saying that we need to have a better model to determine fair share. This is not an economically feasible plan for many of us and the bottom line is the public deserves fairness and representation by their elected officials and I think that at the least, you could hold another public meeting on this next week at a time and place that would be more conducive to working class families and so I hope you consider that. I hope you would consider to delay this project for at least a year while you're getting a plan for us, getting a growth policy for the rest of Missoula County, while you're dealing with the doughnut bill issue. There are many other things on your plate that I think are more important and I think you might want to talk about a planning priority list because two of the three things I just mentioned are State law now and I think that it's really important that you consider holding off for a year, figure out what Missoula County Airport is going to do with their expansion plans, give Barbara more time to talk to the Congressmen and please understand, we live and work and have children in this community for a reason. It's a quality of life, excellent schools, open spaces and most of all, we like our neighbors. Please do not make them move. Thank you."

Chairman Evans called for a five minute break.

Ann Mary Dussault stated for the record that Ms. Beck also made her comments at the City Council meeting. Those who testified about the cart before the horse or the chicken and the egg, relative to the plan versus the sewer, have a legitimate point. She wanted folks to know that the Wye/Mullan plan as it stood before it was interrupted was used by the Commissioners as a basis for adopting a road grid system. The road grid system is designed to relieve some of the pressure off Mullan Road and route traffic to another connector to Reserve Street. The road grid system has been adopted. The last evolution of the Wye/Mullan plan has not been adopted, but that is where the discussions will start when they begin again. It is expected those discussions will begin sometime in January or February and take about a year to conclude. The plan is to complete the Wye/Mullan plan within about a year. That is how long it has taken to complete the Lolo plan. The last proposed Wye/Mullan plan map had densities of up to six homes per acre depending on the area. Even at the stage where the planning process was left off, there was clearly an indication that the whole corridor was going to have increased residential densities. Whether or not the Commission should have completed and acted on that plan before the sewer, or if they are doing the sewer with that preliminary plan in mind, is a legitimate public debate. A second issue is the fact that Missoula does not have a Growth Policy. That is true, however, it is expected that within six months that policy will be completed. That is an overriding document under which various area plans will have to conform. The Lolo plan and the Wye/Mullan plan are being done on a timely basis in concert with the Growth Policy so that in a year, either those densities or increased densities will in fact be adopted.

Bill Shaw, 6135 Mullan Road, stated he was an absentee landowner. He was a little disturbed at this point. He had for some time been hearing rumors of a sewer plan being developed. Not once has he been notified that meetings were taking place. He did not know what the process was here and asked what the requirements were.

Mike Sehestedt stated that State law requires that Commissioners give public notice of their meetings. They have done that. Notice by mail and by posting had been given of 24 separate meetings held at various locations with various groups of landowners. Technically, as a matter of law, the Commissioners don't have to have this hearing to adopt a Resolution of Intent. The required legal notice of a Resolution of Intent to Create an RSID is the mailing to each property owner at the address of record and the publication in the newspaper. There were lots of people at each of the neighborhood meetings. Those meetings were also listed on the Commissioners weekly agendas, which are published and placed on the Internet.

Bill Shaw stated that, as others have mentioned, notification seemed inadequate. He felt people needed to be made aware of what is going on when it comes to spending their money. We have a government of the people, for the people and by the people. Whether he could vote or not, his word is important. He hasn't really known what is going on and waited to speak until he had more information. His observation is that there are two problems, El Mar Estates and growth. The problem is not the existing facilities. Maybe more of the burden should be put on the future growth and not so much on the existing homes. He appreciated the efforts and the fact that the project was moving forward rapidly. That is unusual for government. This project is coming through in six months. This causes him to think that something is awry, something isn't just right. There has to be a reason this is being pushed forward in such a rapid manner. He did not think it was that urgent. The Health Department isn't saying that it is urgent. He thought there were ways of taking care of El Mar and something must be being done or there would be even more problems. It seems the costs are astronomical for families. He would suggest that this be looked at harder, spend more time on it, don't railroad it through. Interest rates are down today but would this project get those interest rates. Probably not. To rush it through because interest rates are low and when there is not a serious problem is the wrong approach. He encouraged the Board to take more time and think more seriously about this. It is a big burden on the people who live there presently.

Commissioner Curtiss stated that one of the maps displayed shows the area around the proposed district, known as the extended service area. If, in the future, those pieces of property decide to hook to this main, they would pay the same assessment per square foot as those in the district. Their money would help to pay down the RSID and reduce the cost to the RSID participants. She wanted to point out that future growth was taken into consideration when planning the RSID. This project is being financed through the State revolving fund, with 4.5% interest, and that has been locked in. The assessments listed in Exhibit B include the cost of financing for 20 years, interest would not be added on top of that figure.

Debbie Brault, 7020 Mullan Road, asked Bruce Bender if the City sewer plant had an extension from the EPA, like El Mar, on upgrading the system because it hasn't been functioning as well as it should have been.

Bruce Bender stated there is a volunteer agreement for nutrient removal. That agreement was negotiated for the Tri State Councils and was regional, affecting Deer Lodge, Butte, Silverbow, the City of Missoula and Stone Container. The commitment was to reduce the amount of nitrogen and phosphate put in the river. The City was not forced to do that, it



was a voluntary commitment. It was done in recognition that the Clark Fork River has been designated as a damaged river. The City wanted to help improve the quality of the river. The agreement was that within 10 years the nitrogen and phosphates would be reduced by 50% and the City and County would reduce the number of septic systems that contribute to the pollution of the river by 50%.

Debbie Brault stated that her husband worked at Stone Container. He has taken a \$2 per hour pay cut because of the cutbacks. That's \$320 per month out of their budget. She did not have any extra money. Her cost for the backbone would be \$3,276. She did not have that kind of money.

Commissioner Curtiss stated that could be financed over 20 years, it did not have to be paid for up front, unless the homeowner chose to do that and avoid the interest charges.

Debbie Brault stated that did not include hooking up to the sewer. That is a burden on a lot of people that the Board did not understand. She is frustrated with the City Health Department. When she built her house 13 years ago, the City would not allow her to install a gravity feed, they had to put in a sump pump at a cost of \$7,000. She asked what is fair and equitable for her. How much more should she have to pay to have an operating sewer. She has never had a problem with her current system. She is being asked to pay over \$3,000 for a system she may not even use for ten years or more. She is also included in the Country Crest subdistrict. In April, it was stated that the interest would be 4%, now Commissioner Curtiss says it is 4.5%. The costs keep going up. She said to Bonnie Snavelly that she could not subdivide her acre.

Chairman Evans asked Ms. Brault not to carry on a conversation with the audience.

Debbie Brault apologized to Chairman Evans. She felt that many don't have a problem with the sewer coming to the area. It is more a matter of fair and equitable prices. The price cannot be justified. She asked if the area could start their own City, why did they have to be included with Missoula.

Chairman Evans stated they could start their own City, but there would not be enough tax base to cover the costs for roads, police protection, sewer, mayor, etc. It would probably not be financially feasible.

Debbie Brault stated that Culver City did that with Los Angeles.

Mike Sehestedt stated that Chairman Evans may have misspoke somewhat. State law as it currently stands says that an area cannot be incorporated if it is less than 3 or 4 miles away from an existing City unless the existing City has refused to annex the area which incorporates. He had recently looked at the State law on behalf of the people in Lolo. About half of Lolo is within that 3 straight line air miles from the nearest point of an adjoining city. The law would probably preclude this area from becoming a city without additional legal processes. When Lolo looked at it 10 or 12 years ago when it was possible to do it, the numbers were not feasible.

Debbie Brault stated that many residents feel like they are being railroaded into this cost and they have no voice.

Bruce Bender stated that the cost of sewage treatment should be looked at. El Mar did look at fixing its own system and being separate from the City sewer. Those numbers were substantially higher than connecting to the City treatment system. The primary reason is the benefit of a large system that already has the ability to discharge waters and that will serve 100,000 people. That is a lot less expensive than trying to do this on their own.

Debbie Brault stated that El Mar's problem needs to be addressed. It is unfortunate that the rest of the people have to end up incurring most of the cost and yet, El Mar, who is having the problem, is getting by with the least amount.

Bruce Bender stated that people know of El Mar's problems right now. Typically in an area like this, that is the first one to experience problems, but as time goes by another area has problems and incrementally, as this area develops, it will gradually degrade the ground water to a point where everyone would have a problem. Eventually, everyone will affect each other as the area grows. It's inevitable. Linda Vista is an example of delay. They had an opportunity to receive sewer on the first go around, a similar situation to this, and they refused to accept it. About four years later they were paying about four times as much, because they had to do it. It is difficult and understandable when it is new and catches people off guard, but the reality of this plan is very good. It is a regional plan. If these are done on a small scale, it is more expensive for each one. This is a good regional plan and is saving money for future costs. A lot of residents won't have to connect to the main right away. They may not want to pay \$3,000 right now, but it would be substantially more in the future when they would have to connect because of degradation in the area.

Sabe Pfau asked when the residents would begin paying on this RSID if it passes.

Ann Mary Dussault stated that it is anticipated that the assessment for the backbone will appear on the tax bill in November of 2003.

Sabe Pfau stated that he heard many people say they would have to sell their homes. In 1994, he bought into a subdivision that had been approved by the County. He took them at their word that it was a good subdivision. However, in 1997, the ditch bank broke and flooded the aquifer so that the water from Grant Creek flooded the subdivision. In the last two years, a new map was done that puts his home in the floodplain. He couldn't sell his house if he wanted to. He has talked to a couple of Realtors and an attorney, who have told him he will lose anywhere from 25% to 33% of the value of his house, because he is in a floodplain. If his house burns down, he could not get a permit to rebuild it. He is retired, he did not have an increase in his pension coming. He won't be able to sell his house. If someone in the extended service area decides to hook up to the main in 2015, and the bond issue is paid off, who gets the money, would the RSID participants get a rebate.

Ann Mary Dussault stated the bond would be paid off in 2023. If the RSID is paid off, there is no fee.

Mike Sehestedt stated there would be no charge for the interceptor. The developer would be paying for the collection system and whatever the City connection fee is at that time. The extended area says that if anybody wants to utilize the



backbone during the life of the RSID bonds that paid for the backbone, those people will have to contribute in cash an amount equal to the assessment paid by people in the original district, approximately \$3,000 per acre. That will be paid into the RSID fund less an administrative fee. That money will be used to make an early call on the bonded debt of the district. That means that the people in the district won't be paying as much or as long on the bonded debt for the backbone. There will be people in the district who paid their bonds off early who won't receive the benefit. The County wanted to be sure there wouldn't be a rush of people getting in on this for nothing.

Sabe Pfau stated that if Commissioner Evans goes to Washington, D.C. and gets 50% of this bond issue and it is paid off in 10 years and in 11 years Kona Ranch wants to come in, they have a free ride for their property except for putting in their trunk lines and such to hook onto the sewer line.

Mike Sehestedt stated that about 50 acres of the Kona Ranch is included in the district right now. As one of the Commissioners said, if Federal funds are found, they might be better applied to subdistrict costs. If Federal funds are used to pay for the backbone system, 66% of that will benefit developers, 33% will benefit existing homeowners. To get the most benefit for existing homeowners, the best thing is to find Federal money that pays for a significant portion of the subdistrict costs, when and if they are created. In Mr. Pfau's case, at Mullan Trail, he will have to hook up sooner rather than later but there is already an existing collection system in place. That subdistrict cost will be less than Country Crest or Frey/Homestead.

Sabe Pfau stated it wouldn't be so bad if he were working and had extra money coming in, but he does not. The Mullan Trail developer, in his great wisdom, waived the purchasers right to protest the sewer. He will send his letter back in protest anyway, but it will not be counted. He wants the Commissioners to know where he personally stands.

Mike Sehestedt stated that once the Resolution of Intention has been adopted, it starts a legal process. Up until now, it has been a political process, deciding where to go and what should be done. Through the process, a lot of changes have been made and many things have been looked at, annexation, outside the district boundaries, etc. When the legal process is over, if there are not sufficient protests, the Commissioners have the legal ability to create the district. Although they have the legal authority, there is still the matter of the political decision to proceed. Even if a resident has waived their legal right to protest, no one has waived their First Amendment rights to petition the government for redress. If someone feels strongly about the project, even if they have waived their right to protest, they should communicate to the Commissioners. It may not have any legal effect, but it may have a political impact.

Sabe Pfau stated that most people realize this is going to pass, there is no chance that it will fail. The health and welfare of the water system through the Health Department could be used as an excuse to fall back on.

Mike Sehestedt stated it was likely the district would be created. Mr. Flynn, a major property owner, has presented his views. He did not have a confident head count and people will follow their own economic best interests and feelings on this.

Dave Scott stated he lived in Country Crest. He did support the sewer system but did not support the cost. He has concerns about the environmental impacts, there have been problems at Country Crest and they will probably not go away. In speaking with Dan Harmon, his concern was that it would cost \$23,000 per house in Country Crest to hook up to the sewer. Mr. Harmon felt there might be ways to reduce that cost. The problem people are having is not the cost of the backbone, but of the subdistricts. In some ways, the cart is before the horse. People are upset about the individual systems and maybe more evaluation and better numbers needs to be obtained. His cost for the backbone would be about \$14 per month. He is not too concerned about that, but he is concerned about his subdistrict's \$23,000. The Board has done some good things on this, but there has not been good publicity in the newspaper about some of the negotiations with the City. He would like to see more information, a newsletter to the residents on what is actually going on. He would like to see the possibility of grant money or other assistance brought more to the forefront of the people. The subdistrict numbers presented are worse case scenario numbers and people need to know that. There is no guarantee but there may be a better alternative. He does support the sewer system, it is needed from an environmental standpoint, but he asked that alternatives be evaluated to see if better costs can be developed.

Russ Lodge stated that he lived on Homestead. He sentiments are similar to Mr. Scott. The backbone is one issue and the subdistricts are another issue. He would like them separated and not lump them into the same scenario. There is no big advantage between 2003 and 2004 when it comes to subdistricts. Obviously there will be a lot of growth in the area over 15 or 20 years and the Board has the responsibility to look out that far, but take time to do that, especially with the subdistricts. The Frey/Homestead/Topaz area has a different soil base than some of the others. He hoped there was some flexibility to people who lived in different areas. It takes time to find Federal dollars, it takes good planning and connections. He did not see any reason to hurry into the subdistricts. He hoped the two issues would be separated.

Chairman Evans stated that the issues are separate. The issue being discussed today is strictly the backbone issue. The subdistricts would follow later, depending on the seriousness of the situation and the waivers obtained and the desire of the residents in those area.

Dan Harmon stated that when the cost estimates were done for the various subdistricts, they did not want to give people false hope. They were forced to look at each subdistrict in detail. When the layouts were estimated, pipes could not be located in someone's backyard or other areas where permission could not be obtained. What they had to do was locate the pipelines down public roadways. In some cases, it would be better to locate the pipes down the back side of the property where there are no streets or pavement. That would reduce the costs. But without knowing if access could be granted, the worse case scenario had to be used. As Mr. Scott stated, there would be a good chance of looking at alternative layouts for the Country Crest area to potentially reduce the cost.

Ann Mary Dussault stated that the subdistricts are being separated from the backbone. The figures that were presented at the neighborhood meetings for the subdistricts were stunning, to say the least. There is a wide variety of costs, from \$2,400 to \$20,000. Work has already begun on ways to mitigate the subdistrict costs and now is the time to start that process. There are State legislative appropriations that occur each biennium. They want to be in line for the legislative sessions in 2003, 2005, 2007 and 2009, as it is anticipated to bring the subdistricts on line over a period of years. It is also

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anticipated that some of the subdistricts would not be brought on line by 2010. There will be a meeting in Helena in December with WASAC, a committee of all State and Federal agencies that hold the strings to different kinds of funding. There has already been some conversation and the process will be ongoing. There is also likely to be Community Development Block Grant (CDBG) money to compete for as well. Those monies are available to certain people who qualify as low income. Each subdistrict will be surveyed to see if there are individuals who qualify. Missoula County cannot apply for that until 2003 when the money allocated for East Missoula has been drawn down. There are technical questions associated with each funding source. The County is starting now to look at those funding sources and assistance available for subdistricts as they come on line over a period of about 10 years.

Don Schmautz, 8050 Lazy H Trail, stated he had about 2 acres and an assessment of about \$7,000. He cannot sell any of his land according to his covenants. Why doesn't he pay just as much as the people in El Mar. He doesn't have any kids and only has one house. If he could sell an acre he would be willing to pay that portion, but why should he do it now. He asked Dan Harmon why the line cost so much, \$7.4 million. He wanted to know if it was being lined with gold or silver? He has put in miles of sewer lines and has never seen one so expensive. There is nothing in the road which should make the digging and laying of the pipes easy.

Dan Harmon stated that Exhibit C in the packet showed the cost breakdown. The RSID is the maximum cost. If for any reason the project has been over estimated, that would be great.

Don Schmautz asked if the people would get the money back?

Ann Mary Dussault stated that it would not be assessed if the actual cost of the project was lower.

Don Schmautz asked if this has been put out for bid?

Dan Harmon stated it has not been put out for bid. He is confident in his numbers however. A lot of research was done with facilities in other parts of the country and locally to develop the basis for those costs. The breakdown is listed in Exhibit C.

Don Schmautz stated it was an awful lot of money. He could not see how it could cost that much.

Bruce Bender stated that this has not only straight gravity pipe, but several lift stations which are expensive. Each lift station has to have a force main. The force mains are fairly large and would be constructed on-site.

Dan Harmon stated they would be constructed on-site but have some components that are pre-made. There are over 56,000 lineal feet of pipe. He could only hope that the estimate was high.

Bruce Bender stated there were about 20,000 lineal feet of force main that was in addition to the other pipe.

Ann Mary Dussault stated that if the district is created, the next phase is final detailed engineering and hopefully put it out for bid by next April or May. If the bid comes in less than Dan Harmon's estimate, that savings is passed on to the residents of the district and they will not be assessed that difference. If the bid comes in higher than estimated, the maximum allowable assessment stated cannot go up. What is shown in the packet is the maximum allowable assessment. The County cannot pass on to the residents anything above what is shown in the exhibit, but any savings will be passed on to the residents in the event the bid comes in lower.

Commissioner Carey stated that Mr. Schmautz asked why he was being assessed approximately \$7,000 for only one home when people in El Mar with just one home are being assessed quite a bit less. He asked someone on the panel to discuss that issue.

Greg Robertson stated that early on in the process several methodologies of assessment that are allowed by State statute were looked at. Essentially, two ways were narrowed down, one based on assessed valuation and the other based on square footage. The assessed valuation was eliminated because undeveloped properties were valued as agricultural at minimal dollars. The effect was that developed properties would be subsidizing the development community. In discussions with Bond Counsel, the only fair methodology was on a per square foot basis. It ensured that the undeveloped properties would receive no subsidy from the developed properties. That was the main reason that method was chosen. Any further differentiation with developed properties could not be done because of statutory limitations.

Curt Bowler stated that if the County went with developed properties and undeveloped properties, his understanding was that there would not be enough money to do the project, or the developed properties would have had to pay much more.

Greg Robertson stated that latter was correct. The dollar amount as far as the total assessment doesn't really change.

Curt Bowler asked if a per dwelling type of assessment existed in State law?

Mike Schestedt stated there was a possibility of doing it on a per hookup basis, but that also winds up shifting about 100% of the cost to the developed properties and leaving all of the undeveloped property not being assessed for anything. When they developed, they have received a real bonanza. That was completely unfair. A variety of numbers based on a variety of methods was looked at. Every time, the undeveloped property came out with a relatively low assessment and shifted the cost to the exiting homeowners. That did not seem fair. They even looked at making all small tracts even, so that, for example, Mr. Schmautz would pay the same as a home in El Mar. That method created more problems. The per square footage assessment worked and overall was the fairest method. When Country Crest was approved, the homesite had to be on one side or the other of the lot so that when sewer eventually came, the lot would be able to be split and have a second building site available to cover the cost. None of this helps those in other subdivisions. There was not a method that could be applied district-wide that wouldn't actually make things worse in the long run.

Bruce Bender stated that the methodologies that can be used are restricted by State law. There are only a few methods that can be used. Bond Counsel also has to review that and give a legal opinion that the bonds will be saleable. He was part of the group that reviewed the different methods and this was by far the most equitable method for the existing homes.

Curt Bowler asked if it was taken into consideration how many homes were being requested in proposed subdivisions, for instance the Washington tract.

Michael Sehestedt stated they tried to assign densities to undeveloped land. That did not work very well because of commercial and residential designations. If that methodology was used, quite a bit more cost was placed on the existing homeowners. A lot of different formulas were looked at and this one seemed the most fair, was still acceptable to Bond Counsel and consistent with State law. This moved the maximum cost from the homeowners, as a group, to the development community.

Chairman Evans stated she is not opposed to the sewer to protect the ground water. She does wish to wait a year so Federal or other money can be found. She also made it clear that she is not the only one that is looking for money. She has been in office the longest and has been to Washington, D.C. more. She felt the El Mar system could wait a year while the search continues for money. She did not want anyone to lose their homes. People have said they could lose their homes and she has heard that. She personally lost a home once because she could not afford to keep it. She knows the trauma that causes. She did not want that to happen to anyone. She respected Commissioner Carey and Commissioner Curtiss' opinions and their vote. She disagrees with the timing. She also took offense when anyone suggested there was corruption, collusion or anything else on the part of the Board. There is no corruption or collusion, simply three people, with the help of staff, trying to do a decent job and provide for the environment and not harm the residents.

Bonnie Snavelly stated she could not concur more. In her dealing with the County and City, she has seen nothing but integrity. The El Mar Estates sewer system, which she is not a part of, is in failure and is impacting her property. She does not have a development in her hip pocket. The real impetus for this is that Washington Corp. is doing a project that will bear a huge burden of this system. She is not protesting on her 98 acres. She will have to adjust her budget. She is paying a huge portion on this. She does not emit the sewage that flows over her own land. There are also over 500 homes whose systems are in failure. She commended the public officials who are trying to rectify the situation.

Chairman Evans stated she wanted to make it clear that this was not being done to benefit Washington Corp.

Bonnie Snavelly stated she was trying to say that this was a way that the costs are being passed to future homeowners.

Chairman Evans thanked everyone for coming. Further written testimony can be submitted to the County Commissioners office until Tuesday, November 27, 2001 at 5:00 p.m.

Vicky Bostick asked if the Commissioners would have another public meeting in the evening. There are others whose voices need to be heard and she implored the Commissioners to do that.

Commissioner Curtiss stated that it was unfortunate that by the time all the facts were finally available, it caused the meeting to be held the day before Thanksgiving. They did ask for the room to be available this evening, but it was not. People had an opportunity to comment last week and this week, as well as submit written testimony. Neither of the hearings were required by law, so they felt they had gone beyond what was required. The Board read all the letters submitted and have heard all the concerns. That will be taken into consideration. This hearing will be closed, but the record will be left open for written comment. It was her opinion that another hearing would not take place.

Commissioner Carey stated that the Board has met as many times as necessary to understand people's ideas and concerns to this project. Even after all these meetings there are still some fundamental misconceptions about what is being proposed. This RSID is for the backbone system which will cost approximately \$3,200 per acre over twenty years, which is about \$20 per month. His views differ from Commissioner Evans, even though he respects her views. If this opportunity slips by, in a year or two the system will be much more expensive, partly because the developers are not going to wait. The package presented has the large landowners picking up about two-thirds of the cost of this RSID. In a year, they might not be there. It is also not right for American taxpayers to subsidize the current deal, which has two-thirds being large property owners. If anyone is to be subsidized, it should be the homeowners who are faced with high costs in the subdistricts. He firmly believed they have heard what they needed to hear and they know what the people are feeling about this proposal.

Diane Beck stated that with what Commissioner Carey just said, why is it fair for her to pay \$20 a month for the next 10 years when she doesn't have an opportunity to hook to the sewer, even if she could. For the next 10 years she will be paying a fee toward a backbone that she can't use even if she wanted to. What is fair about that.

Commissioner Carey stated this is probably not fair to everyone, but he did not know if a way could be found to make it fair to everyone. The Board's job is to preserve the public health and safety, among other things. They have to look at what is happening in this area with water quality issues and with growth issues and whether or not it would be more expensive and more unfair to put the system in two or three years from now, when there is that much more development.

Chairman Evans closed the public hearing but left the record open to accept written testimony until 5:00 p.m. on Tuesday, November 27, 2001.


There being no further business to come before the Board, the Commissioners were in recess at 4:30 p.m.

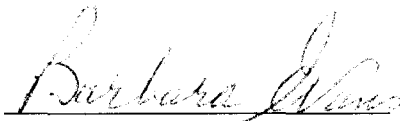
THURSDAY, NOVEMBER 22, 2001

The Courthouse was closed for Thanksgiving Day.

## FRIDAY, NOVEMBER 23, 2001

The Board of County Commissioners did not meet in regular session. The Commissioners were out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

## MONDAY, NOVEMBER 26, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated November 26, 2001, batch number 1669 (pages 1-3), with a grand total of \$38,123.78. The Claims List was returned to the Accounting Department.

Resolution No. 2001-104 – Per approval at the Clerk and Recorder/Treasurer's Meeting held on November 21, 2001, the Commissioners signed Resolution No. 2001-104, a resolution to refund taxes that were erroneously assessed to property owner Dorothy Pulliam.

## TUESDAY, NOVEMBER 27, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated November 27, 2001, batch number 1672 (pages 1-5), with a grand total of \$42,349.67. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 27, 2001, batch number 1673 (pages 1-5), with a grand total of \$51,920.21. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 27, 2001, batch number 1674 (pages 1-2), with a grand total of \$962.32. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 27, 2001, batch number 1675 (pages 1-3), with a grand total of \$8,111.00. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Plats and Agreements – The Commissioners signed the Plats for the following subdivisions:

- 1) Henry's Estates 2<sup>nd</sup> Addition – Phase I, a total area of 4.726 acres. The County Treasurer received cash in lieu of parkland in the amount of \$1,253.74;
- 2) Henry's Estates 2<sup>nd</sup> Addition – Phase II, a total area of 5.672 acres. The County Treasurer received cash in lieu of parkland in the amount of \$1,396.16; and
- 3) Henry's Estates 2<sup>nd</sup> Addition – Phase III, a total area of 4.602 acres. The County Treasurer received cash in lieu of parkland in the amount of \$1,225.48.

The above plats (Henry's Estates 2<sup>nd</sup> Addition – Phases I, II, and III), are all subdivisions located in portions of the S½, SW¼ of Section 29, T 15 N, R 21 W, PMM, Missoula County, with the owner of record being Joseph W. Boyer, Jr.

The Commissioners also signed the following Agreements, dated November 27, 2001, for Henry's Estates, 2<sup>nd</sup> Addition, Phases I, II, and III:

- 1) Agreement for Comprehensive Plan Compliance, which brings the land approved for platting into compliance with the Missoula County Comprehensive Plan, per the items set forth therein.
- 2) Subdivision Improvements Agreement and Guarantee. The improvements that remain to be completed are to construct and pave to County Standards, LeMazion Place (a dedicated County road) at an estimated cost of \$76,750.00. The improvements shall be completed no later than November 1, 2003.
- 3) Fire Suppression Development Agreement, regarding the installation of water supply sources for fire suppression to this subdivision, as per the conditions set forth therein.

Agreement – The Commissioners signed an Agreement, dated November 27, 2001 between the Missoula County Airport Industrial District ("Seller") and Fred Harbinson and John Turcasso, Buyers of Lots 1-6, Block 5, Phase 3D, Missoula Development Park, to assume responsibility between Buyers and Seller for 2001 taxes that may be assessed against said property.

Professional Services Contracts – The Commissioners signed three (3) Occupant Protection Overtime Contracts between the Missoula City-County Health Department and the following for their participation in the Missoula County "Click It or Ticket" Seat Belt Campaign:

- 1) Missoula County Sheriff's Department;
- 2) City of Missoula (Missoula Police Department); and

## 3) Montana Highway Patrol.

The term for each contract will be November 2, 2001 through September 28, 2002. The total amount of each contract shall not exceed \$7,000.00, and funds are provided by the National Highway Traffic Safety Administration (Occupant Protection Grant). Claims for reimbursement of salaries are set forth therein. The documents were returned to the Health Department for further signatures and handling.

Board Appointments – The Commissioners approved the following Board appointments:

- 1) Reappointment of Jerry Ford to a two-year term as a member of the Missoula County Zoning Board of Adjustment. Mr. Ford's term will run through December 31, 2003;
- 2) Reappointment of Gary E. McLaughlin to a two-year term as a member of the Missoula County Zoning Board of Adjustment. Mr. McLaughlin's term will run through December 31, 2003;
- 3) Reappointment of Rebecca Mosbacher to a three-year term as a member of the Missoula Public Library Board. Ms. Mosbacher's term will run through December 31, 2004;
- 4) Reappointment of Carl A. "Andy" Sponseller to a four-year term as a member of the Missoula Urban Transportation District Board. Mr. Sponseller's term will run through December 31, 2005;
- 5) Reappointment of Stanford G. Lucier to a three-year term as a member of the Missoula County Weed Control Board. Mr. Lucier's term will run through December 31, 2004; and
- 6) Reappointment of C.G. "Pat" McCarthy to a three-year term as a member of Missoula County Weed Control Board. Mr. McCarthy's term will run through December 31, 2004.

Certificate – Chairman Evans signed a Certificate of Completion, dated November 27, 2001, for the Missoula County Sunset West RSID WRF-99007 Loan in the amount of \$291,000.00 (Rural Special Improvement District No. 8458 Bond – DNRC Drinking Water Revolving Loan Program, 1998). The project was completed on June 22, 2000.

Request – The Commissioners agreed to a request to postpone a Planning Board Meeting regarding the Lolo Regional Plan, originally scheduled to be held this evening in Lolo.

Other items included:

- 1) The Commissioners voted not to pay the FY 2002 membership dues (in the amount of \$750.00) to the Montana Coalition of Forest Counties.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, NOVEMBER 28, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated November 27, 2001, batch number 1677 (pages 1-2), with a grand total of \$5,932.10. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Carey signed the Claims List, dated November 28, 2001, batch number 1676 (pages 1-4), with a grand total of \$34,193.96. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Sy's Wood Shop as Principal for Warrant #10471, issued July 29, 1999 on the Missoula County Public Schools #17 (Adult Ed) Fund in the amount of \$390.00 (payment for Business Office white boards), now unable to be found.

### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution No. 2001-105 – The Commissioners signed Resolution No. 2001-105, dated November 28, 2001, altering a portion of Graves Creek Road (located in the NE¼ of Section 19 & NW¼ of Section 20, T 12 N, R 22 W, PMM, Missoula County) through Rossignol and United States Forest Service property, as shown on the attached Exhibits "A" and "B".

Request for Action – The Commissioners signed a Change Order to allow Green Diamond Contracting to construct a gravel access road to the City sewer lift station located east of Grizzly Auto Center within the Missoula Development Park. The original Contract Price will be increased by \$4,960.63. The Contract Time will be increased by ten days; date for completion of all work under the contract will be December 7, 2001. The document was returned to Barb Martens in the Projects Office for further handling.

Resolution No. 2001-106 – Following the Public Meeting, Chairman Evans signed Resolution No. 2001-106, relating to Rural Special Improvement District ("RSID") No. 8471, declaring it to be the intention of the Board of County Commissioners to create the District for the purpose of paying a portion of the costs of engineering, design, construction and installation of sanitary sewer trunk lines, pumping stations and force mains (the "Project") that will enable district property to connect to the City of Missoula's Sanitary Sewer Collection System and Wastewater Treatment Plant and financing the costs thereof and incidental thereto through the issuance of RSID Bonds secured by the County's RSID Revolving Fund.

### PUBLIC MEETING – November 28, 2001

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The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, County Public Works Director Greg Robertson, County Chief Administrative Officer Ann Mary Dussault and County Surveyor Horace Brown.

**Pledge of Allegiance**

**Routine Administrative Actions**

*Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$181,593.04. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.*

**Public Comment**

Diane Beck, 8190 Haven Heights, asked if the Board would take public comment on Agenda Item #8, the Decision on the Resolution of Intent to Create RSID #8471 (Mullan Road Corridor Sewer Project)?

Chairman Evans asked if Commissioner Curtiss and Commissioner Carey were willing to take public comment.

Commissioner Carey stated they would be willing to take public comment at that time.

Pat Cunningham, 6520 DeSmet Road, asked if there would be public comment on the closing of the DeSmet Railroad Crossing?

Chairman Evans stated the hearing had already been held on that matter. The hearing had been closed and the Board took action on the request which will take effect January 1, 2002. There may be a delay on that if the RSID for paving of Expressway is approved. That would be determined later in today's meeting.

Pat Cunningham asked if there was any action that would be taken on widening DeSmet Road to Butler Creek Road.

Greg Robertson stated that he had spoken to Mr. Cunningham earlier, and he was interested in the Board's decision on RSID 8470. The decision the Board makes will determine the answer to Mr. Cunningham's question.

**Hearing: Mason Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 530 Micro, Page 2309, located in the west one-half of the northeast one-quarter of the northeast one-quarter and the east one-half of the northwest one-quarter of Section 10, Township 13 North, Range 23 West.

Susan Mason 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 29.25 acres in size located in the northwestern part of Montana near Eds Creek and Petty Mountain. Ms. Mason proposes to create one approximately 9.73 acre parcel for transfer to her parents, Ronald and Barbara Tetz, for residential purposes and keep the remaining approximately 20 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Book 209, Page 2200	1986	N/A		Chatek, et. al.
Book 283, Page 479	1988	Parcels greater than 20 acres	Chatek, et.al.	Marter
Book 385, Page 617	1993	N/A	Marter	Tetz/Mason

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Chairman Evans opened the public hearing.

Susan Mason was present and came forward to answer any questions the Commissioners may have.

Chairman Evans stated the purpose of the hearing was to determine whether this was an attempt by the applicant to evade the Subdivision Act. The Board may ask questions of the applicant to make that determination.

Commissioner Carey asked Ms. Mason if she could assure the Board that she was in fact transferring this property to her parents.

Susan Mason stated she was transferring the property to her parents. Over the years her parents have loaned her money. They are planning to move to Montana and are in their 70's now. She would like her parents to be closer to her family. They are planning to build a house on the property.

There being no further comments, the public hearing was closed.

*Commissioner Curtiss moved that the Board of County Commissioners approve the request by Susan Mason 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 Carey seconded the motion. The motion carried on a vote of 3-0.*

Chairman Evans stated that the approval was for the division of land only. It did not guarantee adequate access, installation of utilities or availability of public services, nor did it obligate the County to provide road maintenance. Other approvals may also be needed from the State or local Health Department. She would receive an approval letter stating those facts.

**Hearing: Request to Vacate a Portion of Highland Drive and Dundee Road (South of Lolo)**

Mike Sehestedt read the staff report.

This is a petition to abandon "Highland Drive from the east/west mid-section line of Section 15 to the south line of Lot 44 of Mackintosh Manor Subdivision and Dundee Road from the east/west mid-section line of Section 15 to the south line of Lots 20 and 44 of Mackintosh Manor Subdivision, located in Section 15, Township 11 North, Range 20 West, PMM, Missoula County, Montana."

The reasons for the request are as follows:

1. The road has never been built or used.
2. The owner of the property has no intention of using it for roadway purposes.

The following landowners have been notified: H. Bruce and Mary B. Maclay.

Chairman Evans opened the public hearing.

Nick Kaufman, WGM Group, Inc., stated Territorial Engineering and Surveying submitted, on behalf of H. Bruce and Mary B. Maclay, a petition to vacate a portion of the roads in Mackintosh Manor Subdivision, north of Carlton and south of Lolo. The vacation of the streets fits with the master planning that the Maclay's have been doing on their property.

There being no further comments, the public hearing was closed.

Chairman Evans stated that no action would be taken today. A site inspection is required by the County Surveyor and a County Commissioner before an decision can be made. This matter would be postponed for one week to allow time for the site inspection. A report will be given and a decision made one week from today at the Weekly Public Meeting on Wednesday, December 5, 2001.

**Decision: Resolution of Intent to Create RSID #8470 (Construction of a portion of paved roadway known as Expressway Road from Butler Creek to DeSmet Road)**

Richard Reep stated he was representing the Gary J. Gallagher Revocable Living Trust. The protestors and the Johnson are the major shareholders in this matter. They have reached an agreement which reallocates a portion of the RSID assessment among the two protestors and the Johnsons, which has the effect of not changing the total amount of the RSID. The protests will be withdrawn contingent upon the Board delaying the closure of the DeSmet railroad crossing until the opening of the proposed road to be constructed with these funds. The reason for this is that the business that is being served, Blair Transport, within the property owned by Mr. Gallagher, is a moving company and requires a turn radius which is not in existence at the present time. If the existing crossing is closed, access will be cut off. They would ask the Commissioners to take that into consideration and delay the closure date until the opening date of the road constructed by RSID 8470. Secondly, they request there be no further delay in the adoption of Resolution of Intent to Create. Mr. Sehestedt is working with Bond Counsel on that issue and felt it could be accomplished. He presented a signed letter to the Board with the terms of the agreement.

Chairman Evans asked if there was assurance that the road could be created at the earliest date possible.

Mike Sehestedt stated that Mr. Reep was not in a position to give that assurance. Once the RSID is created, the responsibility for construction is the County's.

Greg Robertson stated the design is essentially complete. There are some revisions that need to be made and there needs to be some more discussion with the Johnson Brothers. The Board has already committed to the closure of the DeSmet crossing. He had no objection to delaying the closure. It made sense to do that in conjunction with the project. He would like to have construction begin as early as possible this spring.

Chairman Evans stated that the Board has given their word to Montana Rail Link regarding the closing of the crossing. She did not want to reverse that word without discussing it with them. She was willing to have this passed with the knowledge that MRL would be consulted. It was likely they would agree to postponing the closure until the road is built.

Greg Robertson stated that he had a discussion with MRL regarding the closure. They expressed concern about one of their lessors who would be unable to access Highway 10 or Butler Creek Road. They expressed the same concern as Mr. Cunningham. He felt MRL would not have any objection to delaying the closure.

Mike Sehestedt stated Mr. Reep's letter of agreement is contingent on no further delay of the creation of the RSID. Commissioner Evans is not comfortable with making the commitment to not close the railroad crossing until she has spoken with MRL. He asked Mr. Reep if delaying one week on the creation of the RSID would make a difference to the parties involved.

Richard Reep stated that would be acceptable to the parties involved.

Mike Sehestedt stated he would like to have definitive answers from all parties involved before the creation of the RSID.

Bryce Bondurant stated MRL's tenant has big trucks and he felt they would not have any objections.



Mike Sehestedt stated that the Board could consider delaying action on the creation of the RSID by one week to allow time for MRL to respond to the question of delaying the closing of the crossing.

Chairman Evans asked if passing the resolution with the contingency would do that same thing.

Mike Sehestedt stated he did not want to turn over to MRL the final decision on this RSID. He would like to be able to keep this agreement alive and have the discussion with MRL.

Greg Robertson stated the discussion with MRL has already taken place. They have basically requested that the closure be delayed if this project goes forward, to accommodate their renter.

Mike Sehestedt stated it would be best to give it a week and contact MRL to get a letter stating their agreement.

Chairman Evans asked if that was acceptable to all parties.

Richard Reep stated it was acceptable to his client. He asked if he needed to be present for the meeting next week.

Mike Sehestedt stated that would not be necessary.

Richard Reep stated that the consent and agreement is necessarily contingent upon the delay of that closure. Otherwise there were serious issues and they would withdraw their consent.

Mike Sehestedt stated that was his reasoning to wait a week.

Richard Reep stated waiting a week was acceptable.

Bryce Bondurant stated waiting a week was acceptable.

*Commissioner Curtiss moved that the Board of County Commissioners delay action on the Resolution of Intent to Create RSID #8470 for one week to allow time to contact MRL for their agreement on delaying the closure of the DeSmet railroad crossing. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.*

Commissioner Curtiss commended the parties involved for all the work they did to solve the problems involved with creating this RSID.

Chairman Evans seconded that comment and thanked the parties involved for solving their differences.

Decision: Resolution of Intent to Create RSID #8471 (Mullan Road Corridor Sewer Project)

Chairman Evans stated that the hearing on the Resolution of Intent to Create RSID #8471 had been closed but the Commissioners were willing to accept additional comments today. She asked if there was anyone who wished to speak.

Diane Beck, 8190 Haven Heights, stated she was not representing any groups or organizations. She was a landowner and tax paying citizen in the proposed Mullan Road Sewer District. She would like to read her statement. It included comments from many people she has spoken with over the last several weeks.

*"I realize that yesterday the public hearing closed on this issue and I would like to protest the fact that you did not give a fair and adequate notice to my neighbors. First of all the press release went out dated November 9th, for a hearing on November 14th. The only published notification of this meeting that I saw was in the Sunday, November 11th Missoulian. The subsequent meeting, public hearing, the press release dated November 16th for a hearing on November 21st, to my knowledge was only published in the Sunday, November 18th Missoulian. So both of these notices were not, I don't feel, adequately noticed to the residents of this area. They were incorporated into an article in the Missoulian, a weekly City-County update. Most people do not read the section and I find it unacceptable that you felt that that was your best source for notification. I feel that three days notice for a public hearing at 1:30 in the afternoon on a Wednesday is difficult for people, to say the least. And to hold one on the day before Thanksgiving is not acceptable. I know that many folks do not even receive the Missoulian and I do not know what other means that you have provided notification of the previous public hearings, but I feel in all fairness to these families, you should have mailed a notification and I know that you're not required to do that by State law, but I feel that you should have at least held the public hearing open for an additional week with this weekly meeting being in the evening, at a time and place that would allow people that have a job to attend those meetings. This proposal is to assess homeowners a very large sum of money. As you know, we're not talking about a few hundred dollars here, we're talking about thousands of dollars. The purpose for my testimony today is to go on record once again to oppose this RSID. We've lived in this area for 18 years, since 1984, and we would like to stay in this area. We cannot afford the additional tax burden and the majority of my neighbors can't either. You're forcing people to sell their homes and move to other areas. Many folks may not even be able to sell their homes. We've had problems selling homes out there this last year just because of the proposal that is on the table right now. Some people may be required to give their homes back due to the additional financial pressures of taxes, SIDs, energy costs and inflation. There are a couple of points I'd like to make. First of all I want to know why the existing residents are getting the burden for future development. It seems to me that if the City and County has identified this as an area for future growth that you would be willing to take the time to find additional funding to help defray the costs to these folks and that you would be somewhat considerate of the current residents and at least realize that we are taxpayers and we would like some say in how our area grows. You've not provided us any planing or zoning, you've not provided us any predictability, you've not provided us with anything but additional taxes and SIDs to pay for future growth, failing systems and other problems that you have deemed to be driving this project. Many of my neighbors feel that you are selling them to the City of Missoula for a nominal fee at a major expense to them. You argue that the large landowners and developers are paying the largest share. The way this is figured currently, based on the size of parcel, the folks with two to twenty acres are getting hit the hardest. The people that have small ranchettes, if you will, the people that have 4-H projects, a couple of horses for their children or have been fortunate over the last 20 years to acquire some elbow*

room for their families, these are the people that are being hit the hardest. The folks that I know that have these parcels have no intention of subdividing their land. In fact, many have covenants or restrictions that won't allow them to do so. You argue that covenants can be changed. Yes, only by a majority of owners within that subdivision. Why don't you ask these folks to sign a restriction that won't allow them to divide any further. Bottom line, these subdivisions are not designed for further development anyway, and if you take the time to drive out into these neighborhoods and look at each of these subdistricts, this would be very clear to you. If you look at the developer's share of \$3,000 per acre for raw land and divide this by six dwellings unit per acre, on an average, and some are probably looking at eight to ten dwelling units an acre and some are maybe looking at two to four, so I just used an average of six. The cost for the backbone to each of these buildable lots would be approximately \$500. The cost to me for the one buildable lot that I own, the one acre that I currently own that I have a working septic system on, that cost to me would be \$3,000. What is fair and equitable here. The current proposal based on the size of land is not fair to anyone in my opinion, except for the development community or the large landowners. Ann Mary has stated in public meetings that one of the driving factors to this proposal are the development pressures, and I'm almost done. The other driving factor is El Mar Estates and Golden West systems are failing. Who actually owns those systems. I believe the County of Missoula owns El Mar's system. If you have studies and reports that say these systems have failed, why have you continued to approve additional connections to the El Mar system. If my septic system fails at my house, I would be required to fix my problem. I think you should fix yours. It seems that most folks in El Mar are even, not all but some, are upset with this proposal even though they are paying considerable less than the people in River Heights, Clark Fork Estates and Golden West. If this system is truly failing and so detrimental to our aquifer which affects everyone in this valley, why don't you work to find some State or national funding to help solve these problems. If you have the knowledge there's other problems out there with clay soils, why do you continue to approve more subdivisions and continue to have parcels that are divided that have septic systems that we have knowledge that have failed. How can you look these folks in the face and tell them to fix their problems after the subdivisions have been approved. And I cite Country Crest and Mullan Trail as two examples. The fact is there is pending litigation from Mullan Trail and Country Crest at this time. It has not been cited in any of the public hearings that I have attended that this is part of the problem. And so I just wanted to put it on public record that many of us are aware of those situations. We need to talk about some bigger issues. We've got a doughnut bill issue, we've got a Lolo plan that's on the table, we've got a Wye/Mullan Road plan that hasn't been passed and we don't have at this time a growth policy in Missoula County and therefore we cannot get zoning on any parcels in the County, that's what we've been told. So all of this is on hold while we talk about this sewer. I suggest you go back to the drawing board and really take a look at what is important, get a real work plan, prioritize the projects that are based on State law and the needs of the taxpayers and not just extending the sewer out into this area. I realize we need additional housing in this community. I realize this is where it's going to go, but this is not the right proposal and this is not the right time. I would like to thank Commissioner Evans for taking a stand that has been very controversial and with her being an exception, I think it's time the County residents get some representation from County Commissioners that actually live in the County, not just in the City. I guarantee you the folks in this room and that have been testifying at these public hearings will not forget this at re-election time. Thank you."

Mike Flynn, 2275 Roundup Drive, stated that his comments were not directed at Commissioner Evans unless she had changed her mind on the proposed RSID.

Chairman Evans stated she had not changed her mind.

Mike Flynn stated his comments were addressed directly to Commissioner Carey and Commissioner Curtiss. There is not opposition to a sewer on Mullan Road. There is opposition to the cost projections and the timely manner in which it has been presented. His mother was on television the other night and he thought she did a pretty good job. He watched it on tape and saw Commissioner Carey's comments. He wanted Commissioner Carey to understand that the people understand that Missoula has no place else to grow. He has been out there for 53 years and his sister has been there for 57 years. His father was born there, his grandfather was born there. His great grandfather homesteaded there. They are well aware of what is happening on Mullan Road. Information has been requested on water quality issues, density issues and airport issues. None has been received. In a conversation he had with another man today, it was noted that Brian Maiorano, the Floodplain Administrator, is considering moving Grant Creek again, supposedly through his place. His place is being assessed \$3,000 an acre and if Grant Creek is indeed moved, does he get the money back for the land it takes to do that. Commissioner Evans mentioned on television that there was \$5.2 million available to Target Range for their sewer.

Chairman Evans stated that the City is putting roughly \$5 million into the Target Range project.

Mike Flynn stated that Commissioner Evans said she did not understand why more was not available for this project.

Chairman Evans stated that her comment was that these folks were just as deserving.

Mike Flynn stated they believed they are too. It has also been said that at the present time there is no violation as long as the project is being believed on and outside money is being sought. His question was why is this being pushed through. Mike Sehestedt said that on RSID 8470, he wanted to wait and deal straight up with those people. He hoped his comments were being taped.

Chairman Evans stated they were being taped.

Mike Flynn asked why this RSID was not being allowed the same consideration. When this meeting was started, the Pledge of Allegiance was recited. The last three words are "justice for all." He was representing roughly 90% to 95% of the families in the area and some of the larger landowners. They have requested some legal counsel and have hired a lawyer. When the World Trade Center was bombed, President Bush went on television and said "make no mistake about my intentions." He wanted Commissioner Carey and Commissioner Curtiss to make no mistake about their intentions. They have legal counsel and will use legal counsel. He asked them to vote their conscience but to remember that this is not over until it is over.

Jim Carlson, Director of Environmental Health for the City-County Health Department, stated he urged the Board to create this RSID as the most economically feasible method of solving the problems of the multi-family systems at El Mar and Golden West, as a mechanism for honoring the County's obligation under the Voluntary Nutrient Reduction Program

(VNRP) and as a method of providing for the general public health and safety by protecting the Missoula sole source aquifer.

There were no further public comments.

*Commissioner Carey moved that the Board of County Commissioners adopt the Resolution of Intent to Create RSID #8471 for the Mullan Road Corridor Sewer Project.*

Commissioner Carey stated that if the Board waits on this project, it will be more expensive to homeowners. He thought it was the right thing to do in terms of protecting the aquifer, protecting the Clark Fork River. He felt it was the best thing to do in terms of installing infrastructure in an area where it is known growth will occur. If there was anything he could do to help the Flynns and whoever else wanted to stay in agriculture, he would do that. He is not trying to push anyone off their land if they want to farm.

Mike Flynn made the remark "Bulls--t!"

Chairman Evans asked Mr. Flynn to refrain from making such rude remarks.

Commissioner Carey stated that even though this is a new cost to people, he felt it was the most reasonable thing that they could do. If they wait another year or two, the cost will be higher.

Commissioner Curtiss seconded the motion.

Commissioner Curtiss stated her reasons were the same as what Commissioner Carey had stated. She felt this would affect some landowners harder than others. The highest costs would be for the subdistricts that do not have the pipes in the ground at this time. She felt the other Commissioners would agree that they will all put a lot of time, effort and planning into working to get Federal dollars or grants or whatever to help with the subdistrict costs.

*Chairman Evans called the question. The motion carried on a vote of 2-1 (Chairman Evans opposed).*

Chairman Evans stated she had given her reasons for voting no at the previous meeting. She does not disagree that the sewer is needed. It is needed. However, she did not believe that it is so critical at this point that this needs to be done today. She believed this should wait a year. The Department of Environmental Quality has said they could wait a year on the El Mar sewer system. It is her belief that once the backbone RSID is created, Congress will not replace the assessment to the residents and fund the project. They might be able to find funds for the subdistricts, but once this RSID is created, she did not believe Congress would remove that responsibility from the people and take it on themselves. The potential for the \$7.4 million that they have previously asked Congress for will not be realized if the district is created now.

Ann Mary Dussault stated that to clarify, the Board has passed the Resolution of Intent to Create RSID #8471. The next phase is that notice will be sent to all property owners in the district with the legal notice and a letter explaining the form in which a protest must be made.

Chairman Evans stated that letters previously written to the Board regarding this project do not qualify as official legal protests. A protest must be made after they have received written notification from the County.

There being no further business to come before the Board, the Commissioners were in recess at 2:10 p.m.

#### THURSDAY, NOVEMBER 29, 2001

The Board of County Commissioners met in regular session; all three members were present. Commissioner Carey accompanied David Thompson, Co-op Housing Consultant, to various meetings during the day both Thursday and Friday, November 29<sup>th</sup> and 30<sup>th</sup>. In the afternoon, Chairman Evans attended a Judicial Standards Commission Meeting held in Room 201 of the Courthouse.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 29, 2001, batch number 1678 (pages 1-4), with a grand total of \$51,917.42. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter of Support – The Commissioners, in a letter to Gary Morehouse, Montana Department of Commerce, fully supported MCDC's proposal to hire a Small Wood Enterprise Agent through Montana Department of Commerce fire funds. The Commissioners stated that rural Missoula County entrepreneurs will benefit from this project, as well as from the networking that the pilot project proposes.

Request for Action – The Commissioners approved and adopted the Larchmont Golf Course Annual Budget, Capital Replacement and Debt Reduction Schedule, and Fees for 2002.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### FRIDAY, NOVEMBER 30, 2001

The Board of County Commissioners met in regular session; all three members were present.

NOV 01 11:14

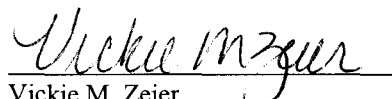
Claims List – The Commissioners signed the Claims List, dated November 30, 2001, batch number 1663 (pages 1-2), with a grand total of \$20,421.71. The Claims List was returned to the Accounting Department.

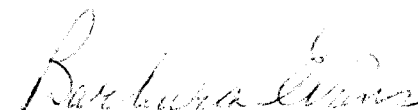
Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated November 30, 2001, batch number 1680 (pages 1-7), with a grand total of \$37,544.40. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Curtiss and Carey signed the Claims List, dated November 30, 2001, batch number 1681 (pages 1-4), with a grand total of \$50,602.44. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated November 30, 2001, batch number 1682 (pages 1-2), with a grand total of \$4,244.67. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 24 - Pay Date: November 30, 2001. Total Missoula County Payroll: \$847,431.90. The Transmittal Sheet was returned to the Auditor's Office.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chair  
Board of County Commissioners

MONDAY, DECEMBER 3, 2001

BOOK 002 PAGE 0175

The Board of County Commissioners met in regular session; all three members were present.

Site Inspection

In the afternoon, Chairman Evans accompanied County Surveyor Horace Brown on a site inspection for the request to vacate a portion of Highland Drive and Dundee Road south of Lolo.

Monthly Report - Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending November 30, 2001.

Monthly Report - Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending November 30, 2001.

TUESDAY, DECEMBER 4, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List - The Commissioners signed the Claims List, dated December 3, 2001, batch number 1686 (pages 1-2), with a grand total of \$449.90. The Claims List was returned to the Accounting Department.

Claims List - The Commissioners signed the Claims List, dated December 4, 2001, batch number 1683 (pages 1-5), with a grand total of \$63,260.37. The Claims List was returned to the Accounting Department.

Plat - The Commissioners signed the Plat for Wornath Orchard Tracts No. 3, Lots 1-A & 1-B, a two-lot subdivision of Lot 1, Wornath Orchard Tracts No. 3, located in the SW¼ of Section 2, T 12 N, R 20 W, PMM, Missoula County, with the owners of record being Tyrone G. and Nancy M. Anderson.

Monthly Report - Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending November 30, 2001.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter - The Commissioners signed a letter to the Data and Statistics Bureau, Montana Department of Transportation, Helena, Montana, certifying the rural road mileage in Missoula County for the purposes of fuel tax allocation. The letter was returned to Greg Robertson, Public Works Director, for further handling.

Contract - The Commissioners signed a Section 5303 (Federal Transit Act) Contract between the State of Montana Department of Transportation, Transportation Planning Division, and the Missoula Office of Planning and Grants ("OPG") for the provision of Federal funds which represent part of the budgets for OPG and Mountain Line (Missoula Urban Transportation District). The OPG will receive \$57,321.00, representing 80% federal share of the total cost of \$71,651.00. The term will be October 1, 2001 through September 30, 2002. One original document was returned to Dave Prescott in the OPG for forwarding to the State.

Board Appointment - The Commissioners approved the reappointment of Roy F. Kimble to a three-year term as a member of the Missoula County Tax Appeal Board. Mr. Kimble's term will run through December 31, 2004.

Chairman Election - The Commissioners elected Jean Curtiss as 2002 Chairman of the Missoula Board of County Commissioners. Commissioner Curtiss prefers to be referred to as "Chair" Curtiss.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

WEDNESDAY, DECEMBER 5, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List - Chairman Evans and Commissioner Carey signed the Claims List, dated December 4, 2001, batch number 1687 (pages 1-5), with a grand total of \$113,460.92. The Claims List was returned to the Accounting Department.

Claims List - The Commissioners signed the Claims List, dated December 4, 2001, batch number 1688 (pages 1-3), with a grand total of \$3,508.62. The Claims List was returned to the Accounting Department.

PUBLIC MEETING - December 5, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, Deputy County Attorney Colleen Dowdall, County Public Works Director Greg Robertson, County Clerk and Recorder/Treasurer Vickie Zeier and County Surveyor Horace Brown.

Pledge of Allegiance

Public Comment

Jim Mocabee, 1540 Topaz Drive, stated that last Monday night a group of citizens gathered at Hellgate Elementary, about 300 to 400 people, to discuss the creation of the sewer district on Mullan Road. The Commissioners felt it was not

necessary to have a meeting when the citizens could actually attend, which he felt was unfortunate. The meeting last Monday started at 7:00 p.m. and was over by about 9:30 p.m. A lot of questions came up and folks had a lot of concerns. The only way those can be addressed is through the Public Comment period today. He asked the Commissioners if they would hold a meeting so that people who work for a living could attend and have a proper hearing. The letters of protest for this RSID are to be mailed to the Clerk and Records Office. Who will make up the canvassing board to go through those letters of protest. At the meeting last Monday the citizens had an election of sorts and there is a group of individuals that should be represented on the canvassing board. The citizens feel they should have representation on the canvassing board. The statutes read that a "yes" vote means nothing is done and a "no" vote means the people need to organize. That is totally wrong as far as how elections should be held. He would like to know to what threshold the letters of protest will be held. Many people did not receive a letter regarding this RSID. Many people have also had their property rights given away that they were not aware of and he would like to know how that would be handled. Many people may not know what their legal description is and he wanted to know if an address would suffice, along with signatures, as a valid protest. When was the mailing list that was used last updated and can they get a copy of the list. Leaseholders who are in possession of property have a right to protest. He wanted to know if they were notified. As this is a water quality issue, they would like to know if an EIS was ever done for this project. How many test wells are there in the district and what are the results of those test wells. The answers to his questions are vitally important and should be answered as soon as possible. There is not a lot of time during the protest period to respond and act. He wanted to know when the answers to his questions could be received.

Vickie Zeier stated that the all the protests will come to the Clerk and Records office and each will be date and time stamped and assigned a number, in case any citizen wants copies of the protest letters. The protest letters need to have the signature of all the owners, but the signatures don't have to be all on the same letter. The protests will be entered into a data base. If a letter comes in one day with the wife's signature and a letter comes in the next day with the husband's signatures, both will be entered. Those will be compared to the names of record. If both names are listed as registered owners, that property will be listed as having a valid protest. The data base has a comment field as well, which will include details of whatever happened. If there is a waiver on the property and a protest is received, that will be noted. She was not sure who would be on the canvass board at this point. She will be on it for sure and probably the person who works with RSIDs, Jesse Sattley, Deputy County Attorney Mike Sehestedt and probably the Chief Financial Officer Dale Bickell.

Jim Mocabee stated he would appreciate it if one of their representatives could be on the board.

Vickie Zeier stated he would have to check with Mike Sehestedt to have a representative present. He could view the data base at any time, or the protest letters. She hoped to have them processed on a daily basis.

Commissioner Curtiss stated that two years ago the City of Missoula spent \$500,000 doing an EIS on the master plan for their sewer. It is about three inches thick. It could be found at the City Public Works Department and is also available at the Health Department. In the contract with HDR, who will oversee this project, at the point where the whole system is designed, it is a requirement to have an environmental study done that will be reviewed by the Department of Environmental Quality and the State revolving fund, the financier of the project.

Jim Mocabee asked if it would make more sense to have an EIS prior to that time, if this is truly a water quality issue, to see if there is a need.

Commissioner Curtiss stated that was addressed in the City's study. Mr. Mocabee was welcome to read that study. If someone wants the study, it would cost them whatever Kinko's would charge to copy it.

Jim Mocabee stated it was his understanding that this area was not included, but he has not read the report.

Commissioner Carey stated that the water quality experts have consistently urged the Board to do this sewer.

Jim Mocabee stated there was a conversation with the folks from Target Range who created their own sewer and water district. They said that the current septic systems are more efficient than the current sewer treatment plant. The effluent that is dumped into the river is not as efficiently cleaned as what a septic system does.

Commissioner Curtiss stated she had talked to Jim Carlson about that. He said that septic systems clean one part of the effluent, but the bacteria, viruses and nitrates are better removed by a sewer system. The Health Department is really who Mr. Mocabee needs to speak with. There are several people who would like to speak today, and all his questions cannot be answered.

Jim Mocabee stated that the efficiency of the sewer treatment plant is actually lower than a good septic system.

Commissioner Curtiss stated the difference is septic systems affect the ground water, the sewer plant goes to the river after it has been treated. Mr. Mocabee needed to speak with Jim Carlson to answer some of his questions.

Jim Mocabee stated that the mixing of the effluent into the river, in a five to nine mile mixing zone, is not as efficient as a septic system. With a septic system, to reach ground water, if it ever would, it would have to go through 100 feet of clay.

Commissioner Curtiss stated that Jim Carlson would be able to answer those questions.

Chairman Evans stated they would move on to Mr. Mocabee's other questions.

Vickie Zeier stated the mailing list came from the tax role information. If a change is noted that was not reflected on this list, after verification, that person is sent the information. The changes are ongoing.

Jim Mocabee asked how quickly the list is updated. They have found that numerous individuals did not receive letters and may have had property changes up to 18 months ago.

Vickie Zeier stated that the tax roles were used. She did not personally prepare the list. She has received a couple of calls about changes. Those have been verified as to the owner of record, and if verified, they have been sent the information. Those changes are ongoing.

Jim Mocabee stated those people lose part of their time to protest. He asked about leaseholders, according to statute 7-12-2110, leaseholders in possession of property.

Vickie Zeier stated she did not have the answers to the leaseholder question.

Jim Mocabee stated that large tracts of land that will be voting on this proposal are under lease.

Vickie Zeier stated she did not prepare the list and did not have the answer to the leaseholder question. Her part in the process is to verify the protests. She could not answer questions as to how the list was created.

Chairman Evans stated that Mr. Mocabee could have a copy of the list, it is a public document and available to anyone who asks.

Commissioner Curtiss stated it was available on the Internet and was also distributed in the packet at the hearing on November 21st at the Library.

Jim Mocabee stated his question was regarding the leaseholders.

Commissioner Curtiss stated the legal questions would need to be answered by counsel. The attorney who could answer those questions had to be in court and was not available.

Jim Mocabee asked if it was understood about his concern with the leaseholders. The large landowners who have land under lease could affect the outcome.

Colleen Dowdall stated she would relay the questions to Mike Sehestedt.

Jim Mocabee asked when they could expect an answer.

Colleen Dowdall stated she did not know.

Chairman Evans stated they would try to answer the question by tomorrow. Regarding his question about the number of test wells, that could be obtained at the Health Department.

Commissioner Curtiss stated that some of the technical questions could be better answered by Jim Carlson or Peter Nielsen at the Health Department.

Jim Mocabee stated he would prefer to have those on public record in the minutes so there is something to refer back to. He would like to get answers in this fashion.

Chairman Evans stated there was a week between meetings. If he wanted the information sooner than that, he would have to contact the Health Department.

Diane Beck, 8190 Haven Heights Road, stated she was not representing any groups or organizations. She was a concerned, tax paying neighbor. She wanted to go on record to say that the community meeting that was held on Monday was attended by well over 300 people. Many people indicated that they did not receive notification as of late last week. The question was asked if some did not receive official notification of the proposed RSID. About 50 people responded that they had not. Many people said they had not heard about the previous public hearing that were held by the Board, had not received information on their subdistrict costs, had not received any information during the summer. There was a large time span between the neighborhood meetings in April and when the last public meetings were held. Her phone has been ringing, people are asking her what is going on, why have they not received notice. How could over 300 people attend the meeting last Monday. Her answer was that most had received a very disturbing letter over the weekend, with a large sum of money attached. It is unfair that people who own property in the district did not get notice. That is a major flaw in the process. She talked to someone who purchased her home in December of 1999 and did not receive notice. Another person who now lives in Stevensville and does not own property in the district received a notice addressed to him and his deceased wife at his Stevensville address. She went through the list and identified about 70 properties that have sold. That is not fair to the current property owners. These people did not have a problem getting their tax bill. The original mailing that went out last Friday did not include a map of the district as was referenced in the letter. Those maps went out yesterday. The 34 cents to mail each map is taxpayers money not well spent. Sending a map after the fact is questionable and not fair notification. This is not about sewerage the Mullan Road area. This is about fair and equitable distribution of costs and fair and equitable representation by the County Commissioners. They meet to listen to the people and had a great opportunity two weeks ago to hold another public hearing and chose not to. There were at least ten people who asked that they hold one more public hearing in the evening and they chose not to do that. That is unfortunate and today there are a lot of upset citizens present. They will not let themselves be sold to the City of Missoula under any circumstances nor impose a large tax burden to benefit past mistakes, future development and the Mayor's desire for more tax base. This extension of sewer has been presented for all the wrong reasons. They knew that Orchard Homes and Target Range would protest such an action so the Mullan Road people were targeted. She felt this should go back to the drawing board. Give the people an area plan, a fair distribution of costs and due public process. It is expected from elected public officials. She thanked Commissioner Evans for making a very tough decision based on economics and listening to the public protests and standing up for a fair process. At least someone was willing to listen. Perhaps the legislative representatives will listen as well.

Jean Sautter, 2490 Peregrine Loop, stated she had a copy of the legal notice from Sunday's paper. The legal notice says that a map of the proposed district accompanies it. No map is included. She questioned the legality of the notice and time frame based on it. She was active in a series of meetings several years ago regarding the Wye/Mullan plan. About three



years ago they were told that no decisions would be made until Laval returned from maternity leave. No meetings have been held since then. Next Monday at 7:00 p.m. at Hellgate School the resident will meet again and she publicly invited the Commissioners to attend the meeting.

Cheryl Groshelle, 2060 Cote Lane, stated she had some of the same questions as others. It looks like the taxpayers in this area are paying for the entire cost. The City is contributing only a little over \$760,000 to the project. Has anyone done any grant studies. There is money out there for this type of project. She owns one acre and, though she didn't know it, she cannot protest annexation. She is also limited to one family per acre. She cannot subdivide to absorb some of the costs. The same acre in El Mar has maybe four homes on it, and each home is paying one-fourth of what she is paying. The cost is figured at per square foot, why not per hookup. If she has a single family home with two people and someone in El Mar or New Meadows has ten kids, their impact will be greater than hers, yet they are paying one-fourth the amount she is. Why were there properties that had 43,000 square feet but only 20,000 was assessable. How was the decision made to charge people. She will be paying for the backbone system then have to pay \$950 for the privilege of hooking up and paying a monthly sewer charge. Why is she different than someone at El Mar or New Meadows. Her neighbors own just under four acres and own four times as much as she does and that is still a single family home. She felt this should be tabled for a least a year. The money spent on engineering costs would have been better spent on grant research to help the citizens pay for this. She had a problem with signing a contract that requires she not protest annexation into the City. She lived in the City and moved out for a reason. She is 3.5 miles from Reserve Street. She did not like someone tying her hands behind her back and plucking her wallet and telling her she has to like it. She did not like it and knew a lot of others that did not like it. Another concern was the scheduling of the meeting the day before Thanksgiving at 1:30 in the afternoon. She intended to come to the meeting but had to go out of town. Had the meeting been at 7:00 in the evening, more people could have attended. Most of the people that live in this area work, maybe earning only \$7 an hour, cannot take three hours off to attend a meeting, as the money may be the difference of buying milk for the children. This is going too fast. The process needs to be slowed down. There is no imminent danger to the ground water. Her well is 181 feet deep. Her septic system was approved by the County. Life expectancy on a drainfield and septic tank is 25 years. She will not get a rebate on her septic system when she hooks to the sewer. This whole process needs to be tabled while grant money is looked for.

Bill Holt stated he owns an acre at Country Crest and just built a new home. He did all the work himself. He has a nice home for about \$175,000 and \$45,000 of that was the ground. He put in a new septic system. He fought to get the drainfield moved so he could put the house on top of the hill. He hired an engineer to put the drainfield in. The covenants required him to install a step tank. He did the work himself but then was not granted a building permit so he had to hire a licensed bonded engineer because he was dealing with the City. It cost him about \$135,000 to build the house and it would have sold for about \$300,000 a week ago. It won't be worth anything if this project goes through. Everyone's property value will go down because a Realtor will have to disclose the cost of the sewer project. He has worked hard all his life and probably has the money to pay his share and will do so because his wife will not move again. He is a CPA and will help all his neighbors file for bankruptcy when this goes through. People are told what they can afford for a house payment. Now they have to pay this sewer bill too, which is okay as they have jobs. Perhaps the wife loses her job. Now two of the Commissioners, one didn't do this to the people, say that another \$255 a month will be needed to pay for this project. All that they have been shown is the backbone at \$3,000 an acre. That's a hell of a deal but doesn't include the subdistrict cost. His total is over \$18,000. He didn't mind the bill for the backbone but that meant he would be sucked into paying a subdistrict cost as well. He was crying at the meeting two weeks because he didn't feel well and couldn't believe the Board would do something like this to people. Normally, these folks deal with little school things and they want those and are told that on a \$100,000 home it's only \$100 a year. That is fine as people want their children to go to college, but those children may not get a scholarship like his son did. Those people will not be able to send their kids to school, they will be filing for bankruptcy or looking for an extra \$150 dollar a month instead. He has a nice sewer system at his place that works. He will make a living by going around with a backhoe and hooking people up who can't pay him because they can't afford to. He will organize the people. He will show them they have a nice school but can't send their kids there because they have to move. The people will study the law and not pay their taxes. This is \$1,500 a year to him, \$225 a month to his neighbor. They don't have that kind of money. They are maxed out like everyone else and would like to take a vacation. He could get a job and make \$20,000 a year. He didn't know what a Commissioner gets paid. The \$100 deal for the school is normally done. He doesn't smoke or drink enough to save \$150 a month. He could organize the people because this is a lot of money. This is more than rent. This is after he has already gone through all the hassle with getting his septic system installed, with the doughnut bill. They don't follow the law so why should he if this will bankrupt him. He acted like an idiot at the last meeting and did not want to do that which is why he wore his suit. He is not going down and will help the other people stay up. At least he went to the Commissioners meeting and said something when he should be putting cabinets in the house he can't afford anymore.

Tyler Jourdonnais stated that the citizens feel this process has been less than democratic. A fair portion of the people are not represented, are not receiving letters about this project. The mailing lists are not up to date. The Commissioners had to be invited to a meeting next Monday to get people talking. This is not a true democratic ideal. He wanted a role call vote and comment to freeze this process, slow down. There is no agenda that needs to be adhered to, put on the brakes until more information is received. He didn't think the Board had enough information from the public nor did the public have enough information from the Commissioners. He asked the Commissioners, one by one, to comment and vote yes or no on the question to freeze this process, please.

Commissioner Carey stated that he did not believe legally they could do that, but asked counsel for confirmation.

Tyler Jourdonnais stated he was not holding anyone's feet to the fire. This is a democracy. The people need to know what the Commissioners are feeling, where they stand on the issues. He is not asking for the moon. He asked them to please go ahead.

Commissioner Curtiss stated that decision would be made on December 19th. That is what the protest period does, give information to make that decision. An RSID is a legal document, it can't be stopped in the middle of the process.

Tyler Jourdonnais stated he disagreed strongly.

Koodie McLaughlin, 1629 Douglas Drive, stated she and her husband bought this property in 1995 and moved into their house over a year ago. To date, she had not received the RSID letter and have not been notified by the County of the impending RSID on the property. They do not know how much this will cost them and have not been notified of their rights in this situation. Yesterday, she called the office to get a letter. She was informed that the U.S. Postal Service was not totally reliable and was transferred to another office. The gentleman there was very helpful and said that the letter was sent to them, unfortunately it was sent to their old address. He assured that his office would mail another letter. Since their tax bill finds its way to their address perfectly, she was confused how the County could find and use their old address. The gentleman said he would update the data base that his office uses but could not update the data base nor guarantee that future correspondence from the County would reach their current address. This is because the data base used to determine the landowners of record came from the State. The State supplied the data base which the County is using for this RSID project. She submitted that if Missoula County could not locate she and her husband after they have owned their parcel for six years, then the County needs to review the accuracy and validity of its data base. Her main point is to express her concern regarding the inequity of funding for this sewer project. They don't object to hooking up to the sewer, but the project will be financed on the backs of the property owners. The outrageous assessments being demanded are based not on actual usage but on potential use. Because of this, they will be subsidizing the growth and development of the Mullan Road area. The growth is coming this way but it is unconscionable that through this funding mechanism they have lost control over the property they own. The Board have lost credibility as decision-makers and caretakers of the public good.

Kandi Mathews-Jenkin, 1211 Cooper Street, stated she was a resident of the City. She just came off campaigning for mayor of Missoula. During that campaign, the wastewater treatment plant was of great concern to the mayoral race, at least from her point of view. She did some investigation on the plant. To the best of her knowledge, there are about 100 miles of pipe through the City of Missoula and 70 of those miles have cracks and leaks through clay pipes. HDR Engineering that is designing this backbone, has a past employee of the State and of the wastewater treatment plant, Mr. Tim Hunter. He is in the process of helping design a sewer line that will fail because the sewer treatment plant is at its capacity or better. A different design firm needs to be involved in this, which she did not believe was even needed. A friend got information off the Internet for her from Fall River, MA, that is exactly like the situation in Missoula, where the mayor was trying to, for annexation purposes, was trying to push sewer into the area. The people had been told the septic tanks were polluting their ground water, lakes, whatever. An expert was quoted as saying that septic systems do a very effective job of treating wastewater, a better job than most sewage treatment plants, and are cheaper. The people in this area have not been given the option of looking at other systems. The lady who just spoke was correct when she said they are being assessed on developable property and not what is there. She took issue with Jean Curtiss. Jim Carlson and Peter Nielsen have a vested interest in this sewer system, it means a lot of work and future employment for them. There should be someone from out of state hired to do ground water quality checks. To the best of her knowledge, this valley has never had an environmental impact study, only assessments. Those are different. The City of Missoula and surrounding County area, from the dam to past the wastewater treatment plant, needs an EIS. Some of the people here have a vested interest in keeping that information out, because it would show that the facts are skewed.

Commissioner Carey stated that in defense of Peter Nielsen and Jim Carlson, who are not present, whether or not this sewer goes through won't affect their time of employment with Missoula County. They have plenty of work to do whether or not the sewer project goes through.

Diane Sharbono, 2160 Chickadee Drive, stated that they were still employed by the City and County and that gives them not necessarily an unbiased opinion. She has lived in El Mar Estates for over 20 years. She agreed with everything that everyone has said. Her one demand is to have another public hearing in the evening so people like her husband, who can't get off work, can attend. Her husband was involved with Doyle Riley, the man who maintained the El Mar Estates sewer system until the County took it over in 1994. Her husband has a lot of knowledge about the system as to its past capabilities and functioning. The County has an agenda they are trying to push which has nothing to do with water quality. The Board needs to hear the people who live out there and allow them to have another chance to speak. That means a meeting in the evening when people who work, and most work so they can pay their taxes, can attend so their views can be heard.

Holly Raser, 4304 Spurgin Road, stated she was not a resident of the Mullan Road area but was the elected representative for the area, House District 70, which covers Target Range, Orchard Homes and the Mullan Road area, up to Evaro. As elected officials, their job is to represent the interests of the people. She listened to the people who are concerned about this project last Monday night at the meeting at Hellgate Elementary. Very interesting, thoughtful, concerned questions were raised about important issues affecting the residents. Her major concern is the lack of ability for most people to attend the public hearings that were held. As elected officials, their job is to listen to the people they represent. They have every right to hold their elected officials accountable to listen to them as they were asked for their vote. The job is to listen to them at a time that they can speak. Like many others, she took a half a day off work so she could attend this meeting. It should not be an imposition for people to speak their mind, it needs to be easy for them and the elected officials should be imposed upon. She addressed Commissioner Curtiss personally as they had walked around El Mar Estates about a year ago. When they were going door to door they told people they would listen to their concerns and would represent their interests well. This is time those interests need to be represented by listening. Please reconsider and hold another public hearing to listen to these people's concerns.

David Bauer, 119 New Meadows, stated that over 10 years ago they moved to Mullan Road to get out of the City, to get away from the school district. Hellgate Elementary is one of the top rated elementary schools in the State. They did not want to be part of Missoula which is why they moved to Mullan Road. They like the space. He felt Commissioner Carey was very closed minded about this. That is unacceptable. Commissioner Carey told him he was being misinformed by the information they had gathered and he thought that was false. Testimony has been heard from credible people today about the facts of what is going on out there. He felt this was a ploy to annex this area into the City, which is unacceptable and nobody wants that. They didn't move out there to become part of Missoula. He knew Doyle Riley and it is a tragedy that he died. He took care of the El Mar Estates sewer system and it worked fine. The system didn't start going downhill until 1994 when the County took it over. If the system was maintained right, it would be fine for the population it serves. Why should they believe the County could do any better with the system that is planned. Why doesn't the County maintain the system. There is a concern about open space. They have open space out there and want to keep it. Why is there such a willingness to get this system put in so the area can be annexed so there can be apartment buildings on every corner. He

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did not understand and would like an answer. Why is open space acceptable in some places but open space in this area is more profitable to develop.

Tom Bears, 8150 Lazy H Trail, stated this was the first meeting he had attended and he had to take time off work. He does not read the newspaper. He was amazed how many people showed up at the meeting last Monday. He did not receive a notice on this proposal. He has moved quite a bit and has always registered to vote, he believed in his right to vote. He thought the protest was a big scam. More than 50 people attending the meeting last Monday had not received a letter. If the big guys that own all the land out there don't protest and half the letters to those that can protest are not sent out, this is a shoe in. He wanted to know how the Board voted on this and how this got passed when he just found out about it. Commissioner Curtiss said people could go read a report. If the Board couldn't take the time to figure out why they are voting it in, he wondered why they were sitting in those chairs. If they don't know the answers, how could they vote. Without all the information, he doesn't make a decision at work.

Commissioner Curtiss stated that she didn't say she didn't know, she said she didn't have the report with her.

Tom Bears stated that Commissioner Curtiss said people could go read it, it was very thick. He hears all the reports about how the current system in the City is leaking and they want to add to it. Don't fix the problem, extend the problem. He is not saying whether it is or is not needed out there. Government is a business and should be run like a business. Over 1,500 people in the City, west of Russell, aren't even hooked to the sewer and more is being pushed. He grew up in this town, in the Rattlesnake. Now that is part of the City. His in-laws street has never been plowed since they were annexed. When it was part of the County, it got plowed. It is less than four houses from a school. He told the Commissioners they were more than welcome to come to his house and have dinner and talk to his daughter. They bought this property to buy her a horse but they cannot afford to now because of this project. Where he came from, he had five acres and a brand new 34,000 square foot house for \$145,000. He elected to come here. He bought a house that needs a bit of work. He cannot afford a horse or feed with the increased taxes that are coming. The County should go after money that is available. He did not get a letter and was not able to protest. There needs to be a vote at a central location. It is not right that so many people did not get letters.

Donald Polinski, 2005 Flynn Lane, stated that in 1947, his parents bought the land that he now owns. In 1950, he, his brothers and parents dug a cesspool, 19.5 feet deep, dug by hand and rocked by hand. That same cesspool is still there and still in working condition. Since then, he has put in a rental unit and a drainfield, in 1976. That is still there and still working. Where the idea is coming from that all these systems are failing is a mystery to him.

Norm Schmautz, 8028 Haven Heights, stated that his understanding was 66% of this project is large landowners and 33% are homeowners. He has been to several meetings and only two large landowners, Mr. Flynn and Bonnie Snively, have attended. He has not seen any other large landowners which means they are probably in favor of the project. Have any of them waived their right to vote.

Chairman Evans stated she believed they have indicated support for the project.

Norm Schmautz asked what percentage of the 33% of homeowners have waived their right to vote.

Chairman Evans stated she did not have those numbers at this time but it could be provided if he wanted to see it.

Norm Schmautz stated he wondered why these meetings were even being held if there is that amount of people that are in favor of the project. Why was this process even being done, just tell the people that it will be done. They don't have a say. No water study has been given although it has been asked for. They have never been shown that anything is wrong out there. This has nothing to do with having water quality problems. This has to do with people who want to develop out there. He cannot afford \$40,000 so someone else can put lots in there and have \$5,000 or \$6,000 in the houses. There is a lady who has a \$73,000 bill for the backbone. He asked Commissioner Carey to tell him that was as cheap as it gets, she should do it now because that is the best price.

Commissioner Carey stated that in his view it was cheaper to do it now.

Norm Schmautz stated that in other words, she could lose her house now.

Commissioner Carey tried to respond to Mr. Schmautz but was not able to speak as the audience was making too much noise.

Chairman Evans asked the audience to please refrain from being so critical and nasty. She would like them to be courteous.

Norm Schmautz stated that if this is the way that Missoula is growing and this is the way this should be done, they should look at it as a Missoula County problem, let people get involved. This shouldn't be on the backs of the people that are out there. 33% of the homeowners will pay a lot more than the large landowners who will develop their land and profit from it. Mr. Flynn will be told that after 125 years of farming out there, he is done. He will either have to sell or lose his property.

Dalton Tessier, Lazy H Trail, stated that he has tried to remain objective during this process and it gets more challenging all the time. At previous meetings, it has been said that sewer is a good idea. His wife says a new car is a good idea, but he can't afford it. Commissioner Curtiss said it is only 4.5% interest, but he could get 0% financing on a car, and he can't afford either. The issue is justification. There is no cost benefit justification for this project. He was in favor of the sewer until last week, if the price was right. Now he could not find a reason to be in favor of the sewer under any circumstance from the information presented at the last meeting. There is no justification, the cost benefit is not there. As representatives of the people, the Board is not presenting a case to sell to the people, but shove it down their throat. It doesn't work.

Lou DeMarois read something from the newspaper which had to do with what Mr. Byrne has gone through trying to get some land subdivided. It states, in reference to the growth policy as per Senate Bill 97, "a law passed in 1999, directing counties to write comprehensive growth policies that would guide new construction and development. The requirements for a growth policy apply to the adoption of zoning regulations. After October 1, 2001, comprehensive plans take the existing facts about an area, how many homes, how much developable land, floodplain, and sort through the future needs of the community, expected businesses and residential growth, projects already in progress. Then the plan suggests ways of different bits of land should be used, because much of the County land is unzoned. Comprehensive plans are often the only guideline when an argument arises about how a piece of property should be developed. There are many new growth policies in place or under construction in Missoula County. The City and County governments finished a comprehensive growth management plan for the main urban area just before this law was enacted. But the County-wide growth plan has not been recently changed. That led Deputy County Attorney Colleen Dowdall to advise Missoula County Commissioners to stop making zoning changes after October 1st, until they draft a new growth policy that meets SB 97 standards." Has any of this been done.

Commissioner Curtiss stated that the Mullan Road area was in the Urban Growth Area which was redone in 1998.

Lou DeMarois asked if sewer was taken into account in 1998.

Commissioner Curtiss stated that the area was also included in the wastewater treatment area, which shows the areas where sewer should and would be expanding.

Chairman Evans stated that if Mr. DeMarois was asking if the County had a growth policy, the answer was no. The process will begin shortly and should be complete within six months.

Lou DeMarois stated that later in the article it says, "if the proposed \$7.4 million sewer line is approved for construction in the Mullan Road area west of Missoula, many property owners there say they will be forced to sell their land to meet the tax bill." The rest of the article says that it can't be determined how the growth will be handled. If there is not a growth plan, why is this even being done. It makes no sense.

Commissioner Curtiss stated that subdivision requests are required to be dealt with in 60 days. That is why long range projects get put on the back burner, as there is no required deadline. The Wye/Mullan plan ....

Lou DeMarois interrupted and said the Wye/Mullan plan is not done.

Commissioner Curtiss stated that it is the next project on the agenda to be finished.

Lou DeMarois stated that plans are being shelved that have been started to throw a new plan into the mix.

Commissioner Curtiss stated that the Board was able to multi-task.

Commissioner Carey stated that there was a long period of time when the planning office was understaffed for a number of reasons. They have just recently hired a sufficient number of planners to begin to work on the Wye/Mullan plan. Two of the most experienced planners have devoted the last eight or nine months to the Lolo plan, which was also behind for a number of reasons. Resources are being marshaled to deal with this problems. Taxes were raised slightly to hire a couple more planners. The question of why the Board would subject itself to this kind of name calling is a good question.

Lou DeMarois stated that nobody has called anyone names.

Commissioner Carey stated that someone called him closed minded today, that's a name. He and Commissioner Curtiss are voting for this because they believe it is the right thing to do. Commissioner Evans is voting her way because she also believes it is the right thing to do.

Lou DeMarois asked how it could be justified to make a few developers happy and upset the rest of the people.

Commissioner Curtiss stated that is not the reason this project is being done.

Commissioner Carey stated his reasons again, even though people don't believe him. He felt this is the least expensive time to do this. The burden should go to the larger property owners and they are paying two-thirds of the cost of this backbone system. He believed that water quality was an issue that they must, as responsible public servants, deal with, sooner rather than later. Those are his beliefs.

Lou DeMarois stated that he respected that, but at the same time he felt that not enough time and study had been done to find out about the water quality problems out there. He did not think that was known.

Commissioner Curtiss stated that they do know. There are many studies that have been referred to that are available for anyone to read. That is what their decision is based on.

Lou DeMarois stated that Dan Harmon had been asked for the water quality reports and they have not been received. Ann Mary Dussault had said she would provide a list of the those in the district and that has not been received.

Commissioner Curtiss stated that the list of people in the district was provided at the meeting at the library.

Lou DeMarois stated that he may have overlooked it. But the water quality stuff has not been received. Could Commissioner Curtiss make a phone call to have the information released to him.

Commissioner Curtiss stated that if would write down what study he wanted, it would be made available.

Lou DeMarois stated he wanted everything. He felt the cart was before the horse. Based on the article in the newspaper, it looks like they are pushing this project through. It seems like all the systems are overloaded and another one is being added to mix everything up.

Commissioner Carey stated there has been a large, state-wide debate over the growth policy bill. Some people think it has to be done in a certain way, other people think it doesn't. That has to be sorted out before people are committed to the task. They want to make sure that what is done is what has to be done, nothing more and nothing less. They are trying their best to use the resources efficiently.

Lou DeMarois stated he understood that, but why not wait until everybody is in place, get the plan in order and then dictate how the properties should be divided.

Commissioner Carey said again that he felt it would be more expensive for all the people if they wait.

The audience became disruptive again and Chairman Evans asked for calm.

Commissioner Carey stated he was paying for this politically, it was very unpopular. But he believed it was the right thing to do.

Don Schmutz, 8050 Lazy H Trail, stated he was against this wholeheartedly because not enough time has been taken to think the project through. It is too much money for the individuals, a lot of people are going to lose their homes. He felt Commissioner Carey and Commissioner Curtiss didn't care if people lost their homes or not. All they want is their job. The golf course is not going to pay for this. He is not going to pay for part of his land too and make a putting green on it. When people walk around a golf course, they are making money for those that own it. Why shouldn't they pay for that 160 acres. The County should go back and get their heads on straight and figure this out better.

Chairman Evans stated she would like to correct a misunderstanding that if the sewer project is created the County will be given the golf course. That is not true.

Pete Deneault, 147 New Meadows Drive, asked if anyone had seen the study that Jeff Smith from the Clark Fork, Pend Oreille Coalition did in 1995 that stated then that the wastewater treatment center was overloaded and suggested a ground-based application for it. In that study it also states that the Missoula wastewater treatment center is the single largest nutrient polluter from Butte to Lake Pend Oreille. These are issues he would like answers to. If the wastewater treatment center needs to be upgraded and this area is on the sewer system, they will be paying for the upgrade.

Commissioner Curtiss stated the upgrade has already been budgeted for, it won't come from the money for this project. Construction is scheduled to begin in the spring and part of the upgrade is to provide more nutrient removal than it does currently. It does meet all Federal guidelines currently.

Diane Beck stated that she wanted to correct Commissioner Curtiss. A portion will go to the upgrading of the sewer treatment plant, in the way of the connection fee. The fee will be collected from the homes that hook up to the sewer system, existing and new, and will go to pay for the upgrade.

Commissioner Curtiss stated that was not for the upgrade as it was currently budgeted. That will go to future work on the system.

Diane Beck stated she would not argue with Commissioner Curtiss, but all new hookups as of December 1st are paying \$1,200. A portion of the sewer connection fee goes to the plant upgrade.

Commissioner Curtiss stated that was not part of the backbone fee. That is additional money that would be paid at the time of hookup.

Diane Beck stated the question had nothing to do with the backbone, the question was how much of the fees these folks are going to pay would go to the upgrade.

Commissioner Curtiss stated it was not part of the backbone project and it is only \$950 for this area.

Jim Mocabee stated he would like to speak to Commissioner Carey's statement about this being the lowest cost to do it now rather than later. If they wait and try and find some grant money, wouldn't they have a better chance of getting those grants if this was not already a funded project.

Commissioner Carey stated that if there was a Federal subsidy for this, it would be better to use that money to help homeowners rather than help large landowners. If there is a Federal subsidy, it would not come in time to still have this district in place. Many, if not all, of the large landowners will be lost and there will still be the need to sewer the area. The question then would be is there any Federal money and who will benefit the most. He felt hooking up the subdistricts is where that money should be spent as that is more expensive and where the help is needed.

Jim Mocabee stated that once the City annexes the area, what guarantees are there that any homeowner will see any help at that time. He thought that looking for the grant funds now would provide that guarantee. He can't afford the \$20,000 subdistrict fee.

Commissioner Curtiss stated those funds are currently being sought.

Jim Mocabee asked why do this now. It won't make a bit of difference if they wait until they know that funding is available. Why push it now.

Commissioner Carey stated that Mr. Mocabee asked his question and he will answer it. If they wait, it will be more expensive for Mr. Mocabee and all the homeowners. That is the reason he wants to do this now. It will be more expensive to the homeowners later.

Jim Mocabee stated he did not agree. He thought the grants funds should be found first.

Commissioner Curtiss stated that Mr. Mocabee had made his point and there were others who wanted to speak.

Chairman Evans stated that this comment section needed to move along.

Norm Schmautz asked if the Commissioners would be there Monday night.

Chairman Evans stated she would be there, but would not be able to answer all the questions that were asked.

Commissioner Curtiss stated she could probably be there, but it did not seem that the people wanted to hear the answers they were given anyway. There was a lot of misinformation given at last Monday's meeting by people who are disgruntled.

Chairman Evans told the audience not to shout questions. If they wanted to speak, please come to the podium.

Commissioner Carey stated that he would be there. He said that they all ran for office and are doing what they think is best. With this issue, it has been quite disappointing that they have received a lot of very abusive letters and phone calls. In many cases, people have called them dishonest, that they stand to gain, that they are with the City, etc. It is frustrating to be working hard to do the right thing and be getting that abuse from people. He may disagree with someone, but he does not personally attribute to them dishonesty and collusion and all the rest. It is not in their interest to make their constituents angry. What elected official in their right mind wants to raise the cost of living for the people who vote. Most elected officials will go out, like they do, and try to reduce costs and still provide good service.

Chairman Evans asked the audience once more to please be courteous. She asked that people who have not spoken yet be allowed to do so.

Norm Schmautz asked how this would raise the cost. Wouldn't the large landowners want in later anyway, wouldn't their costs be there also.

Commissioner Carey stated he believed the big landowners won't be around if they wait until a Federal subsidy could be found. That could take a couple of years. By then, the large landowners will have figured out another way to do sewer which will benefit them, that will leave the homeowners in a position to meet much higher costs, because there will be fewer of them to distribute the cost.

Norm Schmautz stated that if the sewer came out a few years from now, would the large landowners still be around.

Commissioner Curtiss stated they will find another way to provide sewer, whether it be their own system similar to El Mar or run a line straight to the sewer.

Norm Schmautz stated the people have all found another way, but they are included in this, so that confused him.

Elaine Poser stated she was a new resident in Country Crest. She did not like speaking in front of large groups. She was not pleased last Monday thinking about things that went wrong and things that went right, factual or not. It appeared people had done their homework to bring the information to the meeting. She had not received a letter, but considering the impact it has on everyone, it is the County's responsibility to update the list to include new homeowners. She can't afford an additional \$20,000 on the home she just bought. It doesn't matter if the previous homeowner disclosed the information or not. She is not going backwards. She knew about the lawsuit with Country Crest. Somebody needs to talk with her as a new homeowner to let her know what is going on. She spoke with a Commissioner and said that where she worked, if there was a public comment period, they were required by law to schedule them at different times of the day, different days of the week and in the evenings, to allow everyone to participate. The comment periods that counted did not happen in the evening. She would like to receive her letter. Her neighbor received a tax statement but did not receive a letter. Something is wrong and it is reducing the amount of time to protest. She did not know why this could not be stopped.

Duayne Garner, 2120 Tipperary Way, stated he did not receive a letter either and has lived there since 1986. He wanted to know why the County was so inept that the people on Mullan Road had to be in the City. Why does the County feel they have to be in the City, all they do is double taxes and get nothing out of it. He has tried to live out of the City his entire life because he enjoys open spaces. Now they are trying to eliminate the open spaces. The large landowners and those with one acre have been talked about. What about the medium landowners like him, he owns six acres. This will force him to go to a developer. He enjoys his land and raises a few cows. He can't do that anymore. He has put quite a bit of money into having a natural place with wildlife. Because he is not a major landowner, he is now being told he has to sell it. That is not right.

Debbie Brault, 7020 Mullan Road, stated her comment was to Bill Carey.

Commissioner Curtiss stated that comments should be directed to the Board, not someone specific.

Debbie Brault stated that Dave Tyson developed Mullan Trail. Mullan Trail is included in this RSID. If a large landowner does develop his land, then leave, won't the people that buy property and live there have to connect to the sewer like everyone else.

Commissioner Carey stated that he was not on the Board when Mullan Trail occurred. He was saying that this issue was for the backbone system. Those subdivisions whose systems are in trouble will need to hook up sooner rather than later.



That is a water quality issue. Over time, homeowners will be paying the cost of sewer hookup. He hoped that some way would be found to subsidize that cost. It is a mistake to wait and lose the ability for the current large landowners to share the greater burden of the backbone system, then have homeowners have a much higher cost to do the sewer. There is a steady stream of applications to subdivide land. As an administrative arm of the State, they are required to follow State law, that includes bond counsel. There were only a couple of options on how to assess this RSID. The fairest one was the current proposal. If they wait, the homeowners will inevitably pay more in the future. They are not asking people to come subdivide. He would rather see higher density development within the City. The City has a problem with that, as neighborhoods don't want higher density. The developers are faced with the question of where is the land available to develop. They look west of Reserve. The Board has to follow State law. If they deny a subdivision, they must support the decision with conclusions based on the law. Urban densities are headed west, that is where the land is to develop. They are trying to proactively deal with the growth that is coming. He and Commissioner Curtiss have taken an unpopular stand, but it is their belief that it is the right thing to do given what has and will happen in the area.

Commissioner Curtiss stated that any new subdivision would have to put in all the pipes necessary to hook to the sewer system, like everyone else.

Debbie Brault stated that she did not understand why the big push on the large developers if in the end the homeowners will still have to pay. If Mike Flynn subdivides 20 acres with one dwelling per acre, instead of Mike paying for those 20 acres, those people would pay. The end result will be the same.

Commissioner Carey stated that when the subdistricts come up, that would be true, but this proposal is for the backbone system. He has said several times that the Board will look for ways to subsidize homeowners for subdistrict costs.

Commissioner Curtiss stated there was some confusion about annexation. The City can annex legally by several methods. The County can't stop the City from annexing. What the County has done is negotiate with the City that they cannot use the "sewer" method for annexation until 2016 or until 50%+1 of the existing homes change ownership. There was a provision made to try and slow annexation from that method. Someday, all that area will probably be annexed into the City, that is a fact of life. State law would have to change if people don't like that.

Debbie Brault stated that if the large landowners do develop, they will contribute to this.

Commissioner Curtiss stated that was correct.

Chairman Evans closed the public comment section.

#### **Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$345,410.45. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Decision: Resolution of Intent to Create RSID #8470 (Construction of a portion of paved roadway known as Expressway Road from Butler Creek to DeSmet Road) Postponed from November 28, 2001**

Chairman Evans stated that this item was postponed to get a response from Montana Rail Link to make sure they had no problem with not closing the DeSmet crossing until the road was built. They have agreed to that "extension of the closure date from January 1 to a later date providing it is understood that the construction and completion of the road will be in the spring, as soon as weather conditions permit and the crossing then will be closed. The closing of DeSmet Road should not be extended beyond July 1, 2002."

Commissioner Curtiss moved that the Board of County Commissioners approve the Resolution of Intent to Create RSID #8470 for Construction of Expressway Road from Butler Creek to DeSmet Road, Missoula County, Montana. Commissioner Carey seconded the motion.

Bryce Bondurant stated he was representing Johnson Brothers. It was his understanding at last week's hearing that the protesters dropped their protest and agreed to a new allocation of the assessment. Mr. Sehestedt stated at that time that he felt the new allocation was workable. He wanted to know if those terms were accepted.

Chairman Evans stated Mike Sehestedt had advised the Board that was acceptable. The letter from Johnson Brothers et al. is on file.

Commissioner Curtiss asked if the motion needed to be amended to refer to the letter with the new financial distribution.

Greg Robertson stated that should be done.

Horace Brown stated that this is only for a portion of the road, from Butler Creek to DeSmet. Some of it has already been built. The motion should be amended to state that the RSID is only for a portion of the road.

Commissioner Curtiss moved to amend her motion to approve the Resolution of Intent to Create RSID #8470 for construction of a portion of paved roadway known as Expressway Road from Butler Creek to DeSmet Road, Missoula County, Montana. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved to amend her motion to refer to the November 28, 2001, letter from Reep, Spoon, Gordon PC, Attorneys At Law, as to the new distribution of the assessments for RSID #8470. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.



Chairman Evans called the vote on the motion to approve the Resolution of Intent to Create RSID #8470. The motion carried on a vote of 3-0.

*Reep, Spoon, Gordon PC, Attorneys At Law letter of November 28, 2001 as to distribution of RSID #8470:*

*This proposal is as follows for RSID allocation:*

- |   |              |
|---|--------------|
| 1. George and Dianne Grutsch property:  | \$ 20,162.55 |
| 2. Gary J. Gallagher, Trustee of the Gary J. Gallagher Revocable Living Trust property: | \$ 11,461.78 |
| 3. Douglas and Betty Purl property:   | \$ 16,978.72 |
| 4. Johnson property:  | \$116,396.96 |

*The above, together with the \$75,000 Montana Rail Link contribution, should equal \$240,000 of the proposed cost.*

**Decision: Request to Vacate a Portion of Highland Drive and Dundee Road (South of Lolo)**

Horace Brown stated the vacation has changed from what was requested. The Dundee Road vacation will extend to the new road that is being built instead of to the mid section line and will intersect the new road and extend to the boundary of the new road. Highland Drive will be vacated from the mid section line of Section 15, Township 11 North, Range 20 West, to the north line of Lot 45 in the Orchard Tracts. Also, there will be two cul-de-sacs. One will be on the end of the area that is not being vacated at the north line of Lot 45 and will be a 50 foot radius cul-de-sac. The other new cul-de-sac will be on the north line of Lot 45 and Lot 21, and will also be a 50 foot radius cul-de-sac. These cul-de-sacs will provide a way to turn around on the end of the dead-end roads.

Nick Kaufman, WGM Group, stated that he appreciated the time the County Surveyor and the Public Works Department spent in processing this request.

Chairman Evans stated that she inspected the site with Horace Brown and concurred with his recommendation.

Commissioner Curtiss moved that the Board of County Commissioners approve the petition to abandon Highland Drive and Dundee Road as described by Horace Brown and as shown on the map provided. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Establish Spring Hill Drive as a County Road**

Greg Robertson read the staff report.

This is a petition to establish "Spring Hill Drive from Mill Creek Road to and including portion of Circle View and Spring Hill Drive owned by the National Forest Service, located in Sections 25, 26 and 36, Township 15 North, Range 21 West, Missoula County, Montana."

The reasons for the request are as follows:

1. To make safe the current passageway over Mill Creek as the current culvert is dented, has lost its integrity and poses a safety hazard.
2. To have regular maintenance on that portion of the road by having the County maintain it.
3. To restore having the school bus come up to the Circle View split for the safety of the children.
4. To create and establish an RSID.

The following landowners have been notified: Gary and Colleen Dunlop; Leslie Ames; Jim and Carol Marsh; Robert and Kim Hendryx; Clarence and Catherine Miller; National Forest Service; Gil and Sharon Richards; Larry and Vivian Exe; Bob and Lynn Geis; Fred Gardner; Kevin and Lynette Sims; Garey Maxen Smith; James Davis; Hal and Cheryl Dorsman; Mark and Dianne Burke; Rueben T.C. Jessup; Dana and Donna Sprague; Jack and Cindy Sprague; Danny and Rochelle Wigal; Sunny and Jean Rockwell; Jim and Deanna Lamphier; David and Sherry Hunter; Erol Johnsen; Lois Richards; Gerald and Cindy Morris; Dennis and Sharon Bowman; Debra Hagendorn; Jeff and Kathleen Nerison; Ron and Terry Marsh and Richard and Linda Craig.

The petitioners have solicited funds through Fish, Wildlife and Parks to replace and upgrade the culvert and make it fish friendly.

It is recommended to approve the petition subject to the condition that an RSID be established to upgrade the road.

Chairman Evans stated for the record that a letter of protest had been received from James and Carol Marsh. She then opened the public hearing.

Larry Exe, 14825 Spring Hill Drive, stated that he had lived there for over 30 years. The culvert got squashed during a logging project about 25 years ago and has been getting worse each year. If it isn't fixed soon, it will cost more to fix it on an emergency basis than it will cost to fix the whole road. The safety of the school bus is critical. Because of the condition of the culvert and road, the school bus pickup is on Mill Creek Road, which is fairly heavily traveled. He hoped the Commissioners would approve the petition and begin the RSID process.

Commissioner Curtiss asked if Fish, Wildlife and Parks had agreed to help with the culvert.

Larry Exe stated that was correct. There may also be some fire money available because if something would happen to the culvert there would be no access to the other side of the creek in a fire emergency.

There being no further comments, the public hearing was closed.

Chairman Evans asked if this was a request for an RSID or a request to accept the road.

Greg Robertson stated it was a request to establish it as a public road. It is currently a non County-maintained private road. This is the first step in creating it as a public right-of-way with the condition that it be upgraded to County standards. It will then be accepted for County maintenance. An RSID is planned to upgrade the road.

Commissioner Curtiss stated the next step would be the RSID process.

Colleen Dowdall stated the process to create County right-of-way needed to be completed first. This is just like abandoning a right-of-way. The Surveyor and a Commissioner must conduct a site inspection before a decision can be made.

Chairman Evans stated that action on this petition would be postponed for one week until next Wednesday, December 12, 2001, to allow time for the site inspection. At that time, a report will be given and a decision made.

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

#### THURSDAY, DECEMBER 6, 2001

The Board of County Commissioners met in regular session; all three members were present.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Amendment – The Commissioners signed an Amendment to CM 8199(57) – 2001-Missoula TDM Planning between the Montana Department of Transportation and the Missoula Office of Planning and Grants and the Missoula County Board of Commissioners. Modifications were made because of savings in personnel due to vacancies while new employees were hired. Upon review and approval by The Missoula in Motion (“MIM”) Steering Committee and the Director of Planning and Grants, this amendment reallocates funds from “Personnel” into “Program Activities”. The effective date is October 1, 2001. The document was returned to Claudia Marieb, Director of MIM, for further signatures and handling.

Shoreline Permit – Pursuant to the recommendation of the Office of Planning and Grants, the Commissioners approved and Chairman Evans signed an application by Bill and Lori Lawson to replace an existing dock and construct a 434 square foot fixed dock on Big Sky Lake. The property is described as Lot X of the Fred Addition to Big Sky Lake Estates. The document was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Letter – Pursuant to the recommendation of the Office of Planning and Grants, the Commissioners approved and signed a letter to Karl Christians of the Department of Natural Resources and Conservation, Helena, Montana, requesting delaying formal FEMA adoption of the Grant Creek flood study.

Resolution No. 2001-108 – The Commissioners signed Resolution No. 2001-108, a resolution relating to the County’s Economic Development Revenue Bonds (Rocky Mountain Elk Foundation Headquarters Project), Series 1994, authorizing the execution of an Escrow Agreement and related certificates in order to defease and call for redemption of the outstanding Series 1994 Bonds. This Resolution authorizes the Chairman of the Board of County Commissioners and the County Clerk and Recorder to execute the Escrow Agreement.

Board Appointment – The Commissioners approved the appointment of Ray Vandelac as a member of the Lolo Water and Sewer Board (RSID 901). Mr. Vandelac’s term will run through June 30, 2004.

Other items included:

- 1) The Commissioners agreed to sign a letter for the support of the Biomass project. Dick King will be notified and asked to provide a draft of the letter.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

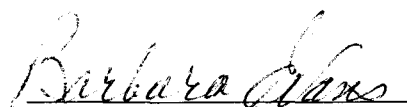
#### FRIDAY, DECEMBER 7, 2001

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out of the office all day.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 7, 2001, batch number 1684 (pages 1-5), with a grand total of \$13,665.60. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 7, 2001, batch number 1692 (pages 1-2), with a grand total of \$36,834.98. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, DECEMBER 10, 2001**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners attended a meeting with Mullan Area Homeowners at the Hellgate Middle School.

Plat – The Commissioners signed the Plat for Terrace Drive Addition, a rural residential subdivision, located in the SE¼ of Section 7, NE¼ of Section 18, T 12 N, R 19 W, PMM, Missoula County, a total area of 6.14 acres, with the owners/developers of record being Nader and Nancy Shooshtari.

Monthly Report – Chairman Evans examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending November 30, 2001.

Resolution No. 2001-107 – The Commissioners signed Resolution No. 2001-107, a resolution to abandon portions of Highland Drive and Dundee Road, and to create two cul-de-sacs.

Subordination of Mortgage – Chairman Evans signed a Subordination of Mortgage by Mortgage Consultants Incorporated in the amount of \$55,900.00 for Perri Knize. This is secured by a Deed of Trust dated December 13, 2001, and pursuant to a Subordinate Deed of Trust dated May 9, 1994, covering the premises described as Lots 21, 22 and 23 in Block 50 of Daly's Addition, a platted subdivision in Missoula County, Montana. The document was returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

**TUESDAY, DECEMBER 11, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Site Inspection

In the afternoon, Commissioner Carey accompanied County Surveyor Horace Brown on a site inspection for the request to establish Spring Hill Drive in the Mill Creek area as a County road.

Claims List – The Commissioners signed the Claims List, dated December 10, 2001, batch number 1693 (pages 1-5), with a grand total of \$43,271.06. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 11, 2001, batch number 1694 (pages 1-5), with a grand total of \$27,911.25. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 11, 2001, batch number 1695 (pages 1-5), with a grand total of \$70,768.71. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 11, 2001, batch number 1697 (pages 1-5), with a grand total of \$19,729.83. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 11, 2001, batch number 1698 (pages 1-3), with a grand total of \$4,063.11. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 11, 2001, batch number 1699 (pages 1-4), with a grand total of \$22,940.28. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 11, 2001, batch number 1700 (pages 1-3), with a grand total of \$28,096.50. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Castle's Acres, a four-lot subdivision located in the NE¼ of Section 26, T 13 N, R 20 W, PMM, Missoula County, with the owner/developer of record being Tim Creighton.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 25 - Pay Date: December 14, 2001. Total Missoula County Payroll: \$840,150.81. The Transmittal Sheet was returned to the Auditor's Office.

Letter – The Commissioners signed a letter, dated December 10, 2001, to the Mullan Road Corridor Property Owners regarding the Resolution of Intention to Create RSID No. 8471 for the construction of a sanitary sewer system. This notice was sent a second time to ensure that all property owners received it, as there were owners who did not receive the first notice.

Agreement – Chairman Evans signed a Construction Agreement between Missoula County Airport Industrial and The Montana Power Company for the provision of gas service to Trumpeter Way and West Harrier at Missoula Development Park. This agreement is in accordance with the applicable rules and regulations and at rates set by the Montana Public Service Commission, as set forth therein. The document was forwarded to Kathy Murphy at The Montana Power Company.

Agreement – Chairman Evans signed an Agreement between Missoula County and the Montana Department of Environmental Quality (DEQ Contract No. 202032; Federal Catalog No. 66,032), for the purpose of providing public information and outreach regarding radon. The total amount shall not exceed \$7,000.00, per the conditions set forth in the agreement. The term will be November 30, 2001 through June 30, 2002. The document was returned to the Health Department for further handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-011 for the Health Department, transferring \$59,727.00 from Source Water Protection/Perm Salaries Funds to Source Water I/Perm Salaries Funds. Fiscal Year 2001-2002 and Fiscal Year 2002-2003 contracts were combined for budget ease, and Title I funds have a separate subactivity for audit purposes.

Request for Action – The Commissioners approved the Park Board's recommendation to award matching grant money to the following parks:

- 1) Upper Linda Vista Homeowners: \$3,000 for installation of park equipment at Kelsey Park;
- 2) Swan Valley Elementary School: \$3,000 for new playground equipment;
- 3) Hellgate Lions Club: \$3,000 for new bleachers and horseshoe pits and improve parking area;
- 4) Mount Jumbo West Little League: \$3,000 to install fencing; and
- 5) Bonner Development Group: \$1,500 for additional funding for sealed vault toilet.

Signed Memorandum of Agreements will be forthcoming from the applicants for the Commissioners' signature.

Board Appointment – The Commissioners approved the reappointment of Dan Corti to a two-year term as a member of the Local Emergency Planning Committee (LEPC). Mr. Corti's term will run until January of 2004.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, DECEMBER 12, 2001

The Board of County Commissioners met in regular session; all three members were present.

Plat – The Commissioners signed the Amended Plat for Delight Subdivision, an amended subdivision plat of Lot 4, Hooker Addition, located in the E½ of Section 21, and in the NE¼ of Section 28, all in T 13 N, R 15 W, PMM, Missoula County, a total gross area of 146.22 acres, with the owners of record being Richard and Emily Delight.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Evelyn Robb as Principal for Missoula County Public Schools PR Department Warrant #74400, issued January 21, 2000 on the Missoula County General (201) Fund in the amount of \$221.92 (payment for substitute teaching), now unable to be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Robert L. Pettit as Principal for Missoula County Public Schools Warrant #72139, issued December 10, 1999 on the Missoula County Payroll Fund in the amount of \$1,050.40 (payment for wages), now unable to be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Kelsa Gallagher as Principal for Missoula County Public Schools Warrant #103389, issued November 21, 2001 on the Missoula County Payroll Fund (7842) in the amount of \$211.52 (payment for wages), now unable to be found.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Denis F. Joyce (for American Legion Post 63), Condon, Montana, as applicant for Accounting Warrant #400980 issued November 15, 2001 on the Missoula County 2210 Fund in the amount of \$1,150.90 (payment for matching funds reimbursement), which was not received in the mail (sent to wrong address). No bond of indemnity is required.

Letter – Commissioner Carey signed a letter, dated November 30, 2001, to Anna Miller, Department of Natural Resources and Conservation ("DNRC"), Helena, Montana, releasing the remaining funds (\$26,806) to DNRC on the Missoula County – Montana Western Fairgrounds WRF Loan (DNRC Drinking Water Revolving Fund Program). The original loan amount was \$233,000, and only \$206,194 was used for the municipal water system project. The letter was forwarded to Anna Miller at DNRC.

Waiver – The Commissioners approved a request for a waiver of penalty and interest for a 2000 delinquent property tax bill for Kayleen Zentner, 500 SW Higgins Avenue, Missoula, Montana, as the taxpayer never received the bill.

### PUBLIC MEETING – December 12, 2001

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Deputy County Attorney Colleen Dowdall, Chief Civil Deputy County Attorney Mike Sehestedt and County Surveyor Horace Brown. Commissioner Carey had a family emergency.

### Pledge of Allegiance

### Public Comment

Chairman Evans stated that the Board would hear Public Comments after action had been taken on the agenda items.

### Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$267,281.32. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Proclamation: Homeless Memorial Day in Missoula County**

Commissioner Curtiss read the Homeless Memorial Day Proclamation:

*WHEREAS, adequate housing is essential for healthy individuals, families and communities; and*

*WHEREAS, the combination of soaring housing costs and a shortage of both rental and single family housing stock has led to housing becoming increasingly inaccessible to a number of Missoula residents, many of whom are working full time; and*

*WHEREAS, 540 people in Missoula, 165 of whom were children, were homeless on April 25, 2001 (the date of a statewide homeless survey); and*

*WHEREAS, untold numbers of homeless families and individuals are living with relatives and friends; and*

*WHEREAS, each year too many people die alone in the cold; and*

*WHEREAS, December 21, 2001 marks the 11th National Homeless Memorial Day.*

*NOW, THEREFORE, WE, the County Commissioners of the County of Missoula do hereby proclaim **December 20, 2001 as HOMELESS MEMORIAL DAY** in the County of Missoula, Montana, and urge all citizens to learn more about the housing crisis facing our City and County and to contribute in whatever way they can to the care and shelter of the homeless in our midst.*

Commissioner Curtiss moved that the Board of County Commissioners sign the Proclamation designating December 20, 2001 as HOMELESS MEMORIAL DAY. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Decision: Establish Spring Hill Drive as a County Road**

This is a petition to establish "Spring Hill Drive from Mill Creek Road to and including portion of Circle View and Spring Hill Drive owned by the National Forest Service, located in Sections 25, 26 and 36, Township 15 North, Range 21 West, Missoula County, Montana."

The reasons for the request are as follows:

1. To make safe the current passageway over Mill Creek as the current culvert is dented, has lost its integrity and poses a safety hazard.
2. To have regular maintenance on that portion of the road by having the County maintain it.
3. To restore having the school bus come up to the Circle View split for the safety of the children.
4. To create and establish an RSID.

The following landowners have been notified: Gary and Colleen Dunlop; Leslie Ames; Jim and Carol Marsh; Robert and Kim Hendryx; Clarence and Catherine Miller; National Forest Service; Gil and Sharon Richards; Larry and Vivian Exe; Bob and Lynn Geis; Fred Gardner; Kevin and Lynette Sims; Garey Maxen Smith; James Davis; Hal and Cheryl Dorsman; Mark and Dianne Burke; Rueben T.C. Jessup; Dana and Donna Sprague; Jack and Cindy Sprague; Danny and Rochelle Wigal; Sunny and Jean Rockwell; Jim and Deanna Lamphier; David and Sherry Hunter; Erol Johnsen; Lois Richards; Gerald and Cindy Morris; Dennis and Sharon Bowman; Debra Hagendorn; Jeff and Kathleen Nerison; Ron and Terry Marsh and Richard and Linda Craig.

The hearing on this request was held on Wednesday, December 5, 2001. A site inspection was conducted by County Surveyor Horace Brown and Commissioner Carey on Tuesday, December 11, 2001.

Horace Brown stated that only a portion of this road will become a County road. Before it can become a County road, the RSID has to pass and that portion has to be brought to County standards. If that is done, he would recommend that the Board declare that portion of Spring Hill Road and a portion of Circle View Drive as a public road.

Mike Sehestedt stated that if the Board accepts this as a public road and right-of-way, they should make it conditional upon the completion of the improvements to bring it to County standards. The RSID is in existence to do those improvements.

It was noted that Lynette Sims, Sherry Hunter, David Hunter and Cheryl Dorsman were in support of the Spring Hill Drive petition.

Commissioner Curtiss moved that the Board of County Commissioners accept the portion of Spring Hill Drive and the portion of Circle View Drive, as described in the petition, as a County road, conditioned upon improvements to bring the road to County standards as required by the Public Works Department and County Surveyors Office. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

**Hearing (Certificate of Survey): Sunford Family Transfer**

Chairman Evans postponed the hearing on the Sunford Family Transfer until further notice as there was no one present to represent the Sunford family.

Public Comment

Diane Beck, 8190 Haven Heights, stated that she was not representing any groups or organizations. She had questions about the public process in the matter of the Mullan Road Corridor Sewer Project. On November 30, 2001, notification was sent to residents in the proposed district and on December 2, 2001, a similar notice was published in the newspaper, in compliance with State statutes. The letters and notification in the paper did not have a map attached as referenced. On Monday, this error was recognized and a subsequent mailing was done to include the map. She finds that out of context and not the proper procedure for notification and wanted it on the record that she was questioning the procedure. Over 300 people met on December 3rd and many came to the Commissioners Public Meeting on December 5th to speak during the Public Comment period. The Board has also received numerous phone calls. It has been determined that the mailing list used was not accurate. She had identified over 70 properties that had changed ownership. She understands that a second notification is being mailed to a group of people that did not receive the first notification and they are being given an additional 15 days to protest the project, until December 31st.

Mike Sehestedt stated that some questions arose as to what was the last completed assessment role. A supplemental mailing will go out on December 14th and those people will be given until December 31st to respond. In many cases, notification has been duplicated. Many of those on the supplemental mailing have already filed a protest. The supplemental mailing is to correct any errors in address or change of name. It is driven off the last completed assessment role, the assessment role certified by the Department of Revenue as of the second Monday in October. Supplemental notice is being given to anyone who had changes after that date. Some of the duplicate notices are corrections of clerical errors in addresses. An example would be a notice that was sent to "2101 Such and Such Street" which should have been "2110." There were also others that were changes in ownership. Those people will have the same notice period that everyone else had, in excess of the statutory 15 days.

Diane Beck stated that she received a phone call yesterday from a lady who closed on her house on October 1st. The lady was told that she had no right to protest, that it would have to be the previous owner of the property. The lady owns the property now and owned it at the time the Resolution of Intent was passed. She had a problem with that.

Mike Sehestedt stated that he would explain that phone call further. This woman lives in Country Crest. She was told that she had no right to notice because the house closed after the Department of Revenue certification date. She is also subject to a waiver of protest. She was specifically advised of her legal description and format for protest. She was specifically advised that if she objected, she should file a written protest. If the protest will count is subject to two issues, one being whether the change in ownership after the close of the assessment role has the legal right to protest. That will be looked at if she chooses to protest. Second is whole issue of waivers of protest. She was told the same thing that everybody has been told that is subject to a waiver. If someone wants to protest, go ahead and do so. The legal issues on the waiver would be sorted out thereafter. That is the advice she received.

Diane Beck stated that regardless of that, being told she was not the property owner of record left her with a bad taste in her mouth, knowing that she was a property owner at the time the Resolution of Intent was signed. She purchased the property directly from a seller who did not disclose a lot of this information. That is not the County's problem but it is important to take a look at this process which they will continue to do. She did not feel this was an accurate assessment, something is missing from the picture. She felt this could not be any more confusing to explain to people. They are doing the best they can to give the people accurate information and make sure they are aware of their rights. Waiving their right to protest has to be clearly explained to them. If it is not clearly marked on the plat, they don't understand it. People who go to get a septic permit after they have purchased their property are told they have to sign a waiver. She thought that was taking away someone's rights and would be subject to legal challenge.

Mike Sehestedt stated he had no doubt there would be a legal challenge.

Diane Beck stated that she knew there would. In June, she asked Ann Mary Dussault what the status of the project was. She was told it was in the process of finalizing the district boundaries and proposed assessments, completing understandings with private landowners regarding inclusion in the district and utility and road easement, completing negotiations with the City on various matters and completing the details needed to construct the resolution. At that time, Ann Mary Dussault expected public hearings to begin in mid-July. That didn't happen. July came and went and she inquired again in August, as she had many people asking her about the project. She was told by Ann Mary Dussault that once everything was completed, they would send out a newsletter to all of the property owners in the assessment area explaining what the process was, what the status of the project was and when public hearings were expected to begin. She had told many people that they would be receiving a newsletter and would be kept current on what was happening. That didn't happen. When she asked Ann Mary Dussault about it again she was told, "it was something we had hoped to do, but in the crunch of time and other demands, it never got done." She is confused about what the crunch of time is, as she was not aware of any deadlines the Board was currently working under. As Holly Raser mentioned last week, part of getting votes to an elected position is to listen to the constituents, not a promise to listen to City and County staff. Maybe the next time a big issue comes along, the Board will pay a little bit more attention to the taxpaying, voting citizens and not gut instincts. Senator Mahlum indicated that the process should be slowed down, seek State and Federal government funding and listen to the people. She submitted to the Commissioners one more time to delay this project until they can show the property owners that they have sincerely worked to obtain grants and funding and until an area plan is completed. Until the people have a say in what goes on, a sewer line will not get passed out there, with or without waivers.

Jim Mocabee, 1540 Topaz Drive, stated that he was representing himself. If any existing homeowners, including himself, were to sell their home they would have to discount the price by \$20,000 to \$30,000 because of the impending RSID and subdistrict fees. With this in mind, it bears something in the current agreement the County has with the City. He asked if addendums could be attached to make it more palatable to the majority of the current homeowners. The best idea would be to delay the project. Barring that, attach an addendum that says that construction of any subdistrict within the district would not happen without substantial grant funding of at least 50% so that the homeowners within the subdistrict would not have to bear the full cost. That stop-gap measure would reduce fear that homeowners have. He did not know why something like that could not be included, especially after the City comes into the area and requires subdistricts to connect. Having something in the plan saying there would be at least 50% grant funding would be very helpful. The second

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addendum would be that any new subdivisions approved in the area have to comply with the existing Comprehensive Plan. That would extend through the time of annexation, if not beyond, maybe for the length of the bond, or until there is a new Wye/Mullan plan that is approved by everyone. Another addendum would deal with the annexation issue. It is his understanding that when 50%+1 of the existing homes change ownership, the area could be annexed. It also allows for annexation by any other legal means except sewer. He asked that be adjusted somewhat so that no annexation could exist, leaving the 50%+1, but that it must have consent of the homeowner, not just the consent of a subdistrict, but of the actual homeowner. That would eliminate some of the annexation issues. The only way true annexation would exist would be if 50%+1 of the homes change ownership. One other addendum would deal with the connection fee to the sewer. Since the City is giving only 10%, they should not charge any existing homeowner in the district a connection fee. These issues would all have to be addendums to the Interlocal Agreement so there is something in writing that will protect the existing homeowners from the huge liability they are faced with.

Chuck Thomas, 2020 Ernest Avenue, stated that at the meeting the other night it was mentioned that there is funding out there to be had for this project. Other than Commissioner Curtiss, it doesn't sound like anyone was trying to get that funding.

Chairman Evans stated she was the one who had been trying to obtain funding.

Chuck Thomas apologized and corrected himself, it was Commissioner Evans. She was the only one looking for funds and this has been in the works for almost two years. If the Board really cares about these people, why haven't they been out there looking for funding, instead of trying to push this project through. There is money out there.

Chairman Evans corrected Mr. Thomas. She has publicly said she has been to Washington to try to find funding from the Congressional delegates. The staff also went to Helena yesterday to speak with a different committee, WASAC, a water and sewer group that tries to find funds for projects of this type. Other County staff besides her have also been looking for money for this project.

Commissioner Curtiss stated that all three Commissioners have signed the letters to the Congressional representatives and chose to send only one person to Washington, D.C. Commissioner Evans was the one who went to Washington, but all three Commissioners have been involved with the process to find funding. Staff is also looking for different grants that may be available. To say that the other Commissioners are not looking for funding is just not true.

Chuck Thomas stated that they should wait on the project until funding is found. It is out there, other have obtained funding such as Lolo and Florence. He wanted to know why this area could not get some funding.

Commissioner Curtiss stated it was because no one had given them any yet. They have asked all the same sources. Florence, being more rural, qualifies for different money than this area. There is money available at the State level for the subdistricts and that has been asked for. The money won't be available until 2003. If the backbone project goes forward, the assessments will not show up on the tax bills until November of 2003. If during that time, they are able to secure grants or other funding, it could apply to the RSID so the assessments to be spread would be less. Even if the RSID is in the works, any funding found could be applied to the RSID to decrease the cost.

Chuck Thomas asked about the Target Range area and the \$5 million that they received. How long did it take them to get the funding.

Commissioner Curtiss stated Target Range themselves did not apply for that money. The City applied for the money for their project.

Chairman Evans stated it was her opinion that once this RSID was created, Congress would not appropriate money to relieve the burden on whom it is already placed. If there are grants available, they could be used to reduce the cost. She did not believe that Congress would appropriate money to replace a debt that is in place. That is her opinion.

Chuck Thomas asked that they try to find funding before this RSID is put in place.

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

#### THURSDAY, DECEMBER 13, 2001

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Commissioners Carey and Curtiss signed the Claims List, dated December 13, 2001; batch number 1702 (pages 1-4), with a grand total of \$58,822.04. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Green Acres, Phase 2, a minor subdivision located in the NW¼ of Section 6, T 13 N, R 19 W, PMM, Missoula County, with the owner of record being the Blanche V. Wheeler Family Limited Partnership.

Plat – The Commissioners signed the Plat for Otto's Acres, Lot 3, located in the SE¼ of Section 24, T 13 N, R 20 W, PMM, Missoula County, a total gross area of 3.22 acres, with the owners of record being Timothy P. and Rebecca D. Creighton.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Proclamation – The Commissioners signed a Proclamation proclaiming December 20, 2001 as *Homeless Memorial Day* in the county of Missoula, Montana, urging all citizens to learn more about the housing crisis facing our City and County and to contribute in whatever way they can to the care and shelter of the homeless in our midst.



Change Order – Chairman Evans approved and signed Change Order #2 to Schedule I (eliminating the ¾ inch grave) and adding to Schedule II, relating to the contract with LS Jensen Construction and Paving for work within Phase 4, Missoula Development Park. The existing contract price will be decreased with this Change Order by the sum of \$6,082.50. The document was returned to Barbara Martens in the Projects Office for further signatures and handling.

Request for Action – The Commissioners approved and signed an Action Strategy form for Fiscal Year 2002 allocation of DPHHS Drug and Alcohol dollars (allocating 89% to Turning Point and 11% to the Missoula Indian Center). The document was returned to Kristina Swanson in the Office of Planning and Grants for further handling.

Agreement – Chairman Evans signed an Agreement between Missoula County and Qwest Corporation for the provision of Qwest Integrated Switched Digital Network ("ISDN") Primary Rate Service (Agreement #M16062). The term of this agreement will expire October 14, 2004. The Total Rate Stabilized Monthly Recurring Charge is \$3,580.00, plus all applicable taxes, surcharges, fees and charges relating to the Service.

Request for Action – John Seymour requested a transfer of Airport Authority records from the Mansfield Library to the Airport Authority. Per recommendation by Records Management, the Commissioners approved that copies are made for the Airport Authority, and the original records remain in the Mansfield Library where they are currently protected in a museum/research environment and available to the public. The request was returned to Marcia Porter in Records Management.

Resolution No. 2001-109 – The Commissioners signed Resolution No. 2001-109, a Budget Amendment for District Court in the amount of \$22,259 for the purchase of a Van for Youth Court (Capital), adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, DECEMBER 14, 2001**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey was out of the office all afternoon.

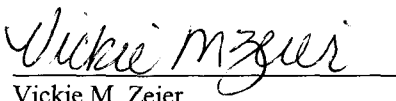
Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Childcraft Education Corp., Milwaukee, Wisconsin, as Principal for Warrant #52007, issued August 2, 2001 on the Missoula County Public Schools (Miscellaneous Federal) Fund in the amount of \$2,031.56 (payment for miscellaneous supplies), now unable to be found.

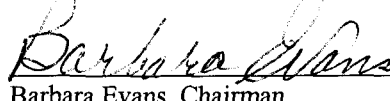
Tax Letter – Chairman Evans examined and approved a letter, dated December 14, 2001, from Missoula County Clerk & Recorder/Treasurer Vickie M. Zeier to Steve Wagner, Executive Director of Outdoor Writers Association of America ("OWAA"), Missoula, Montana, regarding Mr. Wagner's dispute of a property tax bill that was paid under protest. The letter to Mr. Wagner stated that Missoula County believes that OWAA should try to resolve this issue through the method provided in the Montana Statutes when paying taxes under protest (M.C.A. 15-1-402 & 15-1-406).

Agreements – Approved previously on December 11, 2001, Chairman Evans signed three (3) Memorandums of Agreement, dated November 15, 2001, between The Missoula County Park Board (the "Board") and the following for assistance with park development. The Board agrees to provide certain amounts (listed below) in matching funds for improvements as delineated in Attachment A to each Agreement. Funds must be spent by November 30, 2003

- 1) \$3,000.00 to the Mount Jumbo West Little League;
- 2) \$1,500.00 to the Bonner Development Group; and
- 3) \$3,000.00 to the Swan Valley Elementary School.

The documents were returned to Lisa Moisey in the County Parks Office, for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, DECEMBER 17, 2001**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioners Carey and Curtiss attended the Grand Opening of the Carole A. Graham Home.

Claims List – The Commissioners signed the Claims List, dated December 14, 2001, batch number 1706 (pages 1-4), with a grand total of \$40,881.97. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 17, 2001, batch number 1705 (pages 1-4), with a grand total of \$29,290.29. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 17, 2001, batch number 1710 (pages 1-3), with a grand total of \$6,976.82. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming National Safe Kids, Louisville, Kentucky, as applicant for Accounting Warrant #385203 issued April 14, 2001 on the Missoula County Health Fund in the amount of \$14.02 (payment for flyers), which was not received in the mail. No bond of indemnity is required.

**TUESDAY, DECEMBER 18, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated December 18, 2001, batch number 1708 (pages 1-6), with a grand total of \$17,182.14. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 18, 2001, batch number 1711 (pages 1-4), with a grand total of \$34,417.16. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 18, 2001, batch number 1713 (pages 1-3), with a grand total of \$11,778.47. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 18, 2001, batch number 1714 (pages 1-2), with a grand total of \$833.95. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 18, 2001, batch number 1716 (pages 1-5), with a grand total of \$18,946.11. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 18, 2001, batch number 1717 (pages 1-2), with a grand total of \$13,330.59. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 18, 2001, batch number 1718 (pages 1-5), with a grand total of \$72,731.71. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Employment Agreement between the Missoula Board of County Commissioners and Minkie Medora to serve as Health Services Director (replacing Vyonne Bradford). The total amount shall not exceed \$53,000.00, based upon full-time hours. The term will be December 5, 2001 through December 5, 2004.

Position Announcements – The Commissioners approved and signed the Position Announcements for the Missoula County Extension Office Family and Consumer Science and 4-H/Youth Development positions. Commissioner Carey also expressed an interest to participate on the Selection Committee. The documents were returned to Jerry Marks in the Extension Office.

Board Appointment – The Commissioners approved the appointment of Clifford G. Larsen to a five-year term as a “regular member” of the Missoula County Airport Authority. Mr. Larsen’s term will run through December 31, 2006.

Tax Letter – The Commissioners examined and approved a letter, dated December 18, 2001, from Missoula County Clerk & Recorder/Treasurer Vickie M. Zeier to Gloria M. Wright, Huson, Montana, denying Ms. Wright’s request for a refund for taxes paid on a 2000 Nissan Maxima. After initially agreeing to refund the taxes (on December 12, 2001), the Commissioners rescinded that decision due to Ms. Wright’s sale of the automobile, and the inability to change the Motor Vehicle Computer System without the consent of the Department of Justice. It was suggested that Ms. Wright contact Grizzly Auto for a refund.

Letter – The Commissioners signed a Transmittal Letter for a proposal to expand Missoula County’s Domestic Violence Program for Fiscal Year 2002. The Department of Public Health and Human Services has left-over federal money in the shelter grant program and would allocate \$10,000 to significantly expand the number of hours that the new on-site counselor will be available for individual and family counseling in the (YWCA) Domestic Violence Shelter. The document was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Other items included:

- 1) The Commissioners read a letter from James Cary, an Architect at Cardwell/Thomas & Associates, Seattle, to Geoff Badenoch, Director, Missoula Redevelopment Agency, requesting assistance with funding for the Missoula Public Library entrance and entry lobby alterations. The Commissioners expressed support for this request.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, DECEMBER 19, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated December 18, 2001, batch number 1722 (pages 1-5), with a grand total of \$54,583.92. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Interlocal Agreement – The Commissioners signed an Interlocal Agreement between the Missoula Urban Transportation District (“MUTD”) and Missoula County to cooperate in the provision of transportation services to

persons with disabilities and seniors. This Agreement supersedes the agreement jointly executed by MUTD and Missoula County on December 28, 1987. Sources of funding and other conditions are set forth therein.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and AM-PM Bookkeeping, Inc. (Patty Morse), Frenchtown, Montana, to process claims and to develop a financial reporting system for the Weed District. The term will be January 1, 2002 through December 31, 2002. The total amount shall not exceed \$5,000.00.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and G and G Associates, Seattle, Washington, to perform an engineering dam safety review of Milltown Dam. The term is as set forth in the Contract. The total amount shall not exceed \$15,000.00. The document was returned to the Health Department for further signatures and handling.

#### **PUBLIC MEETING – December 19, 2001**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Jean Curtiss, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, Chief Civil Deputy County Attorney Mike Sehestedt, County Clerk and Recorder/Treasurer Vickie Zeier and Chief Administrative Officer Ann Mary Dussault.

#### **Pledge of Allegiance**

#### **Public Comment**

Bill Holt, 2622 Grassland, stated he did not usually attend public meetings. In High School he was selected to attend Boys State so he should know a little about government. He has a degree in Biology and is a Certified Public Accountant. He wanted to make one last shot at a County Commissioners meeting about the sewer on Mullan Road. Knowing a little bit about people's finances, he wanted the Board to know that people cannot afford this. Their choices are to sell their homes, which is not a good choice. He fought all the requirements to get his sewer put in. He will tell the assessors that his house is worth \$20,000 less than they have it assessed for. He wanted to say one more time that it is not financially sound for the homeowners to pay for this project. He appreciated the Commissioners coming to their meeting last Monday. It bothered him that the attorney did most of the talking. He was hoping this would get stopped somewhere along the way. If it doesn't, he will take action and organize the people so they can keep their homes. This will be tough for the people. He knows about finances and has done the right thing all his life, he doesn't owe anybody. He doesn't have a car payment. He doesn't have health insurance so he can't give that up. He did study biology and passed all the exams to put in sewer systems. He has about \$1,500 in his sewer system at his house. He has 140 feet of clay going down to the aquifer. He put in his current system for about what this sewer system, when he is connected, will cost for one year. He has a lot of clients that could lose their homes. He will tell them to give up their health insurance, give up their car payments, give up their jobs and move, but don't try to sell their home as it will be worth \$20,000 less. One of the Commissioners had mentioned that this might be politically a bad thing. He learned from Boys State that if someone makes a mistake they are voted out. It will be too late for the people out there as this will have already been passed. It would be better to keep them in office and come in and bitch and moan. He did not want the Board to do this. There are people making decisions on this who were voted out and now they are back and driving this project. Please stop this project.

#### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$300,953.13. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated that she would like to switch the order of the agenda items and take the Mullan Corridor Sewer Project certification next.

#### **Certification of Protests from First Mailing: Proposed Mullan Corridor Sewer Project**

Vickie Zeier presented the Certification to the Board:

*"I, Vickie M. Zeier, Missoula County Clerk and Recorder for the County of Missoula, Missoula, Montana, hereby certify that I received 491 letters pertaining to the proposed RSID #8471 Mullan Road Sewer Project by 5:00 p.m. Monday, December 17, 2001.*

*I also certify that 385 protests representing 35.11%, which represents \$2,612,954.09 of the total estimated cost of \$7,442,000 (I have included all properties with or without waivers). The total percent that filed a protest that did not have waivers against protesting the RSID is 31.45%, which is \$2,340,454.44 of the total.*

*Lastly, I would note for the record that several parcels received more than one letter that is where the difference between 491 letters compared to 385 protested parcels. (Example – first letter no signature, a second letter followed with signatures, Katoona Lodge had 63 additional letters, etc.)*

*A copy of the Excel spreadsheet was copied onto a floppy disk and is filed in the Treasurer's office vault.*

*Signed this 19th day of December, 2001."*

Commissioner Curtiss publicly thanked Vickie Zeier and her staff for doing an incredible job of protecting the integrity of the whole protest process while still allowing the public access to the documents.

Commissioner Carey seconded that comment.

Mike Sehestedt stated that he also seconded Commissioner Curtiss' comments. His involvement was at the end when he met with Vickie Zeier and went through the protests to answer questions on a few of them. All of those not accepted were reviewed. If there was a missing name, it was checked against the Clerk and Records data base to make sure there was not a death or recent change in ownership. All those with name questions were resolved by referencing the notice list and the updated on-line current Clerk and Records data base. Because of the way in which staff had organized the letters, it was easy to check any questions. He had a high degree of confidence in the results. If there were any doubts, they were resolved in favor of the validity of the protest. There were about 16 that were rejected. Those were clearly not signed by all the property owners. Some were not signed at all. These are legal requirements for a valid protest. It was a very clean protest. The Katoona Lodge's resident's letters received were not counted as they are not property owners, though the property was protested by the owner. The fact that only approximately 16 were rejected is indicative of how clean the process was.

Chairman Evans stated that the Commissioners would not take any action today. There was a supplemental mailing and those people have until December 31, 2001 to protest. January 9, 2002 is when action will be taken. She also noted that there would not be a Commissioners Public Meeting on Wednesday, December 26, 2001.

Vickie Zeier stated that one more certification will be prepared after December 31, 2001. That will be presented at the Public Meeting on Wednesday, January 9, 2002. Today's action was considered an interim certification after the first deadline.

Commissioner Curtiss stated that a letter has been received from Senator Max Baucus regarding Federal funding for the sewer project. Senator Baucus wanted to get Senator Burns and Congressman Rehberg signatures as well, but they were not available in time to sign the letter. His letter reads:

*"I am writing today regarding the community concerns around the Missoula County project for the extension of the sewer in the Mullan Road area. I certainly want to see if there is an opportunity to be helpful."*

*I understand the potential costs to the residents and homeowners in the Mullan Road area, and the magnitude of funding needed. We also understand the importance of protecting the Missoula County aquifer. Extending the sewer infrastructure should not be the burden of these residents alone. It may be appropriate to get some help with Federal funding for the project. As a result, I am willing to make this project a high priority in next year's Federal appropriations process.*

*As you know, the Federal funding process extends from October to September of each fiscal year. So I will not have an indication of potential Federal funding until, at the earliest, later next year."*

Commissioner Curtiss stated that she met with Senator Baucus' Chief of Staff last week and she let him know that all the help and support is appreciated from Senator Baucus and all the Congressional delegates. It was asked specifically if there was an answer to the question of if this RSID is approved and sent forward would Federal funds be able to apply as long as those funds were found before the assessments were put upon the people. From everything that she heard, it does not seem there is a clear answer. There is definitely not an answer that they could not do that, but there is also not an answer that says they could. She wanted the people to know that they are continuing to work to find Federal funds for the project, as well as funding at the State level. She will also be asking the Commissioners to consider submitting an application to USDA Rural Development for the potential of a different method of financing this project.

Diane Beck, 8190 Haven Heights, stated that she was not representing any groups or organizations. She thanked the Commissioners for listening to Senator Baucus and State Senator Dale Mahlum and Representative Holly Raser during this process. She felt that, with or without Federal funding, the point that the majority of the people have been trying to make has been how this is being assessed, based on the size of a parcel. People who have two to five acres, twenty-five acres, small farms, small ranchettes are getting their unfair share of the burden. With or without Federal funding, that still needs to be addressed. The people who are being hit the hardest are small ranchers, small hobby farmers with a horse or two, 4-H project, and that is unfair. She did not know what part of that the Board did not understand, but talk to the people, Norm Schmautz, Don Schmautz, the Wentlands, who have twenty-five acres. Talk to them about their \$70,000 bill before this project moves forward. It is unfair with or without Federal funding. She hoped the discussions were not over because the public process has been flawed. There have been too many mailings, too many notices, too much ambiguity. Before the Board reaches their final decision, she hoped some of this would be taken into consideration.

Ann Mary Dussault stated that it was mentioned at Monday's meeting that staff and the consultant went to Helena to meet with WASAC, an organization at the State level which includes all the various funding agencies. This project was discussed. One point made was that more TSEP money at the State level will be available for the next State fiscal year. That means they will be able to fund more projects, but the funding level of \$500,000 per project will not be increased. They discussed how to position themselves to receive the \$500,000 per biennium, particularly for the subdistricts, although this RSID was not ruled out.

#### **Consideration: Washoe Estates Summary Subdivision (Washoe Road in Potomac)**

Juliet Spalding, Office of Planning and Grants, presented the staff report.

This is a request from Edward Hooker to create Washoe Estates, a 5 lot subdivision southeast of Potomac. The parcel is the 228.68 acre remainder lot of the Hooker Addition Subdivision that was approved and filed in 1999. This proposal is for the creation of four 40 acre lots and one 68.68 acre lot. Each lot would have on-site wells and septic systems and would be served by Missoula Electric Cooperative.

The parcel is unzoned and the 1975 Missoula County Comprehensive Plan designates the property as Open and Resource Land with a recommended residential density of one dwelling units per forty acres. The proposed residential density of this project is one dwelling unit per 45.6 acres.

2000-2001

The property is currently vacant timberland accessed by taking Highway 200 east from Missoula to Potomac Road to Hole in the Wall Road, then north on Washoe Road, then Macardi Lane, a proposed private cul-de-sac road with a 20 foot gravel surface within a 60 foot right-of-way, to provide access to the five lots. A private road maintenance agreement appears in the covenants and on the plat. Also proposed is a public horse trailer parking easement on the southeast end of Lot 5 and a 12 foot public non-motorized equestrian easement within the 60 foot Macardi Lane right-of-way that extends through Lots 2 and 4 to the west, to the property owned by the State.

The applicant has requested four variances. The first is to allow Washoe Road to vary from the required 24 foot surface width to a 20 to 22 foot width. County Public Works Department and the Greenough Potomac Volunteer Fire District (GPVFD) do not oppose this request. Staff is recommending approval of the variance request.

Three variances are also being requested for the proposed Macardi Lane. The first is to vary from the 24 foot surface width requirement to a width of 20 feet. The second is to exceed the maximum cul-de-sac length requirement of 1,000 feet to a total of 5,300 feet. The third is to vary from the paving requirement for Macardi Lane. Again, County Public Works and the Greenough Potomac Volunteer Fire District, and other agencies, did not oppose these requests. Staff is recommending approval of the three variance requests.

Staff is recommending approval of Washoe Estates Summary Subdivision subject to eight conditions of approval. Conditions 1 and 2 address the public access easement proposed on the first 700 feet of Macardi Lane and for the equestrian trail and horse trailer parking. Staff has recommended that these be dedicated as private easements, unless the developer can find a public entity willing to accept their dedication prior to final plat approval.

Condition 3 states that an RSID waiver statement appear on the final plat for improvements to Washoe Road, based on benefit, and that the RSID waiver be removed from the final plat. Based on discussions at Planning Status, staff recommends that this condition be removed.

Conditions 4 and 5 address provisions for fire protection, specifically that a \$100 per new lot contribution be made to the Greenough Potomac Volunteer Fire District and that an RSID waiver for a future public water system adequate for fire protection be placed on the plat.

Condition 6 addresses additions to the protective covenants regarding living with wildlife, weed control, garbage, hunting, driveway turnaround standards and the equestrian trail maintenance.

Condition 7 states that a revegetation plan for disturbed sites be approved by the Missoula County Weed Board.

Condition 8 addresses provisions for irrigation easements to the lots. As discussed at Planning Status, staff is recommended that this condition be removed because the requirement is specific to land served and assessed by irrigation companies, this parcel is not so served or assessed.

Tim Wolfe, Territorial Engineering and Surveying, developer's representative, was present representing Edward Hooker. He had nothing to add to Juliet Spalding's presentation. Jody Hooker, Edward's daughter, was present if the Board had any questions. Edward Hooker was having knee surgery and was not available.

Chairman Evans asked if there were any public comments. There were none.

Commissioner Curtiss stated that one of the biggest complaints from the Potomac area was dust. She was concerned about a new road a mile long that is not paved. What was the potential for traffic on that road.

Tim Wolfe stated that normally the ADT would be 50 trips per day. However, in rural Potomac, that figure would be much less, maybe 2 to 4 trips per lot, for a total of 20 trips per day.

Karen Hughes stated that some of the major problems with dust were from Hole in the Wall Road and Washoe Road. This road only serves five 40 acre lots. The Comprehensive Plan in this area is still relatively accurate concerning the Open and Resource designation. Substantial additional development along that road will probably not happen any time soon. It is a private road and if further development happened, improvements could be required at that time.

Tim Wolfe stated this would give the County five RSID waivers for improvements to Hole in the Wall Road, which does have a dust problem.

Commissioner Curtiss stated that it had been mentioned that Hole in the Wall Road might get some attention next year, in the form of millings.

Chairman Evans stated that should be confirmed with Horace Brown or Greg Robertson before any promises are made.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow Washoe Road to vary from the required 24 foot road width to a 20 to 22 foot road width; approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow Macardi Lane to vary from the required 24 foot road width to a 20 foot road width; approve the variance request from Section 3-2(1)(I)(i) of the Missoula County Subdivision Regulations to allow the proposed Macardi Lane cul-de-sac to exceed 1,000 feet in length to a total length of 5,300 feet; and approve the variance request from Section 3-2(1)(G) to vary from the paving requirement for Macardi Lane, 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 Carey moved that the Board of County Commissioners approve the Washoe Estates Summary Subdivision, based on the amended conditions and findings of fact. Conditions 3 and 8 shall be deleted. Finding of Fact #4 under Agriculture and Agricultural Water User Facilities shall be deleted. Finding of Fact #2 under Criterion 2: Effects on Local Services shall be amended to read: "Hole in the Wall Road is a County maintained off-site road within a 60 foot

right-of-way and has a gravel surface width of 20 to 22 feet. Current traffic on Hole in the Wall Road results in complaints about dust. Additional traffic as the result of this subdivision will increase the dust problem. The applicant is not proposing improvements to Hole in the Wall Road. The applicant has placed an RSID waiver for future improvements to Hole in the Wall Road on the plat which will mitigate the additional dust created as a result of this subdivision." Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Washoe Estates Summary Subdivision Conditions of Approval:**

##### **Roads/Access**

1. The Macardi Lane access easement shall be shown entirely as a private access easement and the portion of Macardi Lane labeled as a public motorized access easement shall be amended to reflect this, subject to review and approval by the County Attorney and OPG. *Subdivision Regulations Article 3-2(1)(H) and County Attorney's Office recommendation.*
2. The 12 foot equestrian/non-motorized access easement, including the horse trailer parking lot, shall be referred to on the plat and within the covenants as a private easement unless the developer can find a public entity that is willing to accept the dedication of this easement/trail. The 12 foot easement shall be shown around the Macardi Lane cul-de-sac bulb on the final plat. These changes are subject to review and approval by the County Attorney and OPG. *Subdivision Regulations Article 3-6 and County Attorney's Office recommendation.*

##### **Fire**

3. The property shall provide evidence of a contribution of \$100 per new lot to the Greenough Potomac Volunteer Fire District, prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-7 and GPVFD recommendation.*
4. An RSID protest waiver statement for a future public water system adequate for fire protection shall be placed on the final plat, subject to review and approval by OPG and the County Attorney. *Subdivision Regulations Article 3-7 and staff recommendation.*

##### **Covenants**

5. Prior to final plat approval, the covenants shall be amended to include the following:

- The "Living with Wildlife" brochure shall be appended to the covenants.
- The weeds section shall be revised to state: "Lot owners shall maintain their lots in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate any ground disturbance caused by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is completed."
- The garbage section shall state that garbage cans shall only be put out for collection on the day of pick up.
- The shooting section shall state that lot owners should be aware that hunting is allowed on private and public lands adjacent to this subdivision.
- Section II, Wildland Residential Interface Fire Standards, shall be amended to include a statement that a turnaround in the form of a circle or a "T" shall be provided and shall have a minimum unobstructed width of not less than 20 feet with the head to the "T" 45 feet wide. Section II shall also include a statement that chimneys shall have a spark arrester and be cleaned regularly.
- Section III shall be amended to state that the non-motorized access easement is 12 feet wide. Section III shall also contain a statement that the horse path must be maintained with a minimum vertical clearance of 9 feet, 6 inches.

These sections of the covenants shall be reviewed and approved by OPG and the County Attorney's Office. *Subdivision Regulations Article 3-1, 3-2(8)(J), MFWP, Missoula County Weed District and GPVFD recommendations.*

##### **Natural Resources**

6. A Revegetation Plan for Disturbed Sites shall be 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.*

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

**THURSDAY, DECEMBER 20, 2001**

The Board of County Commissioners met in regular session; all three members were present. At 5:00 p.m., Commissioner Carey participated in the Homeless Memorial Day Luminary Service held on the Courthouse steps, followed by a reception at the Poverello Center.

Claims List – The Commissioners signed the Claims List, dated December 19, 2001, batch number 1721 (pages 1-2), with a grand total of \$1,306.98. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 20, 2001, batch number 1723 (pages 1-4), with a grand total of \$62,176.21. The Claims List was returned to the Accounting Department.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 20, 2001, batch number 1726 (pages 1-3), with a grand total of \$29,831.58. The Claims List was returned to the Accounting Department.

#### **ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Presentation – The Commissioners presented a framed print of the Missoula County Courthouse (circa 1930) to Tom Gordon for the donation of his time to appraise the E.S. Paxson paintings located in the Missoula County Courthouse.

Application – The Commissioners approved and Chief Administrative Officer Ann Mary Dussault signed the Submission of Application for Montana Public Facility Projects (Mullan Road Corridor Sewer Project – RSID #8471).

Change Order – Chairman Evans approved and signed a final Change Order for Schedule I from Professional Consultants, Inc. (for LS Jensen Construction and Paving) for work within Phase 4, Missoula Development Park. The changes are due to weather conditions that may cause existing gravel to settle. The existing contract price will be decreased with this Change Order by the sum of \$5,497.50.

Chairman Evans also signed the Certificate of Substantial Completion, dated December 12, 2001, for Missoula Development Park, Phase 4, Schedule I, for the road and stormwater structure at the corner of Sandpiper and Expressway.

The documents were returned to Barb Martens in the Projects Office for further handling.

Request for Action – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a counter offer by Tom Poindexter of Poindexter Homes, Inc. for the purchase of Lots 7 and 8, Block 13, Missoula Development Park, Phase 5. The price is \$276,868. The counter offer is set forth in the amendment thereto. The document was returned to Barb Martens in the Projects Office for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, DECEMBER 21, 2001**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chairman Evans and Commissioner Curtiss signed the Claims List, dated December 21, 2001, batch number 1720 (pages 1-3), with a grand total of \$26,564.13. The Claims List was returned to the Accounting Department.

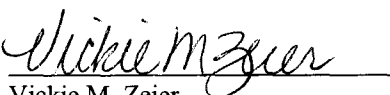
Claims List – The Commissioners signed the Claims List, dated December 21, 2001, batch number 1724 (pages 1-3), with a grand total of \$31,040.60. The Claims List was returned to the Accounting Department.

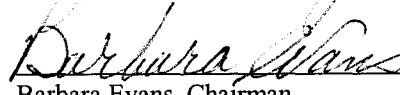
Request for Action – Chairman Evans approved and signed a report for the U.S. Department of Housing and Urban Development in order to continue the receipt of grant funding for the YWCA transitional housing program. Compliance with this reporting requirement continues funding for Fiscal Year 2003 (\$25,000 for one year of a three-year grant). The document was returned to Kristina Swanson in the Office of Planning and Grants for further handling.

Contracts – The Commissioners reviewed and signed two (2) Contracts for Services (Subject to Arbitration Pursuant to The Montana Uniform Arbitration Act) between Missoula County and the following individuals for (1) the provision of treatment/intervention services to inmates convicted of sex offenses and confined at the Missoula Regional Prison, and (2) for professional mental health care services to inmates and prisoners of the Missoula County Detention Facility:

- 1) Michael J. Scolatti; and
- 2) Lindsay Clodfelter, M.A.

The term of both contracts will be retroactive to October 1, 2001, through June 30, 2002. For both contracts, the total annual maximum for the Sex Offender Program (\$40.00 per hour) is \$49,920.00, and the compensation for mental health services will be \$50.00 per hour, not to exceed ten (10) hours per week.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, DECEMBER 24, 2001**

The Board of County Commissioners did not meet in regular session. The Commissioners were out of the office all day.

**TUESDAY, DECEMBER 25, 2001**

The Courthouse was closed for the Christmas Day holiday.

**WEDNESDAY, DECEMBER 26, 2001**

The Board of County Commissioners did not meet in regular session. The Commissioners were out of the office all day.

The Weekly Public Meeting scheduled for this date was canceled due to the holidays and lack of agenda items.



THURSDAY, DECEMBER 27, 2001

The Board of County Commissioners met in regular session; all three members were present in the forenoon. The Commissioners were out of the office in the afternoon.

Claims List – The Commissioners signed the Claims List, dated December 26, 2001, batch number 1727 (pages 1-5), with a grand total of \$56,549.75. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 26, 2001, batch number 1728 (pages 1-5), with a grand total of \$10,533.40. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 26, 2001, batch number 1729 (pages 1-4), with a grand total of \$64,870.67. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 26, 2001, batch number 1730 (pages 1-2), with a grand total of \$16,376.49. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Matthew Johnson as Principal for Warrant #103312, issued November 20, 2001 on the Missoula County Public Schools Payroll Fund in the amount of \$1,020.54 (payment for wages), now unable to be found.

Indemnity Bond – Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Missoula County as Principal for Seeley/Swan Hospital District Warrant #8523, issued April 30, 2000 on the Missoula County 7260 Agency Fund in the amount of \$326.48 (payment for interest on account), now unable to be found.

Replacement Warrant – Chairman Evans examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Western Montana Mental Health Center as applicant for Accounting Warrant #400855 issued November 15, 2001 on the Missoula County 2250 Fund in the amount of \$49,225.49 (payment for M/Health Share 00/HUD), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Community Care, Inc. and Justices of the Peace John E. Odlin and Karen A. Orzech for the MIP (Minor in Possession) Screening Process, as specified in the proposal attached to the contract. The term will be January 1, 2002 through December 31, 2002. The total amount shall not exceed \$5,000.00. Missoula County will be billed monthly at the rate noted in the proposal attached to the contract. The document was returned to Justice Court #1 for further signatures and handling.

Request for Action – The Commissioners authorized a letter of support to the National Board of Geographic Names regarding the renaming of Squaw Peak as required under HB 412, passed in 1999. The proposed new name is Treeless Peak as proposed by the Salish Culture Committee. The document was returned to Chief Administrative Officer Ann Mary Dussault for further handling.

Board Appointments – The Commissioners approved the following Board appointments:

- 1) Appointment of Nicholas P. Kaufman to a two-year term as an ad hoc member of the Missoula County Fair Commission. Mr. Kaufman's term will run through December 31, 2003;
- 2) Appointment of Troy Kurth to a three-year term as a member of the Missoula Planning Board. Mr. Kurth's term will run through December 31, 2004;
- 3) Appointment of Fred Reed to a three-year term as a "regular member" of the Missoula Planning Board. Mr. Reed's term will run through December 31, 2004;
- 4) Appointment of Timothy E. Ibey as the "alternate member" of the Missoula Planning Board. Mr. Ibey's term will run through December 31, 2004;
- 5) Reappointment of Jeanne Sticht to a three-year term as a member of the Seeley Lake Solid Waste Management District Board. Ms. Sticht's term will run through December 31, 2004;
- 6) Reappointment of Paul Torok to a three-year term as a member of the Seeley Lake Solid Waste Management District Board. Mr. Torok's term will run through December 31, 2004;
- 7) Reappointment of William R. Englert to a three-year term as a member of the Seeley Lake Solid Waste Management District Board. Mr. Englert's term will run through December 31, 2004;
- 8) Reappointment of Jean Belangie-Nye to a three-year term as a member of Lolo Mosquito Control Board. Ms. Belangie-Nye's term will run through December 31, 2004;
- 9) Reappointment of John A. Fuchs to a three-year term as a member of Lolo Mosquito Control Board. Mr. Fuchs' term will run through December 31, 2004; and
- 10) Reappointment of Joanne Stewart to a three-year term as a member of Lolo Mosquito Control Board. Ms. Stewart's term will run through December 31, 2004.

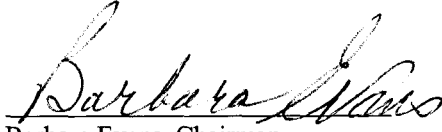
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, DECEMBER 28, 2001

The Board of County Commissioners did not meet in regular session. Chairman Evans and Commissioner Curtiss were out of the office all day.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

MONDAY, DECEMBER 31, 2001

The Board of County Commissioners met in regular session; all three members were present in the forenoon. The Commissioners were out of the office all afternoon.

Claims List – The Commissioners signed the Claims List, dated December 27, 2001, batch number 1733 (pages 1-5), with a grand total of \$48,491.95. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated December 27, 2001, batch number 1734 (pages 1-5), with a grand total of \$21,467.48. The Claims List was returned to the Accounting Department.

TUESDAY, JANUARY 1, 2002

The Courthouse was closed for the New Year's Day Holiday.

WEDNESDAY, JANUARY 2, 2002

The Board of County Commissioners met in regular session; all three members were present.

Plat – The Commissioners signed the Plat for Sorrel Springs No. 41, located in the S½ of the SW¼ of Section 21, T 15 N, R 21 W, PMM, Missoula County, with the owners of record being Michael D. and Terreva R. Carr.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending December 31, 2001.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 26 - Pay Date: December 28, 2001. Total Missoula County Payroll: \$834,473.19. The Transmittal Sheet was returned to the Auditor's Office.

Request for Action – The Commissioners signed an Application for Federal Assistance, Assurances, and Certification Page, relating to a \$70,493.00 grant to be used for the continuation of the Flagship Project at Rattlesnake Middle School and Hellgate High School. The Missoula Forum for Youth and Children will also use the grant. The request was returned to Peggy Seel in the Office of Planning and Grants for further handling.

#### PUBLIC MEETING – January 2, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt and County Surveyor Horace Brown.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$369,209.24. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### Hearing: Petition to Create Spring Meadows County Water District

Mike Sehestedt stated that a sufficient petition has been received. The Board needs to take testimony on whether or not it is desirable or advisable to create the water district as petitioned. The Board may, based on testimony, adjust the boundaries for the district to either include or exclude territory other than as described. Following that, if it is determined to go forward with the creation of the district, an election date needs to be set. All of the registered electors and property owners within the proposed district get to vote on the creation. That election may be combined with the first election of officers for the water district.

Chair Curtiss opened the public hearing.

Steve Roy stated that he lives in the Spring Meadows Subdivision and was responsible for gathering most of the names on the petition. The reason they want to start a water district is to improve the water system. The service is currently adequate, but there are no storage facilities and the system experiences some sand entry problems. They have looked at fixing some of the problems and it would cost quite a bit of money that they don't have. They have investigated getting grants to help but found out they are not eligible unless they are a water district. This will give the Homeowners Association, who owns the water system, better control and help to improve the quality of the water. Several Homeowners Association meetings have been held. The idea has been discussed for a couple of years, and it has now been decided to go ahead and form the district.

There being no further comments, the public hearing was closed.

Commissioner Evans stated that this election does not incur bonded indebtedness. What will the election entail?

Mike Sehestedt stated that the district cannot be created by petition alone. The petition is a required prerequisite. After the Board has determined that the petition is sufficient and proper and that the boundaries are appropriate, then the individuals residing in the district have an election on whether or not to create the district, one person, one vote, with the exception that non resident property owners can also vote. The Board is determining whether or not the petition is sufficient and whether it is in the public interest to go forward.

Commissioner Carey asked how the Board determines whether the boundaries are acceptable?

Mike Sehestedt stated that the petition states that they are acceptable. Notice of the hearing has been given and there has been no alternative idea presented nor has anyone protested the boundaries.

Chair Curtiss asked if the water district boundaries match the Homeowners Association boundaries.

Steve Roy stated that the boundaries do match, they are the original plat for the Spring Meadows Homeowners Association and include all the homes that are on this existing water system.

Chair Curtiss asked if there were any vacant lots that were not included?

Steve Roy stated there is one empty lot left but it is included in the water district.

Chair Curtiss stated that the petition has been checked and verified by the Elections Office. There are 121 registered voters within the district. 10% or 13 of the registered voters within the district are required to sign the petition. The petition contains signatures of 18 of the registered voters of the described district, thereby meeting the requirements of M.C.A. 7-13-2204. She asked counsel how the date for the election is set?

Mike Sehestedt stated that the Board can vote to allow the question of creating the district to go to a vote. The hearing can be continued to next Wednesday, January 9, 2002, to set the election date.

Commissioner Evans moved that the Board of County Commissioners finds the petition to create the Spring Meadows County Water District to be in the public interest and that the boundaries are acceptable, and that the hearing be left open until Wednesday, January 9, 2002, at which time an election date will be set.

Mike Sehestedt stated that the election could be done in conjunction with the regular primary in June or the general election in November, or as a mail ballot, at the pleasure of the Elections Office. The cost differences between the different types and dates was also a factor.

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

Chair Curtiss stated that the Board has voted in favor of giving the homeowners the opportunity to vote on the question of creating this district and the date for the election will be set next week.

Steve Roy asked if the election of the Board members could be held at the same time?

Chair Curtiss stated that counsel had said that was acceptable.

Mike Sehestedt stated that was the usual procedure for the creation of this type of district. The date of the election needs to be set to allow a sufficient period of time for people to file for office and conduct the election in an orderly manner thereafter. He needs to consult with the Elections Office to determine a workable date. He thought the June primary might be a target date.

**Consideration: Mickelson Addition (4 Lots) – Moccasin Court west of Deschamps Lane**

Juliet Spalding, Office of Planning and Grants, presented the staff report.

This is a request from Michael Mickelson to create Mickelson Addition, a 4 lot subdivision of 7.93 acres. This parcel is Tract 4 of COS 5051 and is located southeast of Frenchtown, one mile from the Stone Container Pulp Mill.

Access to the site is gained by taking Mullan Road west, then north on Deschamps Lane, then west on Moccasin Lane to Moccasin Court. Moccasin Court is an existing private cul-de-sac, 20 feet in width and has a gravel surface.

A slide show presentation of the site was made by Juliet Spalding.

The applicant proposes to improve Moccasin Court to a 24 foot wide paved surface with drainage ditches on both sides and two sumps to collect storm water runoff at the base of the cul-de-sac bulb.

The proposed lots are currently vacant and would be served by on-site wells and septic systems.

The subject property is unzoned and is outside the Urban Growth Area (UGA) and the 1999 Sewer Service Area. It is designated by the 1975 Missoula County Comprehensive Plan as Open and Resource land with a maximum residential density of one dwelling unit per 40 acres, likely due to its distance from services and the important agricultural land potential. It is listed in the Inventory of Conservation Resources for Missoula County as Important Farmland-Statewide.

It is outside the Frenchtown Activity Circle by 3.75 miles and approximately 7.5 miles from Missoula City limits.

Surrounding lands are also designated as Open and Resource. Land use to the east and west is large agricultural tracts, to the north is medium density rural residential with 5 to 10 acre parcels, to the immediate south are three 2 acre tracts created in February 2000 by family transfers, and below that to the south are five 3 to 4 acre tracts, part of Alder Acres and Primrose Estates Rural Zoning District.

Subdivision to two acre lots would create a land use more closely fitting a Suburban Residential designation, which is promoted in areas serviceable or potentially serviceable by public water and/or sewer facilities, and in areas capable of supporting high population densities without environmental or economic degradations. Land use of this density is encouraged within activity centers.

This proposal does not comply with the land use designation or the goals and objectives of the 1975 Comprehensive Plan for the following reasons:

2000-2001

1. It does not meet the intent and recommended density for Open and Resource land. It is recognized that the area has experienced increased development over recent years, however, it remains a rural residential area surrounded by agricultural land. The Plan recommends a residential density of one dwelling per 5 to 10 acres as a way to reserve open land and preserve the environment and rural character.
2. The proposal is located 3.75 miles from the Frenchtown Activity Circle and one mile from the Urban Growth Area and is not in an area designated for residential development. Also, it would add approximately 38 daily vehicle trips and increase demands on service providers such as the Fire Department and Sheriff's Department.
3. According to Tom Barger, City-County Health Department, and the SCS Soils Survey Data, this area is constrained for development based on soils, which have a high clay content.

The proposal could better meet the intent of the Plan by reducing the density of development by two lots, which would result in an overall density of one dwelling unit per 3.965 acres. Lots that are four acres in size would better preserve the rural character of this area and make small scale agriculture feasible. Lots that are two acres in size are not feasible for small scale agriculture and are not necessarily rural in character.

Staff is recommending a reduction to two lots as Condition of Approval #1. Staff is recommending four other conditions. The subdivider shall provide a water supply sufficient for fire suppression through one of two mechanisms outlined by the Frenchtown Rural Fire District, subject to review and approval by the Fire District. An RSID waiver for a public water system adequate for fire protection shall be placed on the final plat. As-built engineering plans, testing, calculations and specifications for all road and stormwater improvements shall be reviewed and approved by the County Public Works Department prior to final plat approval. Additions to the covenants include language with provisions for living with wildlife, a statement about revegetation to prevent weed growth and a statement requiring owners to post reflective address signs.

The applicant has requested three variances from the Missoula County Subdivision regulations. One is for Moccasin Lane to vary from the 24 foot surface width requirement to 18 feet. Staff is recommending approval of this variance request due to the rural nature of this area. An RSID waiver statement for future improvements to Moccasin Lane shall also appear on the final plat. A second variance has been requested for Moccasin Court to vary from the curb and gutter requirement. Staff is recommending approval of this variance due to the rural nature of the area and the fact that curb and gutter would not be required if lot density is reduced by two lots as staff is recommending. A third variance request is for internal pedestrian connections on Moccasin Court. Staff is also recommending approval of this variance request because there are no sidewalks or other pedestrian trails elsewhere in this area with which to connect.

In conclusion, staff recommends approval of the three variance requests and approval of the Mickelson Addition Summary Subdivision subject to the five recommended conditions of approval.

Tim Wolfe, Territorial Engineering and Surveying, developer's representative, was present, as was the developer, Mike Mickelson. He thanked staff for their work on this report. They would request that Condition 1 be eliminated, as it is not feasible to make this subdivision profitable with only two lots. They would like the condition removed in its entirety. They would also like to modify Condition 2. Scott Waldron of the Frenchtown Fire District was not able to attend the meeting today but they have been in discussion with him about the condition regarding water supply for fire suppression. A better solution would be to eliminate options A and B from Condition 2, and make the water supply system subject to review and approval by the Frenchtown Fire District, assuming an equitable situation can be worked out with them. Those were the only two changes they were requesting. He or Mr. Mickelson were available to answer any questions the Commissioners may have.

Commissioner Carey asked counsel to state their reasons to eliminate Condition 1.

Colleen Dowdall stated the issues she has raised have to do with relying on the Comprehensive Plan for purposes of making a recommendation that results in a reduction of lots. The Montana Legislature made changes at the 2001 session which removes the statutory provision that allowed the Commissioners to use the Comprehensive Plan for making decisions about subdivision review. Currently in the regulations there is a provision that subdivisions need to be in substantial compliance with the Comprehensive Plan but since the adoption of those regulations, the legislature has said that is no longer available as a review criteria. They are directed instead to include in the growth policy those elements of subdivision review that would be applied to a subdivision such as this. The County does not have an adopted growth policy so that is not available either. It is her recommendation that the Board does not rely on the Comprehensive Plan to make decisions that result in an economic loss to the applicant, particularly in the case where the Comprehensive Plan is old and the reasons for this particular designation perhaps no longer exist.

Commissioner Carey asked if they could rely on a finding that would basically determine that it is in the public interest to preserve a certain amount of open land and rural character for that part of the County.

Colleen Dowdall stated that would have to be tied to one of the review criteria and be able to make findings that this is an area where that needs to occur and why this particular land owner should provide for that value.

Chair Curtiss asked the Office of Planning and Grants to explain the other criteria besides the Comprehensive Plan that their recommendation was based on.

Colleen Dowdall stated it would be helpful if the particular findings could be noted as well.

Juliet Spalding stated that the Comprehensive Plan that governs this area was used for review. This proposal is outside the Urban Growth Area and should be per the 1998 Update to the Urban Comprehensive Plan, so the 1975 Comprehensive Plan's designation as Open and Resource land had to be used.

Jennie Dixon stated the area is also outside the Frenchtown, or any other, Activity Circle. The reasons for the Open and Resource designation were, in 1975, that it was unsuitable for development. They looked at what may have made the area unsuitable and if the situation has changed over the years so that it is now more suitable. This area is about a mile past Deschamps Lane on a road significantly more narrow than today's standards with a gravel surface. Variances were requested and recommended for approval based on the reduction to two lots. The specifics on the soils are not known. Perc tests have indicated gravel but the Health Department is concerned about the clay soils in the area. Septic review and approval is received from the Health Department and the Department of Environmental Quality. Distance from any activity circle designation or the City limits or any other services was a consideration, it is 7 to 8 miles outside the City limits and a fair distance even from the Urban Growth Area. The suitability of agriculture was also looked at. Most of the parcels in the area are five acres or larger. They looked at what most closely matches meeting the goals and objectives of the Comprehensive Plan for the area, a rural residential designation of one dwelling per 5 acres. That keeps the rural ethic and character to allow for small farming operations or grazing. Smaller than that leads to Suburban Residential which is not what the Comprehensive Plan was suggesting for the area, then or now.

Colleen Dowdall stated that all those issue, except the roadway, are tied to the Comprehensive Plan and are not tied to other review criteria within the Subdivision Regulations. The fact that it is not within an Urban Growth Area is a Comprehensive Plan issue. This area is not even in the Urban Planning Area. There are areas outside the urban plan that recommend greater densities as they are closer to other urban areas. The fact that it is outside the Urban Growth Area is a Comprehensive Plan issue and also not one that should be used for review. The only issue that is not related to the Comprehensive Plan is the width of roadway. The findings for the variance do not relate directly to the number of lots or vehicle trips generated. If the Board decides to approve the four lots and not the variance, additional information would be needed about this lot owner's responsibility for improving Moccasin Lane, how much would have to be improved and what ADT would trigger those improvements.

Horace Brown stated that not too long ago this area was not maintained at all during the winter. The road itself during the spring is very hard to maintain due to all the moisture. It ruts easily and is narrow. It does need improvement if subdivisions are continued to be allowed in the area. An RSID would be the best way to handle those improvements. The ADT now is very low and it would be quite awhile before improvements would be needed. The exact ADT cannot be measured on a gravel road. Deschamps Lane is going to be paved and would allow for an accurate traffic count when paving is complete. That could be used to help determine the ADT on Moccasin Lane. Improvements would probably be required when people yell loud enough.

Tim Wolfe stated that an RSID waiver is being placed on the plat so that at the time an RSID is proposed for Moccasin Lane, these lots would participate. They are also proposing to build Moccasin Court to County paved standards even though it is a private road. The utilities are already there so it seemed logical to have a little bit more density for this proposal.

Commissioner Carey thanked Juliet Spalding for her well prepared report. He would have to rely on counsel's advice on this matter but he appreciated the work that went into this staff report.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow Moccasin Lane to vary from the required 24 foot road width to an 18 foot road width; approve the variance request from Section 3-2(7)(B)(i) of the Missoula County Subdivision Regulations to vary from the curb and gutter requirement for Moccasin Court; and approve the variance request from Section 3-2(8)(A)(iv) to vary from the internal pedestrian connections requirement for Moccasin Court, all based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Mickelson Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval, as amended: Condition 1 shall be deleted. Condition 2 shall be amended to read: "The subdivider shall provide a water supply sufficient for fire suppression for this subdivision, subject to review and approval by the Frenchtown Fire District, prior to final plat approval." Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Colleen Dowdall stated that the Board should note that the four lots are in compliance with the Comprehensive Plan, or meet the criteria. The findings will need to be modified in order to support four lots instead of two lots as recommended by staff.

Chair Curtiss stated that the Board recognizes that by removing Condition 1, the four lots will be in compliance with subdivision review criteria.

Commissioner Carey stated that this was confusing, the Comprehensive Plan could not be used to deny the subdivision, but it could be used to approve it.

Colleen Dowdall stated that the Comprehensive Plan had to be addressed in some way. Parts of the findings now say that this is not in compliance with the Comprehensive Plan. She would like the Board to be able to sign a letter that does not have findings that say this is not in compliance with the Comprehensive Plan. The conclusions will be consistent with what she has stated today.

Commissioner Carey stated that he approved the four lots based on not using the Comprehensive Plan as it was not relevant.

Colleen Dowdall stated that findings in the staff report need to be changed prior to the approval letter being sent. Currently, the findings support the recommendation for two lots. Those need to be changed to support approval of four lots. The findings need to be revised to support four lots.

Commissioner Carey stated that the Board would be saying they have made their findings based on the compliance with the Comprehensive Plan.

2000-2001

Colleen Dowdall stated that the findings will show what the proposal is for and what the Comprehensive Plan recommends. The conclusions will talk about the current state of the law and how the Comprehensive Plan cannot be relied upon right now.

Jennie Dixon stated that rather than the finding saying this was in compliance with the Comprehensive Plan, it would say that the Comprehensive Plan cannot be relied upon and was not part of the review process.

Colleen Dowdall stated that is what she meant, that the Board was not relying on these findings to make their decision as they do not support that decision.

**Mickelson Addition Summary Subdivision Conditions of Approval:**

**Fire**

1. The subdivider shall provide a water supply sufficient for fire suppression for this subdivision, subject to review and approval by the Frenchtown Fire District, prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Fire District recommendation.*

2. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

“Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water system adequate 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.” *Subdivision Regulations Article 3-7(2).*

**Roads**

3. As-built engineering plans, testing, calculations and specifications for all subdivision improvements, including roadway and stormwater improvements, shall be submitted to the County Public Works Department for review and approval prior to the final plat approval. *Subdivision Regulations Article 3-2(1)(J), 3-2(2)(F), 3-4, County Public Works Department and Frenchtown Fire Department recommendation.*

**Covenants**

4. Prior to final plat approval, the covenants shall be amended to include the following:

a. To help homeowners avoid problems with wildlife, the following language shall be added:

1. Pets should be confined to the house or yard and not allowed to roam off the homeowner's property, as they can chase and kill big game and small birds and mammals. This harassment also causes unnecessary energy expenditures and can displace animals to less suitable habitats. Walking pets on a leash prevents these problems.
2. This subdivision includes habitat for white-tailed deer and smaller mammals and birds, typical of many areas in the Missoula vicinity. There is potential for vegetation damage by deer to lawns, gardens, flowers and ornamental shrubs and it is the homeowner's responsibility to protect their vegetation or plant only non-palatable vegetation. White-tailed deer might occasionally attract mountain lions to the area.
3. Pet food, livestock feed, etc., should be properly stored in secure animal-proof containers or inside buildings to avoid attracting species such as bears, lions, raccoons or skunks. Bird feeders and compost piles also attract bears and are discouraged from being used in this area. Artificial concentrations of game animals resulting from feeding could attract mountain lions and result in additional damage to gardens, ornamental shrubs, etc. Montana law prohibits supplemental feeding of game animals.

b. Article II, Section I, Item J, shall be revised to state: “Lot owners shall maintain their lots in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Ground disturbance caused by construction or maintenance shall be revegetated with beneficial species at the first appropriate opportunity after construction or maintenance is completed.”

c. A section shall be added that requires property owners to post reflective address signs.

*Subdivision Regulations Article 3-1, MFWP, Frenchtown Fire District and Missoula County Weed District recommendations.*

There being no further business to come before the Board, the Commissioners were in recess at 2:15 p.m.

**THURSDAY, JANUARY 3, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was out of the office all day due to illness.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 3, 2002, batch number 1737 (pages 1-5), with a grand total of \$81,035.17. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 3, 2002, batch number 1738 (pages 1-2), with a grand total of \$1,660.83. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 3, 2002, batch number 1739 (pages 1-5), with a grand total of \$23,767.08. The Claims List was returned to the Accounting Department.



Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming George Ludemann as Principal for Missoula County Public Schools Warrant #58306, issued November 21, 2001 on the Missoula County General Fund in the amount of \$126.34 (payment for reimbursement), which was mutilated.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending December 31, 2001.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending December 31, 2001.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Memorandum – The Commissioners signed a Memorandum to all Missoula County Department Heads conveying the Internal Revenue Service's standard mileage rate of 36.5 cents a mile for business use of a vehicle in calendar year 2002. Under Montana law, mileage may be reimbursed at 36.5 cents for the first 1,000 miles per month traveled, and at 33.5 cents thereafter in the same month. These mileage rates became effective on January 1, 2002.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-016 for the Financial Administration/Sheriff's Department, transferring \$2,223.00 from Contingency Reserve Fund to Rent Fund. This amount is for the rental of office space by the Sheriff's Department in the Seeley Lake Ranger Station.

Lease Agreement – The Commissioners signed a Lease Agreement between the Missoula County Weed Control Board and Chris and Marie-Ange Buzan for a three-year lease of new office space at 127 West Spruce, Missoula, Montana. The monthly rental payment shall be \$1,500.00. Inflationary costs are as set forth in the agreement. The term will be January 1, 2002 through December 31, 2005.

Request for Action – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a Counter Offer (with amendments) by Tom Poindexter of Poindexter Homes, Inc. for the purchase of Lots 7 and 8, Block 13, Phase 5, Missoula Development Park. Sale proceeds remain at \$276,868. The amendments include changing the closing date for Lot 8, and are as set forth in the Counter Offer. The document was returned to Barbara Martens in the Projects Office for further handling.

Other items included:

- 1) A discussion was held regarding correspondence received from Judge McLean with regards to the Office of the Clerk of Court.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **FRIDAY, JANUARY 4, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

#### **MONDAY, JANUARY 7, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners accompanied Perry Ashby on a tour of Canyon Creek Village in the Missoula Development Park.

Claims List – The Commissioners signed the Claims List, dated January 7, 2002, batch number 1740 (pages 1-3), with a grand total of \$12,832.90. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming William V. MacGill & Co., Addison, Illinois, as applicant for Accounting Warrant #399753 issued October 23, 2001 on the Missoula County 2270 Fund in the amount of \$199.20 (payment for lice combs), which was not received in the mail. No bond of indemnity is required.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Ames Color File, Boston, Massachusetts, as applicant for Accounting Warrant #371494 issued October 31, 2000 on the Missoula County 2180 Fund in the amount of \$109.19 (payment for Invoice #673850), which was not received in the mail. No bond of indemnity is required.

Notice of Hearing – Chair Curtiss signed a Notice of Hearing regarding the relocation of O'Brien Creek Gate from its current location to its former location (approximately one mile east of its current location on O'Brien Creek Road). A public hearing was set for January 16, 2002, at 4:00 p.m. in Room 201 of the Missoula County Courthouse Annex.

#### **TUESDAY, JANUARY 8, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated January 7, 2002, batch number 1741 (pages 1-5), with a grand total of \$17,577.23. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 7, 2002, batch number 1743 (pages 1-4), with a grand total of \$42,098.57. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Matthew Wright as applicant for Missoula County Public Schools Warrant #104831 issued December 21, 2001 on the MCPS Payroll Fund 78-42 in the amount of \$197.36 (payment for wages), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Terry Kendrick for continuation of work to assist a regional planning group to identify priorities for HIV prevention work. The term will be September 26, 2001 through December 31, 2004. The total amount shall not exceed \$4,500.00, and is funded through a grant from the Federal Centers for Disease Control and Prevention to the Montana Department of Public Health and Human Services.

Memorandums – The Commissioners signed Memorandums of Understanding (“MOUs”), dated January 8, 2002, between Missoula County and the Counties of Sanders, Powell, Ravalli, Flathead, Sanders, Mineral, and Lincoln for mutual aid requests for Special Response Teams. These documents are being renewed (previously signed in 1996) because of changes in local government personnel; there are no changes in the MOUs from 1996. The documents were returned to Don Mormon in the Sheriff's Department for further signatures and handling.

Resolution No. 2002-002 – The Commissioners signed Resolution No. 2002-002, a Resolution of Intention to Create RSID #8472 – Spring Hill Road Construction, and setting the hearing date for January 30, 2002 at 1:30 p.m. at the Missoula County Courthouse. The general character of the improvements is the installation and construction of 24-foot wide asphalt pavement for approximately 2,600 linear feet on Spring Hill Road, a bus turnout and replacing a culvert and installation of signs. The total estimated cost of the Improvements is \$109,000.00.

Extension Request – In a letter to Ron Ewart of Eli & Associates, the Commissioners approved a request for a one-year extension of the final plat approval deadline for Tannie Summary Subdivision, in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is January 17, 2003.

Board Appointment – The Commissioners approved the appointment of Nicholas P. Kaufman to a two-year term as an ad hoc member of the Missoula County Fair Commission. Mr. Kaufman's term will run through December 31, 2003. Per the Fair Board's request, the Commissioners voted to appoint only one ad hoc member this year. The members of the Fair Commission are Julie Gemar-Williams, Betty Jo Johnson, Charlie Deschamps, Buck Smith, and Kim Latrielle.

Other items included:

- 1) All three Commissioners will attend the Economic Outlook Seminar on February 1, 2002.
- 2) A discussion was held on the unification of the Public Works and Surveyor Departments. Chief Administrative Officer Ann Mary Dussault is working on clarifying the transition of duties.
- 3) The Commissioners decided who would be the Commissioner Representative for the various Missoula County Boards for 2002.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **WEDNESDAY, JANUARY 9, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated January 8, 2002, batch number 1745 (pages 1-2), with a grand total of \$22,155.80. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution No. 2002-001 – The Commissioners signed Resolution No. 2002-001, dated January 9, 2002, a Budget Amendment for the Public Works Department – Bridge Fund (TSEP Grant for the new Finley Creek Bridge), in the amount of \$5,000. This Amendment adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Request for Action – In a letter to Don Snavely, the Commissioners approved the transfer of Lot 5A, Block 2, Phase 1, Missoula Development Park from Snavely Family Enterprises, L.L.C. back to Missoula County, subject to conditions as set forth therein. The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved a request from Clerk and Recorder Vickie Zeier for an exception to Missoula County policy on compensatory time for FLSA-exempt staff.

Request – The Commissioners denied a request from Brent Hooey, Lolo, Montana, to waive the penalty and interest of \$19.60 for Tax ID #5859341. The Commissioners cannot waive penalties; the request was given to Chief Civil Attorney Mike Sehestedt who will respond to Mr. Hooey.

Quit Claim Deed – The Commissioners signed a Quit Claim Deed, dated January 9, 2002, between Missoula County and Grant Creek Heights, Inc., for a tract of land located in and being a portion of the SW¼ of Section 33, T 14 N, R 19 W, PMM, Missoula County, Montana. The sum of \$10.00 was paid by Grant Creek Heights, Inc. The Deed was returned to Deputy County Attorney Michael Sehestedt for further handling.

Other items included:

- 1) A discussion was held on correspondence received from Judge McLean regarding the Office of the Clerk of Court. After follow-up phone calls, Judge McLean did not expect a response from Clerk of the District Court, Kathleen D. Breuer. The Commissioners therefore withdrew their previous request for a letter to be sent to Ms. Breuer for a response.
- 2) A discussion was held on the Federal Election Reform Bill. Missoula County needs to start looking at a new election system. Clerk and Recorder Vickie Zeier would like to form a committee to research the options.
- 3) Chief Administrative Officer Ann Mary Dussault shared her discussions with District Judges and their support for restoring the old courthouse. The four judges will be sending a letter to the Commissioners.
- 4) Sheriff Mike McMeekins will brief the Commissioners at the Sheriff's Departmental meeting regarding the Bar Jonah trial, which will be held in Missoula.
- 5) Discussion continued on space that the Office of Crime Victim Advocates ("CVA") previously occupied in the stairway area of the Courthouse. Chief Administrative Officer Ann Mary Dussault is to follow-up on how often CVA will use this space during court appearances.

At the County Attorney Departmental Meeting held on January 9, 2002, the following items were discussed:

- 1) The Commissioners passed a motion to release 20 acres of collateral for improvements for Miller Creek View Addition.
- 2) Deputy County Attorney Marnie McClain reported on the Marilyn Abbott horse case.
- 3) The Commissioners approved and set the election date (mail ballot) for April 23, 2002 for the Spring Meadow Water District.
- 4) The Commissioners approved and set the hearing date for February 20, 2002 for the Greenough-Potomac Fire District annexation of territory.
- 5) The Commissioners approved and set the Public Hearing Date for February 20, 2002 for the Seeley Lake Fire District annexation of property in Powell County.
- 6) The Commissioners approved and signed an abstract on an unrecorded easement in the Missoula Development Park.

#### **PUBLIC MEETING – January 9, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, County Surveyor Horace Brown, Chief Administrative Officer Ann Mary Dussault and County Clerk and Recorder/Treasurer Vickie Zeier.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$201,127.58. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Set Election Date: Spring Meadows County Water District**

Mike Sehestedt stated that last week the required public hearing was held on the petition to create a County water district in the Spring Meadows area. The Commissioners indicated they would recommend the question of whether or not to create this water district be placed on a ballot. Final action was deferred until today so an appropriate date could be set for the election. The Elections Office felt it would be easier to conduct this as a mail ballot election rather than combining it with the June primary election. The date that would be most convenient and give people time to file for the Board of Directors positions would be April 23, 2002. This would not overlap with final preparations for the June primary. It is recommended that April 23, 2002 be set as the election date.

Commissioner Carey moved that the Board of County Commissioners set the election date for the Spring Meadows County Water District for April 23, 2002. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt stated this would be a combined election as authorized by statute for both the creation of the district and the Board of Directors. If the vote goes against creation of the district, the directors would not have an office to assume.

**Certification: Second Certification of Protests and Decision on RSID #8471 (Mullan Road Corridor Sewer Project)**

Vickie Zeier read the Certification of Protests:

*"I, Vickie M. Zeier, Missoula County Clerk & Recorder for the County of Missoula, Missoula, Montana, hereby certify that I received an additional 29 letters pertaining to the proposed RSID #8471 Mullan Road Sewer Project by 5:00 p.m., Monday, December 31, 2001. This brings the total number of letters received to 520.*

*I hereby certify that 402 protests representing 36.02% which represents \$2,680,600.12 of the total estimated cost of \$7,442,000 (I have included all properties with or without waivers). The total percent that filed a protest that did not have waivers against protesting the RSID is 32.25%, which is \$2,400,332.30 of the total.*

*Lastly, I would note for the record that several parcels received more than one letter, that is where the difference between 520 letters compared to 402 protested parcels. (Example – first letter no signature, a second letter followed with signatures, Katoonah Lodge had 64 additional letters, etc.)*

*A copy of the Excel spreadsheet was copied onto a floppy disk and is filed in the Treasurer's Office vault.*

*Signed this 9th day of January, 2002."*

Chair Curtiss asked for public comments. She noted that Charles G. Showers had submitted a letter that he would like read into the record. Mr. Showers stated that the Commissioners could make clarifications or corrections to his comments if they wished but the Board would not do so at this time. She asked the Commissioners secretary, Patty Rector, to read the letter into the record.

*"An Open Letter To Missoula County Commissioners, City of Missoula*

*This is an open letter to all of you because after all of the public hearings, editorials and letters to the editor concerning the Mullan Road Sewer Project, we felt it was important to clear the debris and clutter and get right down to the situation as presented to us and as we perceive it. Please correct us if we are wrong regarding these stated observations.*

*County claims presented as fact to date regarding this project:*

*The project as presented:*

- *Cost in excess of \$7 million. This is only the cost of the backbone and does not include hook-ups.*
- *The backbone to be installed is four miles long and over designed to accommodate whatever densities the final Comprehensive Plan designates.*
- *It will require numerous lift stations to pump the sewage uphill to the present treatment plat that doesn't work very well and is situated in the flood zone.*

*County Commissioners stated reasons for this project:*

- *The County has stated that El Mar and Golden West subdivisions sewer treatment systems have serious upgrade needs but are not failing at this time.*
- *The County Commissioners have stated that in order to allow additional development in the area (presently the minimum lot size for the area is one acre with a septic system) the County needs to reduce the number of septic fields in the greater Missoula area around the Clark Fork River to improve or maintain the quality of the Missoula area aquifer and river.*

*County Commissioners stated facts concerning this project:*

- *Some homeowners waived their right to protest when they bought their homes.*
- *Homeowners on one acre lots and larger with working septic fields will be charged for the backbone but will not have to hook up to the sewer system.*
- *Active agricultural lands in the project area will be assessed for the backbone.*
- *Golf course fairways, lands under conservation easement, common areas, sidewalks and roadways will not be assessed.*
- *The County has owned and operated the El Mar treatment system since 1994, at that time the El Mar system was functioning properly. The County has been collecting service fees from the El Mar residences during this entire time.*
- *The County claims an Environmental Assessment and FONSI has been issued for the project and the analysis included a number of alternatives to the present project although the alternatives have not been shared with the area landowners.*
- *The required Missoula County Comprehensive Development Plan for this area's development has not been completed, although State law requires it to be completed before continuing development.*
- *The total number of homes (or sewer hook ups) is unknown because there is no completed Comprehensive Development Plan.*

*Reality as perceived by most, if not all, of the present homeowners:*

*Waiving the right to protest the sewer is not waiving the right to protest the method of implementation or payment/assessment!*

- *All the affected landowners support and value clean water.*

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- Preserving water quality and the area aquifer is a benefit to everyone in the County.
- This project is not about reducing the number of active septic fields in the area, this is quite obvious because Commissioners Carey and Curtiss acknowledged that existing homes on septic systems will not have to hook up to the sewer system after the backbone is installed.
- This project is not about the El Mar treatment facility; according to the County's operator, the system is working now and merely needs upgrading to continue to function well.
- This project is not about cleaning up potential damage to the Missoula area aquifer, this is obvious because the present sewer system is in disrepair and it leaks raw sewage into the ground water at the present time and nothing is being done about it and there are still City residences not on the City sewer system.
- This project is not about clean water, it is about supporting a handful of landowners and potential developments and their developers; Mr. Dennis Washington being one of the more obvious potential benefactors due to the fact that the fairways of his proposed golf course will not be assessed and the Federal "Clean Water Act" requires storm drain runoff from developed areas to be treated. This fact extends to the transportation systems of subdivisions as well.
- Due to the above perceptions, it is quite apparent that the larger landowners and developers are using Mr. Washington's local "good will" account to put such a burden on their neighbors for the sake of making a buck. He and the larger landowners seemingly do not value their neighbors or mind if their neighbors suffer so they can make a buck, otherwise they too would protest this project.
- Based upon the observed actions of the Commissioners, i.e., the push, timing, blatant disregard for the recommendations from the public and other elected officials, the actions taken by the Commissioners give the very visible perception that one or more of them may have a personal gain, stake or benefit in this endeavor, just as the larger landowners and developers.
- Some of us have been involved in the grant request process for public/sewer improvements, usually you have to have an approved Comprehensive Plan to receive grants and once there is some entity/group on the hook for paying for the improvement, grants are not given to "reimburse" the folks doing the paying.
- Finally, both our local State Representative and our State Senator, Max Baucus, have urged our Missoula County Commissioners to "wait one year for grants and Federal funding" before beginning this project.

We truly hope the above perceptions are incorrect. Changing these perceptions will take a great deal of work if the County Commissioners insist on continuing on the present course of action.

As identified earlier, WE DO SUPPORT the preservation of the area's clean water, but we recognize that it is the entire community (City/County residents) that will benefit and they must share responsibility to pay for those benefits. The Commissioners are responsible for maintaining the El Mar treatment facility and approving the lot size, when they did those things they accepted the responsibility (for all the County residents) for fixing problems that arise.

This method of weighing votes to protest based upon the value of what the voter owns is not democratic (probably unconstitutional as well) and assessing individuals for something they are not using and may never need to use is no less than a "taking" by the government.

Because WE SUPPORT CLEAN WATER, we have some suggestions that perhaps the Environmental Analysis did not come up with and some economic steps that can be taken to soften the blow.

1. Since El Mar is presently working and already owned by the County, perhaps it would be feasible to upgrade and expand the facility into a Regional Treatment Facility. This could take care of El Mar and with a smaller expense, Golden West, as well as future subdivision needs. There are some benefits to this. The need for lift stations is reduced because more of the flow is downhill, the length of the backbone is severely reduced, the treatment facility is not in the flood zone or even close to it and the treatment facility is closer to where Mr. Washington's and other future development is.

Putting in a Regional Treatment Facility farther west along Mullan Road might also allow for partnering with Frenchtown or Smurfit-Stone. Additionally, putting the facility farther west could potentially make the system entirely gravity flow, reducing operating costs and picking up a greater area of development, the proximity of which is a greater threat to the river and aquifer than any of the existing developments will ever be.

2. If in fact there is no other choice than to do as proposed, we urge the Commissioners to be fiscally responsible and put in no more than a mile of pipe until the area served by that mile is 90% developed and then put in the next mile and so on.
3. Reduce the cost to be assessed by completing the Comprehensive Development Plan and resize the system to deal with the "actual planned densities" rather than this "ultra conservative design to handle whatever the final Comprehensive Development Plan comes up with, thus fine tuning" the design to build only for what is planned for, not some whim.
4. Using the plan, base the charges on commensurate use not to be applied until hook up. The County acquiring funding through future developments with the ability to reimburse developers as homeowners hook up. This is ideal because this situation is not unique to this one location in the County and the problem will continue into the future and this could be the way to fund future needs fairly and economically.

What should really strike home as apparent, considering all the perceptions and the potential solutions offered, is the need for the "Comprehensive Plan" to be completed before moving forward on this project.

Please take the time to consider the "Perceptions" of the populous that are being affected by this project before making the final decision in this situation.

Don't mistake that because this letter is signed by only one person that these statements are not true perceptions of your voting populace. I have garnered the thoughts discussed here from meeting with my neighbors; a mass of

*signatures would accompany this letter if your process had allowed more time. Signatures are being gathered as you read this.*

*Sincerely, -- Charles G. Showers, River Heights Subdivision, 1540 Crest Haven Drive, Missoula, MT 59808, (406) 327-8637"*

Jim Mocabee: For the record, I'm Jim Mocabee, 1540 Topaz Drive. As an existing homeowners in this Commissioners/developers created district, my protest right, along with other existing homeowners, is only worth 40% of the vote. The district boundaries were created to insure passage, in fact, when one of the large landowners came out against this Commissioners/developers proposal, the lines were changed to again assure passage. Yet at the same time, I'm also 40% of the subsidy that the large developers will receive to reduce their costs and increase their profits. Yes, every month when I pay my taxes, I will be proud to know that I personally saved a handful of wealthy land developers thousands of dollars so they can enjoy the good life while I'll be working extra hours each month to pay the tax bill. Not since the creation of the Civil Rights Act in 1964 and not since the concept of one man – one vote have the rights of American citizens, Montanans, been so blatantly infringed upon. As elected Democrats I would think that you would be more sensitive to the rights of individuals. Remember, people vote, land doesn't. People matter whether they are wealthy or poor. Additionally, as a contributor and supporter of the Democratic Party and as a past elected Wyoming Democratic Party official, I would like to personally thank Commissioner Evans for her support for the citizens during this debate and I would ask that any true Democrat sitting on this County Commission's Board vote no on this proposed RSID. Thank you.

Diane Beck: "Good afternoon. My name is Diane Beck. I live at 8190 Haven Heights here in Missoula. I'm not representing any groups or organizations. There are many things that go into leadership, there are many styles. Leaders are not born, they become leaders through many years of hard work, hard knocks and tough decisions. I have been in several leadership positions myself over the past 10 years in organizations such as the Missoula Building Industry Association, the Missoula County Association of Realtors and currently serving as their past president of the Realtor Association. I was elected to those positions by my peers and I believe today, as I look back, that I was elected to represent the best interests of our membership and to make decisions based on fairness for all. We did have some tough decisions, some financial impacts on our members. We would go out, we would get their input and we would make our final decision based on how the majority of our members felt. We would ask for their input through written comments, through public testimony and encouraged everyone to participate. We listened to all of the members. I didn't always personally agree with the outcome of the decisions that were made. I didn't personally support the candidates that our members chose to support in the elections. I didn't always personally support the direction, but I was elected to represent the members, not my own personal agenda. With that being said, I think it's time for you to make a tough decision. You have heard from a large majority of the landowners, the property owners, mostly existing, mostly all existing. You've heard from hundreds of people that raised their hands at meetings, at the meeting on December 10th, you've listened to public testimony of how folks will be forced to sell their homes or lose them to the bank due to the increased taxation. You've listened to people ask you to provide a current plan for their area and you have listened to people say, please put this on hold until you can find some State or Federal funding. You've heard people say they just can't afford the increase. So, I ask you one more time to please delay this project until you figure out a way to fund this infrastructure that will be fair to the existing residents. Work on getting us a completed, adopted plan and work on the Federal and State funding. Speaking of that, I have packets for each of you which I'll hand you as soon as I'm finished, that have information on some Federal funding. The first of the information comes directly from the Golden West Sewer Study that is dated from 1999, prepared by HDR Engineering. In this you will find a list of all of the current funding sources that are available to you from the Federal and State government. Clearly this information has been overlooked by you as it has become apparent in the last few months that since 1999 and today, the requests just recently began. I understand some of our staff went to Helena in December at the request of Senator Dale Mahlum and I understand that Commissioner Evans delivered an application, signed by all of you, in September of 2001. Do you consider this as looking out for the best interests of the residents of the Mullan Road area? I think that the study completed in 1999 outlines some of those problems that are supposedly created at this time. If you didn't read it, I have excerpt from you and I highly encourage you to get a copy of it and read it. It is your responsibility as a County Commissioner to thoroughly research all of the potential funding sources for a project of this magnitude. I surely think that it is really important that you take some time here and research your options, wait for your applications to go through their proper channels and processes and I've talked to a lot of people in Mullan Road that would support the delay. You have spent far too much time listening to your staff and not enough time researching all of the available options or listening to the area residents. The Interlocal Agreement that there was a public hearing on, in your Resolution of Intent to Create the RSID and all of the subdistrict presentations, you refer to water quality issues and the Voluntary Nutrient Reduction Program, the VNRP. Well, I ask how many of you have actually read that document? It's a 26 page document available on the City of Missoula's website and it clearly outlines the sources of nutrients in the Clark Fork River, from Butte to Missoula. The document is a plan and a timeline for reducing the nutrient levels in the river. On Page 4, you will find a section that refers to the Missoula area. It talks about the local Missoula County Health Department and the DEQ, what they will do to address some of these issues. One of the items states that they will review State and local regulations with the goal of removing disincentives and/or offering incentives for connecting new and existing septs to public sewer. It also states that you'll encourage development of alternatives to municipal wastewater disposal, other types of applications, such as land application, wetland or other types of nutrient removal systems. I guess I would like to ask you if you believe that an average of a \$20,000 fee is encouraging connections to the sewer. If that's encouraging, I would hate to see what would happen if you weren't inclined to encourage it. I also think that your reports, everything continually states we have a water quality problem in this County and I understand that's been recognized by the Federal government. Well, I'm here to tell you today that the Mullan Road corridor is not listed in the VNRP report. There is not any mention of that corridor and that report has listed east of Reserve, the south end, 1,000 units, east Reserve, north end, 948 units, west Reserve interceptor, 516 units, East Missoula, 766 units, South Avenue, 1,227 units, Target Range, 660 units and a miscellaneous projects line of 113. None of these fit the description of the Mullan Road corridor. The VNRP says to remove 50% of the existing 7,000 septic systems. This adds up to over 4,500 units. This does not include the Mullan Road corridor. The timelines in this, the VNRP, is from 1998 to 2008. Yes, sometimes leaders need to make tough decisions they may not personally agree with. They need to listen to those people that elected them and to the majority of those people, not just those with the most land, money or interest in any given project. I suggest that you vote to delay this project until you get some funding. Thank you.



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Chair Curtiss stated that to clarify, the Commissioners directed staff to go to Helena, not Senator Mahlum.

Jim Carlson: Commissioners, my name is Jim Carlson. I'm Director of the Environmental Health Division of the City-County Health Department. I'm here to continue to urge your support of the creation of the RSID for the installation of a sewer main along Mullan Road. This project will provide the opportunity to correct problems in the El Mar/New Meadows and Golden West sewer systems which are under ongoing orders from the Department of Environmental Quality, State of Montana. They have had ongoing, significant treatment problems for many years prior to and after the time the County took control of those systems. It will provide a method by which many other houses can be economically connected to sewer, without additional funding. Such examples include the Mullan Trail subdivision and Katoonah Lodges. It provides facilities for the orderly growth of new housing in Missoula in a manner that will not impact our sole source aquifer and will minimize impacts on the river. It provides a key link in fulfilling our obligation under the VNRP to reduce the number of homes on septic systems from approximately 7,000 to 3,500 and to continue that level at 3,500 thereafter, and the Mullan Road homes were included in that count of 7,000 homes. It is also my understanding that based on the parcels which have protested rather than the valuation which has protested, that there are approximately 36% of the parcels which have protested. This indicates to me that if under other conditions of approving this project, we have a significant parcel approval of the project. For those reasons, I encourage your support.

Jerry Behrens: Jerry Behrens, Target Range Homeowners Association. Regarding the nutrient reduction plan, Mr. Carlson's talking about this reduction of 3,500 homes, adding 3,500 homes to the sewer system, and I keep putting in letters to you and they keep answering you about the 1,300 units that are not hooked up within the City and it is east of Reserve Street and it's on a map. There are 1,300 units that are presently in the City and have been in the City since about 1970 backwards to 1910 and these units have not been hooked up to the City. If the City's concerned about the environment they should be hooking the 1,300 units up in the City first. Second, they are doing a Phase III of the plant to go ahead and do biological nutrient reduction but they are telling you about something that's supposedly going to happen in the future. That design should be completed, should be tested, before we know what the real results are. Often, as the EPA has said, design standards that are estimated for these plants have not been successful and have not met the design standards that they're seeking. There is another critical thing that's been going on here. The City of Missoula has been basically asking for and receiving permission to weaken the standards of its pollution to the river. They've been doing it since 1983 to allow for this massive expansion and growth. In early 1980, the amount of fecal coliform, colony forming units that were allowed in the river were 200 per 100 milliliters, 200. They increased that by permit in early 1980 to 10,400 per 100 milliliter. This is a 54 times increase in the amount of fecal coliform that they're putting in the river that they received permission from the State to do so. If they had to abide by these standards, they would be more difficult in this rapid expansion that they're attempting to do. This problem needs to be corrected before they add any more septs to the sewer system. The second thing that happens is, and something that I didn't know, there's something called recreationally chlorine. Chlorine is done at the sewer plant only during the months of, from May 30th to October 1st. The other eight months of the year there's no chlorine added to the effluent coming out of the sewer plant, therefore, the river is receiving pure, unadulterated fecal coliform in colony forming units that are too numerous to count. That's the situation, every time we raise it, when you look at your answer that you received from Jim Carlson, he's given a pass to the sewer plant for the lack of treatment that it's doing. And you're going along with it. If you're doing the correct thing for the environment, you should demand that the 1,300 units in the City be hooked up and second of all you should demand that the plant should be fixed, it should be upgraded and then it should be tested. And when those things are done, then I think you can make a logical decision that's best for the environment. Thank you.

Chris Burke: My name is Chris Burke and I'm here representing the Missoula Water Quality Advisory Council. We're a group appointed by the Health Board and we're meant to provide technical assistance to the Missoula Water Quality District, and so over the years we have been reviewing the water quality issues in Missoula. Actually we just met last night and discussed this project, at least along the lines of what it means in terms of protecting water quality in the aquifer and in the river. I would like to comment more on the assessment procedure, but I'm not sure I can really address that and I think that's a difficult issue, obviously, with many different sized lots. It's a difficult thing to figure out how to really assess fairly. But, in terms of doing the right thing for the river and the aquifer, there's no question that in the long run we need to extend sewerage to parts of Missoula that currently are on septic systems, and particularly in this area where we've got fine grain, glacial Lake Missoula sediments, it's critical. We should do this partly because we're obligated under the VNRP to reduce nutrient loading to the river. We do that by reducing nutrient loading to the aquifer, ultimately. Also, we do feel that this project needs to be sized so that we're looking into the future. In other words, some people are complaining about the oversize of the project, however, I think it would be a bigger mistake to undersize the project or to not account for the future growth, whether we like it or not, is obviously going to occur in this area. It's a difficult decision to make, but ultimately I think it is the right one for the river and for the aquifer.

David Bauer: For the record, my name is David Bauer, 119 New Meadows. I would like all the Commissioners to keep in mind the reasons why the United States instituted the Electoral College, so a massive amount of population like New York City or Los Angeles, would not be in control of the whole country. And I believe that the principles that you guys base your decisions on are completely against that principle of the Electoral College and I'd keep that in mind. Throughout this whole process I've been told what's best for me. You guys know what's best for us and I get the impression that you believe that we're all ignorant sheep and I would ask, please, that if you do believe that we are ignorant sheep, act like good shepherds instead of the big, bad wolf. Thank you.

Dale Mahlum: Good afternoon, Commissioners. For the record, my name is Dale Mahlum, 10955 Highway 93 North. I do not live in the proposed subject district, but I represent them from the State Senate, and I'm sorry that I've had to appear before you twice, but being this is the last day today, I would like to ask you for consideration of not money, but time. These people that live in this district, I've talked to very many of them in the last few days, they've called me and I'm sure they've called you Commissioners also, and the hardships that will come upon these people I cannot believe. I do not even hear these things in the Senate when I listen to my people in the committees there. And the whole thing could be eliminated by something that doesn't cost anything and it's called time. And if you could see in your hearts to give this precious commodity to these people, time. I would ask that one of you Commissioners during



the Executive Session that you would move to table this particular decision for one year, to that first Wednesday in the year of 2003, February. And within that time period, you would have one year to give the people an opportunity to help you along with the elected officials in Washington, D.C., along with the elected officials such as myself, we could help get some funding for these people. And it's just called time. And please, when you make the motion it would be so gracious if somebody would second it. Thank you.

Donna Miller: My name is Donna Miller, I live at 1620 Crest Haven Drive. At the beginning of this meeting when we started, we said the Pledge of Allegiance and it said, "We, the people." We, the people, everybody out there has protested, given our thoughts and our views and we are right, Missoula County does need water quality, everybody agrees to that. I personally wouldn't mind the sewer out there, we can't afford it but it helps the water quality. I just think that you, the Commissioners, and you are here for us, that you need to wait, find the funding to help people out and not put the burden on us. Thank you.

There were no further public comments.

Commissioner Evans stated that she would like to read the letters from the Congressional representatives so it is understood what they have said. There are copies up front and more can be made if necessary. She felt that the Congressional representative would work hard to help with this, but they have not asked the County to wait a year and have not informed the County how much money they will try to obtain.

*"Dear Commissioners: I am writing today regarding the community concerns around the Missoula County project for the extension of the sewer in the Mullan Road area. I certainly want to see if there is an opportunity to be helpful.*

*I understand the potential costs to the residents and homeowners in the Mullan Road area and the magnitude of funding needed. We also understand the importance of protecting the Missoula County aquifer. Extending the sewer infrastructure should not be the burden of these residents alone. It may be appropriate to get some help with Federal funding for the project. As a result, I am willing to make this project a high priority in next year's Federal appropriations process.*

*As you know, the Federal funding process extends from October to September of each fiscal year. So I will not have an indication of potential Federal funding until, at the earliest, later next year.*

*With best personal regards, I am sincerely – Max Baucus"*

*"Dear Commissioners: We are writing to you regarding community concerns about the Mullan Road area sewer extension project. We would like to offer our assistance to you on this important project.*

*It is vital that the Missoula County aquifer is protected. There are numerous costs involved with a project of this magnitude and extending the sewer infrastructure should not be a burden solely borne by the residents and homeowners in the Mullan Road area. We intend to assist Missoula County in obtaining Federal funding for this project during the fiscal year 2003 appropriations process.*

*The Federal appropriations process is lengthy and we will not have an indication of the potential for funding until late in the year. While it is uncertain whether Federal funding can be obtained, we are optimistic and will work hard toward that end.*

*Sincerely – Denny Rehberg and Conrad Burns"*

Commissioner Evans stated that she felt the representatives would be successful in finding funding to help with this project. She wants to give them the time to do that. The Commissioners, as a whole, will work hard to find other funding.

Commissioner Carey moved that the Board of County Commissioners direct staff to develop policies and written timelines on the following issues of concern before the January 30th meeting:

1. Target date for completion of Growth Policy.
2. Target date for completion of the Mullan portion of the Wye/Mullan plan:
  - Policy to use the current plan as a guide until new plan adopted.
3. Timeline for applying the grant money from the State and whether applications can or will be made for the backbone and/or subdistricts:
  - TSEP (Treasure State Endowment) - \$500,000 per biennium
  - NDRC (Renewable Resource Grant) - \$100,000 per biennium
  - DEQ
  - CDBG (Community Development Block Grant) – including a timeline for conducting a survey of Mullan Corridor sewer project homeowners for income qualifications.
4. Support and commitment from the Water Quality District for contribution to reduce connection fees (for subdistricts).
5. Continued efforts to obtain Federal appropriations for the backbone and/or the subsequent subdistricts. Also, clarify if the RSID will qualify as the match for any Federal appropriation.
6. Written policy that describes, in the event Federal special projects appropriations are made for any portion of this project, where the dollars will be directed:
  - Pay down the bonds
  - Reduce assessments

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7. City policy on conditions under which connection to the sewer is required.
8. Written policy from the County on the conditions under which the County and/or the City will initiate subdistricts, such as:
  - Where there is an immediate public health or water quality issue, unless;
  - The County has obtained substantial grant money for the subdistrict, or;
  - The subdistrict petitions for creation of a district to extend the sewer.
9. Comprehensive timeline that includes all of the above items integrated with the proposed project deadlines, such as:
  - Completion of engineering
  - Bid process
  - Construction timetable, etc.

Commissioner Evans stated that she supports all those items and hopes to provide them to the public. She asked that the motion include a delay until January 8, 2003.

Commissioner Carey stated he would prefer not to lock in that particular timeframe.

Chair Curtiss seconded the motion.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Commissioner Evans asked if the motion included a time for further action on this matter.

Chair Curtiss stated that was not included in the motion. The motion made by Commissioner Carey has passed. It directs staff to address the nine issues presented by January 30, 2002. That will give more time to consider this project. Missoula County is continuing discussions with the City of Missoula to identify ways for any additional funds from the City to benefit existing plumbed units in the proposed district. If those discussions are successful, the Interlocal Agreement will have to be amended and brought before the City Council and the Board of County Commissioners.

Commissioner Carey moved that the Board of County Commissioners direct staff to develop a Resolution to Create RSID #8471 for the Mullan Road Corridor Sewer Project and bring it back to the Board of County Commissioners for consideration at the public meeting on February 6, 2002. Chair Curtiss seconded the motion.

Commissioner Evans stated that she appreciated a delay of any kind. This whole project will benefit the entire community, not just the people on Mullan Road. She felt the contribution from the City should be significant. She would like to see this an actual contribution, not a loan. She didn't not feel that could be accomplished by February 6th. She would like to have adequate time for more discussions so the people will know the Board has listened and tried to help. She does appreciate any delay but would have to vote no on the motion.

Commissioner Carey stated that if all the information requested cannot be gathered to their satisfaction by February 6th, he would vote to extend the timeline further. There is no rush to do something because of any hidden agenda or personal gain. That is ludicrous. The Board wants to take the time to do the right thing.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Chair Curtiss stated the decision on this RSID would come before the Board again on February 6, 2002.

Mike Sehestedt stated that the actual agenda item for today's meeting was acceptance of the Certification of Protests. The Board should formally acknowledge that.

Commissioner Evans moved that Board of County Commissioners accept the Certification of Protest as provided by Vickie Zeier. Commissioner Carey seconded the motion.

Chair Curtiss stated that Vickie Zeier and her staff did an excellent job of taking care of handling the formal protests for this RSID.

The motion carried on a vote of 3-0.

Chair Curtiss stated that protests on RSID #8471 have been officially certified. Discussions on the decision to create the RSID will continue on February 6, 2002.

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.

THURSDAY, JANUARY 10, 2002

The Board of County Commissioners met in regular session; a quorum of members was present. Chair Curtiss was in Helena attending a MACo Health and Human Services Committee meeting held at the MACo Office.

Claims List – Commissioners Carey and Evans signed the Claims List, dated January 10, 2002, batch number 1749 (pages 1-2), with a grand total of \$326.29. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Contract Amendment – The Commissioners signed an Amendment to the Professional Services Contract between Missoula County and Cathy Joy, LPC, dated May 31, 2001, for consulting services for the Crime Victims Advocate Program. This Contract amends the total value of the contract from \$2,500 to up to \$7,800, and extends the contract for one year, commencing on January 1, 2002 and terminating on December 31, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and The City of Missoula, as represented by the City Attorney's Office, allowing the City of Missoula to disburse the City Attorney portion of the match for the VOCA grant that supports the Crime Victims Advocate Program. The total amount shall not exceed \$9,664.00. The term will be July 1, 2001 through June 30, 2002, contingent upon receipt of grant funds from the Montana Board of Crime Control by Missoula County.

Agreements and Claims – The Commissioners signed two Tax Increment Release Agreements and Disbursements Claims Agreements, dated January 10, 2002 as follows: 1) to the Missoula County Board of Commissioners for Countywide Schools for Fiscal Year 2001-2002, in the amount of \$39,925.85; and 2) to the Missoula County Board of Commissioners for Fiscal Year 2001-2002, in the amount of \$39,810.24. The Missoula City Council authorized the Missoula Redevelopment Agency ("MRA") to remit unused and uncommitted tax increment urban renewal monies to local taxing jurisdictions.

The Commissioners also signed City of Missoula Claim Forms for each Agreement totaling the appropriate amount of remittance. These Claim Forms will be submitted for the two payments of tax increment to be received in Fiscal Year 2002 per each Agreement.

Grant Application – Commissioner Evans signed a Grant Application to the Board of Crime Control for the final year of the Missoula Correctional Services Pretrial Supervision Program. The document was returned to Sue Wilkins, Missoula Correctional Services, for further handling.

Request for Action – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a Counter Offer (with amendments) by JBCD Investors, LLC for the purchase of Lots 3 and 4, Block 9, Phase 2, Missoula Development Park, for a total price of \$705,954. The amendments are as set forth in the Counter Offer. The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a Counter Offer (with additional language) by Montana Office Machines of Missoula, Inc. for the purchase of Lot 6, Block 13, Phase 5, Missoula Development Park. The total sales price remains at \$127,909. The additional language regarding platting is set forth in the Counter Offer. The document was returned to Barbara Martens in the Projects Office for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, JANUARY 11, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Library Video Co., Wynnewood, Pennsylvania, as Principal for Missoula County Public Schools Warrant #47409, issued May 3, 2001 on the Missoula County General Fund in the amount of \$159.80 (payment for videos), now unable to be found.

Plat and Agreement – The Commissioners signed the Plat and Development Agreement for Meadowlands, Lot 5, a subdivision located in the NE¼ of Section 28, T 14 N, R 20 W, PMM, Missoula County, a total area of 5.69 gross acres, with the owners of record being Larry E. and Jeanne M. Coufal. The Development Agreement is intended to meet requirements of Condition #3 of the conditions of approval, which pertains to compliance with the Montana Noxious Weed Control Act, as set forth in the Agreement.

Resolution No. 2002-007 – The Commissioners signed Resolution No. 2002-007, Giving Notice of an Election on the Question of Creating Spring Meadows Water District and for the Election of District Directors. A public hearing was held on January 2, 2002. The mail ballot election will be held on April 23, 2002.

Resolution No. 2002-008 – The Commissioners signed Resolution No. 2002-008, a Resolution to Create Public Highways Spring Hill Drive and Circle View Drive, located in Sections 25, 26 and 26, T 15 N, R 21 W, PMM, Missoula County. A public hearing was held on December 5, 2001 at the Missoula County Courthouse Annex. The \$75.00 County Administrative Fee was waived, and Commissioner Bill Carey and County Surveyor Horace Brown made a site inspection in accordance with State statute.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, JANUARY 14, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 14, 2002, batch number 1746 (pages 1-7), with a grand total of \$73,734.84. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 14, 2002, batch number 1751 (pages 1-4), with a grand total of \$12,078.13. The Claims List was returned to the Accounting Department.

2000-2001

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 14, 2002, batch number 1752 (pages 1-5), with a grand total of \$116,364.00. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 14, 2002, batch number 1753 (pages 1-5), with a grand total of \$76,769.91. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 14, 2002, batch number 1754 (pages 1-4), with a grand total of \$79,380.18. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 01 - Pay Date: January 11, 2002. Total Missoula County Payroll: \$837,459.83. The Transmittal Sheet was returned to the Auditor's Office.

Deed Restriction Agreement and Subordinate Deed of Trust

Chair Curtiss signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and Daniel J. and Linda C. McQueen in the amount of \$734.00 for the property located at 13510 Crystal Creek Road, Clinton, Montana 59825, for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with down payment, closing cost and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth therein. The documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

**TUESDAY, JANUARY 15, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated January 15, 2002, batch number 1759 (pages 1-3), with a grand total of \$76,675.35. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Allison Field as applicant for Missoula County Public Schools Warrant #104256 issued December 14, 2001 on the MCPS Payroll Fund 7842 in the amount of \$218.74 (payment for wages), which was not received in the mail. No bond of indemnity is required.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending December 31, 2001.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Lease Agreement – The Commissioners signed a Lease Agreement, with conditions, between Missoula County and the Missoula Fastpitch Association and the Missoula Softball Association, extending the lease for two years on real estate as designated on Exhibit A attached to the Agreement. The term will be January 15, 2002 through January 15, 2004. Rent for the real property is \$1.00.

Contract Documents – Chair Curtiss signed HOME Contract #M2001-SG300105 between Missoula County and the State of Montana Department of Commerce ("Department") to provide funding for project activities approved by the Department under the Montana Home Investment Partnerships Program ("HOME"). This funding will be used to acquire and renovate a building to create six transitional housing units for women who are in chemical addiction treatment (Carole A. Graham Home project). This Contract takes effect upon the date of signature of the Director of the Department and will be in effect for the "period of affordability," which is 15 years for the acquisition and rehabilitation of rental housing, when the investment of HOME funds per unit is more than \$40,000. The total amount shall not exceed \$318,000.00. Other HOME documents include:

Designation – Chair Curtiss signed a Designation of Depository for HOME Funds, designating First Interstate Bank, Missoula, Montana, as the depository for all funds to be received from the Department resulting from HOME Contract No. M2001-SG300105.

Certification Form – The Commissioners signed a Signature Certification Form, authorizing the Commissioners to sign requests for payment of Montana HOME Investment Partnership Program Funds for the Missoula County Fiscal Year 2000 HOME grant. Two of the three persons are needed to sign each request for payment form.

Resolution No. 2002-006 – The Commissioners signed Resolution No. 2002-006, dated January 15, 2002, a Budget Amendment which adopts the \$318,000.00 Federal HOME funding expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

The HOME documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further signatures and handling.

Extension Contract – Chair Curtiss signed a (final) Water Main Extension Contract between Missoula County and Mountain Water Company for Schedule 1, Phase 4, Missoula Development Park (MWC Job #3101A010). The amount due to Mountain Water Company is an additional \$281.66. The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved the Park Board's recommendation to forward requests from Schmautz Park and Canyon Village Park to the County Weed Board for Weed Grant money for noxious weed control and re-vegetation plans. The requests were returned to Lisa Moisey in the Parks Office for further handling.

Resolution No. 2002-004 – The Commissioners signed Resolution No. 2002-004, dated January 15, 2002, a Budget Amendment for Aging Services (County Participation/Fund Balance), in the amount of \$10,425.00. This Amendment adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-005 – The Commissioners signed Resolution No. 2002-005, dated January 15, 2002, a Budget Amendment for the Public Works Department (Fund Balance/INTERCAP Proceeds), in the amount of \$500,000.00. This Amendment adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Terry Weisenburger, of Micro-Mania, to install Ethernet network and provide internet access at the new Weed District Office at 127 West Spruce. The term will be January 21, 2002 through March 31, 2002. The total amount shall not exceed \$1,500.00; payable upon satisfactory completion of installation of computer network wiring.

Agreement – Chair Curtiss signed a DEQ Agreement (Contract No. 502041) between Missoula County and the Montana Department of Environmental Quality ("DEQ"), for the purpose of inspecting and testing small Public Water Supply systems to ensure their safety. The total amount shall not exceed \$14,000.00. Performance shall begin on the date the Agreement is signed by both parties, and services must be completed by June 30, 2003. The document was returned to the Health Department for further handling.

INTERCAP Documents – Chair Curtiss signed documents relating to an INTERCAP Revolving Program Loan, in the amount of \$500,000, for the Public Works Department for the purchase of equipment. The Closing Date for the Loan will be January 18, 2002. The term over which the Loan Advance is to be amortized is January 18, 2002 through February 15, 2007.

Resolution No. 2002-003 – Chair Curtiss signed Resolution No. 2002-003, dated January 15, 2002, a Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), approving the form and terms of the Loan Agreement, and authorizing the execution and delivery of documents related thereto.

Extension Request – The Commissioners signed a letter to John Kellogg of Professional Consultants, Inc., granting his request for a one year extension of the final plat approval deadline for Ola Drive Summary Subdivision, in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is February 21, 2003.

Other items included:

- 1) A discussion was held on the Missoula Development Park proposed contract presented by Mickelson's attorney, and the Missoula County amendments to it. Public Works Director Greg Robertson, Chief Civil Attorney Mike Sehestedt, Projects Officer Barbara Martens, and Chief Administrative Officer Ann Mary Dussault will continue to review and research the proposed contract.
- 2) The Commissioners approved a motion to allow usage of "The Landing" (space in the Missoula County Courthouse formerly used by Victim Advocate Program) by other parties *as along as they [Victim Advocate] can have access "if we need the space for a trial or TOP hearing in Justice Court."* Chief Administrative Officer Ann Mary Dussault will write a brief Memorandum of Understanding for signature by all parties.
- 3) The Commissioners approved a request for the Deli (located on the first floor of the Missoula County Courthouse) to run a water and drain line to their espresso machine and ice maker, in order to meet with Health Department standards. The Deli will pay for all expenses and meet all building codes.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### WEDNESDAY, JANUARY 16, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated January 16, 2002, batch number 1747 (pages 1-4), with a grand total of \$20,637.09. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 16, 2002, batch number 1755 (pages 1-4), with a grand total of \$18,662.94. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 16, 2002, batch number 1757 (pages 1-4), with a grand total of \$6,507.37. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 16, 2002, batch number 1760 (pages 1-3), with a grand total of \$3,565.26. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 16, 2002, batch number 1761 (pages 1-2), with a grand total of \$3,287.64. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Carlton Tracts No. 3, a subdivision located in the SE¼ of the NW¼ of Section 35, T 11 N, R 20 W, PMM, Missoula County, with the owners of record being Kent S. Olson and John B. Justin.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer Meeting held in the forenoon, the following items were signed:

2000-01-01

Resolution No. 2002-009 – Chair Curtiss signed Resolution No. 2002-009, a Resolution of Intention to Annex portions of Sections 34, 35 and 36, T 15 N, R 18 W, PMM, Missoula County, Montana, South of Highway 200, to the Greenough-Potomac Fire Service Area. A Notice of Hearing was set for February 20, 2002, at 1:30 PM in Room 201, Missoula County Courthouse Annex.

Notice of Hearing – Chair Curtiss signed a Notice of Hearing for a petition for annexation of Lots 1, 2A, 2B, 5, 7, 8 and 9 located in Section 36, T 17 N, R 15 W, Powell County, Montana, into the Seeley Lake Rural Fire District. The Hearing was set for February 20, 2002, at 1:30 PM in Room 201, Missoula County Courthouse Annex.

Other items included:

- 1) A discussion was held with Public Works Director Greg Robertson on the Lolo Water & Sewer issue.
- 2) A discussion was held with Bob Brown, Susan Talbot and Fern Hart on the Historical Museum Mill Levy issue.

#### **PUBLIC MEETING – January 16, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Commissioner Bill Carey and Chief Civil Deputy County Attorney Mike Sehestedt.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$435,328.70. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 1:30 p.m.

**O'Brien Creek Road Gate Hearing** – At a Hearing held on January 16, 2002 at 4:00 p.m., the Commissioners unanimously approved a motion to install a Forest Service style gate on O'Brien Creek Road at the location identified by Missoula County Public Works and the United States Forest Service ("USFS"). The road will be temporarily closed beyond that point to motorized traffic except for property owners and governmental administrative and emergency services. The gate and the road shall be signed to indicate that non-motorized public access continues to be available beyond the gate. The estimated cost is \$1,000, and the USFS will pay for the gate (even though others in attendance at the hearing offered to pay for the gate).

### **THURSDAY, JANUARY 17, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated January 17, 2002, batch numbers 1756 and 1763 (pages 1-2), with a grand total of \$2,385.44. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 17, 2002, batch number 1765 (pages 1-5), with a grand total of \$64,696.59. The Claims List was returned to the Accounting Department.

#### **ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Letter – The Commissioners signed a letter to Representative Carol Juneau, Browning, Montana, dated January 16, 2002, stating that on December 27, 2001, the Commissioners unanimously endorsed the renaming of "Squaw Peak" to Ch-pa-agn (Treeless Peak). The Commissioners prefer, if possible, that the native name be used (Ch-pa-agn/Treeless Peak Trail). The letter authorizes Ms. Juneau to represent the Commissioners' position to the National Board of Geographic Names, with the understanding that, with the concurrence of the Salish-Kootenai Tribal Council, the US Forest Service and Missoula County, the recommended name change can now be forwarded to the Commissioners.

Other items included:

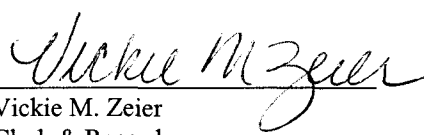
- 1) A discussion was held on who will be able to attend the MACo Midwinter Meetings in Kalispell the week of February 11<sup>th</sup>. Commissioner Carey will attend, depending upon the location of the Mental Health Meeting to be held the same week.

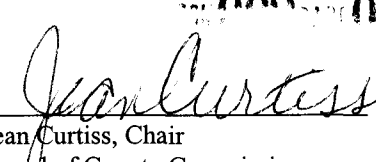
The minutes of the Administrative Meeting are on file in the Commissioners Office.

### **FRIDAY, JANUARY 18, 2002**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioners Carey and Evans were out of the office all afternoon.

Claims List – The Commissioners signed the Claims List, dated January 17, 2002, batch number 1762 (pages 1-6), with a grand total of \$34,769.13. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, JANUARY 21, 2002**

The Courthouse was closed for the Martin Luther King, Jr. Day holiday.

**TUESDAY, JANUARY 22, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 22, 2002, batch number 1769 (pages 1-3), with a grand total of \$12,429.54. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Agreement for Professional Engineering, Surveying and Platting Services between Missoula County and Professional Consultants, Inc. to develop a final plat for Lots 5, 6, 7 and 8, Block 13, and Park 11, Phase 5, Missoula Development Park. The Agreement provides for the platting by June 1, 2002 and also for construction bidding and construction management services for all of the work described in the Agreement, as well as the coordination of gas and electric service to these lots. The total cost of the contract is estimated to be \$32,256.00. The document was returned to Barbara Martens in the Projects Office for further handling.

Contract – Chair Curtiss signed a Treasure State Endowment Program Contract (#MT-TSEP-PE-02-174) between Missoula County and the State of Montana Department of Commerce, Helena, Montana, for grant funding for the structural and hydraulic evaluation of two bridges. Missoula County is authorized to draw up to \$15,000 against the TSEP funding awarded. The Contract takes effect when signed by all parties to the Contract. Missoula County has until April 30, 2002 to complete the work described in Section 5 of the Contract. The document was returned to Greg Robertson, Director of Public Works, for further signatures and handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

Extension Request – At the Planning Status Meeting held on January 22, 2002, the Commissioners signed a letter to John Kellogg of Professional Consultants, Inc., granting his request for a one year extension of the final plat approval deadline for Rolling Hills Subdivision, in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is February 26, 2003.

**WEDNESDAY, JANUARY 23, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey left for San Diego, California to attend a Growth Conference through Friday, January 25<sup>th</sup>.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 22, 2002, batch number 1766 (pages 1-2), with a grand total of \$2,735.49. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 22, 2002, batch number 1768 (pages 1-5), with a grand total of \$208,178.42. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 23, 2002, batch number 1767 (pages 1-5), with a grand total of \$62,175.11. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 23, 2002, batch number 1770 (pages 1-5), with a grand total of \$22,163.77. The Claims List was returned to the Accounting Department.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Amendment – The Commissioners signed an Amendment to the Memorandum of Agreement between the Missoula Board of County Commissioners and the Art Museum of Missoula, amending the duration of the Agreement from seven (7) months to 15 months. Funding for this Agreement comes from an additional \$3,245.00 from the Wallace Reader's Digest Planning Grant for Family Literacy. The duration of the Agreement will be from January 10, 2002 through June 30, 2002.

**PUBLIC MEETING – January 23, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, County Surveyor Horace Brown and Deputy County Attorney Colleen Dowdall. Commissioner Bill Carey was attending a seminar in San Diego, CA.

**Pledge of Allegiance**



**Public Comment**

None

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$400,018.68. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Consideration: Deadman Gulch Homesites (5 Lots – 3 miles south of Buckhouse Bridge off Cochise Drive)**

Karen Hughes, Office of Planning and Grants, presented the staff report.

This is a request from The Jackson Group represented by Land Services, LLC. They are requesting to subdivide a 24.10 acre parcel into five lots ranging from 2.5 acres to 4.07 acres in size. They are also proposing to dedicate 8.23 acres of the subdivided area to the Homeowners Association as common area.

The proposed subdivision is located about 0.5 miles up Cochise Drive on the west side of the road. Cochise Drive is located just over 2.5 miles south of Buckhouse Bridge on Highway 93 South. The property is unzoned and the 1978 Lolo Land Use Plan designates about two-thirds of the property as Residential with a recommended density of one dwelling unit per 10 acres and the remaining one-third as Open and Resource, with a maximum residential density of one dwelling unit per 40 acres. The proposed density of this subdivision is one dwelling unit per 4.6 acres.

The applicant has requested five variance requests. Most of them have to do with roads. Staff is recommending approval of four of the five variance requests. Staff is recommending the variance request to not pave Deadman Gulch Court be denied. Staff is recommending the road be paved due to its location within the Air Stagnation Zone. Staff is recommending approval of the summary subdivision, subject to 14 conditions.

The key issues for this subdivision are Comprehensive Plan compliance, roads and natural environment.

The property is unzoned and the 1978 Lolo Land Use Plan provides the land use designations for this area. This Plan is supplemented by the Urban Growth Comprehensive Plan which sets goals and objectives. Staff did a thorough analysis of both the land use designation and the goals and objectives of the Comprehensive Plan. The land use designation is still applicable. The goals and objectives focus on the importance of the natural environment and wildlife habitat, environmental health and community character. Staff found that the subdivision did not comply with the Land Use Designation or the goals and objectives outlined in the Comprehensive Plan and felt a reduction in density would help bring the proposal into compliance. However, there have been changes in State law which have raised questions regarding the ability of the Board of County Commissioners to review subdivisions for compliance with the Comprehensive Plan. Therefore, no recommended conditions regarding density have been proposed.

The road situation is fairly confusing. Cochise Drive intersects with Highway 93 at a dangerous location. Cochise Drive has a couple of switchback and this subdivision is located at the second switchback. The developer is proposing to build a road called Deadman Gulch Court. Deadman Gulch Road also is located along the northern portion of the subdivision. It is a non-maintained County right-of-way, basically two tracks, which provides access to State owned forest land to the west of this subdivision and needs to remain open. It is unusual to have all these roads come together at a switchback on another road. The County Public Works Department felt there should be minimal problems with the site distance at Cochise Drive. Deadman Gulch Court as proposed would be acceptable with the requirement that it paved.

The other variance requests have to do with the surface with of Cochise Drive, it is narrower than it should be at the point where it approaches the subdivision. Cochise Drive will likely be improved to a wider surface width due to logging operations proposed on State land. It is recommended that an RSID waiver be included for Cochise Drive and the portion of Deadman Gulch Road serving this subdivision. That should address this developers responsibility for improvements in the future to either of those roads.

Other variance requests have to do with both Deadman Gulch Court and Deadman Gulch Road. Both cross lots in the subdivision which is prohibited in the Subdivisions Regulations. They have requested a variance from that requirement. The terrain prevents being able to go along one edge or another completely. The portion of Deadman Gulch Road that crosses the lots is a remnant road. It doesn't serve any purpose and may be vacated in the future. It is not the part that is used to serve State land. Deadman Gulch Court crosses lots as well, but because of the terrain and riparian area, it is better for it to go through the open meadow and cross lots than be configured in a different manner.

There is some question as to the actual location of Deadman Gulch Road and there are conditions to address its location correctly, to be reviewed and approved by the County Surveyors Office.

The other variance request has to do with provision of non-motorized transportation facilities for this subdivision. This is in a fairly rural area where sidewalks or walkways of any kind would not connect. It is recommended that this variance request be approved.

The third key issue is natural environment and wildlife habitat. The property is primarily comprised of steep hillsides that slope from the south, where the common area is located, to the north. Most of the southern portion of the property is a timbered hillside and is designated as common area. The remainder of the steep area is designated as a "no-build" zone. There is a swale that bisects the property along the buildable areas, which is an open grassland area. It will result in long driveways crossing the swale. It has also been identified as a natural drainage area and staff has recommended some conditions to prevent structures from being built in the drainage area and requiring driveways to be built so they don't obstruct drainage.

The slope category map shows the southern portion of the property, about 150 to 200 feet north of the northern common area #2 boundary, as having slopes greater than 25%. The property north of Deadman Gulch Court is identified as having slopes of 10-25% grade. An area of 10-25% slopes is also located in the northeast corner of the subdivision. Staff recommends that the final plat be consistent with the preliminary plat in terms of areas designated as "no-build" zones.

The riparian resource area located along the northern boundary is also crossed by the County road, which is unfortunate. Staff has done their best to keep it in as good shape as possible. A Riparian Management Plan has been provided and it is shown as a "no-build" area. It is also recommended that it be shown as a "no-improvements" area. There are also some recommendations as to the types of activities that are permitted or prohibited in the riparian area.

This is an area within whitetail deer winter range. It is slightly lower in elevation than elk winter and spring range. Other species such as black bear, mountain lion and moose also make use of the area, as well as a number of bird species. As a result, there have been some recommended changes to the covenants to more specifically address property owners responsibilities for living with wildlife. Changes have also been recommended for weed control both in the common area and on owned property.

Marc Carstens, Land Services, LLC, stated he was representing The Jackson Group. The developer has embraced the conditions as proposed and is in favor of the variance request findings. They have made every effort to design the subdivision to be consistent with the immediate neighborhood. There are small tracts to the east and west of the proposal. The building sites have been located to have the least impact on the immediate area. The improvements to Deadman Gulch Court are significant in that it is also an access easement enjoyed by several immediate landowners. The proposal was well reviewed by OPG staff. He was available to answer any questions the Board may have.

Chair Curtiss asked for public comments.

Joann R. Anderson, 7300 Cochise Drive, stated her property is to the north on the hill from this proposal. She also owns the first acreage on Cochise Drive from the highway. She had two concerns. She would like to know more specifically what the weed control program will be. As a group of landowners, the neighbors have been very active in weed control in this area. This is one of the remaining pieces of property that is very bad. They would like to cooperate with the developer and work on the problem together. They have obtained Soil Conservation grants and Missoula County Weed grants. The other concern is even more urgent and that is Cochise Drive. The intersection with Highway 93 is dangerous. The wait to make a left turn to go into Missoula is long and more houses will increase the wait and the danger. A neighbor is going to request a traffic light and one is needed at Hayes Creek as well. The light at Blue Mountain Road does help some. It has already been stated that the logging project may necessitate improvements to Cochise Road. This needs to be addressed before anything happens on this subdivision so the neighbor know what is going to happen. She would like to hear more about this.

Chair Curtiss asked Karen Hughes to address the weed issue. The County does not have a "Weed Sheriff" and does include language in most subdivisions to address the issue.

Karen Hughes stated the most common requirement is a revegetation plan for disturbed sites. When work is done on the road, a revegetation plan is submitted and approved by the Weed Control Board. That will be done prior to final plat approval. Changes have also been made to the covenants that require property owners to maintain their properties in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Additionally, there is a provision in the Homeowners Association documents and the covenants requiring the Homeowners Association to maintain the common areas weed free.

Commissioner Evans stated that the neighbors could contact Jerry Marks at the Extension Office to develop a weed control project for the area.

Joann Anderson stated the neighbors are aware of the various agencies and have been working with them. This provision needs to have some real teeth in it, all the good intentions don't always actually happen.

Marc Carstens stated his company has a botanist who has worked for the past several years as a consultant to the National Bison Range in weed management and control. A weed management program has been authored that will integrate with the existing requirements of both the State and the County. That will be an element of the final plat.

Chair Curtiss stated that the Highway Department makes decisions on traffic lights, which are not especially favored on a major highway.

Commissioner Evans stated it would be unlikely this location would meet the warrants for a traffic light.

Horace Brown stated he has heard rumors about the proposed logging but his office has not been contacted about any specific plans. If they want to improve the road, the Surveyors Office would have no problems with that.

Karen Hughes stated that Bob Rich from DNRC has contacted Clint Harris and has begun the discussion about improving the road.

Roy Anderson, 7300 Cochise Drive, stated his family owns the property to the north that adjoins this proposal. It should be pointed out that particular piece of property is absolutely infested with weeds, Spotted Knapweed and Leafy Spurge. It needs attention not only for disturbed sites, but the undisturbed sites that are fully overrun now. That really has to be addressed. He asked if Deadman Gulch Road was on part of this property. Does the property include the road?

Karen Hughes stated that it appears to include at least part of the road. The developer will have to do some work with the Surveyors Office to correctly identify exactly where the road is located. They will use the centerline of existing tracks to determine the location.

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Horace Brown stated the road in this case is a monument and the centerline of the road will determine the centerline of the 60 foot wide easement.

Roy Anderson asked who the Jackson Group was?

Karen Hughes stated that she believed it was a contractor's group. Doug Jackson was the president.

Roy Anderson asked what their address was?

Marc Carstens stated he did not have the address with him. The address listed in the staff report is a Post Office Box in Missoula. He could also provide a phone number if necessary.

Janice Pruyn, 7855 Alta View, stated her property was uphill from this proposal. Her first concern was about the weed situation, both currently present and during development. She would like to see something done about the weeds before development. Another concern was the access to Highway 93. There are 19 homes right now that use Cochise Drive. Four or five additional homes is significant. She felt a lot of pressure every morning trying to make a left turn onto Highway 93. Another concern is the access for this proposal on Cochise Drive. Cochise Drive is considered by most as the right-of-way. There should be some sort of yield sign or something to indicate that those on Cochise Drive have the right-of-way. The corner is also very sharp and blind.

Karen Hughes stated the condition is written so that Deadman Gulch Court shall be paved to a surface width of 24 feet with a cul-de-sac bulb that meets County Subdivision standards and road signs shall be installed prior to final plat approval.

Chair Curtiss stated that the County Public Works Department and the Surveyors Office will determine what signage is appropriate.

Horace Brown stated a determination will be made as to which is the main road and the other road will get either a stop sign or a yield sign.

Bob Rich stated he was a Forester for Montana DNRC. He knew most of the neighbors in this area from the work they have been doing. There are plans to do some harvesting on State Trust land which is accessed by Deadman Gulch Road. They will be coordinating with the developers on keeping this right-of-way open to the public. There have also been discussions with Joe Jedrykowski and Clint Harris on improving the standards of Cochise Drive before there is any logging truck traffic on it. It is as narrow as 18 feet in some places. The discussions so far have determined they will be able to widen that road and apply surfacing the County would supply.

Commissioner Evans asked about what the County would supply.

Bob Rich stated the crushed rock would be available and the DNRC's contractor could apply it.

Horace Brown stated this was up to the Public Works Director. Normally, there would be cooperation but the County would not supply the material to pave the road.

Bob Rich stated it was not the paving, it was inch crush rock.

Horace Brown stated that needed to be worked out with the Public Works Department.

Chair Curtiss asked when they expected the work to begin and how long it would take?

Bob Rich stated the logging could start as early as a year from now and could continue for up to three or four years.

Horace Brown asked if they planned to continue operations during the winter?

Bob Rich stated that decision has not been made yet. It is always a possibility and would help to minimize dust on the road.

Horace Brown stated it was easier on the road and the forest to do the work during the winter.

Commissioner Evans asked what the DNRC would be doing to help minimize the weeds.

Bob Rich stated there is a biological control release site on the property right now. An insectary has been established for root mining weevils on knapweed. They have released two different species of leafy spurge flea beetles through cooperation with Bill Otten of the Weed Department. There is a possibility they will be spraying their roads plus the BPA power line. That hasn't been decided yet and the Environmental Assessment is ongoing.

Commissioner Evans asked if they spray their tires as they are coming and going?

Bob Rich stated there is a clause in their contract that requires off road equipment to be power washed before it is brought onto the site. The log trucks and pickup trucks are not required to be washed every time.

Mark Tschida stated he was an adjacent landowner to the east. He has concerns about the road traffic even though he does not get directly involved with Cochise Drive. The impact of this intersection with Cochise Drive and another intersection with the County road has the potential for some serious problems. It is a switchback that comes into this intersection and especially during the winter, it could cause some problems. He would like some clarification in the density, he understood it should be one dwelling unit per 10 acres.

Karen Hughes stated that she had given a copy of a letter from Mr. Tschida to the Board. The density is based on the Comprehensive Plan land use designation which is a policy document that provides guidance on what are appropriate land use densities, along with other information on goals and objectives. It is not a regulatory document and cannot regulate how much density can be done, it can only guide staff in their decision. Staff provided analysis that this likely would not comply with the Comprehensive Plan density and goals and objectives. However, there have been some changes in State law that restrict the ability to use Comprehensive Plan compliance as a basis for reviewing subdivisions.

Colleen Dowdall stated that was based in part on the fact that the County does not have a growth policy. There are changes that need to be made to the regulations after adoption of a growth policy.

Mark Tschida stated he felt the density should come closer to what has been in existence in the area and follow the guidelines that have been established. The proposal is closer to one dwelling per 4 acres as opposed to one per 10. His other question relates to the existing easement of Deadman Gulch Road that goes, more or less, through his living room. Is that easement going to be abandoned with the intention of developing a new easement.

Karen Hughes stated the applicant intends to abandon the lower drop of Deadman Gulch Road and there is some question as to whether or not Deadman Gulch Road actually goes out and joins with what is known as Cochise Drive. If there is an abandonment, it would only be the lower part and only what exists on this property. They could work with Mr. Tschida to vacate other portions of the road. There are restrictions on vacating roads that access public land.

Horace Brown stated the road could not be vacated as it does access State land. He made the recommendation that it not be vacated. He was not sure if the portion on Mr. Tschida's property could be vacated. Mike Sehestedt or Colleen Dowdall would have to make that determination. It is probably part of the original road but there is another access.

Colleen Dowdall stated that Horace Brown was correct that the law says a road cannot be abandoned that accesses public land unless there is another access that is comparable, as good as or better. Since the roadway is not built at this point, it would not provide better access. If it was the only access, built or not, then it would be prohibited to abandon it. The petition can address whether or not to abandon the access on Mr. Tschida's land and the Board can choose to abandon all of it or part of it. That has some consent requirements as well. It is a procedure that is separate from this subdivision review.

Commissioner Evans stated that once the road is constructed to provide an alternate access, would Mr. Tschida want the part that goes through his living room abandoned.

Mark Tschida stated he would like to see that happen.

Chair Curtiss stated that Mr. Tschida and the developer could work together to ask for this to be done as a whole or he could petition to abandon the portion on his property.

Joann Anderson asked what the timeline was for this development, once it receives approval.

Karen Hughes stated if the subdivision is approved today, the developer has one year to file the final plat, which means meeting all the conditions of subdivision approval. That can be extended up to three years. Lots cannot be sold until the final plat has been filed.

Colleen Dowdall stated that the subdivision cannot be developed until the plat is filed. Once preliminary plat approval has occurred, they can sell lots into escrow, but none of the proceeds can be spent.

Marc Carstens stated he believes the developer would like to proceed as timely as possible. They don't intend to leave this on the shelf for any length of time. He would also like to discuss Deadman Gulch Road. He has met with members of the County Surveyor's Office over the past few days and everyone is working diligently to determine where the road actually lies. It never was the developers intent to close off any public access. They were wondering what to do with that piece of Deadman Gulch Road that runs through the lots and there is no road. They are working on the situation and will have it resolved prior to filing the final plat.

Mark Tschida asked if there was a limit to the number of homesites.

Karen Hughes stated there could only be one dwelling on a lot, without going through an additional review process. If someone wanted to put a second dwelling on their property, they would have to go through the Subdivision for Lease or Rent process. It would require Commissioners action.

Bert Rautio stated she was directly affected by this proposal. She had property both north and south of this proposal. She reiterated the road issue, it is important, and she would like to see the knapweed addressed. Her main concern is the common area rules. Are they enforceable after today's approval, or after the final plat is filed.

Colleen Dowdall stated the common area rules are essentially the covenants for the subdivision. They are filed with the subdivision plat. A common area is not required for this subdivision so the County's involvement is limited.

Bert Rautio stated that the covenants could change before the final plat is filed.

Karen Hughes stated that there are some recommendations for changes to the covenants. One of them is that the governing body would have to approve any amendments to certain sections, including weed control. The covenants are an agreement between the property owners in the subdivision, they enforce one another.

Chair Curtiss stated the section of the covenants regarding weeds could not be changed without approval from the Board.

Commissioner Evans stated she would like to make it clear that the Board is not in the position of enforcing the covenants. A private attorney would have to be retained to do that.

Roy Anderson stated it was still unclear what the plans were concerning Cochise Drive. This is something that has to be addressed before the subdivision goes in. Two trucks cannot currently pass on that road, it is too narrow. It is the only access to the area.

Chair Curtiss stated the developer could only be required to do things on their own property. DNRC is also planning to do some improvements to the road.

Roy Anderson stated that about four years ago they offered to provide land for the widening of the road. The offer was ignored and has been withdrawn. That road has to be widened if the number of houses is increased. The ideas of what might be done are very vague.

Karen Hughes stated that Cochise Drive is within a 60 foot right-of-way so there is adequate width to do the improvements that might be necessary. The developer would be responsible, if required, to do improvements to the road adjacent to their property, but would not be required to do any improvements further down the road.

Commissioner Evans asked if Cochise Drive was a County maintained road and if there were any plans to improve it.

Horace Brown stated he did not run the Road Department anymore and did not know of any plans for improvement. If logging is going to occur on that road, it will have to be widened.

Joann Anderson stated that it should be very clear that even though it looks like DNRC is going to log this land, the sale has not been made. It is not a done deal by any means. She did not think this development should be tagging onto the logging, saying that DNRC will improve the road. The developer has to have responsibility. It is too big an issue.

Colleen Dowdall stated that this is an off-site road used by all the residents. The County cannot impose the burden of fixing the problem on this developer. It would have to be done through the creation of an RSID that would involve all of the users of the road to improve the roadway. It is not something that can be required of this developer.

Karen Hughes stated the developer has waived the right to protest the creation of a future RSID. They would be required to contribute if an RSID is created for improvements to this road.

Joann Anderson asked if the approval of the subdivision could be withheld until the road is guaranteed?

Colleen Dowdall stated that legally the County cannot do that.

Joann Anderson stated that was amazing, just as when she and her husband offered their land and fill free to improve the road. This just keeps going around in circles, nobody is really responsible, until somebody gets killed.

Commissioner Evans stated that Mrs. Anderson needs to understand that the Board is not in a position where they make the laws, but they must observe them. The law does not give all the power they would like to have. The Board is considered an arm of the State and can do only that which the State specifically tell the Board they can do. She wished that could be reversed, but that is not the case. It is not within the power of the County to tell this developer they have to fix the road not adjacent to their property. She was unaware of the offer the Andersons made a few years ago, there may have been a good reason for it not being accepted. The County may not have had the money to upgrade the road even with their generous donation. If the residents want to create an RSID to fix the road, that can be done. She understands the problems of Cochise and it is very scary.

Chair Curtiss stated that all the houses up there should have been considered when they were put in.

Joann Anderson stated that was the concern, seeing more and more houses go in. A good development is not a problem as long as there is adequate infrastructure.

Commissioner Evans asked if Mrs. Anderson would be interested in initiating an RSID to fix the road?

Joann Anderson stated she would like to know what the other residents felt about the situation.

Commissioner Evans stated that the people who are interested in creating an RSID get a petition together. If 51% of the people in the affected area are in favor, then the County will go to the effort of attempting to create the RSID. If only 30% are in favor, the County would not spend the time or the money knowing the attempt would be defeated.

Roy Anderson stated that the road is a County road but does not meet County specifications. Did he understand that it was not the County's responsibility to widen the road, but the individuals who use the road.

Colleen Dowdall stated the County has an obligation to improve roadways within their budgetary limitation. Those decisions have to be made based on a risk assessment and how many people use the road. The amount of money available through the road tax is so small that there is not adequate funding to bring every County road up to County road standards. There are many, many miles of County roads that don't meet County road standards. The residents of Cochise Drive are not alone.

Roy Anderson stated there were probably very few roads worse than Cochise Drive.

Chair Curtiss stated that they hear the same complaint from lots of people on lots of different roads.

Roy Anderson stated he had heard representatives of the County Road Department say this is the worst road they have.

Commissioner Evans stated that some of the development in this area may have been done through the Certificate of Survey process which is exempt from subdivision review or County oversight. The law allows that process but puts the County in a bad situation. Houle Creek is an example. Most everything on the top of Houle Creek was done through Certificate of Survey. The road was too steep and people probably had an expectation the County would take care of it. There was fire and children died because the fire trucks were unable to get up the hill. None of that was the County's responsibility because it was not reviewed through the subdivision process. The development of the land was done through a "loophole" in State law. It is possible some of the houses in this area were done the same way. After the fact, people think the County should have done something, but the County didn't have the ability to require improvements as there was no review of the development.

Roy Anderson stated the road was, in fact, accepted as a County road.

Chair Curtiss stated there are other roads that are not in very good shape that the County has accepted. The only thing that can be done now is go forward. That is why this developer is being required to build the new road to County standards and participate in an RSID if one is created.

Horace Brown stated that around 1973, the Board of County Commissioners accepted all the roads that were being maintained at that time. That is how this road got to be a County maintained road.

Commissioner Evans stated that since about 1978, the County does not accept a road for maintenance unless it is brought to County standards.

There were no further public comments.

Commissioner Evans stated that she is concerned about the road. She would like to be assured that when DNRC does begin their logging operation, they will work with the Surveyor's Office and the Public Works Department to include as much safety on that road as possible.

Horace Brown stated that the Public Works Department will be responsible. The Surveyors Office will not exist by that time.

Karen Hughes stated that a letter from Clint Harris is included in the packet and they have been in contact with DNRC. There have been discussions about improving Cochise Drive. This developer is not responsible for any improvements to Cochise Drive.

Chair Curtiss stated the concerns about Cochise Drive have been heard and are understood. The County is making some progress on improving roads, but the County is as big as the State of Delaware. It will take time.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Article 3-2(1)(G) of the Missoula County Subdivision to not pave Deadman Gulch Court, based on the findings of fact set forth in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations to allow for Cochise Drive to be 22 feet in width instead of the required 24 feet; approve the variance request from Article 3-3(1)(D) of the Missoula County Subdivision Regulations to allow for Deadman Gulch Court to divide Lots 1, 2 and 3; approve the variance request from Article 3-3(1)(D) of the Missoula County Subdivision Regulations to allow for Deadman Gulch Road to divide Lots 4 and 5; and approve the variance request from Article 3-2(8) of the Missoula County Subdivision Regulations to not install non-motorized transportation facilities within this subdivision; all based on the findings of fact in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Deadman Gulch Homesites Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans stated that if logging begins and there are still concerns as to the safety of Cochise Drive, please contact the Board.

#### **Deadman Gulch Homesites Summary Subdivision Conditions of Approval:**

##### **Roads**

1. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Cochise Drive and the portion of Deadman Gulch Road used for access to this subdivision including, but not limited to, paving and installation of sidewalks, 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 depicted herein."

Any reference to an RSID waiver for Deadman Gulch Court shall be removed from the plat subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-2 and staff recommendation.*

2. Final road plans shall be reviewed and approved by the Missoula County Public Works Department prior to final plat approval. The road improvements, including paving Deadman Gulch Court to a surface width of 24 feet with a cul-de-sac bulb that meets County Subdivision standards and road signs, shall be installed prior to final plat approval, subject to review and approval by the County Public Works Department. Improvements shall be made subject to Article 3-13(5) of the Missoula County Subdivision Regulations which prohibits intentional sidecasting

of road material into the riparian area and requires effective sedimentation and erosion control practices. *Subdivision Regulations Article 3-2(1)(J), 3-13(5), County Public Works Department and staff recommendation.*

3. The final plat shall clearly state that Deadman Gulch Court is a private access easement, subject to review and approval by the County Surveyor's Office and OPG. The "certificate of dedication" on the plat (Plat Page 2) shall be removed prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-2(3) and staff recommendation.*
4. The correct location of Deadman Gulch Road shall be identified on the final plat, subject to review and approval by the County Surveyor's Office, prior to final plat approval. *Subdivision Regulations Article 3-2 and staff recommendation.*
5. Driveways for homes within this subdivision shall meet driveway standards outlined in Missoula County Subdivision Regulations Article 3-2(10) and, where located in an area with greater than 10% grade, Article 3-15(5). Driveways shall be constructed in a manner that does not obstruct the function of the swale as a drainage area. Plans shall be reviewed and approved by the County Public Works Department, OPG and the Missoula Rural Fire District prior to building permit issuance. *Subdivision Regulations Article 3-2(10), 3-4 and 3-15.*

#### Drainage

6. Drainage plans, including the plans for the drainage retention area in the northeast corner of the site, for the site and the road shall be reviewed and approved by the County Public Works Department prior to final plat approval. If a drainage easement for the swale is required by the Public Works Department, it shall be shown on the final plat, subject to review and approval by the County Public Works Department. *Subdivision Regulations Article 3-4, County Public Works Department and staff recommendation.*
7. The swale that bisects this property and is used for drainage shall be identified on the plat as a "no-build" area for structures. *Subdivision Regulations Article 3-4 and staff recommendation.*

#### Fire

8. The subdivider shall provide a water supply sufficient for fire suppression for this subdivision, subject to review and approval by the Missoula Rural Fire District, prior to final plat approval. The subdivider shall file a development agreement, subject to review by the Missoula Rural Fire District, that provides the specifications on the approved fire fighting water supply and details on installation of the water supply. The development agreement shall be approved by the Missoula County Attorney's Office. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*
9. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public water system adequate 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." *Subdivision Regulations Article 3-7(2).*

#### Covenants

10. The proposed covenants shall be revised to include the following information:
  - The specific driveway standards outlined in Article 3-2(10) and 3-15(5) of the Missoula County Subdivision Regulations for hillside design, width, surfacing, grade and emergency turnarounds.
  - The covenants and Homeowners Association documents shall state that the common areas shall be maintained by the Homeowners Association in a weed free condition, in accordance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. *Subdivision Regulations Article 3-1.*
  - The specific Wildland Residential Interface (WRI) standards outlined in Article 5-3(5)(R & S) of the Missoula County Subdivision Regulations.
  - The Riparian Management Plan shall be incorporated into the covenants including a drawing showing the location of the area of riparian resource and vegetation types. The following revisions shall be made to the Riparian Management Plan. It shall state that except for the removal of invasive weeds, the existing vegetation including native shrubs and trees, shall remain undisturbed. Further, plantings of additional native riparian species is strongly encouraged. Planting of lawns or non-native, ornamental species is prohibited. Grazing, tilling, mowing (unless part of an approved weed control plan) and fencing are prohibited in the riparian area. No motorized access or road improvements are allowed within the riparian resource area. Road improvements for Deadman Gulch Court shall be made in accordance with Article 3-13(5) of the material into the riparian area and requires effective erosion and sedimentation control practices. *Subdivision Regulations Article 3-13.*
  - A section shall be added with the following information on property owners responsibilities for living with wildlife: *Subdivision Regulations Article 3-1(1)*
    - a. Garbage, pet food, livestock feed, etc., should be properly stored in secure animal-proof containers or inside buildings to avoid attracting species such as bears, lions, raccoons or skunks. Garbage shall not be placed outdoors until garbage pick up day to help avoid conflicts with animals such as bears.
    - b. Bird feeders and compost piles attract bears and are discouraged from being used in this subdivision.



- c. Artificial feeding of wildlife is prohibited, in accordance with Montana State Law. Artificial concentrations of game animals resulting from feeding can attract mountain lions. It can also result in additional damage to gardens, ornamental shrubs, etc.
  - d. There is potential for vegetation damage by deer to lawns, gardens, flowers and ornamental shrubs located on or near the homesites. Homeowners should be aware of the potential problems that can occur and take the responsibility to protect their vegetation or plant only non-palatable vegetation. Homeowners should also be aware that whitetail deer might occasionally attract mountain lions to the area.
  - e. Homeowners must accept the responsibility of living with wildlife and be responsible for protecting their vegetation from damage, confining pets and properly storing garbage and other potential attractants. The "Living with Wildlife" brochure is available from the Missoula Office of Planning and Grants or Montana Fish, Wildlife and Parks.
  - f. Homeowners should be aware of the potential problems associated with the occasional presence of bears, mountain lions, deer, etc.
- The weeds section shall be amended to state that properties within this subdivision shall be maintained in a weed free condition, in accordance with the Montana Noxious Weed Management Act and the Missoula County Noxious Weed Management Plan. *Subdivision Regulations Article 3-1(1)*.
  - The following statement shall be added: "The Missoula City-County Air Pollution Control 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." *Subdivision Regulations Article 3-1 and Health Department recommendation*.
  - The section stating that the Governing Body shall approve amendments to the covenants shall be revised to state that Governing Body approval of amendments to the following sections is required: driveway standards, WRI standards, common area maintenance, riparian management plan, wildlife and weeds.

Recommended revisions to the covenants shall be made prior to final plat approval, subject to review and approval by the County Attorney's Office and OPG.

#### Natural Environment

11. The final plat shall be consistent with the proposed plat in terms of areas shown as "no-build" due to slope. *Subdivision Regulations Article 3-1(2) and staff recommendation*.
12. The Riparian Resource Area shall be shown on the plat as a "no-improvement" area, subject to OPG review and approval, prior to final plat approval. The description of the area of riparian resource on the drawing and in the Riparian Management Plan shall be consistent and described as follows: The first (identified by black crosses) is an area with both coniferous and deciduous overstory of Douglas fir, spruce, ponderosa pine, black cottonwood and western snowberry. The second (identified by blue crosses) is identified as having the following grasses and shrubs: smooth brome, reed canary grass, mountain alder, choke cherry and western snowberry. *Subdivision Regulations Article 3-13 and staff recommendation*.
13. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation*.

#### Utilities

14. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement,' to have and to hold forever." *Subdivision Regulations Article 3-5(2)*.

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.

**THURSDAY, JANUARY 24, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 24, 2002, batch number 1771 (pages 1-4), with a grand total of \$37,529.70. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 24, 2002, batch number 1772 (pages 1-3), with a grand total of \$31,640.97. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated January 24, 2002, batch number 1775 (pages 1-3), with a grand total of \$3,429.18. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

2000-2001

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Bob Ranney, of Spartan Renovation, for construction activities and restoration work for the LaLonde Ranch, per the time schedule and items set forth on Exhibit A to the Contract. The total amount shall not exceed \$20,000.00. The document was returned to Barbara Martens in the Projects Office for further signatures and handling.

Contract Addendum – The Commissioners signed Addendum No. 1 to Contract for Deed between Missoula County and North Reserve Business Center, LLC, effective January 22, 2002, modifying the original Contract (dated August 7, 2000) to allow payment for the second installment of the Purchase Price to be made in two installments: payment #1 due on or before February 9, 2002, and payment #2 due on or before June 15, 2002. The document was returned to Deputy County Attorney Mike Sehestedt for further signatures and handling.

Agreement – The Commissioners signed an Easement Modification Agreement, dated December 18, 2001, between Kevin G. and Rebecca A. Larson, and Bonnie R. Hamilton, modifying the easement in the Leonard's Clark Fork Estates running from Hamilton Way to Lot 11 between Lots 8 and 9. The document was returned to Deputy County Attorney Mike Sehestedt for further signatures and handling.

Agreement – Chair Curtiss signed a Memorandum of Agreement, dated November 15, 2001, between The Missoula County Park Board (the "Board") and the Hellgate Lions Club for assistance with park development. The Board agrees to provide up to \$3,000.00 in matching funds for improvements as delineated in Attachment A to the Agreement. Funds must be spent by November 30, 2003. The document was returned to Lisa Moisey in the Parks Office for further signatures and handling.

Resolution No. 2002-010 – The Commissioners signed Resolution No. 2002-010, granting an agricultural use covenant affecting Tract A1 of Certificate of Survey 5237, located in the SW¼ of Section 21, T 16 N, R 15 W, PMM, Missoula County, Montana.

Other items included:

- 1) County Surveyor Horace Brown provided information to the Commissioners regarding the following projects: 1) the replacement of the Maclay Bridge, 2) the GIS Project, and 3) the Rumble Creek Road extended right-of-way.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, JANUARY 25, 2002**

The Board of County Commissioners did not meet in regular session. Commissioner Evans was out of the office all day.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Stephen Reynolds as applicant for Missoula County Public Schools Warrant #103822 issued November 30, 2001 on the MCPS Payroll Fund 78-42 in the amount of \$530.21 (payment for wages), which was not received in the mail. No bond of indemnity is required.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, JANUARY 28, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated January 25, 2002, batch number 1778 (pages 1-5), with a grand total of \$14,561.59. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 25, 2002, batch number 1780 (pages 1-2), with a grand total of \$2,438.47. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 25, 2002, batch number 1781 (pages 1-5), with a grand total of \$69,436.51. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 28, 2002, batch number 1782 (pages 1-4), with a grand total of \$22,459.99. The Claims List was returned to the Accounting Department.

Payroll Authorization Form – The Commissioners signed a Payroll Authorization Form for the Montana Disaster and Emergency Services Division, for the provision of information necessary for The Emergency Management Assistance ("EMA") Grant Program. Indicated was a change in the salary for Jane Ellis, Director of Emergency Services, from \$28.63 to \$30.58 per hour (80 hours per pay period), effective July 1, 2001. The document was returned to Jane Ellis in Emergency Services.

**TUESDAY, JANUARY 29, 2002**

The Board of County Commissioners met in regular session; all three members were present.

2000-2001

Audit Exit Conference

In the afternoon, the Commissioners, et al., met with Paul Sepp of Elmore and Associates for the Annual Audit Exit Conference.

Claims List – The Commissioners signed the Claims List, dated January 28, 2002, batch number 1786 (pages 1-3), with a grand total of \$14,050.20. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 29, 2002, batch number 1783 (pages 1-3), with a grand total of \$149,756.16. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated January 29, 2002, batch number 1787 (pages 1-2), with a grand total of \$1,497.35. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming L. Andrea Clark as Principal for Accounting Warrant #269626, issued December 14, 2001 on the Missoula County Payroll Fund in the amount of \$189.78 (payment for payroll period #25), now unable to be found.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 02 - Pay Date: January 25, 2002. Total Missoula County Payroll: \$840,861.57. The Transmittal Sheet was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Extension Contract – Chair Curtiss signed a (preliminary) Water Main Extension Contract (#between Missoula County and Mountain Water Company to extend the water line throughout the remainder of Phase 4 (Schedule 2), Missoula Development Park (MWC Job #3102A002(P)). \$123,000.00 shall be advanced to Mountain Water Company for this project. The effective date of the Contract is January 17, 2002. The document was returned to Barbara Martens in the Projects Office for further handling.

Resolution No. 2002-011 – The Commissioners signed Resolution No. 2002-011, dated January 29, 2002, a Budget Amendment for the Public Works Department, in the amount of \$3,588.00, reclassifying the Administrative Aide to Office Manager position. This Amendment adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Contract – The Commissioners signed a yearly Contract for Nutrition Services between Child Start, Inc., sponsor of the Health Start Program, and the Missoula City-County Health Department, to provide nutrition services to the Head Start Program (through the WIC Office). This contract is for Fiscal Year 2002. The total amount shall not exceed \$725.00.

Grievance – The Commissioners signed a letter to Todd Lovshin, MEA-MFT, Helena, Montana, granting the remedy Mr. Lovshin requested in a grievance filed on behalf of Janet Foss. Ms. Foss' reinstatement will be effective February 19, 2002.

Request for Action – The Commissioners approved a request from Chief Financial Officer Dale Bickell to increase the capitalization limit from \$500 to \$5,000 in order to facilitate reporting information to the public, per standards set by the Governmental Accounting Standards Bureau ("GASB"). Also approved was the adoption of IRS depreciation schedules for all assets that must be depreciated for grant reporting purposes. The request was returned to CFO Dale Bickell for further handling.

Other items included:

- 1) A discussion was held with Jane Ellis, Director of Emergency Services, regarding 9-1-1 Center staffing issues.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, JANUARY 30, 2002**

The Board of County Commissioners met in regular session; all three members were present.

CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, no items were signed. An update was given on the status of the Mullan Road Corridor Sewer Project.

PUBLIC MEETING – January 30, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Chief Administrative Officer Ann Mary Dussault, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown, County Clerk and Recorder/Treasurer Vickie Zeier and County Public Works Director Greg Robertson. Commissioner Bill Carey was out of the office.

Pledge of Allegiance

2003-2004

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$408,975.23. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Staff Report: Mullan Corridor Sewer Questions

Ann Mary Dussault presented the "Draft Response to Questions Posed by the Board of County Commissioners."

**1. What is the schedule to complete Missoula County's Growth Policy?**

- Staff will complete its work on Missoula County's Growth Policy by May, 2002. It will then be submitted to the Planning Board for review and referral to the Governing Bodies.

**2. What is the schedule to complete the Wye-Mullan Comprehensive Plan?**

- Staff will complete its work on the Wye-Mullan Plan by the end of February, 2003. It will then be submitted to the Planning Board for review and referral to the Board of County Commissioners.

**3. Can the Board of County Commissioners adopt policy guidelines so that the current plan is the guide until the new plan is adopted?**

- The current plan is one of the guides utilized by staff and the Board of County Commissioners in reviewing proposed developments.
- Since the absence of a Growth Policy, as well as other ambiguities in the statutes complicates this question, the Missoula County Attorney is considering seeking an Attorney General's opinion on these matters.
- Until the ambiguities are clarified, any policy statement would be meaningless on its face.

**4. Can the County proceed to complete a CDBG survey of Mullan Road Corridor Sewer project homeowners for income qualifications for CDBG grant money?**

- CDBG funds are targeted assistance to qualified individuals. While there may be qualified individuals in other parts of the project, they most likely reside in the El Mar/Golden West area and in various mobile home courts.
- The Missoula County CDBG Grant for East Missoula must be spent down before a new grant application can be made. Target date for spend down on the East Missoula project is 2003.
- Surveys are valid for 12 months prior to the application.
- Depending on the Option selected by the Board, staff would program CDBG survey and application as appropriate.

**5. What is the timeline for applying for grant dollars from the State?**

- **TSEP (Treasure State Endowment Program):** Maximum grant - \$500,000
  - Applications for each funding cycle are set by program guidelines, but are generally due 6 to 8 months prior to the Legislative session. TSEP applications for Fiscal Year 2003-2004 are due May, 2002.
  - TSEP projects are then approved by the Montana Legislature, which meets in January, 2003.
- **State DEQ grants:** Estimated maximum grant - \$10,000
  - State DEQ grants are limited in size, scope and purpose. Depending on which Option is selected, we may be able to apply for these funds to offset preliminary engineering costs for subdistricts. Application timeline coincides with TSEP.
- **DNRC (Renewable Resource) grants:** Maximum grant - \$100,000
  - DNRC grants are more limited than TSEP in scope and purpose. Depending on the Option selected, we may be able to qualify for certain subdistricts. Application timeline coincides with TSEP.

**6. Is there support and commitment from the Water Quality District for funds to reduce City connection fees?**

- Staff has drafted a letter to the Water Quality District Board requesting grants in the amount of \$260,265 for Fiscal Years 2003 through 2005. These monies would assist 695 developed properties at \$375 per property toward sewer connection costs.
- This request is consistent with similarly funded projects by the Water Quality District Board in Linda Vista, East Missoula and Reserve Project Phases I and II.

**7. Are there continuing efforts to obtain Federal appropriations for the backbone project and/or the subsequent subdistricts?**

2000-2001

- Yes. The Commissioners are committed to seek Federal appropriations for this project. Montana's Congressional delegation has placed this project on their priority list and has committed to work for Federal Fiscal Year 2003 funding.
  - The amount to be requested depends on which Option the Board selects. Whether these dollars are directed toward the backbone, subdistricts, or both, depends on the Option selected.
- 8. If Federal appropriations are made for any portion of this project, how will the dollars be allocated? (E.g., Pay down bonds? Reduce Assessment?) What policy is recommended?**
- The Commissioners will have several options to choose from and the answers are different depending on each option:
    - **Option 1 – Suspend any action until receipt of Federal funds is known.**
      - Recommendation: Direct new Federal appropriations toward backbone and reduce assessments.
    - **Option 2 – Create RSID 8471 as originally proposed.**
      - Recommendation: Direct new Federal appropriations toward the backbone by buying down bonds before assessments are spread and recalculate, thus reducing assessments.
    - **Option 3 – Recreate backbone RSID applying City “Aid to Construction” dollars (\$1,000,000) and utilizing “Equivalent Dwelling Unit Assessment (EDUA)” methodology for existing plumbed units.**
      - Recommendation: Since this methodology standardizes and significantly changes the backbone assessments for parcels with existing plumbed units by creating an “EDUA,” the recommendation is to direct new Federal appropriations toward subdistrict assessments. With an appropriation of \$2.5 to \$3.0 million, initial calculations show that ALL subdistrict assessments could be reduced by 55% with this infusion alone.
    - **Option 4 – Create two separate projects, an “East End” project and a “West End” project.**
      - Recommendation: Depends on final construction schedule. If these projects were completed within the 2002 construction season, new Federal funds would not be applied.
      - This recommendation leaves out any ability to sewer the middle of the project with the infrastructure that would be in place.
- 9. Can RSID revenues be used as the match for any Federal appropriations?**
- Yes. A 45% match is required assuming these are EPA funds.
- 10. What is the City of Missoula's policy on requiring connection to the sewer once it is in place?**
- See Ordinance Number 2992 (this policy applies only when the property is annexed).
  - *“Every building within the City in which sanitary sewer plumbing has been or will be placed, shall be connected with the City Sanitary Sewer when the building or associated wastewater drainage facility is located within 200 feet of a City Sanitary Sewer main, as measured in the adjacent public right-of-way or public sewer easement.”*
- 11. What is the County's policy on requiring connection to the sewer once it is in place?**
- The Missoula County Health Code says, in essence: “If a septic system fails or must be expanded and public sewer is available adjacent to the property and is within 200 feet of the building served, then the building must be connected to public sewer.
- 12. Can/should the Commissioners adopt a policy statement regarding the creation of subdistricts within the project area including the following principles:**
- The County will initiate subdistricts for areas with demonstrable public health or water quality issues;
  - The County will initiate subdistricts for other areas in the event:
    - The County has obtained substantial (defined?) grant money for the subdistrict; or
    - The subdistrict petitions for creation of a district to extend sewer to the area.
  - Recommendation: The Board should adopt such a statement of intent.
- 13. Develop a timeline to show when the above items will be implemented, including project milestones, grant application milestones, etc.**
- This timeline is different depending on which Option the Board selects.

Chair Curtiss asked for public comments. She thanked staff for their response to the questions. The Board knew most of the answers before the motion was made, but wanted to provide the answers in a written form so they were on the public record. The decision on the Option the Board will take will be made next week.

Diane Beck, 8190 Haven Heights, stated she was not representing any groups or organizations. Several residents have contacted her and asked if she would inquire about the ongoing work in the Mullan Road area. HDR Engineering has subcontracted with WGM Group who is doing some surveying and setting some monumentation. Who authorized the

expenditure of funds for this work, without having made a determination whether the project is going to go forward or not. She has also had some questions about the RFP process. She would appreciate having the answers on public record.

Chair Curtiss stated that the Commissioners authorized the expenditures for the activities that are ongoing in connection with this project. From the beginning of any RSID process, there are expenses that, if the RSID is not created, the County knows they will have to bear. Those include the preliminary engineering work. To date, all that has taken place is the surveying. If the project does go forward, it was known that the surveying would have to be done early to get into this upcoming construction season. The Commissioners will be making a decision tomorrow whether to stop at this point while they reassess the situation and decide which Option they will choose.

Commissioner Evans stated that she understood that an RSID does not require a RFP.

Greg Robertson stated it would depend on the process used. Typically, with RSIDs, a Homeowners Association or interested group of citizens will solicit the services of an engineer who is familiar with the RSID process. That is outside the realm of the RFP process and compliance with State law. The County will solicit an RFP for any work that is done.

Ann Mary Dussault stated that for professional services the County does not do an RFP. The statutory process is an RFQ (Request for Qualifications). The RFQ is published and qualified firms submit a response. The governing bodies then choose from the pool of qualified individuals to undertake the task. This is different than a bid, which is a legal process required when the expense is projected to exceed a certain amount and is generally for construction services. There is a significant statutory difference between an RFQ and RFP in local government law.

Mike Sehestedt stated that was well explained. The requirement for acquiring professional land surveying, engineering and architectural services is spelled out in State statutes. There is notification of a project of a certain general nature and firms are requested to submit a statement of their qualifications to undertake the work. The firm chosen is the best qualified. It is a violation of statute to ask for price until after the firm that is best qualified has been selected. Negotiations are conducted with the chosen firm to determine the price. If a mutually agreeable price cannot be reached, then negotiations are formally discontinued with that firm and are begun with the second most qualified firm and so on, until an agreement is reached.

There were no further public comments.

Chair Curtiss thanked Mike Sehestedt for the civics lesson. She stated the Mullan Corridor Sewer Project question will be addressed at the public meeting next week. Option 3 that Ann Mary Dussault referred to in the report takes into account an additional \$1,000,000 from the City that would be directed toward existing plumbed units. From the preliminary briefing they had this morning, they believe that could significantly reduce the cost to all the plumbed units in the district and any property less than one acre. They are working on that Option and will present the information at the meeting next week. This would require reworking the Interlocal Agreement with the City.

**Hearing (Certificate of Survey): Barbara Karmel Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as COS 1731, Section 29, Township 14 North, Range 19 West, P.M.M., Missoula County.

Barbara Karmel 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 40.258 acres in size located northeast of the Grant Creek Ranch Headquarters off Dark Horse Road. Ms. Karmel proposes to create one approximately three acre parcel for transfer to her daughter, Kelly Karmel, for residential purposes and keep the remaining approximately 37 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1731	1978	Parcel greater than 20 acres	Grant Creek Ranch	

The property was part of the family ranch owned by the Marbut. The applicant acquired the property in 1978 as part of the sale of the family ranch. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

The proposed parcel appears to be in the middle of the property. Both Kelly Karmel and her representative, Dick Ainsworth, are present today and could address the location.

Chair Curtiss stated the purpose of the hearing is to determine if the request is really to give land to a family member and not an attempt to evade the subdivision laws.

Dick Ainsworth, Professional Consultants, Inc., stated he was representing Barbara Karmel who could not be present today. Her daughter Kelly, who is the recipient of the transfer, is present. Mrs. Karmel wishes to convey this property to Kelly who is planning to get married within the next year and build a home on the parcel. Ultimately, all of this property will be Kelly's and the site selected is where she would like to build her home. An easement will be granted to access the property.

Chair Curtiss opened the public hearing.

2000-2001

Kelly Karmel stated the parcel was selected at her mother's request. It is on the more flat part of the property and has good access to Dark Horse Road and is close to Dark Horse Creek. It also visually screens this property from the current cabin so the two homes will not see each other to provide more privacy.

Chair Curtiss stated there was a letter in the application packet from Barbara Karmel assuring the Board that this was indeed a family transfer and not an attempt to evade the subdivision rules.

There being no further comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Barbara Karmel 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. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Chair Curtiss stated that they would receive an approval letter and they would need to go through all the proper procedures to get a septic permit, etc., to build their home.

**Hearing: Petition to Vacate a Portion of Woodville Street in Clinton**

Vickie Zeier presented the staff report.

This is a petition to abandon "The westerly four feet of Woodville Street south from Third Street, adjacent to Lots 1 through 5, Block 14, East Clinton, located in the southeast one-quarter of Section 27, Township 12 North, Range 17 West, Missoula County, Montana."

The reasons for the request are as follows:

1. There is an existing encroachment on the County right-of-way, which prohibits financing of the property for any potential buyers.

The following landowners have been notified: Michael Tait, Erik S. Heen, Phyllis Jamison.

Vickie Zeier stated for the record that there was an error in the notice that appeared in the newspaper, it listed the public hearing date as January 31, 2002. The notice sent to the paper by the Clerk and Records office was correct, but the paper listed it incorrectly.

Mike Sehestedt stated that testimony should be taken today from anyone present. He also felt the Missoulian should be contacted to have the ad re-run and hold a second hearing on this issue, so the notice matches the hearing date. Notice is jurisdictional so it does need to be republished. The hearing should be continued so if there are others with concerns about the matter, they can testify at the rescheduled hearing.

Chair Curtiss opened the public hearing.

Michael Tait stated he was the petitioner, he lived at 200 Third Street in Clinton. His house does physically encroach on the right-of-way for Woodville Street. There is no road constructed at this location. The house encroaches by about 1.4 feet and they have asked for a four foot vacation.

Mike Sehestedt stated the house encroaches by about 1.4 feet and eave overhang is a little more than that. By vacating four feet, it would allow him to paint the house while still on his own land.

Chair Curtiss asked about the shed that appeared to be in the middle of the street.

Mike Sehestedt stated Mr. Tait was told the vacation could help with the house. Both the house and shed are subject to an encroachment permit. If the vacation of four feet is approved, the house will no longer encroach. The shed will continue under the terms of the encroachment permit. If, when and at such time as the right-of-way is utilized, Mr. Tait or his successors will have 60 days to remove the shed. This is not a developed road.

Michael Tait stated that there were only two people that lived on this road.

Phyllis Jamison stated she felt it was a good idea for Mr. Tait to get his house out of the right-of-way so he could sell it. Her concern was if the four feet was enough.

Mike Sehestedt stated that Mr. Tait brought in a survey done by PCI. PCI was contacted and they felt four feet would be enough. They did not want to go much beyond four feet as there was a concern in the neighborhood about that road being closed off. This petition seemed to satisfy both concerns. The shed is way out into the right-of-way on the survey. Mr. Tait was told that the Board was unlikely to give up that much of the right-of-way. The shed would continue under the existing encroachment permit. When and if the right-of-way is utilized, Mr. Tait or his successors would have to remove the shed at that point in time.

Michael Tait stated there was about five years left on the encroachment permit.

Mike Sehestedt stated there were no immediate plans for Woodville Street in this area.

Charles Drinville stated his parents previously owned that property. Mr. Tait's house does encroach into the right-of-way. He did not have a problem with the request and felt it was a good idea. He would like to see Mr. Tait receive more than four feet so he doesn't step out his door into the street. He does have one concern. The petition shows the vacation on Lots 1 through 5. He presently owns Lot 5. He would like to see the vacation on just Lots 1 through 4.



2000-2001

Mike Sehestedt stated the Commissioners could address that. He advised Mr. Tait to request the vacation for the whole street in a straight line. If Mr. Drinville does not want the vacation on Lot 5, the Board will take that into account when they make their decision.

Vickie Zeier stated the notice would be published again on February 3, 2002. Ten days notice is necessary so the issue could be reheard on February 13, 2002.

Chair Curtiss asked if there was a problem with not vacating this four feet on Lot 5.

Horace Brown stated that was up to the Commissioners.

Mike Sehestedt stated the notice has been given of the proposed vacation. The Board could approve less that was requested. It was only problematic if the Board wanted to do more. Legally, there was no problem with removing Lot 5 from the request.

Chair Curtiss stated that a site inspection with one Commissioner and the County Surveyor was required before a decision could be made.

There being no further comments, the public hearing was closed.

Chair Curtiss stated the hearing will be continued until February 13, 2002. A site inspection will be scheduled before that date and a decision will also be made on February 13, 2002. They will also address Mr. Drinville's request at that time.

Mike Sehestedt apologized to the applicant for the delay. The notice the County sent to the Missoulain was correct but was published incorrectly by the newspaper.

**Hearing: Resolution of Intent to Create RSID #8472 (Spring Hill Road Construction)**

Jesse Sattley, Public Works Department, presented the staff report.

This is a request to create RSID #8472 – Spring Hill Road paving.

RSID #8472 will construct a 24 foot wide asphalt pavement for approximately 2,600 linear feet on Spring Hill Road, a bus turnout, replacement of a culvert and installation of signs.

A petition was received with 54% signature approval by the freeholders that also represents approximately 62% of those paying the cost. The total RSID cost is \$109,000. A grant from the Montana Department of Fish, Wildlife and Parks was awarded to the project in the amount of \$11,800 for the replacement of the Mill Creek culvert. The RSID will be assessed in equal amounts of \$2,945.95 over a period of 20 years. The roadway was accepted in December, 2001, contingent on the creation of the RSID. One letter of protest was received.

Commissioner Evans asked about the protest letter from Mr. Davis. Was his timber land included in the RSID and if it was removed, what would that do.

Jesse Sattley stated that if his land was excluded, the Resolution of Intention would have to be redone and the cost re-spread for the district. Two of the three tracts owned by Mr. Davis were included in the RSID boundary. He does receive benefit from this road to access his property.

Chair Curtiss opened the public hearing.

Commissioner Evans asked if Mr. Davis's land could be removed from the RSID?

Mike Sehestedt stated that the fact the land is assessed as timber land has no bearing on whether or not it should be included. It is advantageous to the owner to have land assessed as timber land, as opposed to a residential tract. The property would benefit from the improved access, its value in a market sense would be improved, not its value for tax purposes. He did not feel there was anything unique about this property that would justify excluding it from the RSID.

Lynnette Simms stated that she lived at the end of Spring Hill Road. She wanted to reaffirm the fact that the main reason behind this RSID was the damaged culvert. There are at least 24 dwellings past the culvert. If the culvert would fail, it would cut off their access. When the area was developed, there was no road association formed. Most of those living in the area agree that this RSID should go forward. She also asked what the speed limit would be on the road once it is paved.

Greg Robertson stated the speed limit would be designated according to the geometric characteristics of the road, taking into consideration the land use and other factors. Speed limits are governed by the Manual and Uniform Traffic Control Devices. It outlines what steps need to be taken in order to set a particular speed limit. That will be assessed when the design plans are reviewed. The County would set the speed limit and install appropriate signage.

Lynnette Simms stated some of the residents have expressed a desire to keep the speed limit at 20 to 25 mph. They were afraid that with the paved road, the speed would increase. That would not be enough to see the project fail, however. They are very much in favor of the project.

There being no further public comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the creation of RSID #8472 for Spring Hill Road paving, a bus turnout, replacement of a culvert and installation of signs. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

JANUARY 2002

**Hearing: K/O Estates (11 Lots on 16 Acres) – Corner of Miller Creek Road and Trails End Road**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Mike McCullough, represented by Gilbert Larson of Professional Consultants, Inc., is requesting approval to split a 16.1 acre parcel into 11 lots; ten of the lots are 1.0 acres and one lot is 1.4 acres. The property is located at the junction of Miller Creek Road and Trails End Road in the Upper Miller Creek area.

The land is currently vacant and consists of open grassland with a 1% to 4% slope with one large cottonwood tree near the eastern boundary. There are two variances being requested. One is for sidewalks along Trails End Road and Miller Creek Road. The other is to allow for a through lot situation because of Crisco Lane adjacent to Lots 10 and 11. OPG is recommending approval of both the variances requests and approval of the subdivision subject to 13 conditions.

There were no written public comments. One person from the neighborhood testified at the Planning Board hearing.

The proposal complies with the zoning for the area which is the Miller Creek Land Sensitive Zoning District. The property is in Zone A and would allow the density proposed. It is also in substantial compliance with the Comprehensive Plan for this area.

Brushpopper Lane will be a public road, paved to a 24 foot width. It will have a 5 foot wide asphalt sidewalk on one side that will allow access to the walkway easement that goes between Lots 2 and 3 to reach the common area. One of the conditions of approval is that the easement be developed to include a trail for residents as the property is sold. The developer will also need to construct a walkway bridge across the Baker Irrigation Ditch which runs through the property.

All of the lots will be served by individual wells and septic systems. Some of the other conditions include an RSID waiver for fire fighting water supply, easements being properly shown, etc. There is nothing out of the ordinary being required in the conditions.

Gilbert Larson, Professional Consultants, Inc., developer's representative, was present. He thanked staff for their work on this proposal. There are no disagreements with any of the conditions and the developer is in complete compliance with them. He enjoyed the civics lesson earlier and would like to present a short history lesson regarding this subdivision proposal. The history of this project is quite interesting. The McCullough brothers have a long history with this land. George McCullough bought this land around 1900 and gradually increased the land ownership to about 5,300 acres. The brothers started into the rodeo stock business and owned the K/O Ranch, where the name of this subdivision was derived. Brushpopper was one of the national championship stock that they raised there. The ties here go very deep. The ranch became unprofitable about 30 years ago. At that time, the brothers proposed a 518 lot subdivision that was approved. In the 1980s, the market died and the subdivision was never built and the approval lapsed. In 1993 the Miller Creek Land Sensitive Zoning was approved. It was important for him to know the history of the land. The proposal from the McCullough brothers is sensitive to that history and the zoning that was approved in 1993. It is sensitive to what they would like to see happen with this land and the roots that go back over 100 years. It was enjoyable for him to work with the landowners and staff on this project. It is good for the Board to hear the history of a project.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve a variance request from Article 3-2(8) of the Missoula County Subdivision Regulations to not provide sidewalks along Miller Creek Road and Trails End Road, based on the findings of fact set forth in the staff report, and approve the variance request from Article 3-3(1)(H) of the Missoula County Subdivision Regulations to allow Lots 10 and 11 to be "through lots," based on the findings of fact and Condition 6 set forth in the staff report. Chairman Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the K/O Estates Subdivision, based on the findings of fact and subject to the conditions in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**K/O Estates Subdivision Conditions of Approval:****Roads and Drainage**

1. The developer shall mitigate the traffic impacts generated by this subdivision on the Miller Creek transportation system by contributing to the fund for Miller Creek Road improvements in the amount of \$1,800 per new lot. *Subdivision Regulations Article 4-12 and OPG recommendation.*
2. The following statement shall appear on the face of the plat:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Miller Creek Road and Trails End Road, including installation of pedestrian walkways or bikeways, 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." *Subdivision Regulations 3-2(8) and County Surveyor recommendation.*
3. Grading, drainage and erosion control plans shall be reviewed and approved by the County Public Works Department prior to final plat approval. Engineering plans, calculations and specifications for all subdivision improvements including roadway and stormwater improvements shall be approved by Public Works prior to final plat approval. *Subdivision Regulations Article 3-2 and Public Works recommendation.*

2000-2001

4. The final plat shall contain a statement that the K/O Estates lot owners do not have the right to access Crisco Lane. *Subdivision Regulation Article 3-3(1)(H) and OPG recommendation.*

**Easements**

5. The final plat shall eliminate the reference to the 10 foot utility easement to the north of Lots 1 to 6 and delete the first paragraph under the "Notes" section regarding a 20 foot rear lot utility easement. All utilities shall be placed within the 54 foot Brushpopper Lane right-of-way. *Subdivision Regulations Article 3-6 and OPG recommendation.*
6. The final plat shall indicate all of Brushpopper Lane is a "54 Foot Public Access and Utility Easement." *Subdivision Regulations Article 3-6 and OPG recommendation.*
7. The location and width of the Baker Irrigation Ditch easement shall be clearly shown on the plat and reviewed and approved by the County Surveyor and Miller Ditch Company prior to final plat approval. *Subdivision Regulation Article 3-6, Montana Power Company and OPG recommendation.*

**Water Supply**

8. A water supply for fire fighting must be established by the developer prior to final plat approval by one of the following methods:
1. Provide a centrally located well that produces 350 gallons per minute (gpm) and a minimum 2,000 gallon storage tank/cistern;
  2. Provide a centrally located 5,000 gallon minimum storage tank/cistern with an attached fire hydrant; or
  3. Add a provision to the K/O Estates covenants that requires every residence to install residential sprinklers prior to occupation.

If method 1 or 2 is chosen, a plan for the upkeep of the system must be addressed in the covenants. Final plans for the fire fighting water supply shall be approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7 and Missoula Rural Fire District recommendation.*

9. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for public water systems, 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." *Subdivision Regulations Article 3-7(2).*

**Weeds and Wildlife**

10. The K/O Estates covenants shall be amended as follows:
- a. Amend the title of Section 17 to "Animals/Pets and Wildlife," and then divide section 17 into two subsections; the first subsection would remain titled "Animal and Pets" and the new subsection would be titled "Wildlife." Add the following language under the new wildlife section: "Owners must accept the responsibility of living with wildlife and be responsible for protecting their gardens and landscape plants from damage by choosing plants that do not attract deer and/or by caging or fencing susceptible plants. The artificial feeding of wildlife is prohibited. All pet food shall be properly stored indoors or in secure animal-proof containers to avoid attracting bears, lions, raccoons, skunks or other such wildlife." The declarant shall provide each owner with a brochure entitled "Living with Wildlife" and inform owners of the potential problems associated with the occasional presence of bears, mountain lions, deer and other wildlife in the area. *Montana Fish, Wildlife and Parks recommendation.*
  - b. Amend Section 29 by inserting the following: "The declarant shall be responsible for noxious weed control on all unsold lots and the Common Area until all of the lots are sold and title to the Common Area is transferred to the Association. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
11. A Revegetation Plan for construction of Brushpopper Lane shall be reviewed and approved by the Missoula County Weed District Supervisor prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

**Garbage Storage**

12. The following language in Section 15 of the covenants regarding garbage shall be deleted:

"... unless it is constructed so as to be located underground which does not create any unsightly area or interfere with the surrounding residential development." *Missoula City-County Health Department recommendation.*

**Common Area Access**

13. Prior to final plat approval, the developer shall submit plans for OPG and the Miller Ditch Company review and approval regarding the bridge construction over the Baker Irrigation Ditch to access the Common Area from the 20 foot wide access easement between Lots 2 and 3. Both the bridge and a five foot wide gravel pathway along the access easement shall be constructed by the developer prior to final plat approval. The final plat shall indicate the 20 foot access strip as a private easement or common area. *Subdivision Regulations Article 3-1(8) and OPG recommendation.*

**Consideration: River Run Estates (4 Lots – off River Run Road south of the Ninemile Area)**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Andrew and Jolene Sherry, represented by Ron Ewart of Eli and Associates, are requesting approval of a four lot residential subdivision in the Ninemile area. The subject property is located south of the Ninemile area and Interstate 90. The proposal is to divide a 20.15 acre parcel into four lots, each just over 5 acres in size. The property is accessed by River Run Road, south of Interstate 90 and the Ninemile exit. River Run Road is privately owned and maintained by the River Run Road Homeowners Association.

Lots 1 and 2 will access off River Run Road. Proposed Lots 3 and 4 will share a driveway that is located between Lots 1 and 2 with a 30 foot private access and utility easement. There will also be a shared driveway maintenance agreement.

The subdivision will be served by individual private wells and septic systems.

The property is unzoned. The 1975 Comprehensive Plan land use designation for the subject property is Open and Resource, with a recommended maximum residential density of one dwelling unit per 40 acres. The Open and Resource designation on this property is intended to protect agricultural and other resources.

The area is a semi-rural residential, scenic area north of the Clark Fork River. The property is mostly open with grasses and has been under agricultural production as non-irrigated grazing land. A portion in the southeast includes steep slopes between 10% and 25%, a wooded area in the northwest corner of Lot 1 and a swale in the northwest portion of Lot 3. These are shown on the plat as "no-build" zones to protect existing resources. Parcel sizes in the area range between 5 and 30 acres. Parcels to the south are 5 acres in size, to the west 15 acres and to the east 30 acres.

There are three variance requests. They include a variance for River Run Road that requires all subdivisions outside of the Urban Growth Area and located on private roads to provide internal pedestrian connection, pedestrian connections to school bus stops and to adjoining neighborhoods; for the on-site portion of River Run Road to have paved streets; and to vary from the required 24 foot road width to the existing 22-24 foot road width. Staff recommends approval of all three variance requests. Staff also recommends approval of the subdivision subject to six conditions. They include drainage plans for the site, water supply for fire fighting purposes, a revegetation plan for disturbed sites and some minor amendments to the covenants.

The area is within the Big Horn Sheep winter range and wintering areas for bald eagles. It is also adjacent to the Clark Fork River scenic and open space area.

Ron Ewart, Eli and Associates, developer's representative, was present. He thanked Liz Mullins and the OPG staff for their work on the proposal. The staff report is well written and they are in agreement with the recommended conditions of approval. This is a very beautiful area. The Interstate sits up and away from the proposal. There are several five acres homesites in the area. This is the last of the 20 acre parcels from the COS, all the others have been divided. There are covenants on the property that allow lot division down to 5 acres in size. This proposal meets the covenants and the community expectations of lot size. Additional covenants will address other items specific to this proposal. There is also a road maintenance agreement. There are currently about 8 homes that use River Run Road and they pitch in to help maintain the road. The lot owners of this proposal will have a more formal agreement. The existing homes are very well maintained and are on five acre lots. The hill is shown as a "no-build" zone. George Sherwood and his daughter Betsy Milliard are present today as well representing the Sherrys and were available to answer any questions.

Chair Curtiss asked for public comments. There were none.

Chair Curtiss stated that Condition 6 shows that covenants could not be amended in regard to driveway construction and maintenance without governing body approval. The Board does not want to be responsible for driveway maintenance.

Liz Mullins stated the condition was included to insure the driveway would remain a driveway, so that Lots 1 and 2 would not use it for access.

Colleen Dowdall stated if there was another access off the driveway, it would have to meet road standards. Two of the lots will access off River Run Road and two will access off the driveway. That was the reason for the restriction. The covenants say the first two lots cannot use the driveway. If that covenant were changed, they would have to get permission to do that from the Board of County Commissioners and would likely have to improve the driveway to road standards.

Commissioner Evans asked if permission could be given by the Public Works Director.

Colleen Dowdall stated that this was typically how parts of the Subdivision Regulations are implemented to last forever. This provision is also used to protect riparian areas and wildlife habitat, and sometimes for driveways to make sure they will remain accessible to emergency vehicles. It would not always be appropriate for the Public Works Director to do that. It is also something that is more within the Commissioners approval than the Public Works Director.

Commissioner Evans stated she did not want to be contacted if the driveway was not being maintained.

Colleen Dowdall stated that is not what this condition means. It is only if they want to change the covenant with regard to the driveway standards to say that all lots can access off the driveway. It could be made more clear.

Commissioner Evans stated she would like it made more clear, she did not want to be in the position of enforcing maintenance.

Colleen Dowdall stated that would be made clear. Neither the Board nor the Public Works Director should be in that position.

Horace Brown stated that River Run Road is a private road and it would be difficult to require the County to maintain any of it.

Jennie Dixon stated that the condition is referring to a section of the covenants, Driveway Construction and Maintenance. The language of the condition would be changed to clarify the situation.

Colleen Dowdall stated that the condition could be amended to read: "Article II, in General Provisions for Amendments, shall be amended to include that the provisions, Driveway Construction and Maintenance section, may not be changed without governing body approval."

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations for River Run Road that requires all subdivisions outside of the Urban Growth Area (UGA) and located on private roads to provide internal pedestrian connection, pedestrian connections to school bus stops and to adjoining neighborhoods; approve the variance request from Section 3-2(1)(G) of the Missoula County Subdivision Regulations for the on-site portion of River Run Road that requires all new subdivisions to have paved streets and roads; and approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow River Run Road to vary from the required 24 foot road width to the existing 22-24 foot width, all based on the findings of fact in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the River Run Estates Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, as amended. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

#### **River Run Estates Subdivision Conditions of Approval:**

##### **Roads**

1. Drainage plans for the site shall be approved by the Public Works Department prior to plat filing. *Subdivision Regulations Article 3-4.*

##### **Fire**

2. The subdivider shall provide a water supply sufficient for fire suppression for this subdivision, subject to review and approval by the Frenchtown Fire District prior to final plat approval.
  - a. A minimum of 350 gallons per minute (gpm) fire flow with a minimum of 2,000 gallon minimum storage or backup power source. Multiple hydrants may be required with spacing not more than 1,000 feet apart; OR
  - b. Residential sprinkler systems meeting NFPA 13R standard. In the event that residential sprinklers are an acceptable alternative for fire protection, as recommended by the appropriate fire jurisdiction, a development agreement shall be filed to include the requirements of installation, subject to review and approval by the appropriate fire jurisdiction. *Subdivision Regulations Article 3-7(1) and Frenchtown Fire District recommendation.*

##### **Weeds**

3. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to plat filing. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

##### **Covenants – Prior to final plat approval, the covenants shall be amended to include the following:**

4. A section shall be added that requires property owners to post addresses and street signs. *Subdivision Regulations Article 3-2(F)(G) and Frenchtown Fire District recommendation.*
5. Article I, Section 6, shall be revised to state: "Lot owners shall maintain their lots in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Ground disturbance caused by construction or maintenance shall be revegetated with beneficial species at the first appropriate opportunity after construction or maintenance is completed." *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
6. The provisions contained in Article I, Section 12, may not be changed without governing body approval. The list of covenants that cannot be changed without governing body approval contained in Article II, Section 2 (Amendments) shall be amended to include Driveway Construction and Maintenance. *Subdivision Regulations Article 3-2.*

#### **Consideration: Willison Addition (3 Lots – off Hawk Lane in Clinton)**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Vern and Alvina Willison, represented by John Kellogg of Professional Consultants, Inc., are requesting approval to subdivide a 4.8 acre parcel into 3 lots of varying size. The property is located in Clinton off Hawk Lane about 800 feet south of Schwartz Creek Road. In 1999, the Willisons were granted approval by the Missoula County Board of Commissioners to add a third dwelling to their parcel through a subdivision for lease or rent process. There are currently three existing residences on the site and this proposal seeks to officially subdivide the three home sites into separate legal lots.

The residences are accessed by three driveways off Hawk Lane, a private 24 foot wide gravel road within a 60 foot right-of-way. A private Road Maintenance Agreement exists among the users for maintenance of Hawk Lane. The nearest paved County maintained road is Schwartz Creek Road, about 800 feet to the north. Each residence is served by an individual well and septic system.

The parcel is unzoned. The 1975 Missoula County Comprehensive Plan designates the immediate area as Suburban Residential (two dwelling units per acre). The surrounding uses are generally residential and small acreage agriculture, with adjacent parcels ranging in size from 1.25 acres to 5 acres. The parcel is located within the Clinton Activity Circle.

Two variances are being requested – one to not provide internal pedestrian connections and one to allow Lot 3 to have a depth greater than three times its width. Staff is recommending approval of the variance requests. Staff is also recommending approval of the subdivision. No conditions are being recommended, the subdivision for lease or rent process took care of any concerns regarding the road, fire fighting water supply, etc.

John Kellogg, Professional Consultants, Inc., developer's representative, was present. He had never had a subdivision with no conditions before. The Willisons are in favor of the recommendation.

Chair Curtiss asked for public comments. There were none.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections and approve the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations to allow Lot 3 to vary from the required lot size ratio, both based on the findings of fact set forth in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Willison Addition Summary Subdivision, based on the findings of fact in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Willison Addition Summary Subdivision Conditions of Approval:**

NONE

There being no further business to come before the Board, the Commissioners were in recess at 2:45 p.m.

**THURSDAY, JANUARY 31, 2002**

The Board of County Commissioners met in regular session; all three members were present. At noon, the Commissioners attended the State of Missoula Luncheon sponsored by the Chamber of Commerce at the Double Tree, with Chair Curtiss giving the "State of the County" Address.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending January 31, 2002.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Ronald Paul Foltz, CPA, as Principal for Warrant #35768, issued November 13, 2001 on the Missoula County School District #40 Fund (Frenchtown) in the amount of \$7,200.00 (payment for 2000-01 Audit), now unable to be found.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming School Specialty, Inc., Milwaukee, Minnesota, as Principal for Missoula County Public Schools Warrant #49106, issued May 31, 2001 on the Missoula County General Fund in the amount of \$164.90 (payment for hot plate, calcite), now unable to be found.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Tara Grover as Principal for DeSmet School Payroll Department Warrant #12191, issued January 18, 2002 on the Missoula County Payroll Fund in the amount of \$440.36 (payment for wages), now unable to be found.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming School Specialty, Inc., Milwaukee, Minnesota, as Principal for Missoula County Public Schools Warrant #48785, issued May 30, 2001 on the Missoula County General Fund in the amount of \$284.80 (payment for miscellaneous science supplies), now unable to be found.

Grant Documents – Missoula County received a grant award of \$318,000 in Montana Department of Commerce ("MDOC") HOME funds. The Commissioners signed the following grant documents for this funding to be used to provide basic needs assistance for supportive housing for single parents with children during chemical dependency treatment (Carole A. Graham Home Project):

- 1) 2000-2001 Housing Investment Partnerships Program Carole A. Graham Home Project Agreement between Missoula County and Turning Point, Inc. dated January 31, 2002. The Scope of Activities and the Management Plan are as stated in Exhibits A and B to the Agreement;
- 2) County Program Income Contract, dated January 30, 2002, between Missoula County and The Western Montana Mental Health Center (on behalf of the Carole A. Graham Home, a program of Turning Point), in the amount of \$10,000;

- 3) Exhibit E – Request for Payment;
- 4) Exhibit 3-F2 – Summary of Project Expenditures; and
- 5) Exhibit 3-J – Project Progress Report.

The HOME documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further signatures and handling.

Agreement – Chair Curtiss signed an Agreement, dated January 22, 2002, between Missoula County and Morrison-Maierle, Inc. for the provision of engineering services for several bridge projects, which is funded by a TSEP (Treasure State Endowment Program) Grant. Terms and conditions are as set forth in Exhibit A ("Scope of Service") to the Agreement. The total amount shall not exceed \$30,000.00. The Agreement was returned to Greg Robertson, Public Works Director, for further handling.

Request for Action – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a letter, dated January 31, 2002, accepting a Counter Offer (with amendments) by Tom and Mari Laursen for the purchase of Lots 10, 11 and 12, Block 3, Phase 4, Missoula Development Park. The amendments include changing the closing date to July 30, 2002. The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved a request from the Auditing Department to assign oversight of the subdivision traffic mitigation process to the Subdivision Engineering Department of the Missoula County Public Works Office. This action would ensure that all developers paid fees owed in a timely manner.

Other items included:

- 1) An update was given and a discussion was held regarding the Mullan Road Corridor Sewer Project.

The minutes of the Administrative Meeting are on file in the Commissioners Office.



## FRIDAY, FEBRUARY 1, 2002

The Board of County Commissioners did not meet in regular session. In the forenoon, Chair Curtiss and Commissioner Carey attended the Economic Outlook Seminar sponsored by the University of Montana Bureau of Business and Economic Research held at the Holiday Inn.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1777 (pages 1-3), with a grand total of \$13,678.95. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1788 (pages 1-3), with a grand total of \$2,340.19. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1790 (pages 1-4), with a grand total of \$382,332.33. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1792 (pages 1-4), with a grand total of \$49,638.24. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1793 (pages 1-5), with a grand total of \$240,522.42. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1794 (pages 1-4), with a grand total of \$10,393.86. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1795 (pages 1-2), with a grand total of \$39,133.00. The Claims List was returned to the Accounting Department.

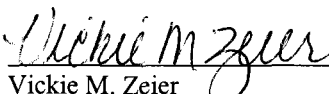
Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1797 (pages 1-3), with a grand total of \$6,558.56. The Claims List was returned to the Accounting Department.

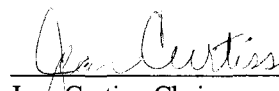
Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1798 (pages 1-4), with a grand total of \$65,460.84. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1799 (pages 1-2), with a grand total of \$855.39. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Evans and Carey signed the Claims List, dated January 31, 2002, batch number 1800 (pages 1-5), with a grand total of \$42,151.30. The Claims List was returned to the Accounting Department.

Monthly Report – (Approved and noted on January 31, 2001.) Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending January 31, 2002.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

## MONDAY, FEBRUARY 4, 2002

The Board of County Commissioners met in regular session; all three members were present.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming American Library Association, Chicago, Illinois, as applicant for Accounting Warrant #394266 issued July 23, 2001 on the Missoula County Library Fund in the amount of \$155.15 (payment for brochures), which was not received in the mail. No bond of indemnity is required.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending January 31, 2002.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending January 31, 2002.

Abstract – The Commissioners signed an Abstract of Unrecorded Easement, dated February 4, 2002, between Missoula County and Goodan-Keil Estates Homeowner's Association, regarding an easement for wells, pumps, controls, water lines, and energy transmission facilities issues. The document was returned to Deputy County Attorney Mike Sehestedt for further handling.

## TUESDAY, FEBRUARY 5, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated February 5, 2002, with a grand total of \$6,736.69. The Claims List was returned to the Accounting Department. [Note: A new form is being used for Claims Lists; Batch Numbers and Number of Pages are no longer necessary.]

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County Commissioners and the Montana Department of Transportation to pay for excess haul costs for a millings/overlay project in the Potomac area. The total amount shall not exceed \$9,660.00. The document was returned to Greg Robertson, Public Works Director, for further signatures and handling.

Loan Application – Chair Curtiss signed a State Revolving Fund (“SRF”) Loan Application, dated February 1, 2002, for the Phase I improvements associated with the Lolo RSID No. 901 Wastewater Treatment Plant. The loan amount is for \$713,000. The document was returned to Greg Robertson, Public Works Director, for further handling.

Grievance – The Commissioners signed a letter to Todd Lovshin, Field Consultant, MEA-MFT, denying the grievance of Zoe Mohesky, dated January 2, 2002, stating that any contractual issues regarding Ms. Mohesky’s June 2000 reassignment are no longer relevant.

Board Appointment – The Commissioners approved and signed a letter dated February 6, 2002, appointing Patrick Cainan as an “alternate member” of the Missoula City-County Animal Control Board to fill an unexpired term through December 31, 2002.

Board Appointment – The Commissioners approved and signed a letter dated February 6, 2002, appointing Anthony C. Niccum to a three-year term as a member of the Missoula Aging Services Governing Board. Mr. Niccum’s term will run through December 31, 2004.

Other items included:

- 1) The Commissioners received an update on Growth Management from Cindy Klette and Jeff Schalow.
- 2) A discussion was held on operational issues relating to the upcoming Bar Jonah trial, which is to be held in Missoula.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, FEBRUARY 6, 2002**

The Board of County Commissioners met in regular session; all three members were present.

CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Professional Services Contracts – The Commissioners signed three (3) Professional Services Contracts between Missoula County and the following, for the continuation of contracts to perform HIV prevention work:

- 1) Curry Health Center, University of Montana, in the amount of \$4,000.00;
- 2) HIV/AIDS Education and Prevention Council of Ravalli County, in the amount of \$4,000.00; and
- 3) Missoula AIDS Council, in the amount of \$12,260.00

The term for each contract will be January 31, 2002 through December 31, 2002. The documents were returned to the Health Department for further handling.

Resolution No. 2002-012 – The Commissioners signed Resolution No. 2002-012, dated February 6, 2002, a Budget Amendment for the 9-1-1 Department, in the amount of \$29,775.00 (“Quarter Money”). This Amendment was approved at the January 29, 2002 Administrative Meeting and adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Task Order – Chair Curtiss signed Task Order No. 02-07-4-11-045-0 to the Missoula County Master Contract that covers the period July 1, 1998 through June 30, 2005 (Tuberculosis Program). This is a Task Order with the Montana Department of Public Health and Human Services for the control and prevention of Tuberculosis. The term will be January 1, 2002 through December 31, 2002. The total amount shall not exceed \$8,000.00. The document was returned to the Health Department for further signatures and handling.

Other items included:

- 1) A discussion was held regarding Clerk of Court staffing issues.

PUBLIC MEETING – February 6, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, Chief Administrative Officer Ann Mary Dussault, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown, Director of Environmental Health Jim Carlson and County Public Works Director Greg Robertson.

Pledge of AllegiancePublic Comment

Chair Curtiss read a letter from Christy Anderson in Lolo thanking the County for their work on the roads.

2002-02-03

*"Once again I'd like to say thanks to those who do such an excellent job of keeping our street plowed and sanded. It's a steep grade and could be treacherous. Thanks for a job well done." – Christy Anderson, Lolo*

Chair Curtiss stated that she wanted to make sure the Road Department was aware that their hard work was appreciated. The Frenchtown Fire Department made a similar comment about the Road Department as well. She presented the letter to Greg Robertson, Public Works Director.

Phyllis Jamison stated that the Commissioners have said that their contribution to the new Animal Control facility is providing the land. The Commissioners should be aware that the new facility as designed is inhumane to cats. Several years ago, the director of Animal Control told the City Council's Health and Safety Committee that because there had never been cat control in Missoula that the cat problem was worse than the dog problem. Less than 10% of the new facility is planned for cats. There is not enough space for even one large exercise cage for cats. There is also no plan for an outside exercise yard for cats. There are 12 exercise yards planned for dogs, as well as a dog "get acquainted" yard. There is no separate receiving area planned for cats, which may cause a problem of placing sick cats with healthy ones. There is a secure drop off area for dogs during the hours the facility is closed, but one is not being planned for cats. Animal Control should design a facility that includes a cat exercise area and a separate receiving room.

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$859,801.77. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Greg Petersen Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 27, COS 339, Section 35, Township 15 North, Range 21 West.

Greg Petersen 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 10.10 acres in size located in Frenchtown, Montana. Mr. Petersen proposes to create one approximately 5 acre parcel for transfer to his father, Marvin J. Petersen, for residential purposes and keep the remaining approximately 5 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Tract 27, COS 339, Mill Creek Ranches	1974	N/A	N/A	N/A

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Chair Curtiss opened the public hearing.

Chair Curtiss stated that the Board is required to make sure that this is really a legitimate family transfer and not an attempt to evade subdivision review. She asked if Mr. Petersen did intend to transfer this parcel to his father.

Greg Petersen stated that was indeed his intention.

There being no further public comments, the hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Greg Petersen 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 stated that Mr. Petersen would receive a letter of approval. The approval was for the division of land only and did not give approval for a septic permit. The request was not reviewed for adequate access, installation of utilities, compliance with zoning or availability of public services; nor did this approval obligate Missoula County to provide road maintenance, dust abatement or other services.

**Hearing: Susan Lane Planned Variation and Subdivision (21 Lots on 4.76 Acres) – Short Street (0.25 miles from South Third Street West)**

Karen Hughes, Office of Planning and Grants, presented the staff report.

This is a request from P & L Homes, represented by Ron Ewart of Eli and Associates, Inc. They have proposed a 21 lot subdivision on 4.76 acres, located east of Short Street and approximately 0.25 miles north of South Third Street West, on the west side of Reserve Street. The request is also for a Planned Variation which allows for some relaxation of zoning standards of the C-RR3 district. The C-RR3 zoning district allows a maximum residential density of four dwelling units per acre. The 1998 Missoula Urban Comprehensive Plan recommends suburban residential land use with a density of approximately two dwelling units per acre. This site is also located where new sewer extensions are available. The Comprehensive Plan addresses locating new development where facilities are located.

The Planned Variation would supplement the C-RR3 zoning district and allow reduced lot size, reduced lot width, building setbacks and a 10% increase in density to 4.4 dwelling units per acre, or two additional lots.

2002-02-01

Staff did a certified mailing to property owners within 300 feet of the site and a legal advertisement was placed in the Missoulian. Public comment letters are included in the presentation packet. The applicant held two neighborhood meetings. The Planning Board hearing was held on January 15, 2002. The Planning Board discussion focused on the density of the subdivision and how the common area was configured. Public comment focused on density and traffic on Short Street. Planning Board made the same recommendations as staff, approval of the Planned Variation without any conditions, denial of the variance request for road width and curbs and gutters for Short Street, but approval of a sidewalk variance request for Short Street, approval of the variance request for minimum lot width, denial of the variance request from the regulation that prohibits curb side parking along the short courts and approval of the Susan Lane Subdivision, subject to 21 conditions.

Ron Ewart submitted a letter dated January 31, 2002, that outlines recommended changes to the Planning Board's recommendation. Staff outlined those issues still in question in a memo, which provides alternative actions to consider.

Staff does not recommend any changes to the Planned Variation other than to note that the condition that requires parkland dedication be in land instead of cash-in-lieu. That was linked to the Planned Variation findings. One of the criteria for a Planned Variation is that residual open space accumulated by modifying space and bulk requirements be usable for outdoor recreation or outdoor living purposes or buffer or preservation of natural environment.

The key issues for the subdivision are access, drainage and flood risk. The property is accessed by taking South Third Street West from Reserve Street, then heading north on Short Street to almost its end. Short Street is currently under construction due to infrastructure improvements and the City Engineer stated that it would be rebuilt to a width of 22-23 feet with no shoulders or pedestrian facilities, within a 60 foot right-of-way. The applicant has requested a variance from improvements to Short Street. The County Public Works Department, City-County Health Department and City Engineer all recommended that the variance request be denied. The County Public Works Department recommended that the road be widened to a total of 36 feet, or 18 feet, half of the road that this subdivision would be responsible for, and that curbs and gutters be installed to help address the drainage problems in this area. That is addressed in the memo provided, along with the applicant's recommended change. Staff made the recommendation for these improvements.

Susan Lane is the proposed road from Short Street to the east that branches into a one way loop street to serve the interior of the subdivision. For the first 242 feet of the road, Susan Lane is proposed as 28 feet in width with curbs, gutters and boulevard sidewalks within a 54 foot right-of-way. After that, Susan Lane branches into a one way loop street around a central common area. The one way portion is proposed at 24 feet in width with curbs, gutters and boulevard sidewalks within a 38 foot right-of-way. Based on comments from the Public Works Department, staff has recommended that the two way portion of Susan Lane be widened to 32 feet to accommodate traffic and parking. At the end of the one way loop, the applicant proposes a couple of accesses to the lots to the north and south. The access to the south is technically a driveway. The access to the north would be considered a private short court. It is proposed to be paved to a 20 foot width with curbs, gutters and a curb side sidewalk on the east side, within a 28 foot private access easement. Short courts would serve a limited number of lots to the north, however, they have allowed parking on one side of the street, which would limit the available traffic lane to a width of about 8 feet for an access that allows two way traffic. Staff recommended that the short courts not allow on street parking and that the applicant provide for overflow parking in some other configuration, probably at the end of the short court. The applicant would be responsible for the redesign and this is included as a recommended condition of approval. That is one of the issues that the applicant has suggested a change to and is addressed in the memo provided.

There is a major issue surrounding drainage and flood risk. The property is located southeast of the Clark Fork River and outside the FEMA designated floodplain. Much of the property is at or near base flood elevation and soil types are Xerofluvents. There is also evidence of seasonally high ground water at this location. During the 1997 flood event, water actually surfaced on the southern half of the property. For these reasons, Brian Maiorano, the Floodplain Administrator, recommended that the lowest floor of new construction be two feet above the 100 year flood elevation, or two feet above the existing elevation, whichever is greater. Basements are prohibited. Crawlspace are permitted as long as no mechanicals are located within them.

Additionally, staff has recommended a section of covenants that would notify property owners of the proximity of their property to the floodplain and high surfacing ground water potential, and that the developer provide engineer certification that the drainage design for roads and lots within the subdivision will sufficiently address drainage issues on-site, both for surface runoff and for surfacing high ground water.

There are boulevard sidewalks proposed for Susan Lane but not for Short Street. The applicants have included an RSID waiver on the plat that would address future improvements to Short Street that could include sidewalks. Additionally, a public pedestrian easement is proposed along the short courts and on Common Area #2. The applicant has proposed to construct a five foot wide wood chip trail through the common area to connect to a five foot wide gravel surface trail in the Grove Subdivision to the east. Staff has recommended that the trail be improved as proposed.

New lots will be served by a privately maintained community water system. Staff has recommended some changes to the covenants to address ownership and maintenance of the water system. The subdivision will connect to public sewer, which has been approved through the Contract Sewer Committee.

The applicants originally showed two common areas, the central common area inside the one way loop, and a common area to the southeast of the subdivision where the trail is located. Based on staff's recommendation, they have also shown a third common area to address the deficiency in parkland dedication. It is located on the north side of Lot 21.

Ron Ewart, Eli & Associates, developer's representative, was present, as were developers Eric Patenaude and Jared Langley with P & L Homes, and Don MacArthur, the project architect. They worked together to create a nice, workable, livable residential development. The density is 4.4 units per acre. The average lot size of the smaller lots is

over 5,400 square feet. Lot widths are approximately 50 feet. The City sewer goes through the property from Grove Street and through the Grove Subdivision, which is under construction and similar in density to this proposal. A lot of attention has been paid to architecture and floor plans. The garages are at the rear of the homes. From the street, the homes will have front porches with boulevard street trees about 30 feet apart, boulevard sidewalks and curbs and gutters. The City Contract Sewer Committee was pleased with the design. A non-motorized trail connection is planned from Grove Street to this property. The trail will be either concrete or asphalt, not wood chips as previously proposed, to facilitate bike riding. Some of the people who live in the area expressed concern about the speed of traffic on Short Street. The developer is proposing to install two signs with a posted speed limit of 25 mph and "Slow – Children Playing." The street is currently not signed but the listed speed limit is 25 mph. Short Street is paved to about 20-22 feet, a nice country lane. This development will be a good contribution to the area. It is a little different that what is currently on Short Street. Some of the neighbors are used to seeing the vacant lot and may have some apprehension about new development. Mr. Patenaude and Mr. Langley want to create a model subdivision. One issue of concern that has been discussed is to leave Short Street as it is for now. When it is determined there is a need to upgrade Short Street, it will be done as one comprehensive engineering project. Especially in this case, if curbs and gutters are installed just along the frontage of this project, it would cause more problems than it would solve, due to surrounding topography and the way Short Street is built. They would like the two way portion of Susan Lane to remain at 28 feet with parking on one side only. They would also like to limit signage and use painted yellow curbs. They would like to allow, as proposed, parking along the east side of the short court. That distance is a little over 100 feet and would allow people to park in front of their homes. There is a sidewalk proposed along the short court as well. The most important of the issues is the curb and gutter along Short Street. During a recent drive of the area, both Leonard's Clark Fork Estates and the Grove Subdivision look a lot better by not having curbs and gutters on their side of the street. Whether or not the curbs and gutters would take care of any drainage problems that might exist is questionable. He thanked OPG and Karen Hughes for their work on this proposal. Two neighborhood meetings were held and he feels this will be a very nice addition to the neighborhood.

Commissioner Carey asked the Public Works Director to comment on the reasons why he was not in favor of leaving Short Street in its current condition.

Greg Robertson stated that in urban developments of this type, curbs and gutters function in two ways. One is a safety issue and the second is for drainage purposes. He would prefer the area along Short Street that is to be improved have curbs, gutters and sidewalks and the drainage be funneled through their drainage system.

Commissioner Carey asked if that could be done and still tie into other improvements when all of Short Street is done.

Greg Robertson stated that could be accomplished as long as the work was done to a uniform standard.

Commissioner Evans stated that the discussions also indicated that work could be done after the sewer is installed so it would not be torn up.

Greg Robertson stated he was not sure if the sewer was complete in the area. If the sewer work has been completed, there is no reason why the curbs, gutters and sidewalks could not be installed at this time. If the sewer work is not complete, the developer should bond for the improvements and hold off until the sewer is done.

Ron Ewart stated the sewer has gone down the street but the street is still somewhat in disrepair. The main problem is the property to the south is about four feet lower and there is no way to prevent the drainage from running to that other property.

Chair Curtiss opened the hearing.

Don Stinger, 245 North Davis Street, stated he was the Orchard Homes representative for the Neighborhood Network. Few people attended the first meeting so another was held. Only two more attended that meeting. They voiced their concerns about the traffic. The neighbors were lucky that the Grove Subdivision only had a 10% increase in density. When it is annexed into the City, that density bonus could be as high as 50%. Once the sewer comes to a certain area, it is susceptible to annexation. There is increased density coming to this area, a few proposals have already been submitted. The neighbors are concerned about this density but they haven't seen anything yet.

Don MacArthur, MacArthur, Means and Wells Architects, stated he had been involved in the project for quite some time. The drawings show five houses spaced as they would be on the lots, showing the rhythm of the street trees and front porches. The design process is pretty far along. Three of the four house designs are complete with construction documents. The pricing is being done so they can be presented to potential buyers. The plans are far enough along that the Board can believe what they see. It is a fairly dense project but they have tried to make a nice design that focuses on community. The have tried to create a nice place to live even though it is slightly more dense than surrounding properties. Most of the houses have been oriented to face the central green area. The one way street allows easy access and creates a larger front yard. Each house also has a small private back yard. They have tried to blend the streets to accommodate bikers, pedestrians and automobiles. He reiterated what Ron Ewart had said, they would like to have parking allowed along the short court. The reason for that is so homes have multiple places to park near their homes. It was mentioned that there would only be an 8 foot lane after cars are parked, it would actually be 12 to 13 feet wide. It is important to relieve possible congestion around the park area to allow parking on the short court.

There being no further comments, the public hearing was closed.

Commissioner Evans asked if parking was to be allowed on both sides of the short court.

Ron Ewart stated that it was to be allowed on just one side, the east side in front of the homes.

Commissioner Evans stated there was a comment in the report that the proposed short courts were unacceptable because there was a potential for future connections to the north and south of this subdivision to future roads from the

Grove Subdivision and Leonard's Clark Fork Estates. She did not see how that could be possible, there was nothing to connect to.

Ron Ewart stated the short courts were never intended to be connectors. That was a comment from Clint Harris at the Public Works Department and he was looking into the future.

Greg Robertson stated that Clint Harris was looking at future connectivity. It makes sense to try and get as many through streets in terms of a grid system as possible. Cul-de-sacs are a maintenance headache. Each time they are put in, it makes it more difficult for the Road Crews to maintain. His opinion of the land use differs from Clint Harris' opinion. Future extension of the roads is marginal. However, the width, back of curb to back of curb, was 20 feet, so the actual driving surface was closer to 18 feet and it would difficult to do snow removal with cars parked along one side of the street. One concern he had with narrow roads in these new developments, with obstacles like parked cars, is the inability of the Road Department to remove snow. Snow storage is an important element of any road and should be provided for. The size of the trucks and plows restricts how narrow a road should be. They try to maintain every local access, collector and arterial road. The City does not deal with local access roads. This may be annexed into the City, but the County will be obligated to maintain it until that time. As long as that is the case, it should be built to allow for access or make it a private access and not maintain it.

Commissioner Evans stated her concern was there was not a place for guest parking. There needs to be a place for people who are visiting to park their cars. She understood the concerns and wondered if there was some middle ground.

Greg Robertson stated that he was not suggesting there should not be parking on the street, it should be planned for and adequate width provided to accommodate the safe movement of traffic. With the size of street proposed, parking should absolutely not be allowed.

Karen Hughes stated that when staff recommended that on street parking not be allowed on the short courts, they did state that the design should be revised to provide a minimum of one space of overflow parking for the northern short court. Some redesign would be needed and perhaps provide parking spaces at the end of the short court. It was agreed that having no parking was not a good idea, but with the width of the street, on street parking was not a good idea.

Colleen Dowdall stated the maintenance issue was addressed in Karen Hughes memo. It talks about the difficulty of maintenance and the suggestion that if the applicant want to keep the width at 28 feet, that the County choose not to accept it for maintenance and require that it be maintained by the Homeowners Association until such time as a jurisdiction is willing to maintain it. The County would be free of the liability and when it was annexed into the City, the City could make their own decision on maintenance, but it would still be a public road.

Karen Hughes stated that in either event, the short court area would be privately maintained. Colleen Dowdall is referring to the first section of Susan Lane and allowing a narrow width.

Commissioner Evans stated she was not inclined to reduce the width to 28 feet. The road should be 32 feet as requested by the Road Department. She agreed with Karen Hughes that parking should be allowed at the end of the short court. She wanted to make sure emergency vehicles had access and guests had a place to park.

Don MacArthur stated that they did not look at parking at the end of the short court for two reasons. One was that might be a place for snow storage and the other was pedestrian connectivity in the future.

Commissioner Carey stated he was okay with the narrower width and parking on the short courts provided the County does not have to maintain the road.

Greg Robertson stated if the County is not maintaining the short courts, the only issue he had was right at the intersection because of the way the plows work. To allow for the narrower width and parking on the short courts, parking should be restricted within the first 50 feet on either side of the intersection to Susan Lane.

Commissioner Carey moved that the Susan Lane Planned Variation be approved, based on the findings of fact in the staff report, with no recommended conditions of approval. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the portion of the variance request from Article 3-2(14)(D) of the Missoula County Subdivision Regulations for road width and curbs and gutters for Short Street be denied and the portion of the variance request for sidewalk installation on Short Street be approved, based on the findings of fact in the staff report. Commissioner Evans seconded the motion and stated the Public Works Department had no problems and the Subdivision Regulations allow a two year time frame in which to do the improvements. The motion carried on a vote of 3-0.

Commissioner Carey moved that the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations that requires minimum lot widths of 60 feet be approved, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the variance request from Article 3-2(1)(I)(vi)(d) that prohibits curbside parking along short courts be approved, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the narrower streets are allowed on the condition that the County is not obligated to assume maintenance and that parking be restricted for the first 50 feet of the short courts at their intersection with Susan Lane.

Greg Robertson stated that the first 50 feet along the short courts should have parking restricted so if the County does assume maintenance responsibility for Susan Lane, there is room to provide adequate maintenance.

Karen Hughes stated that the Board is looking at a 28 foot width for Susan Lane, so it would stay a private road and the County would not accept it.

Colleen Dowdall stated it would be a County road but the County would not accept it for maintenance. The right-of-way would still exist when it was annexed into the City, which may make the decision to maintain it.

Commissioner Evans stated she indicated she wanted the road kept at 32 feet.

Karen Hughes stated that would be included in a condition of subdivision approval which they have not acted on yet.

Commissioner Carey stated that his motion was that the narrow roads be accepted on the condition that the County does not assume them for maintenance.

Commissioner Evans stated she was not in favor of that. She would prefer to see the extra width and have County maintenance.

Commissioner Carey stated that his motion would die if there was no second to it.

Commissioner Evans moved that the two way portion of Susan Lane be built to 32 feet in width. Chair Curtiss seconded the motion. The motion carried on a vote of 2-1 (Commissioner Carey opposed).

Commissioner Evans moved that Condition #4 be revised to read: "No-parking signs or yellow curbing, if approved by the Missoula Rural Fire District and County Public Works Department, shall be installed to prohibit parking in the following locations: on the north side of Susan Lane adjacent to Lots 1 and 2, around the corner of Lot 21 on the south side of Susan Lane, around the central common area, on the corner at Lot 6 and on the east side of this lot, around the corner of Lot 13 and on the east side of this lot and on the west side of the short courts. The covenants shall be amended to state that the no-parking signage or yellow curbing shall be maintained by the Homeowners Association until the County accepts these roads for maintenance." Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Susan Lane Subdivision be approved, based on the findings of fact in the staff report and subject to the conditions as amended (revise Condition #4 and delete Condition #6). Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Susan Lane Planned Variation Conditions of Approval:**

NONE

#### **Susan Lane Subdivision Conditions of Approval:**

1. The Planned Variation shall be approved prior to final plat approval. *Subdivision Regulations Article 3-3(1)(B).*

#### **Roads**

2. The subdivider shall improve the east half of Short Street along the frontage of the subdivision to a paved minimum width of 18 feet (from the centerline to back-of-curb) with curbs and gutters, subject to review and approval by the County Public Works Department, prior to final plat approval. *Subdivision Regulations Article 3-2, County Public Works Department and staff recommendation.*
3. Names for the street and the subdivision shall be approved by the County Surveyor's Office prior to final plat approval. The two way portion of Susan Lane shall be constructed to a minimum width of 32 feet. Short courts shall be installed to the proposed specifications. Susan Lane and the short courts shall be installed prior to final plat approval. Road engineering plans and specifications for improvements within the subdivision, including a template showing all utilities within the right-of-way, shall be approved by the County Public Works Department prior to final plat approval. Road engineering plans for Susan Lane shall be reviewed and approved by the Missoula Rural Fire District to assure adequate turning radius at the corners for emergency vehicles. *Subdivision Regulations Article 3-2 and County Public Works Department recommendation.*
4. No-parking signs or yellow curbing, if approved by the Missoula Rural Fire District and County Public Works Department, shall be installed to prohibit parking in the following locations: on the north side of Susan Lane adjacent to Lots 1 and 2, around the corner of Lot 21 on the south side of Susan Lane, around the central common area, on the corner at Lot 6 and on the east side of this lot, around the corner of Lot 13 and on the east side of this lot and on the west side of the short courts. The covenants shall be amended to state that the no-parking signage or yellow curbing shall be maintained by the Homeowners Association until the County accepts these roads for maintenance. *Subdivision Regulations Article 3-2(2)(F), 3-2(1)(I)(vi) and Missoula Rural Fire District recommendation.*
5. The covenants shall be revised to state that the Homeowners Association will maintain the no-parking signs or yellow curbing located along the west side of the short courts and that they will enforce no parking in this area. *Subdivision Regulations Article 3-2(2)(F)(I)(vi) and staff recommendation.*
6. The section of the covenants addressing driveway maintenance shall be amended to eliminate reference to Lot 6, prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-2 and staff recommendation.*



**000-0911**

7. Prior to final plat approval, the covenants shall be amended to include a section on road maintenance for the short courts. The final plat shall include the following statement in reference to the short courts:

“The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance and snow removal shall be the obligation of the owner or Property Owners Association and that Missoula County is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance.” *Subdivision Regulations Article 3-2(1)(I), 5-2(4)(J) and staff recommendation.*

8. Common Area #2 and the short courts shall be located within a conditional public walkway easement. The following statement shall be included on the plat and refer to the conditional public access easement:

“The owners dedicate a public walkway easement, as shown on the subdivision plat, conditioned upon the property being annexed into the City of Missoula.” *Subdivision Regulations Article 3-2(5), 3-6 and staff recommendation.*

9. The trail in Common Area #2 shall be improved as proposed and trail plans shall be reviewed by the City Parks and Recreation Department prior to final plat approval. *Subdivision Regulations Article 3-2(5) and staff recommendation.*

## Drainage, Floodplain and Groundwater

10. a. Detailed grading, drainage and erosion control plans for the site and road that address both run-off and surfacing high groundwater shall be reviewed by the City Engineer and approved by the County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4, 4-1(12).*

- b. The plat shall include a certification by the consulting engineer that the drainage design will effectively retain any additional drainage that results from the subdivision on-site or release it in a manner that will not substantially increase the peak run off normally present before the subdivision. The certification will also state that the drainage design will ensure that surfacing high ground water and run off will not adversely affect properties or structures within this subdivision. *Subdivision Regulations Article 3-4 and County Attorney recommendation.*

- c. Any engineer's certification called for in this approval shall include an indemnification of Missoula County for any damages that may result to landowners, homeowners or public infrastructure as the result of a claim against Missoula County for approval of this subdivision based upon the engineer's certification. The engineer shall also provide evidence of coverage by errors and omissions insurance prior to final plat approval. *Subdivision Regulations 3-1(2), Floodplain Administrator and County Attorney recommendation.*

11. a. New construction shall have a lowest floor at least two feet above the 100 year flood elevation or above the existing grade, whichever is higher. Crawlspace floors may be at flood elevation or the existing grade, whichever is higher, if they contain no mechanicals (heating and cooling systems). Basements are not permitted. The lowest adjacent grade to all new construction shall be brought to at least the published 100 year flood elevation. New construction shall be reviewed for compliance with this condition at the time of zoning compliance permit review. The covenants shall be amended to include this requirement prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B), 3-1(2), 4-1(12) and Floodplain Administrator recommendation.*

- b. Subject to review and approval by OPG and the County Attorney's Office, the covenants shall be amended, prior to final plat approval, to state:

“The property is near a designated floodplain. Approval of this subdivision is not a guarantee that property in this subdivision will be safe from flooding and/or surfacing high groundwater.”

This statement shall also be included on the final plat. *Subdivision Regulations Article 3-1(2), 4-1(12) and County Attorney recommendation.*

## Fire, Water and Sewer Services

12. Prior to final plat approval, the covenants shall be amended to address the Homeowners Association's ownership and maintenance of the water system serving this subdivision, subject to review and approval by OPG and the County Attorney's Office. *Subdivision Regulations Article 3-7 and County Attorney's Office recommendation.*

13. The following statement shall appear on the face of the final plat:

“Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for public water systems, based on benefit. The lot owner shall connect to public water within 180 days of when the public water is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein.” *Subdivision Regulations Article 3-7 and staff recommendation.*

14. The design of the tank and hydrant for water supply for firefighting shall be reviewed and approved by the appropriate fire jurisdiction prior to final plat approval. The tank and hydrant shall be installed or a guarantee filed prior to final plat approval, subject to review and approval by the Missoula Rural Fire District and the County Public Works Department. *Subdivision Regulations Article 3-7 and Missoula Rural Fire District recommendation.*

**Wildlife**

15. The covenants shall be amended to include specific "Living With Wildlife" recommendations, subject to OPG approval, prior to final plat approval. *Subdivision Regulations Article 4-1(12) and staff recommendation.*

**Weeds**

16. A Revegetation Plan for Disturbed Sites shall be approved by the Missoula County Weed Board prior to final plat approval. The covenants shall be amended to state that lots, boulevard areas and common areas shall be maintained in a weed-free condition in compliance with the Montana Noxious Weed Management Act and the Missoula County Noxious Weed Management Plan. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

**Common Area**

17. The proposed subdivision shall be redesigned to accommodate the full common area dedication requirement in land. The redesigned subdivision shall be reviewed and approved by Missoula County prior to final plat approval. *Subdivision Regulations Article 3-8 and staff recommendation.*
18. The grading plans to allow for the common areas to function as drainage facilities, particularly in regards to the side slopes around the edges of the common areas, shall be reviewed and approved by the City Parks and Recreation Department. *Subdivision Regulations Article 3-4, 3-8 and staff recommendation.*
19. The covenants shall be amended to include provisions for weed control, trail maintenance and other maintenance activities in the common area. *Subdivision Regulations Article 3-8 and staff recommendation.*
20. A development agreement shall be filed stating that the developer shall provide noxious weed control and litter removal in the common area until the Homeowners Association accepts maintenance responsibility. The development agreement shall be filed prior to final plat approval, subject to County Attorney's Office approval. *Subdivision Regulations Article 3-8 and staff recommendation.*

The Board took a five minute break.

Chair Curtiss called the meeting back to order.

**Decision: Resolution to Create RSID #8471 (Mullan Road Corridor Sewer Project)**

Chair Curtiss: The first thing we'd like to do is have Ann Mary present to us more of the Option 3 that we requested her to be ready for this last week.

Ann Mary Dussault: For the record, I'm Ann Mary Dussault, Missoula County Chief Administrative Officer. The Board, at your last hearing on this matter, asked staff to respond to a series of questions posed by the Board of County Commissioners and we gave you that briefing paper at last week's Public Meeting. You then asked us to further explore Option 3 and, to some degree, Option 4, for you so this report today is essentially a report on the Options with particular emphasis on Option 3 and Option 4, to a lesser degree. The handout that I'll be working from is this document. Does everybody have a copy of this? The Policy Goals that were intended to be met by RSID 8471, or the Mullan Road Corridor Sewer Project, are four fold. Number One was to remediate existing community systems that are failing, particularly El Mar, New Meadows and Golden West. Number Two, to reduce risk to existing community systems that are threatened, particularly Mullan Trail, which is threatened by flooding. Number Three, to remediate reported failing of individual systems, particularly the reports we've received about Country Crest. Number Four, to achieve the goals adopted by the Board relative to the Voluntary Nutrient Reduction Program, commonly called VNR, which in itself is two fold, which is a) to avoid new individual septic systems to be introduced into the valley resulting primarily from new development, and b) to reduce the number of existing individual septic systems already in place and to reduce those numbers over time. You asked us to give you a list the primary funding sources that we are looking at relative to this project. That list is on Page 2. Potential funding sources at the Federal level include EPA VA/HUD Special Projects money, and I would note for you, because it will come up in a later discussion, is that, I think it was in Federal Fiscal Year '01, both Lolo and El Mar/New Meadows were recipients of this funding, so the County has a history of applying for and receiving these funds. Number Two is the Rural Development or sometimes called the Rural Utility Services Federal monies. The third that I meant to add to the list is known as WRDA, stands for the Water Resource Development Act, and these are dollars allocated to the Corps of Engineers. If fully funded, it would mean \$25 million in funding to the State of Montana for various water and sewer related projects. However, I would note that for this fiscal year, it was not fully funded and only \$500,000 in funding was placed in the Federal Fiscal Year '02 budget, but it is still an Act that remains on the books and theoretically might be funded. At the State level, we're looking at the SRF programs, which is the State Revolving Loan Fund. The TSEP, which is the Treasure State Endowment Grant Program. As a rule, the maximum grant available under this program is \$500,000. The DNRC Renewable Resource Grant and Loan Program, the maximum allowable under this program is \$100,000. CDBG, which is Community Development Block Grant, which is targeted assistance to low income individuals. At the local level, you directed us to continue conversations with the City of Missoula relative to an allocation from the City to this project and that is being referred to as Aid to Construction, and the Missoula Water Quality District has traditionally assisted folks in costs relative to hookup to sewer. On Page 3, you asked us to develop for you an integrated timeline so we could kind of take a snapshot look at how much time is involved with various parts of a project like this. As we move forward to discuss Options 2, 3 and 4, any one of those Options would require that you recreate a new RSID. The timeline that we estimate to do that is about two months. We'd like to be able to hold neighborhood meetings. We would need to renegotiate one or both Interlocals, the Interlocal with the City and the Interlocal with the Airport. And then, the technical process itself, the notice of your Resolution of Intent, the opportunity to protest and then your final decision, takes about a month. So, in total, the time required to recreate is about two months. The second item has to do with the design and construction phase. Assuming that we are about where we are at now in terms of design, to complete the final design and to acquire MEPA, which is the Montana Environmental Policy Act, documentation that is necessary, those two things take about six months to complete. After that, we have a product that can go to bid. Three months is probably a little too long for that, I would say we can do that within two to two and a half months. And so, we would begin construction essentially eight months later. So, to

get to the point where we could actually begin construction, that's about an eight month process. In terms of the financial assistance phase, the EPA VA/HUD dollars would be allocated in Federal Fiscal Year '03. The Federal Fiscal Year begins in October and so you can see on that timeline, I've indicated notice and technically what happens is we are given a notice of the award and notice that it has been included in the Federal Fiscal Year '03 budget. For the State dollars, both TSEP and DNRC, the applications for Fiscal Year '03 are due in the month of May, both for TSEP and DNRC. Both of those, if they qualify at the point of application, are awarded by the Montana Legislature which begins meeting in January of '03. Generally, this particular bill is not acted on until the final days of the session, so we anticipate notice of award in about March of '03. Let me just state, you don't see CDBG on this because we are not able to apply for a new CDBG grant until '03 and the reason for that is the grant that we currently have is for the East Missoula project and we're required to spend down that grant before we qualify for a new grant. In terms of the City Aid to Construction, that would take about a month and is actually concurrent with renegotiating the Interlocal Agreement with the City. The Water Quality District is about a month, we have a, as we told you last week, a draft letter prepared to the Water Quality District requesting funds for the cycle '03-'04. So that is your integrated timeline and as we move forward, you'll see that we applied this timeline then to your various options. Option 1 is to create RSID 8471 as proposed. I think we have all agreed that we do not recommend that you create RSID 8471. Option 2 is to delay creation until Federal funding is known. The implication of that Option, we would stop any design at this time. We would receive notice of Federal funding technically or at the earliest date would be October of '02. What we know from experience is that notice can come in October or November or December or January, that's simply not something we have control over, but assuming that notice would come in October of '02, we would then begin the redesigning process and you can see that timeline would mean that we would begin construction in July of '03, assuming that you would recreate a new RSID utilizing these Federal funds. Let me reference for a minute the maps behind you. This map is one that looks very familiar to you, this is RSID 8471. This map is a preliminary proposal for Option 3 and this map is a preliminary proposal for Option 4. These are the subdistrict maps that went along 8471 but would be the same in this district, but the numbers there are ones that I'm going to refer to when I talk about Option 3. There is no map for Option 2 because we do not know what the district would look like one year from now and we also do not know what the design of the sewer system would look like so we couldn't produce an exhibit for you. Option 3, you would need to recreate a new RSID and assuming that we started in February, we would complete that by about April Fools Day. The design phase would continue, we would begin construction on essentially the east end of the RSID in late summer and complete that by late fall. We would complete the balance in '03, so the total system would be operational by '03. In this scenario, assuming that the funding mechanisms worked, we could also have Golden West, Mullan Trail and Country Crest subdistricts completed in FY '04. If you look at the financial assistance phase, the City Aid to Construction money that is on the table is \$1,000,000. We would utilize that million dollars for the backbone. We would apply for EPA VA/HUD money which would primarily be directed toward the subdistricts to reduce those subdistrict costs which are fairly substantial for most of the subdistricts. We would apply to the State TSEP and DNRC, particularly for the Golden West, Mullan Trail and Country Crest subdistricts and we would immediately submit a letter to the Water Quality District to assist in the hookup fees those subdistricts that would be connected in FY '03 and '04. Page 5 is an attempt to describe for you what Option 3 looks like in terms of the funding mix. Now remember, the key difference in this proposal is there is a million dollars of City Aid to Construction that ends up getting applied in a very specific way. So, under Option 3 the total bonded project cost is reduced from \$7.4 million under RSID 8471 to \$6.3 million, and that's the effect of having the City Aid to Construction applied up front so there's less cost to be bonded. The total assessable square footage remains the same, the total acreage remains the same and the value per acre of \$3,167 an acre remains the same. The significant difference is in something that I forgot to write out for you, which is the EDUA, Equivalent Dwelling Unit Assessment. So let me see if I can explain that. The proportional cost for parcels that would receive or be assessed by an EDUA methodology rather than the square foot methodology are first of all those parcels that are one acre or less with or without a plumbed unit and number two, those parcels over one acre that have a plumbed unit on those parcels. So that includes all residential units in this district. The net effect of that proposal is that the value of one EDU is about \$1,500 and I say about because we've done an initial calculation that is lower than that but being a little bit conservative, I don't want to tell you it's going to be \$1,300 and so no, it's really going to be \$1,350. So, \$1,500 per unit is the maximum amount it would be, that gives us time to truth test everything else in our equation. It's important to understand that with the EDUA, existing commercial units and mobile home units have more than one EDUA and those are calculated based on the size of the water meter for potable water servicing the unit or facility or in the event there is no water meter, you look at a comparable facility and a capacity unit would be assigned. The bottom line under this methodology for all residential units, however, is their maximum exposure for the backbone is \$1,500 a unit. It is lower than that for El Mar because under this methodology what we've done is we've taken their EPA money and applied it to their costs, so that Federal money reduces their assessment, their EDUA, to \$780 a unit. On the non-plumbed unit side of the equation, which is on the right hand side of this page, these are undeveloped parcels and they remain in a square footage assessment block and their square footage does not change. They remain assessed at \$3,167 an acre, the same as in RSID 8471. So, to play out the scenario a little bit more, if you turn to page 5b, what I've just told you is what happens with the backbone. This is going to start to describe to you what would happen with the subdistricts where for most folks they face pretty significant costs here. So, Page 5b, you see a subdistrict number, the proposed construction timeline here, FY '03-'04, are for Golden West, Mullan Trail and Country Crest, you see the units per subdistrict, so in El Mar there's 491 units, Mullan Trail 93, etc., and I've taken those blue numbers and said what the subdistrict infrastructure costs are. The total for everybody in the area is \$4,623,900. That's the cumulative amount of subdistrict costs that we identified. The Federal EPA VA/HUD is a 55/45 match. The Federal request, or what we would actually be asking the Feds for, is about \$2.5 million. That would pay 55% of your subdistrict costs and the local match required for that is 45%, exactly what we're doing in El Mar, exactly what we're doing in Lolo. So, let me then just spin out for you what that would look like for those proposed for construction in FY '03-'04 under this scenario. So we're looking at Golden West, Mullan Trail and Country Crest. And let me just take Golden West and run that across for you. Golden West has 73 units, there subdistrict cost is \$31,000. If you apply the EPA VA/HUD Federal money against that, that's \$17,050, so the local match required at this point in the calculation is \$13,950. Assuming that we qualify for TSEP, DNRC funding for Golden West, that would pay for 50% of the 45%, so the State money would pay 50% of the local share. That means, now, that we've got a local contribution in the amount of \$6,975 for the infrastructure. We have to now add on the City connection fee, which for Golden West is \$35,150, for a total local contribution of \$42,125. We discount from that contribution from the Water Quality District of \$13,875, or approximately \$375 a unit, for a total local contribution of \$28,250. If you divide that by the number of units, the total per unit contribution for the subdistrict is \$764 for Golden West. If you drop down to the next box then, here's what happens with Golden West. The backbone EDUA is \$1,500. The subdistrict assessment per unit is

\$764. So the total under this scenario is \$2,264, compared to \$10,900 a unit under RSID 8471. The numbers for Country Crest are even more startling, if you let me take you to the bottom line, if you look at Country Crest in the second box, the backbone EDUA is \$1,500, subdistrict, \$4,284, total \$5,784 compared to RSID 8471 costs of \$20,800 a unit. Now, just because we know that TSEP and DNRC, we've got to qualify for those and they determine if we qualify, it's very difficult, we can't calculate those numbers, we have to submit the application. So I wanted to run you a scenario of what happens if we didn't qualify for TSEP and DNRC, so that's what that last little box is. Assuming that we did not qualify for the TSEP/DNRC monies, Golden West would go from \$2,264 to \$2,452; Mullan Trail from \$2,336 to \$2,598 and Country Crest would go from \$5,784 to \$9,493. That's Option 3. Option 4 is an option that certainly does not meet all of the policy goals but it makes progress toward some of them. Option 4 would create an eastern project which is composed primarily of land that is undeveloped, it's served by the Airport and the North Grant Creek Interceptor and only those that are in this proposed district that would be directly benefited from it. One thing we learned by running these two scenarios that once we do this the cost goes up. So, the folks in this area would see a per acre cost larger than what they see either under this scenario or this. So, that would be a separate project and then the west end would be a separate project. There's a significant difference in the infrastructure to serve this compared to here or here in that the only gravity line is from El Mar to the pumping station and from here we simply have a forced main, we have no gravity infrastructure in here which means the middle section cannot be served by this proposal. So this truly is a proposal to serve only the east end and the west end. That concludes my report. From the staff team we have Greg Robertson, Director of Public Works; Mike Sehestedt, County Attorney; Jim Carlson, Director of Environmental Health from the Health Department and contractor Dan Harmon from HDR Engineering.

Chair Curtiss: Thank you Ann Mary. At this time, is there anyone in the public who would like to comment on any of the four options?

Jim Mocabee: Hi, I'm Jim Mocabee, I live at 1540 Topaz Drive and I'm a member of the Mullan Road Coalition. I would just like to take a minute if I may, there's been some, I guess, confusion as to who the Mullan Road Coalition is so I just wanted to get everybody up to speed on who we are and what we are. Mullan Road Coalition is the fastest and the newest grass roots organization in Missoula County. We boast a diverse group of elected officials and contributors. We are farmers, ranchers, homemakers, retired, blue and white collar, small and large landowners, homeowners, renters and on and on. Additionally, we have meetings that exceed 500 individuals within our area. We represent the interests of the majority of the residents of the proposed RSID area and it's pretty much outrageous to believe that we do not. MRC is dedicated to insuring that the government is responsive to the needs of its citizens, in fact, MRC would not exist today if it were not for the lack of respect given to many individuals who have voiced legitimate concerns and questions about a poorly planned project. Yes, essentially the County Commissioners have created this organization and we are asking for due process, proper planning and respect. These are little things that should be given to all citizens, but because we felt that we were not given those, the organization is now going to expect them and that's my statement for now. Thank you.

Chair Curtiss: Thank you Jim. Is there further comment?

Mike Flynn: Hi, my name is Mike Flynn and I live at 2275 Roundup. I've just got a question here to ask and then I've got a prepared statement to read. In the February 1st meeting, we had the draft responses to questions posed by the Board of County Commissioners. Option 1 was suspend any action until receipt of Federal funds is known and in this that we got today, where is Option 1.

Chair Curtiss: You're right Mike, I think that we switched them.

Mike Flynn: They're switched.

Ann Mary Dussault: One and two are switched.

Mike Flynn: Okay, so, which one are we going by, we going by February 1st or are we going by this one? As far as the two that are switched? This one?

Chair Curtiss: We'll go by this one, we'll call them Option 1, 2, 3 and 4 by the one presented today.

Mike Flynn: Okay.

Chair Curtiss: Thank you for bringing that to our attention.

Mike Flynn: I already said who I was. I am speaking on behalf of the Mullan Road Coalition and its members of 500 concerned property owners affected by the proposed RSID. Of the four Options proposed for the Mullan Road Sewer Project, the Coalition supports Option 2, suspend any action until receipt of Federal funds is known, with the following modifications. The Coalition agrees that the project should be suspended until the full extent of the outside funding in known so the property owners in the district can be told how much the project will cost them. The Coalition also feels that the project should be suspended until the County obtains other information necessary to give property owners within the district an accurate projection of their assessment and total cost of the project. The additional information necessary to calculate each property owners RSID assessment and their total cost for the project includes: 1) completion of the Wye-Mullan Comprehensive Plan; 2) completion of the Missoula Airport Expansion Plan; and 3) completion of the new Grant Creek Floodplain Area and Map, including adoption by FEMA, Missoula County and the State of Montana. Without that information, the County cannot determine with accuracy the proper boundaries of the RSID, the amount of total assessable area or the amount of assessable or developable property in an individual parcel. Further, until the allowable density of development is determined, the County can only guess at the necessary capacity of the backbone system. In the interest of divulging the total cost of the project to each property owner, the Coalition requests that each property owner be given, as part of the notice of the new RSID, accurate estimates of the cost to each property owner and timeframe for construction and connection of the subdistricts and accurate estimates of the cost to each property owner and timeframe for annexation and upgrades to the City Sewage Treatment Plant. Finally, the Coalition would like to thank the Board of County Commissioners for its work in developing new options for the proposed RSID. You and your staff came up with these options in only a couple of weeks. Imagine the range of

options that could be developed given more time and additional input. I would like to volunteer on behalf of the Coalition to contribute to the refinement of these options and development of others. Meaningful public participation in the process of governmental decision-making makes public acceptance of the results much more likely. The Coalition believes that the Montana Environmental Protection Act (MEPA) provides a viable work frame for the type of public participation we seek. It requires development of alternatives, an analysis of potential impacts and allows for public notice and comments on each step. Compliance with MEPA and its Federal counterpart, NEPA, are necessary prerequisites to obtain State and Federal funding that you have repeatedly assured us you would seek. To date, the only MEPA documents that have been completed regarding this project and please correct me if I am mistaken, are the Checklist Environmental Assessment and the Finding of No Significant Impact that were done by the City of Missoula in April of 1999 as part of the 1999 Wastewater Facilities Plan Update. That was nearly three years ago and many of the conclusions in that EA were based on a 1983 EA. None of the conclusions were based on the backbone and subdistrict systems and methods of assessment as they are currently proposed. None of the conclusions adequately address the social, economic and physical impacts that the system and the assessments will have on the area. The costs of this project to property owners in the district will force many to subdivide and develop their property. The 1999 EA, as well as the City and County, recognizes that this project will induce development of the area, but the effects of that development have yet to be analyzed. The potential impacts that must be analyzed include: •impacts stemming from changes in use of agricultural lands; •visual and aesthetic impacts associated with increased development and decreased open space; •changes in the demographic characteristics of the project area including changes in population quantity, distribution and density; •impacts on general housing conditions, particularly in terms of affordability in lieu of assessments; •displacement or relocation of businesses or residents in the project area due to costs associated with the project; •impacts of population growth on schools serving the area; •impacts of population growth on other governmental services such as fire protection, police protection and emergency medical services to the area; •impacts on road networks and local traffic flows; and •impacts of the project on private property rights including those associated with the RSID assessment obligations, rights to protest RSID formation and alleged waivers thereof, and City annexation requirements. Those are just some of the factors influencing the human environment that the 1999 Checklist EA found would not be significantly impacted. The Board cannot seriously contend that a Checklist Environmental Assessment prepared almost three years ago, with many of its conclusions based on an assessment prepared almost 20 years ago, adequately analyze the effects of the proposed project, when the details of the proposed project were not even conceived of at those times and are still undergoing modification. MEPA was designed to foster informed and fully considered governmental decisions. Additional information and full consideration with public input is exactly what this project needs. It is time the Board acknowledge its duty to fully comply with MEPA and begin development, analysis and public comment on various wastewater alternatives for the project area, as well as the effects of those alternatives on the area's social, economic and physical environment. That kind of approach makes sense and is what the law requires. Until proper planning and analysis is completed, no expenditure of public monies or new tax levies should be permitted. This is not a race, we should all be winners. There is no reason to set up unrealistic timelines that may permit poor planning or lack of sufficient public input on this project. Again, MRC will support Option 2 only if it is amended to include the additional planning, analysis and opportunities for public participation that I have discussed. Thank you.

Chair Curtiss: Thank you Mike. It was only the City's \$1,000,000 that gave us the opportunity in the last month to come up with Option 3, just to put that on the record. Is there further comment?

Vicky Bostick: Vicky Bostick, 2051 Flynn Lane. I am a member of the MRC and stand behind their statement but I would like to once again ask the Board to slow down and wait for the Federal, State and local funding options and outcomes to be known before going forward with the sewer project. We are a very large and strong group of citizens that will help stand behind the Commissioners in the funding that needs to be found and helping you go to our local government, to our State government, and ask for the funds that are needed. We are here to help you. We do, I do particularly appreciate the fact that you are looking at other options and that you have slowed down enough to at least say that there are maybe some other things out there that will help us as a group of citizens who just cannot afford the project as it stands right now with this RSID. I appreciate it, I have thanked you very much for looking at some of the other things, and I said, I think I and many others are there, as Mike said, to help.

Chair Curtiss: Thank you Vicky. Is there further comment?

John Rice: My name is John Rice, I'm Vice Chairman of organization Montanans for Better Government, regional rep for Montanans for Better Government and local chairman of Montanans for Better Government. We stand behind the folks in the Mullan area in demanding an Environmental Impact Statement. We believe that the decision-making process should be taken away from the local bureaucrats, if you excuse the term, and their hypothesis with respect to this sewerage. We believe that the citizens should be made a part of the decision-making process which is mandated by an Environmental Impact Statement and we also believe that alternatives to this municipal sewerage should be explored, especially in lieu of the fact that many do believe that this is revenue driven. Thank you very much for your time.

Chair Curtiss: Thank you John. Is there further comment?

Kandi Matthew-Jenkins: Kandi Matthew-Jenkins, I'm a member of Montanans for Better Government. In considering the points of the MEPA you also have to take into consideration the National Environmental Policy Act when soliciting taxpayers dollars in Federal aid and this project would come under the NEPA considering that you're looking for funding from the Federal standpoint. I would recommend also that the Environmental Impact Statement that was already recommended in 1984 be finally be done and that it be done by objective experts from out of this area and more properly, out of the State.

Chair Curtiss: Thank you Kandi. Is there further comment?

Jim Carlson: Just a point of clarification. My name's Jim Carlson, I'm Director of Environmental Health for the City-County Health Department. The folks who administer the State and Federal funds for sewer projects, generally before those funds are disbursed, are required to comply with MEPA and NEPA where appropriate. For example, the Area-Wide Sewer Planning Project that the City recently conducted with regard to the expansion of the sewer service area,

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the expansion of the plant, the building of the biological nutrient removal system which will start construction hopefully sometime this construction season, have all gone through review under those systems and the Federal government issued a Finding of No Significant Impact. Likewise, if we go ahead with these projects, depending on what funds are involved and what agency decisions are involved, the State and Federal government will comply, like they do in all situations, with the requirements under those Acts.

Chair Curtiss: Thank you Jim.

Will Snodgrass: I'm Will Snodgrass, P.O. Box 9225. I've been researching the sewer issue for about eight years here. My comments, to Colleen, your Deputy County Attorney, requests for documents, submissions to the Office of Planning and Grants, all of which refer to activities that I have characterized as violations of State and Federal law, are a matter of record. Those documents still induced to this very day. I believe Federal law has been broken here on a long standing basis in Missoula County. One clear example exists on Page 101 of the Dames and Moore analysis for the 1984 Wastewater Collection and Facilities planning document. The planners that you hired referred to the need for an Environmental Impact Statement that was never done. That's one point. Secondly, you folks are so far behind Europe and other parts of the United States in terms of exploring alternative systems which are less expensive and more efficient than your wastewater treatment facility, that it's really a criminal shame. For example, Mr. Max Weiss tested an alternative sewer treatment device, I call it a swamp in a bottle, it's being used in France right now, although Mr. Weiss' machine uses an enhanced and more efficient membrane. It was tested out at your own wastewater treatment facility and at its mid-stage of treatment, it was already cleaner than your final output. I need not remind you of the problem inherent in the wastewater treatment facility at this time into which you plan on pumping all of this sewage. That facility, with or without its advanced planned tertiary treatment, cannot adequately treat sewage. It is a major polluter and it is essentially, as the MBG report states most clearly, a transportation mechanism for hazardous waste. You have done nothing really practical in terms of source reduction. So what you have here is something that resembles very much in a very troubling sense the developments around the Larchmont Golf Course, which by the admission of Barbara Evans own staff, involved the driving of a sewer through the Larchmont Golf Course to the "University development," Mr. DeVore's documents, which indicate the pursuit of that development, pre-date any public notification of the University property for sale. In other words, the deal was cooked in advance, before those lands were even put up for sale. I think that this particular...

Commissioner Evans: Mr. Snodgrass, I don't have a staff and I don't know what you're talking about.

Will Snodgrass: I've heard what you say, and I'll remember that, thank you. So, I think that if you're going to build multi-million dollar systems that are antiquated and force people to pay exorbitant costs and pump this stuff into an antiquated sewage treatment plant that dumps directly into the river which is fraught with problems from the mechanical standpoint, the design standpoint, to the realm of supervision, and I use the term loosely, then you better reconsider, I think, what you're doing here. Again, you have violated Federal law, you have violated MEPA and to state as Commissioner Curtiss stated for the news media just a day or two ago that a FONSI was rendered, a Finding of No Significant Impact, is simply to say that you haven't looked at the types of things that you're supposed to be looking at under Federal law. If you look for baseballs, you find baseballs. You should be looking for BBs and the finer points that were brought up most succinctly by Mr. Flynn. Thank you.

Chair Curtiss: Thank you Will. Is there further comment?

Mike Bellows: Good afternoon Commissioners. For the record, my name is Mike Bellows, my mailing address is P.O. Box 483. I'm a member of the local Liberation party and I just wanted to express my support for some of the Mullan Road residents. I hope you guys look at all the options including the option to have some competitive systems out there. That would certainly help improve the City system. I know that places in Indianapolis has sort of handed their systems over to private organizations and they've done wonders as well as save the taxpayer a lot of money, so in that regard I hope you guys look at that. I'm not really in favor of the SIDs. So thank you very much.

Chair Curtiss: Thank you Mike. Is there further comment?

Diane Beck: Good afternoon. My name is Diane Beck, 8190 Haven Heights. Not here representing any groups or organizations, however, I am a member of the Mullan Road Coalition. I just didn't plan on commenting, but I have to, I feel compelled to say a few things. I'm amazed that the Commissioners have pushed so hard on this project. Continually looking for options is wonderful, but it took almost an act of Congress to get you to consider any other options and that really troubles me. It also troubles me that I believe somewhere in the range of \$250,000 to probably maybe near \$500,000 has already been spent on this project since HDR Engineering first did the studies at El Mar in 1998 and 1999. I don't know if that's an accurate number. It's a guesstimate based on conversations I've had with a few people. I want to mention for the record that the dollars that have been spent so far, including the surveying that's going on out there right now by WGM Group, that is taxpayer dollars, those monies have been spent, they have been, those checks have been written and I think that in all fairness to the community, that you stop this project until you get your ducks in a row. I think you should reflect on your mistakes, some of them, obviously in this process, have been notification, meetings in the afternoons, notices not going out. Many people that showed up to the meeting that we had, the one in which there were over 500 people present, at that meeting, many of those people, what prompted those people to come to that meeting was simply getting a notice for an assessment. They had no knowledge of any prior meetings. Using the Missoulia for legal notification is not adequate for an RSID that has the financial impacts that this one does. We just want a fair public process that's inclusive of all the residents in the area. We want to require that the County holds the meetings in the evenings and allow for better notification and communication with the affected property owners and we want our Commissioners to represent us, the people, not their own special agenda or their own interest or those of Missoula City and County staff. We want the City of Missoula to be accountable and up front with their plans for annexation and future growth. This should have been a joint project from the beginning, as both of the jurisdictions are involved. We expect better representation than this and actually we demand it. And, just to correct Commissioner Curtiss, I don't know that the City of Missoula has authorized expending a million dollars. The minutes that I read from the meeting on January 16th that Ann Mary Dussault presented it to the Committee of the Whole, it talks about looking into it. I don't think the Committee has committed a million dollars. Thank you.



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Chair Curtiss: And I didn't say they did. I said their million let us look at Option 3 and develop Option 3. Without that offer, we wouldn't have had that opportunity. Okay, is there further comment?

Commissioner Evans: I'd like to make a statement. As you know, I have been opposed to this RSID until we determine if there's Federal money. What I'm going to ask you folks to do is to look at Option 3, give it a neutral look, see if you think you can live with it and then let us know. We're going to be having a meeting, as I understand it, Monday night at the library. Is that correct, staff?

Chair Curtiss: That hasn't been set yet.

Commissioner Evans: Well, I understood it was. Has it been set for Monday night, please, Ann Mary?

Ann Mary Dussault: No.

Commissioner Evans: What night are we meeting with them, and where?

Ann Mary Dussault: We've not heard back from...

Chair Curtiss: We haven't heard back from their group yet.

Commissioner Evans: Mr. Mocabee, have you determined from your group what night would be convenient for you?

Jim Mocabee: We've expressed any night next week would be fine. Pick a night.

Chair Curtiss: But we also haven't received a list from them as to who...

Jim Mocabee: We'll contact our membership and our steering committee.

Commissioner Evans: Well, since we don't seem to know when we're meeting with you, obviously we will meet with you at sometime here soon and then we'd like to hear what you have to say. I'd like you to look at this proposal, give it your best shot. And I want to tell you all that we'll do our very best to try and get you Federal money, but I also want to make the potential for winning or losing very clear. We may be able to get some and we may not get some.

Jim Mocabee: We realize that, that's why we like to...

Commissioner Evans: I want you to know that if we don't get any it won't be because we didn't try, but then the costs can go up and so I want you to weigh that in your consideration so that you've made a decision with all the facts in mind.

Jim Mocabee: And that's exactly what we're asking for, and I appreciate them. Thank you.

Chair Curtiss: Is there further comment? I find it interesting that this is the first time that you've seen Option 3 and the costs and not one of you commented that that would make it helpful, so it makes me wonder whether anybody really wants a solution. Okay. Is there any motion?

Commissioner Carey: I move that we not adopt the Resolution to Create RSID 8471.

Commissioner Evans: I second that motion.

Chair Curtiss: All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye.

Commissioner Carey: It's not a motion, but again, I would suggest that Option 3 bears a very good, close look at. Again, it is not something that I feel the Board is pushing, but we're trying to find a way to do what we think is in the best interest of the people who live here now and who will live here long after we're gone. So, please take a good look at Option 3. I think we made some good steps toward making this affordable and I'd be very interested to hear what you have to say after you've had a good look at it.

Diane Beck: Diane Beck, 8190 Haven Heights. I just have to make a comment. One of the things that we've repeatedly said is to communicate with us. Commissioner Carey, at the meeting 30 days ago you made the motion to delay for 30 days. I find it amazing that within the last 30 days, you haven't bothered to call and ask any of us what we think. So, you've come up with your options based on your staff report, based on your, the information that you're receiving and gathering and so now all of a sudden you put it out in front of us and Commissioner Curtiss, you think we should say it's okay. I don't think so. I don't think that that's a fair public process. If you want to know what we think, ask us to the table. It wasn't until day before yesterday, I believe, that Commissioner Curtiss called to ask us if we'd come to the table. You know, 30 days ago that could have come up and I'm appalled that it didn't. So here we are and it's 30 days later and now you want to know why we don't like your idea. Why don't you ask us what we think before you keep making up your own minds. Thank you.

Commissioner Carey: Diane, for the record, I think it was, what, yesterday that we got this report. We've been, for the last 30 days, working to try to put a deal together and that's what we've done and I didn't, all I asked was for people to take a good look at it. We just got it yesterday, so.



Chair Curtiss: And I did call Mr. Mocabee the day after we had received the numbers so we had something for you to look at.

Kandi Matthew-Jenkins: Kandi Matthew-Jenkins, 1211 Cooper. I think that one thing that really gets forgotten around here is who pays the bill. You're public servants, you don't have the right to talk to these people or anybody else in any other manner but polite and with respect. We have a little bit more leeway because we pay the salary. So I think that some consideration and respect for these people is called for and if you don't think that we're respecting you, well I think that that respect needs to be earned and you're not earning it, Jean.

Chair Curtiss: Thank you Kandi. Is there further motions or direction from the Board to staff on Option 2, 3, 4.

Commissioner Evans: I'd like to ask that we get a meeting set as quickly as possible and I would say that Monday night seems to be the best from the folks that I was around when they were asked what night next week would be best and that's us I'm talking about and if Monday would suit the folks of the Mullan Road Coalition and if the Library is available, I would suggest that we set the meeting for next Monday so that we can hear what you've got to say about this proposal, take your questions and then again try to find time to answer them for you.

An unidentified audience member asked what time the meeting would be.

Commissioner Evans: Generally we have them at 7:00 p.m., but we will notify Mr. Mocabee who has indicated he will notify all the rest of your members.

Chair Curtiss: This meeting was not intended to be a huge public meeting at this time. This meeting, that's why it hasn't been set yet, was to have a few people who have been involved and who seem to be representing the majority of the folks out there to sit down and talk in more depth about the thing. Then if we decide to go forward with it, we would have all the public meetings in the neighborhoods as described in this document.

Michael Sehestedt: Can I follow up a little bit on that. I mean, obviously if the Commissioners are there, it's a public meeting. What Commissioner Curtiss is saying is this isn't going to be a open to everybody to testify. It's an opportunity for us to talk to the Mullan Road Corridor people and we'll tell you what we think and what some of the problems are and you can give us your responses to those. Anybody can be there, but it's not going to be a free for all, it's going to be, as I understand what the Commissioners had in mind, a dialogue between the Commissioners and the Mullan Road residents. Anybody that wants to be there to watch can be, but participation is going to be limited at that meeting to Mullan Road folks and BCC.

Chair Curtiss: Because it wouldn't be a public hearing on any particular RSID as there isn't one to look at. But I would appreciate the list from you, Jim, of the folks on your Steering Committee, because we would like to make it a more small, workable meeting for the first time. Okay, if there's no further business, we're in recess.

There being no further business to come before the Board, the Commissioners were in recess at 3:30 p.m.

#### THURSDAY, FEBRUARY 7, 2002

The Board of County Commissioners met in regular session; all three members were present.

##### Site Inspection

In the afternoon, Chair Curtiss accompanied County Surveyor Horace Brown on a site inspection of Woodville Street in Clinton for the request to vacate a portion of the street.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 03 - Pay Date: February 8, 2002. Total Missoula County Payroll: \$853,550.79. The Transmittal Sheet was returned to the Auditor's Office.

##### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution – Chair Curtiss signed a Property and Supply Bureau Resolution, dated February 7, 2002, listing the agents authorized to acquire federal surplus property. The document was returned to the Central Stores/Surplus Property Program (Property and Supply Bureau) in Helena, Montana.

Resolution No. 2002-013 – The Commissioners signed Resolution No. 2002-013, dated February 7, 2002, a Budget Amendment for the Employees Benefits Department, in the amount of \$11,000.00, which reinstates a .5 FTE office aide. This Amendment was approved at a February 6, 2002 Meeting with Risk Manager Hal Luttschwager, and adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-014 – The Commissioners signed Resolution No. 2002-014, dated February 7, 2002, a Resolution to Approve a Planned Variation for property described as Susan Lane Subdivision, located in NE¼, Section 19, T 13 N, R 19 W, PMM, Missoula County.

Resolution No. 2002-015 – The Commissioners signed Resolution No. 2002-015, a Resolution creating Rural Special Improvement District (RSID) #8472 – Spring Hill Road. A Notice of Hearing was previously held on January 30, 2002 in the Missoula County Courthouse Annex.

Letter – The Commissioners signed a letter to the Missoula Water Quality District, dated February 7, 2002, requesting capital funds in the total amount of \$285,375 for the purpose of providing incentives to groups or individuals to connect to public sewer in the Mullan Road area.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, FEBRUARY 8, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in Lolo all forenoon attending a Travelers Rest Meeting held at the Lolo Community Center.

Claims List – The Commissioners signed the Claims List, dated February 7, 2002, with a grand total of \$76.43. The Claims List was returned to the Accounting Department.

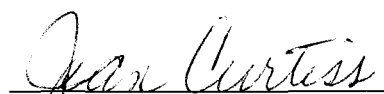
Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 7, 2002, with a grand total of \$76.43. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 7, 2002, with a grand total of \$20,915.31. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 8, 2002, with a grand total of \$12,518.56. The Claims List was returned to the Accounting Department.

Request for Action – The Commissioners signed grant documents (submittal letter, special assurance and conditions, and signature pages) for the Crime Victim Advocate Program (VOCA) proposal for Fiscal Year 2003, submitted to the Board of Crime Control. The documents were returned to Leslie McClintock in the Office of Planning and Grants for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, FEBRUARY 11, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners attended a meeting with representatives of the Mullan Homeowners Associations and the Mullan Road Corridor Steering Committee regarding the proposed sewer project. The meeting was held at the Missoula Public Library.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 8, 2002, with a grand total of \$20,002.84. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 11, 2002, with a grand total of \$129.79. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 11, 2002, with a grand total of \$55,234.12. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 11, 2002, with a grand total of \$20,960.59. The Claims List was returned to the Accounting Department.

**TUESDAY, FEBRUARY 12, 2002**

The Board of County Commissioners met in regular session; all three members were present.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Proclamation – The Commissioners signed a Joint Proclamation with the City of Missoula proclaiming February 10 through February 16, 2002 as *Love Without Fear Week*, and urging all citizens to actively participate in events sponsored by the Missoula Family Violence Council, the Missoula Crime Victim Advocate Program, the Missoula YWCA, the University of Montana Student Assault Recovery Services and Women's Center, and the SSTEP (Seeley-Swan Talk, Education and Protection) Family Violence Council.

Memorandum of Understanding – Chair Curtiss signed a Memorandum of Understanding between Missoula County and the State of Montana Department of Transportation for a CMAQ (Congestion Mitigation and Air Quality) Project to design and construct a bikeway/walkway on Clements, Spurgin, and Humble Roads. Total project costs are estimated at \$200,000. The document was returned to County Surveyor Horace Brown for further signatures and handling.

Agreement – Chair Curtiss signed two (2) Network Service Agreements between Missoula County and Qwest Corporation for two-year renewal contracts for services to all facilities on a point-to-point basis. The Agreements are effective on the latest signature date and expire February 15, 2004. Charges for service are as specified therein.

MISSOULA, MONTANA

Memorandum of Understanding – The Commissioners signed a Memorandum of Understanding between the City of Missoula (“City”) and Missoula County (“County”) regarding the annual payment for mapping, GIS and surveying services rendered by the County to the City for Fiscal Year 2002. The amount agreed to by the City is \$17,500, as set forth in the itemized list attached to the Memorandum as Addendum A. The document was returned to County Surveyor Horace Brown for further signatures and handling.

Agreement – The Commissioners signed a Schedule “A” Agreement between Missoula County (“County”) and the U.S. Forest Service (“Forest”). This is an annual mutual aid agreement for maintenance of County and Forest Service Roads which splits up maintenance responsibilities for a wide variety of County and Forest Roads. There are no budget implications. The document was returned to Public Works Director Greg Robertson for further handling.

Report – Chair Curtiss signed the Applicant/Recipient Disclosure/Update Report for the U.S. Department of Housing and Urban Development required to receive grant funding for the YWCA transitional housing program. Compliance with this reporting requirement begins funding for Fiscal Year 2003-2004 (\$131,522 for a two-year grant). The document was returned to Kristina Swanson in the Office of Planning and Grants.

Other items included:

- 1) The Commissioners (“BCC”) discussed a transition plan submitted by County Surveyor Horace Brown regarding the transition of the County Surveyor Office to jurisdiction by the Public Works Department. It was agreed that the monthly Surveyor/BCC meetings will become Public Works/Surveyor/BCC meetings.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, FEBRUARY 13, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 12, 2002, with a grand total of \$3,705.87. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 12, 2002, with a grand total of \$3,920.00. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 12, 2002, with a grand total of \$7,204.42. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated February 13, 2002, with a grand total of \$45,619.33. The Claims List was returned to the Accounting Department.

### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution No. 2002-016 – Chair Curtiss signed Resolution No. 2002-016, a Resolution of Intention to create Rural Special Improvement District (RSID) #8473, for improvements to existing Lolo RSID 901 Wastewater Treatment Plant. A Notice of Hearing was set for March 6, 2002 at 1:30 p.m. in the Missoula County Courthouse Annex.

Letter – The Commissioners signed a letter, dated February 13, 2002, to the Montana Department of Transportation (“DOT”), Accounting Services Bureau, pertaining to numerous invoices received relative to Project DPI 0195(001) – Missoula I-90 Airport Interchange. The letter stated that these invoices are relative to litigation between the DOT and Frontier West, and Missoula County is not liable for any costs associated with that lawsuit.

Other items included:

- 1) A discussion was held with John Crowley regarding the Mullan Corridor Sewer Project.

### PUBLIC MEETING – February 13, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Chief Administrative Officer Ann Mary Dussault, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Surveyor Horace Brown. Commissioner Evans was meeting with a constituent and would be a few minutes late.

### Pledge of Allegiance

### Public Comment

None

### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$190,287.26. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans joined the meeting at this time.

February 16, 2002

**Presentation of Award by Sheriff Doug Chase and Chief of Police Bob Weaver**

Sheriff Doug Chase stated that it was a special day for the Sheriff's Department and the Police Department to be able to jointly present an award for life saving efforts to David Williams, who saved his father from choking on Christmas Day, 2001. About 11:45 a.m. on Christmas Day, Elizabeth Williams, who was unable to attend today, was setting the table while her husband Dave was carving the roast. Dave cut off a piece of the meat and ate it, but was unable to swallow it. Elizabeth noticed that her husband was choking. Their son, David, was in the living room. He came into the kitchen and moved everyone aside and began the Heimlich Maneuver on his father. It took six times to dislodge the obstruction. David learned the life saving technique as a Boy Scout. Both Mr. and Mrs. Williams were scared and didn't realize one could choke so fast. They are convinced that if not for the actions of their son David, Mr. Williams might not be alive today. David will also be recognized by the Scouting group in Missoula for his actions. That award is given to a Scout who saves a life by using something learned in the Scouting program. David is a Life Scout at present and will soon be working on obtaining his Eagle Scout. On behalf of Chief of Police Bob Weaver and himself, representing all law enforcement and emergency services in the Missoula area, he presented David Williams with a Certificate of Appreciation. According to Webster's dictionary, David is a hero.

Chief of Police Bob Weaver stated that on behalf of the Police Department and the Sheriff's Department he was pleased to present David with this Certificate of Appreciation. There are a lot of emergency situations that occur in life and those that have a bias to act are looked upon with a lot of respect. He thanked David and would be happy to give him an application to the Police Department.

Sheriff Chase read the Certificate of Appreciation: *"The Missoula County Sheriff's Department and the Missoula Police Department proudly present this award to David Williams in grateful appreciation for your successful life saving efforts on December 25, 2001, the day that all of your family will remember. You delivered the essence of service to a fellow human in need."*

Chief of Police Weaver presented David with a letter from the Police Department acknowledging his efforts as well and a few mementos from the Department.

Sheriff Chase also presented David with some mementos from the Sheriff's Department.

Dave Williams stated that he might not be standing here today had David not taken the steps he did. He wanted David to know that he loved and appreciated him and owed him his life.

Sheriff Chase stated that the article that was written for the Missoulian was picked up by the Montana Standard and made the front page. It was impressive that people outside our community also knew of his efforts.

David Williams stated that he just did what anyone else would have done. He would do it again if the chance ever came up.

**Proclamation: "Love Without Fear" Week**

Chair Curtiss read the Proclamation:

**WHEREAS**, domestic and sexual violence, mainly perpetrated against women and children, continue to be pervasive social problems; and

**WHEREAS**, the crimes of domestic and sexual violence are not confined to any group or groups of people, but cross all social and economic barriers; and

**WHEREAS**, the problems of domestic and sexual violence are worsened by societal biases and indifference; and

**WHEREAS**, the crimes of partner assault, family member assault, and sexual assault violate an individual's privacy, dignity, security and humanity because of the systematic use of physical, emotional, sexual, psychological and economic control and/or abuse; and

**WHEREAS**, the impact of domestic and sexual violence is wide-ranging, profoundly affecting not only its survivors but family, friends and society as a whole; and

**WHEREAS**, survivors of domestic and sexual violence have been in the forefront of efforts to bring peace and equality to our homes and communities; and

**WHEREAS**, *Love Without Fear* is a value that we hold in the City and County of Missoula;

THEREFORE, we, the Board of County Commissioners and the Mayor of the City of Missoula, in order to renew focus and commitment toward building a non-violent community, do hereby proclaim the week of February 10-16, 2002, **LOVE WITHOUT FEAR WEEK** in the City and County of Missoula and urge all citizens to actively participate in promoting *Love Without Fear Week* events sponsored by the Missoula Family Violence Council, the Missoula Crime Victim Advocate Program, the Missoula YWCA, the University of Montana Student Assault Recovery Services and Women's Center, and the SSTEP (Seeley-Swan Talk, Education and Protection) Family Violence Council.

Dated the 12th day of February, 2002 and signed by Missoula Mayor Mike Kadas, Missoula County Commissioner Jean Curtiss, Missoula County Commissioner Barbara Evans and Missoula County Commissioner Bill Carey.

Jenifer Blumberg, Missoula Family Violence Council, thanked the Board of County Commissioners for their support, especially in light of recent events in the community. On Monday there was an interdenominational prayer service at Christ the King Church, where eight new “Silent Witnesses” for the Missoula area were dedicated. There was a Teen Dating Violence Panel at Hellgate School on Tuesday. There are various events throughout the week at the University of Montana. On Saturday at the YMCA, from 11:00 a.m. to 3:00 p.m., there will be a “Day of Peace and Pampering.”

**Hearing (Certificate of Survey): Dan and Diane Poling Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 26, COS 339, Section 35, Township 15 North, Range 21 West.

Dan and Diane Poling 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 10 acres in size located in Mill Creek, near Frenchtown, Montana. Dan and Diane Poling propose to create an approximately 5 acre parcel for transfer to Dan’s father, James C. Poling, for residential purposes and keep the remaining approximately 5 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Tract 26, COS 339, Mill Creek Ranches	1974	N/A	N/A	N/A

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Last week a request for Greg Petersen was considered for a family transfer parcel on the adjoining lot. As it was unusual to have two parcels right next to each other requesting family transfers, the public record was investigated to determine when each of the parties obtained title to these properties. Both parties received title to these properties on September 26, 2001. Both parcels were purchased from Robert Lake as the conservator for Harold Lake. On that date, both parcels were encumbered by construction mortgages. Steve Inabnit, the surveyor that is working on these, said that Greg Petersen is building a house on both parcels. It was Mr. Inabnit’s belief that the house on this parcel that is under construction is for the Polings.

Commissioner Evans asked if these were mortgage exemptions needed for financing.

Colleen Dowdall stated that the mortgage was placed on the entire 10 acres as a construction mortgage. She was unaware of why the family transfer splits were happening coincidentally.

Dan Poling stated that they are building a house on this parcel. It is almost complete and they will be moving in as soon as it is done.

Colleen Dowdall asked if Mr. Petersen was building the house for him.

Dan Poling stated that was correct. Mr. Petersen is a friend and also a builder. They will be neighbors and it worked out better to do everything together, cost-wise. It saved them both some money.

Chair Curtiss asked if Mr. Poling was dividing his property to give land to his father and did his father plan to build a home as well?

Dan Poling stated he was giving the land to his father and he did plan to build a home.

Chair Curtiss stated that it was a strange coincidence that two pieces of property next to each other, bought the same day, were now both requesting family transfer. The Board’s purpose in asking these questions is to determine that the subdivision laws are not being evaded.

Dan Poling stated that it could appear that way. Mr. Petersen, being a builder, started them on the process.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Dan and Diane Poling to create one new 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.

Commissioner Evans stated that Mr. Poling would receive an approval letter. This does not give him a septic permit or any other things necessary for building. This just splits the land.

**Continuation of Hearing and Decision: Request to Vacate a Portion of Woodville Street in Clinton**

This is a petition to abandon “The westerly four feet of Woodville Street south from Third Street, adjacent to Lots 1 through 5, Block 14, East Clinton, located in the southeast one-quarter of Section 27, Township 12 North, Range 17 West, Missoula County, Montana.”

The reasons for the request are as follows:

1. There is an existing encroachment on the County right-of-way, which prohibits financing of the property for any potential buyers.

2002-02-17

The following landowners have been notified: Michael Tait, Erik S. Heen, Phyllis Jamison.

There was an error in the notice that appeared in the newspaper, it listed the public hearing date as January 31, 2002, instead of January 30, 2002. The notice sent to the paper by the Clerk and Records office was correct, but the paper listed it incorrectly. The hearing from January 30, 2002 was continued until today. A site inspection was conducted on Thursday, February 7, 2002 by Commissioner Jean Curtiss and County Surveyor Horace Brown.

Chair Curtiss stated the hearing on this matter had been continued from January 30, 2002. She asked for public comments.

Horace Brown stated the map presented in the original petition was not very accurate. The vacation is on Woodville Street near Third Street. The vacation of the four feet on Woodville Street should be along Lots 1, 2, 3 and 4.

Michael Tait stated that this should not be abandoned adjacent to Lot 5, Mr. Drinville's property.

Horace Brown stated that no right-of-way in the intersection should be vacated. The map his office prepared should accompany the petition for accurate identification of the vacation.

There being no further comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the petition to abandon "The westerly four feet of Woodville Street south from Third Street, adjacent to Lots 1, 2, 3 and 4, Block 14, East Clinton, located in the southeast one-quarter of Section 27, Township 12 North, Range 17 West, Missoula County, Montana," as more accurately diagramed on the accompanying map. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Consideration: Sorrel Springs, Lot 16 (2 lot subdivision of 10 acres – north of Frenchtown)**

Juliet Spalding, Office of Planning and Grants, presented the staff report.

James and Marcia Howard, represented by Ron Ewart of Eli & Associates, are proposing Sorrel Springs, Lot 16, a two-lot summary subdivision of 10 acres into one 5.94 acre lot (Lot 16A) and one 4.06 acre lot (Lot 16B). The subject property is part of the Sorrel Springs residential development that contains 91 lots on 685 acres. The original Sorrel Springs plat was filed in 1973 as a 62 lot development and since that time 23 of the lots have been further divided through subdivision review.

Adjacent land in all directions is timbered with single-family residences on 5 to 10 acre lots. A community water system maintained by the Homeowners Association would serve both lots and each lot would have individual septic systems.

Proposed Lot 16A has the Howard's home on it and proposed Lot 16B is currently vacant. The property is located approximately 2.5 miles northwest of Frenchtown and is accessed by turning north off the Frenchtown frontage road onto Roman Creek Road, then west on Sorrel Springs Lane and then east on Morgan Lane. Roman Creek Road and Sorrel Springs Lane are both paved roads. Morgan Lane is a 22-24 foot wide gravel road within a 60 foot wide right-of-way. It is a private road maintained by the Sorrel Springs Homeowners Association. Subdivision Regulations state that Morgan Lane must have a surface width of 24 feet and have pedestrian connections or sidewalks. The applicants have requested variances from these regulations. Staff is recommending approval of the variance requests.

A shared 12 foot wide gravel driveway is proposed to serve both lots and a maintenance agreement is included in the proposed covenants. Currently, the driveway varies in grade from 8% to 14%, with an average grade of 9%. The applicant states that the driveway will be reworked to a grade of no more than 10%, but was uncertain the driveway could meet Missoula County driveway standards of a maximum grade of 8% with lengths of no more than 50 feet up to 10% grade. To mitigate this uncertainty, the applicant has requested a variance from the driveway standard. County Public Works Department supports the variance request. The Frenchtown Fire District also supports the variance request, but asks that the applicant install a residential sprinkler system in the new home if the driveway cannot meet Missoula County standards. Staff recommends approval of the variance request and is recommending as a condition of approval that a residential sprinkler system be installed if the driveway does not meet standards and that the driveway plans be reviewed and approved by the Frenchtown Fire District.

The subject property is mostly timbered with open areas and it has an average natural slope of approximately 15%. Small areas of the property have a slope of 25% or greater and staff is recommending as a condition that these areas be labeled as "no-build" zones on the final plat.

No significant impacts to the natural environment have been identified. The proposed covenants include the "Living With Wildlife" brochure and the vegetative reduction guidelines and fire standards for homes in the Wildland/Residential Interface. Staff is recommending as a condition of approval that a Fire Safety Permit be obtained.

The County Weed Board has recommended additional language be added to the covenants describing revegetation protocol and weed control and staff is recommending that addition to the covenants as a condition of approval.

There is no loss of land presently under agricultural use as a result of this subdivision. Staff is recommending approval of the three variance requests and approval of the summary subdivision, subject to six recommended conditions of approval.

Ron Ewart, Eli & Associates, developer's representative, was present, as was Jim Howard. Jim and Marcia Howard live on the property, their children are grown and they are retired. They would like to divide their 10 acre lot. Sorrel

Springs began as a 62 lot subdivision and about 30 of those lots have been divided. The covenants allow divisions to 4 acres in size. The Homeowners Association has also approved the division of this lot. The property has an average grade of about 15%. He had a meeting with Scott Waldron from the Frenchtown Rural Fire District on-site. They discussed reworking the grade of the driveway to an average of 9%. That would be acceptable to the Fire District. The driveway plans will be reviewed and approved by the Frenchtown Fire District and will be inspected after completion. A Fire Safety Permit will be issued if the driveway is found to be acceptable. The applicant is in agreement with the recommended conditions of approval.

Chair Curtiss asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow Morgan Lane to vary from the required 24 foot road width to a 22 foot road width; approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections; and approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow the shared driveway to have a grade of more than 8%; all based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Sorrel Springs, Lot 16, Summary Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Sorrel Springs, Lot 16, Summary Subdivision Conditions of Approval:**

##### **Roads/Access**

1. Driveway plans shall be reviewed and approved by Frenchtown Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and 3-2(10)(E).*
2. The RSID protest waiver statement for Morgan Lane shall not be included on the final plat. *Subdivision Regulations Article 3-2 and OPG recommendation.*

##### **Fire**

3. The subdivider shall provide a means for fire suppression for this subdivision either by providing driveway access that meets Missoula County standards or by providing residential sprinkler systems, plans to be reviewed and approved by the Frenchtown Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(F), 3-7(1) and Frenchtown Fire District recommendation.*
4. The subdivider shall obtain a fire safety permit from the Frenchtown Fire District. *Subdivision Regulations Article 3-1(1).*

##### **Covenants**

5. Prior to final plat approval, the weeds section of the covenants shall be amended as follows:

"Lot owners shall maintain their lots in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate any ground disturbance caused by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is completed." *Subdivision Regulations Article 3-1, 3-2(8)(J) and Missoula County Weed District recommendation.*

##### **"No-Build" Zones**

6. Areas of 25% grade or greater shall be labeled as "no-build" zones on the final plat, subject to review and approval by OPG. *Subdivision Regulations Article 3-15.*

There being no further business to come before the Board, the Commissioners were in recess at 2:05 p.m.

#### **THURSDAY, FEBRUARY 14, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in Kalispell attending the MACo Midwinter Meetings through Friday, February 15<sup>th</sup>. At noon, Commissioner Evans attended the University of Montana Charter Day Celebration and Luncheon.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 14, 2002, with a grand total of \$13,977.33. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 14, 2002, with a grand total of \$400.00. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 14, 2002, with a grand total of \$57,697.12. The Claims List was returned to the Accounting Department.

#### **ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Request for Action – The Commissioners approved a request from Projects Officer Barbara Martens for a proposed revised price list by Properties 2000 for lots within the Missoula Development Park, as recommended by the Missoula Development Authority. The amended price list will generate \$117,756 in additional revenue.

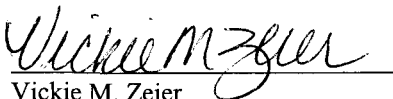



Quit Claim Deed – The Commissioners signed a Quit Claim Deed between Missoula County and Richard A. and Linda S. Ainsworth (a one-half interest), and to Cecilia Christensen, for a tract of land located in the NE¼ NE¼ of Section 24, T 13 N, R 19 W, PMM, Missoula County, Montana. The Deed was returned to Deputy County Attorney Michael Sehestedt for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, FEBRUARY 15, 2002**

The Board of County Commissioners did not meet in regular session. Chair Curtiss was out of the office all day; and Commissioner Evans was in Helena for a meeting with the EPA.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, FEBRUARY 18, 2002**

The Courthouse was closed for the Presidents' Day holiday.

**TUESDAY, FEBRUARY 19, 2002**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. At noon, Commissioner Carey attended a Smart Growth luncheon held in the Office of Planning and Grants Conference Room; Chair Curtiss traveled to Condon for a meeting at the Swan Eco Center all afternoon; and Commissioner Evans was in Seeley Lake for a meeting with Senator Max Baucus and area residents in the afternoon.

Claims List – The Commissioners signed the Claims List, dated February 14, 2002, with a grand total of \$158.60. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 15, 2002, with a grand total of \$183.75. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending May 31, 2001, which was inadvertently left out of the June 2001 Journal entries.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – Chair Curtiss signed a Traffic Safety Bureau Standard Agreement, dated October 1, 2001 between Missoula County Commissioners and the Montana Department of Transportation for the Missoula County Integrated Project. The project includes maintaining a child safety seat fitting station; a child safety seat loan-to-own program; holding six safety seat events at various sites; a DUI Program, including Home Free Missoula; classes regarding alcohol harm reduction; and new resources for other traffic safety efforts. The total amount shall not exceed \$23,000.00. The term will be ten days from the date of execution of the Agreement and shall be completed no later than September 30, 2002. The document was returned to the Health Department for further handling.

Amendment – Chair Curtiss signed Amendment Number Two to Task Order No. 99-07-5-31-261-0 between Missoula County and FICMR that originally covered the period October 1, 1998 through September 30, 2000. Amended are the contract end dates, as follows: "... the services provided pursuant to Section 1 must be completed by November 12, 2001, except for the final annual written report due January 17, 2002." The document was returned to the Health Department for further signatures and handling.

Request for Action – The Commissioners approved the County Park Board recommendation to forward a request from Susan Morgan of Ravenwood Park for a \$2,000 weed grant for noxious weed control and re-vegetation to the County Weed Board. The document was returned to Lisa Moisey, County Parks Department, for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, FEBRUARY 20, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated February 19, 2002, with a grand total of \$20,732.93. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 19, 2002, with a grand total of \$12,726.18. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 19, 2002, with a grand total of \$20,890.14. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 19, 2002, with a grand total of \$78,097.51. The Claims List was returned to the Accounting Department.

7000-10210

CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Consent to Plat – Chair Curtiss signed a Consent to Plat, dated February 20, 2002. Missoula County holds the Deed of Trust and consents to platting of 2360 Mullan Road (located in the W½ of Section 17, T 13 N, R 19 W, Missoula County) by Montana Regional Orthopedics, LLC. The Consent was returned to Deputy County Attorney Michael Sehestedt for further handling.

Quit Claim Deed – The Commissioners signed a Quit Claim Deed correcting the Quit Claim Deed signed on February 14, 2002 between Missoula County and Richard A. and Linda S. Ainsworth and to Cecilia Christensen (correcting a typographical error and quit claiming a one-half interest to each party). The tract of land is located in the NE¼ NE¼ of Section 24, T 13 N, R 19 W, PMM, Missoula County, Montana. The corrected Deed was returned to Deputy County Attorney Michael Sehestedt for further handling.

PUBLIC MEETING – February 20, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Surveyor Horace Brown.

Pledge of AllegiancePublic Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$204,863.56. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Petition to Annex Territory to Greenough-Potomac Fire Service Area

A petition has been received for annexation to the Greenough-Potomac Fire Service Area for property generally described as those portions of Section 34, Section 35 and Section 36, Township 15 North, Range 18 West, Missoula County, south of Highway 200.

Mike Sehestedt stated that the Board's action would be to take testimony from the property owners or anyone who wants to be heard on the subject. When the public hearing is closed, the Board will make a determination to approve the annexation. There is a period for written protest after the Resolution is signed to defeat the annexation. This is a Fire Service Area which operates slightly differently than a Fire District.

Chair Curtiss opened the public hearing.

Lee Hyslop, Chairman of the Greenough-Potomac Fire Department, stated that this annexation request is from the people in the Sperry Grade area. That area is just outside of, but contiguous to, the Fire Service Area (FSA) boundary. In looking at the map, there is an area in Section 25 that should be included in the annexation.

Mike Sehestedt stated that the area in Section 25 was not included in the petition.

Lee Hyslop stated that he believed there were two residences in Section 25.

Chair Curtiss stated that the portion of Section 25 south of Highway 200 should be included.

Mike Sehestedt stated there should not be a problem with notice as there is a 60 day protest period after the Resolution is signed.

Lee Hyslop stated the Greenough-Potomac Fire Department had no problem with the annexation and had approved its inclusion in the FSA. There is another annexation request that will be coming from a little further to the west that is also contiguous to the FSA boundary. These requests are to include areas that originally protested inclusion in the FSA. The ownership has since changed and these people are now requesting to be included in the FSA.

Mike Sehestedt stated the Board's next step is to pass a Resolution approving the annexation. The annexation is effective 60 days after passage of the Resolution, unless by that date more than 50% of the property owners have protested.

Commissioner Evans stated that she would like those in Section 25 to be notified of this action.

Mike Sehestedt stated that it would be best to continue the hearing for one week to resolve the Section 25 issue.

Commissioner Evans moved that the Board of County Commissioners continue the hearing on the Greenough-Potomac Fire Service Area annexation for one week to allow time to resolve the question of inclusion of Section 25 in the annexation request. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Petition to Annex Powell County Property into Seeley Lake Rural Fire District**

A petition has been received for annexation to the Seeley Lake Rural Fire District for property generally described as Lots 1, 2A, 2B, 5, 7, 8 and 9, located in Section 36, Township 17 North, Range 15 West, Powell County, Montana.

Mike Sehestedt stated that the Missoula Board of County Commissioners is conducting a hearing on adding property in Powell County to a Fire District in Missoula County. There is nothing problematic with having Fire District's that span county lines. The question was who should hold the hearing on the annexation, Powell County or Missoula County, since this affects Powell County residents. The Powell County Commissioners were clear that Missoula County should hold the hearing. His recommendation was to go ahead and have the hearing. There are no property records for Powell County at our courthouse but the Clerk and Records Office contacted Powell County to verify the petition. The hearing should proceed per the request of Powell County.

Chair Curtiss opened the public hearing.

Chair Curtiss stated there is a letter from the Seeley Lake Fire District supporting this annexation.

There being no comments, the public hearing was closed.

Mike Sehestedt stated that in absence of opposition, the Board should approve the annexation.

Commissioner Evans moved that the Board of County Commissioners approve the petition to annex Lots 1, 2A, 2B, 5, 7, 8 and 9 located in Section 36, Township 17 North, Range 15 West, Powell County, Montana, into the Seeley Lake Rural Fire District. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Petition to Abandon Portion of Old Petty Creek Road**

This is a petition to abandon "A portion of old Petty Creek Road (declared a public road by County Commissioners in 1902, shown on GLO plat and in Missoula County Road Book No. 1), generally lying on the west side of Petty Creek and located in the south one-half of the south one-half of Section 19, Township 14 North, Range 22 West, Missoula County, Montana."

The reasons for the request are as follows:

1. In August of 2001, the County Commissioners approved a two lot subdivision known as Max Acres. In reviewing the final plat, the County Surveyor's Office discovered a portion of an old County road crossing a portion of this subdivision.
2. There is an old roadbed crossing on what will be Lot 1, that continues on to the south off of the Max ownership, which is quite obviously this old County road. The portion of this old roadbed on the Max ownership will be used as a driveway for Lot 1, however, it should be abandoned as a County road across this property.

The following landowners have been notified: Walt and Susan Max.

Chair Curtiss opened the public hearing.

John Kellogg, Professional Consultants, Inc., stated that Dick Ainsworth is working with Walt and Susan Max on a subdivision of this parcel. The request came from the Surveyors Office to abandon this stretch of old highway that has not been used in many years.

Horace Brown stated that this is the Old Petty Creek Road. Sometime ago it got changed to where it is currently located on the east side of the creek. The request does access Federal land, but there is another access to the south that could be used to access Federal land.

Mike Sehestedt stated the portion of the road that is being requested to vacate is located on private land. Federal land can still be accessed to the same extent by using the remainder of the old Petty Creek Road, so access is not being cut off. Also, the existing Petty Creek Road provides equivalent access to Federal land. He did not believe that vacating this portion would violate the prohibition on vacating a road that provides access to public land. The County does not have title to this land, it is simply a right-of-way easement. The property owners are paying taxes on the land, subject to a right-of-way easement. When a road is abandoned, the County releases the easement interest. The fee has always been in the property owners name. In this case, the common ownership will no longer be burdened by the easement. The request from the Office of Public Works is to not vacate the right-of-way, but to alter the right-of-way. Currently, where the road exists as listed on the petition, the County has a 60 foot wide road right-of-way. Many years ago, the road was relocated to another location. Over time, the petitioned road was forgotten. The relocated road only has a prescriptive right-of-way. Instead of a 60 foot wide right-of-way, there is only the right-of-way that is used for road purposes. The letter from Public Works is to, instead of vacating the right-of-way, alter the right-of-way to where the road currently exists so the full 60 foot wide right-of-way is retained, with the consent of the property owner. This clears the title for the property owner and give the County the full 60 foot wide right-of-way for the road in its new location.

Chair Curtiss stated that a site inspection would need to be conducted prior to the Board making a decision. The inspection will be scheduled and the hearing would be continued for one week. A decision would be made at that time.

**Hearing (Certificate of Survey): Bick Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 60 of COS 1925, located in the west one-half of the west one-half of Section 16, Township 14 North, Range 20 West, Missoula County, Montana.

Richard W. and Lujana Bick have 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 21 acres in size, located near O’Keefe Creek Boulevard, off Fred’s Lane. They propose to create an approximately 5.31 acre parcel (Tract 60-B) for transfer to their daughter Jeanne Diane Bick; an approximately 5.31 acre parcel (Tract 60-C) for transfer to their daughter Susan Jean Bick; and an approximately 5.31 acre parcel (Tract 60-D) to their daughter Dawn Marie Bick, age 17. The remaining 5.31 acre parcel (Tract 60-A) will be retained for residential purposes. Property to be transferred to the minor child is required to be done through a trust.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
COS 1925 in the Meadows of Baron O’Keefe	1979	Divisions of land in excess of 20 acres	Geneva Cates	N/A

The Bicks purchased the property in July, 1995.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Chair Curtiss opened the public hearing.

Richard Bick was present and came forward to answer any questions the Board may have.

Chair Curtiss stated it was the Board’s responsibility, through the law, to determine if this was truly a transfer to family members and not an attempt to evade subdivision review. She asked if Mr. Bick intended to transfer this property to his children.

Richard Bick stated that was his intention.

Chair Curtiss stated that because one of the daughters was underage, the land to her would have to be done through a trust.

Richard Bick stated that his daughter would be 18 in August. Would that make a difference.

Colleen Dowdall stated that if his daughter is still a minor when the transfer is made, it is required to be done through a trust. If the survey is not filed until after August when she turns 18, then the trust would not be necessary. The trust is additional paperwork that would require the services of an attorney. Mr. Bick might want to consult with his representative about the timing of the transfer.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Richard W. and Lujana Bick to create four new 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 and that the land for the minor child must be done through a trust. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated the Bicks would receive an approval letter. This approval is for the division of land only. It does not guarantee permission for a septic system or anything else that would be necessary to build.

**Hearing (Certificate of Survey): Holden Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Deed Book 117, Page 69, less the portion south of railroad right-of-way in the northeast one-quarter of Section 21, Township 12 North, Range 17 West.

Kathleen Holden has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 60 acres in size located near East Mullan Road, west of Clinton, Montana. She proposes to create an approximately 8 acre parcel for transfer to her husband, John D. Holden. She will retain an interest in the remaining 50 acres.

The history of the parcel is a follows:

Parcel History	Year	Exemption Used	Applicant	Intended Recipient
Deed	1932	N/A	Clinton Irrigation District	Peter & Julian Fleming

Mrs. Holden purchased the property in 1983.

According to the records kept by the Missoula County Surveyor, the applicant used the Occasional Sale Exemption to create a parcel near Turah in 1990.

Chair Curtiss opened the public hearing.

John Kellogg, Professional Consultants, Inc., stated the 8 acre parcel is along Old Mullan Road and there is an existing residence on it that the Holden's son occupies.

Kathleen Holden was present and came forward to answer any questions the Board may have.

Chair Curtiss stated it was the Board's responsibility, through the law, to determine if this was truly a transfer to a family member and not an attempt to evade subdivision review. She asked if Mrs. Holden intended to transfer this property to her husband.

Kathleen Holden stated that was her intention. If anything further was done to the property, it would go through subdivision review.

There being no further comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Kathleen Holden to create a new 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 stated Mrs. Holden would receive an approval letter. This approval is for the division of land only. It does not guarantee permission for a septic system or anything else that would be necessary to build.

#### Other Business

Chair Curtiss reconvened the public hearing on the petition to annex territory to the Greenough-Potomac Fire Service Area.

Lee Hyslop stated that he could resolve the question on the Greenough-Potomac Fire Service Area annexation pertaining to Section 25. He had the original request with him and determined that Section 25 should not be included in the petition as it was cliffside, there is nothing there. The highway drops off into the river in that location. No homes are located in the area.

Mike Sehestedt stated the Board could act on this petition as the question on the Section 25 issue had been resolved. They could approve the annexation as requested.

There being no further comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the petition to annex property generally described as those portions of Section 34, Section 36 and Section 36, Township 15 North, Range 18 West, Missoula County, Montana, south of Highway 200, to the Greenough-Potomac Fire Service Area. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 2:05 p.m.

### THURSDAY, FEBRUARY 21, 2002

The Board of County Commissioners met in regular session; all three members were present.

#### Site Inspection

In the afternoon, Commissioner Carey accompanied County Surveyor Horace Brown on a site inspection for the request to abandon a portion of Old Petty Creek Road.

Claims List – The Commissioners signed the Claims List, dated February 19, 2002, with a grand total of \$64,405.40. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 19, 2002, with a grand total of \$74,560.05. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 20, 2002, with a grand total of \$500.00. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Request for Action – The Commissioners signed a 1031 Tax Deferred Exchange Addendum with Buyers Dave and Mari R. Laursen for the sale of Lots 10, 11, 12, Block 3, Phase 4, Missoula Development Park. The Buyers intend to sell land they own in Seeley Lake and as part of their purchase of Development Park land, will enter into an exchange. Deputy County Attorney Mike Sehestedt reviewed the form and approved it for signature. The document was returned to Barbara Martens in the Projects Office for further handling.

Agreement – The Commissioners signed an Agreement, dated February 21, 2002, for Professional Engineering and Surveying Services between Missoula County and Professional Consultants, Inc., for RSID #8470 – Expressway Road Construction. The total amount shall not exceed \$20,386.00. The estimated date of completion shall be July 1, 2002.

Resolution No. 2002-017 – The Commissioners signed Resolution No. 2002-017, dated February 21, 2002, a Budget Amendment for Capital Improvement in the amount of \$350,000.00, to reflect an amendment in the Old Shops

property Receivable. This Amendment adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-018 – The Commissioners signed Resolution No. 2002-018, dated February 21, 2002, a Budget Amendment for the General Fund (Financial Administration) in the amount of \$11,246.00, to reverse Resolution No. 2001-083 which was paid by Snowdrift Lane Homeowners Association. This Amendment adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Request for Action – Chair Curtiss signed an Applicant/Recipient Disclosure/Update Report for the U.S. Department of Housing and Urban Development (“HUD”) required to receive grant funding for the YWCA transitional housing program. Also signed were two cover pages of Technical Submissions for the YWCA transitional housing program and Share House transitional housing program, required to receive HUD grant funds. Compliance with these reporting requirements begins funding for Fiscal Year 2003 – Fiscal Year 2004 in the following amounts: 1) \$131,522 for a two-year grant to the YWCA; and 2) \$393,330 for a two-year grant to Share House. The documents were returned to Kristina Swanson in the Office of Planning and Grants for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, FEBRUARY 22, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 21, 2002, with a grand total of \$1,952.18. The Claims List was returned to the Accounting Department.

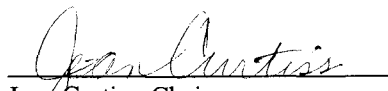
Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 21, 2002, with a grand total of \$9,005.07. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated February 21, 2002, with a grand total of \$2,478.37. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Denton Subdivision, a subdivision located in portions the E½ of Section 32 and the W½ of Section 33, T 14 N, R 19 W, PMM, Missoula County, a total area of 21.765 acres, with the owners of record being Mark A. and Verna R. Denton.

Contract Modification – Chair Curtiss signed a First Modification to Purchase of Service Contract Number 20023-DMVL0015 between the Missoula County Domestic Violence Program, Missoula County Office of Planning and Grants (“OPG”), and the Montana Department of Public Health and Human Services (“DPHHS”). Modified is the following: “The total sum for services to be paid under this contract must not exceed \$60,000.” DPHHS has left-over federal money in the shelter grant program this year and allocated additional funding for the Domestic Violence Program, which will be used to expand the hours for the new on-site counselor. The document was returned to Leslie McClintock in the OPG for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, FEBRUARY 25, 2002**

The Board of County Commissioners met in regular session; all three members were present.

**TUESDAY, FEBRUARY 26, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated February 21, 2002, with a grand total of \$73,173.85. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 25, 2002, with a grand total of \$90,498.27. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Northern Analytical Laboratory, Billings, Montana, as Principal for Accounting Warrant #403583, issued January 14, 2002 on the Missoula County 2272 Fund in the amount of \$168.00 (payment for analysis), now unable to be found.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending January 31, 2002.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 04 - Pay Date: February 22, 2002. Total Missoula County Payroll: \$840,568.98. The Transmittal Sheet was returned to the Auditor's Office.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Request for Action – The Commissioners approved a request from Chief Financial Officer Dale Bickell to waive the 160-hour donated sick leave limit (as set forth in County policy) for employee Doreen Culver.

Letters – The Commissioners signed seven (7) letters to Special Districts, dated February 25, 2000, canceling Trustee/Commissioner elections and declaring by acclimation each candidate who filed a nominating petition for a position. Letters went to the following:

- 1) Frenchtown Rural Fire District, declaring Daniel D. Pattee and Sandra G. Tocci as Trustees for three-year terms;
- 2) Seeley Lake Rural Fire District, declaring James White as Trustee for a three year term;
- 3) East Missoula Rural Fire District, declaring Carolyn Risher and James D. Allison as Trustees for two-year terms;
- 4) Missoula Rural Fire District, declaring Larry O. Hanson (for the three-year term) and Hugh A. Jesse (for the one-year term) as Trustees;
- 5) Clinton Rural Fire District, declaring Steve McAdam and Jonelle Walker as Trustees for three-year terms;
- 6) Frenchtown Irrigation District, declaring Thomas R. Scheffer as Commissioner in Division #1 for a three-year term; and
- 7) Missoula Irrigation District, declaring Ben L. Lowman (Division #4) and Robert J. Cole (Division #1) as Commissioners for three-year terms.

The letters were returned to the Elections Office for further handling.

Other items included:

- 1) The Commissioners decided that the Lolo Comprehensive Plan Hearing would be held in the evening on March 27, 2002, at Lolo, Montana.
- 2) The Commissioners approved a request from the Missoula Westside Little League for County CDBG Program Income Funds.
- 3) Information was provided to the Commissioners regarding Senate Bill 1766 (Energy Bill).
- 4) A discussion was held regarding a current ACLU lawsuit. County Attorney Fred Van Valkenburg and Attorney Margaret Borg will represent Missoula County at a status meeting with Montana's Attorney General on February 28, 2002. Missoula County is the only county named in this suit wherein Public Defenders are County employees. The 2003 Montana Legislature will have to address the financial implications of this suit, and Missoula County may need to hire outside counsel.
- 5) County Surveyor Horace Brown received a request to look at a new road from Hayes Creek Road to Blue Mountain Road. The Commissioners stated all road issues should go through Public Works Director Greg Robertson, and homeowners must follow County procedures for RSIDs.
- 6) An update was given on the Shelby Water District dispute over the usage of water meters. Recall petitions of three new Board members have been turned in to Elections. The Missoula County Attorneys' Office is determining their role in this issue.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### WEDNESDAY, FEBRUARY 27, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated February 26, 2002, with a grand total of \$1,969.75. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 26, 2002, with a grand total of \$118,002.49. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 26, 2002, with a grand total of \$50,933.63. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 27, 2002, with a grand total of \$200.00. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 27, 2002, with a grand total of \$33,452.39. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Notice of Hearing – Chair Curtiss signed a Notice of Hearing on the request of the Friends of the Historical Museum at Fort Missoula and the Board of Trustees of the Historical Museum to submit to the electors the question of authorizing a levy of 2 mills each year for the support of the Historical Museum. A public hearing was set for March 13, 2002, at 1:30 p.m. in Room 201 of the Missoula County Courthouse Annex.

Notice of Hearing – Chair Curtiss signed a Notice of Hearing on the request of the Board of Trustees of the Seeley-Swan Cemetery District to submit to the electors the question of authorizing a levy of one (1) additional mill each year



for the support of the Seeley-Swan Cemetery District. This additional mill would increase the levy to a maximum of 5 (five) mills per year. A public hearing was set for March 13, 2002, at 1:30 p.m. in Room 201 of the Missoula County Courthouse Annex.

Other items included:

- 1) Various Public Defender Office issues were discussed.
- 2) A discussion was held on the Mullan Corridor Proposed Sewer Project. A consensus was to adopt a calendar proposed by staff to proceed with Options 3 and 4 in March and, simultaneously, Staff will draft amendments as discussed to Interlocals with the City and Airport Authority for all three options. March 12<sup>th</sup> was chosen for an evening Public Hearing to be held in the large Courtroom of the Missoula County Courthouse. The Commissioners agreed to consider the number of Equivalent Dwelling Unit Assessments protesting when making a decision, as well as protest value.

#### **PUBLIC MEETING – February 27, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and Deputy County Attorney Marnie McClain.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$487,479.06. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Decision: Petition to Abandon Portion of Old Petty Creek Road**

This is a petition to abandon "A portion of old Petty Creek Road (declared a public road by County Commissioners in 1902, shown on GLO plat and in Missoula County Road Book No. 1), generally lying on the west side of Petty Creek and located in the south one-half of the south one-half of Section 19, Township 14 North, Range 22 West, Missoula County, Montana."

The reasons for the request are as follows:

1. In August of 2001, the County Commissioners approved a two lot subdivision known as Max Acres. In reviewing the final plat, the County Surveyor's Office discovered a portion of an old County road crossing a portion of this subdivision.
2. There is an old roadbed crossing on what will be Lot 1, that continues on to the south off of the Max ownership, which is quite obviously this old County road. The portion of this old roadbed on the Max ownership will be used as a driveway for Lot 1, however, it should be abandoned as a County road across this property.

The following landowners have been notified: Walt and Susan Max.

The public hearing on this matter was held February 20, 2002. A site inspection was conducted by Commissioner Bill Carey and County Surveyor Horace Brown on Thursday, February 21, 2002.

Commissioner Carey stated that he and Horace Brown conducted the site inspection. He concurred with Horace Brown's recommendation that the right-of-way be altered, as submitted in a memo dated February 21, 2002: "Commissioner Carey and I visited the Old Petty Creek Road in Section 19, Township 14 North, Range 22 West, P.M.M. I would recommend that the roadway right-of-way be altered to the existing Petty Creek Road. This would result in the alteration taking place in the south one-half of the south one-half of Section 19, Township 14 North, Range 22 West, P.M.M, the new right-of-way to be 60 feet wide, centered on the centerline of the existing road."

Mike Sehestedt stated that the motion could include that based on the petition received, the right-of-way be altered from the existing right-of-way location to the alignment of Petty Creek Road, subject to the consent of the property owner.

Commissioner Evans moved that the Board of County Commissioners alter the right-of-way of Old Petty Creek Road in Section 19, Township 14 North, Range 22 West, from the existing right-of-way location to the alignment of the current Petty Creek Road in the south one-half of the south one-half of Section 19, Township 14 North, Range 22 West, with the new right-of-way to be 60 feet wide, centered on the centerline of the existing road, subject to consent of the property owner. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing: Orchard Homes Ditch Company 310 Permit Extension**

Marnie McClain presented the staff report.

This is a request to renew a 310 Permit for Orchard Homes Ditch Company.

Under the Natural Streambed and Land Preservation Act, also known as the 310 Law, any person proposing a project on the bed or banks of a perennial stream must obtain a permit from either a Conservation District or the Board of County Commissioners. The 310 Law provides for a pre-construction review of projects in conjunction with Montana Fish, Wildlife and Parks, in order to minimize impacts to the stream and to other property owners.

In Missoula County, the Missoula Conservation District covers all of Missoula County outside the 1946 City limits. The Orchard Homes Ditch Company is inside the 1946 City limits and its proposed projects must be reviewed by the Board of County Commissioners.

Last year, Orchard Homes submitted an application to repair an inlet structure and an overflow and deepen the channel east of their main headgate. The headgate is located between the Higgins Avenue bridge and the Orange Street bridge, on the south side of the Clark Fork River.

The proposed project was reviewed by Inter-Fluve, a Bozeman consulting firm under contract with DNRC to provide technical assistance to conservation districts and County Commissioners in the 310 review process. Montana FWP reviewed the application and made recommendations.

The Board of County Commissioners approved the project with modifications after a public hearing on March 28, 2001. The permit expiration date is March 28, 2002.

Marvin Ross, president of the Orchard Homes Ditch Company, has submitted a request to extend the permit for another year. The work was not completed as proposed because of untimely equipment breakdowns.

Montana Fish, Wildlife and Parks has been contacted and has no objection to extending the permit for another year, subject to the recommendations made at the time the original permit was granted.

It is recommended to approve the one year extension of the 310 Permit to March 28, 2003, subject to all terms and conditions of the original permit.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve a one year extension of the 310 Permit for the Orchard Homes Ditch Company, to March 28, 2003, subject to all terms and conditions of the original permit. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Olson Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract C of COS 3361, located in the northeast one-quarter of Section 24, Township 13 North, Range 19 West, Missoula County, Montana.

Richard A. and Linda J. Olson have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 0.5 acres in size located just off Speedway Avenue in East Missoula. They propose to create an approximately 0.25 acre tract for their daughter, Elizabeth A. Olson. The remaining approximately 0.25 acres will be used for residential purposes.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Intended Recipient
COS 3361	1986	73-3-207(1)(a) – Relocating common boundary lines between adjoining properties	Anna S. Anderson	N/A

The applicants purchased the property in May 1995.

According to the records kept by the Missoula County Surveyor, the applicants have not previously used exemptions to the Subdivision and Platting Act.

Chair Curtiss opened the public hearing.

Richard Olson was present and came forward to answer any questions the Board may have.

Chair Curtiss stated it was the Board’s responsibility, through the law, to determine if this was truly a transfer to a family member and not an attempt to evade subdivision review. She asked if Mr. Olson intended to transfer this property to his daughter.

Richard Olson stated that was his intention.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Richard A. and Linda J. Olson to create a new 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 Evans seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated that Mr. Olson would receive an approval letter. The approval was for the split of land only. It did not grant permission for a septic permit or anything else that might be necessary to build a home.

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**Hearing (Certificate of Survey): Smart / Baker Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 50, COS 1925, located in the west one-half of the west one-half of Section 16, Township 14 North, Range 20 West, Missoula County, Montana.

Colleen A. Baker and Michael Smart have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near O’Keefe Creek Boulevard, off Fred’s Lane. They propose to create an approximately 16 acre tract (Tract 50A) for their son, Morgan M. Smart, age 2. The remaining approximately 4 acres (Tract 50B) contains the applicants existing home. Property to be transferred to a minor child is required to be done through a trust. A letter from their attorney is included stating that such a trust is being created.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Intended Recipient
COS 1925 in the Meadows of Baron O’Keefe	1979	76-3-104 (Divisions of land in excess of 20 acres)	Geneva Cates	N/A

The applicants purchased the property in August 1999 from Harry J. Schweigert. This is the third family transfer in the Meadows of Baron O’Keefe area in the last four weeks.

According to the records kept by the Missoula County Surveyor, the applicants have not previously used exemptions to the Subdivision and Platting Act.

Chair Curtiss opened the public hearing.

Mike Smart was present and came forward to answer any questions the Board may have.

Chair Curtiss stated it was the Board’s responsibility, through the law, to determine if this was truly a transfer to a family member and not an attempt to evade subdivision review. She asked if Mr. Smart intended to transfer this property to his son.

Mike Smart stated that was his intention.

There being no further comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Colleen A. Baker and Michael Smart to create a new 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 and that the land for the minor child must be done through a trust. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated that Mr. Smart would receive an approval letter. The approval was for the split of land only. It did not grant permission for a septic permit or anything else that might be necessary to build a home.

**Consideration: Tough Old Bird Subdivision for Lease or Rent**

Chair Curtiss stated that the Tough Old Bird Subdivision for Lease or Rent had been approved at the Planning Status meeting on Monday as it had no variance requests.

There being no further business to come before the Board, the Commissioners were in recess at 1:42 p.m.

**THURSDAY, FEBRUARY 28, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Chair Curtiss met with the County Crest Homeowners Association regarding Options 3 and 4 of the proposed Mullan Corridor Sewer Project. The meeting was held at the Mountain View Baptist Church on Mullan Road.

Claims List – The Commissioners signed the Claims List, dated February 28, 2002, with a grand total of \$1,700.60. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 28, 2002, with a grand total of \$20,160.33. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 28, 2002, with a grand total of \$12,038.15. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 28, 2002, with a grand total of \$24,917.51. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated February 28, 2002, with a grand total of \$33,035.22. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Pruyn Veterinary Hospital (“Pruyn”) for animal trauma/medical treatment, euthanasia services, specialized training for Animal Control Staff, and on-site inspections of facility. Pruyn has provided these services for the past ten years; the current contract term will be January 1, 2002 through December 31, 2002. A cost breakdown of these services is as set forth in the contract, and the total amount depends upon the number of animals served. The document was returned to the Health Department for further handling.

Agreement – The Commissioners signed an Agreement between the Missoula City-County Health Department and the Frenchtown School District for Public Health Nurse services during the school year. The term will be August, 2001 through June, 2002. The total amount shall not exceed \$36,977.00. The document was returned to the Health Department for further signatures and handling.

Agreement – The Commissioners signed a Memorandum of Agreement for Workforce Investment Act Work Experience between Missoula County and the Human Resource Council for the Youth Workforce Program. This Agreement will allow the Extension Office to participate in the program. The term will be February 27, 2002 through June 30, 2002. The document was returned to Marie Pruitt in Human Resources for further signatures and handling.

Board Appointment – The Commissioners approved (via signed letter) the reappointment of Chuck Gibson to the Local Emergency Planning Committee. Mr. Gibson’s term will run until January of 2004.

Other items included:

- 1) The Commissioners received a fax from the Montana Coalition of Forest Counties regarding a “Governors Timber Summit” to be held in Helena, Montana on May 13 and 14, 2002. The Commissioners responded via return fax that they do not wish to attend the Summit.
- 2) The Goodan-Keil access was discussed.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

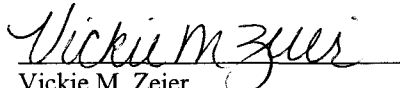
FRIDAY, MARCH 1, 2002

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Chair Curtiss served as one of the judges at the County Spelling Bee held at Hellgate Elementary School.

Claims List – The Commissioners signed the Claims List, dated February 28, 2002, with a grand total of \$38,003.38. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending February 28, 2002.

Agreement – The Commissioners signed an Agreement between Brent D. Mickelson and Jeanette Mickelson, Bitterroot Valley Bank ("BVB"), and Missoula County, for the purpose of building an access roadway from the I-90 airport interchange to the existing Goodan-Kiel Road. BVB shall make available to Missoula County the sum of \$700,000.00 for this construction. Payment obligations and other terms of the Agreement are set forth therein. The document was returned to Deputy County Attorney Mike Sehestedt for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

MONDAY, MARCH 4, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated March 1, 2002, with a grand total of \$7,369.48. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated March 1, 2002, with a grand total of \$27,208.51. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated March 1, 2002, with a grand total of \$22,879.81. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending February 28, 2002.

Resolution No. 2002-019 – The Commissioners signed Resolution No. 2002-019, annexing to the Seeley Lake Rural Fire District the parcel of land described as: "Lots 1, 2A, 2B, 5, 7, 8 and 9, located in Section 36, T 17 N, R 15 W, Powell County, Montana." A public hearing was held on this matter on February 20, 2002. There were no protests.

Resolution No. 2002-020 – The Commissioners signed Resolution No. 2002-020, annexing to the Greenough-Potomac Fire Service Area the parcel of land described as: "Those portions of Section 34, Section 35 and Section 36, T 15 N, R 18 W, Missoula County, Montana, south of Highway 200." A public hearing was held on this matter on February 20, 2002. There were no protests.

TUESDAY, MARCH 5, 2002

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey was out of the office all afternoon due to illness. In the evening, the Commissioners met with the Mullan Trail Homeowners regarding the proposed Mullan Corridor Sewer Project, held at the Sunset Memorial Funeral Home.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending February 28, 2002.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed an Amendment to the Professional Services Contract between Missoula County and Dagny Krigbaum to complete an historic district survey for the McCormick Neighborhood in the City of Missoula. The Office of Planning and Grants has received an additional grant award of \$5,000.00 from the State Historic Preservation Office to complete the survey. The new amended contract total amount shall not exceed \$16,200.00. The term remains August 30, 2001 through May 31, 2002.

Agreement – The Commissioners signed an Interlocal Agreement between the Montana Association of Counties ("MACo"), the Montana Department of Transportation ("MDT"), and Missoula County for the purpose of implementing the MDT statewide GPS Project. Missoula County will be responsible for data collection for roads in the City/County of Missoula, and Ravalli and Mineral Counties. MDT will pay \$11.10 per mile to GPS. The project is to be completed no later than January 31, 2003. The document was returned to County Surveyor Horace Brown for further signatures and handling.

Request for Action – The Commissioners approved a request from Ellen Leahy of the Missoula County Health Department for pay equity adjustments for Jim Carlson, Director of Environmental Health, and Greg Oliver, Director

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of Health Promotion. A pay adjustment of 5% will be made after February 1, 2002, as set forth in Ms. Leahy's Request.

Shoreline Permit – Pursuant to the recommendation of the Office of Planning and Grants, the Commissioners approved and Chair Curtiss signed an application by Charles Wolff to replace an existing dock and construct a 600 square foot fixed dock on Big Sky Lake. The property is at 589 Perimeter Road, described as Lot S-4 of the Nyquist-Riley Addition. The document was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Letter – The Commissioners approved and signed a letter to Kitty Logan, Principal of the Swan Valley Elementary School, regarding discontinuation of the plowing and sanding of the school parking lot. The Director of Public Works would be willing to continue the plowing and sanding only if the school 1) has exhausted all efforts at finding a company or individual in the private sector to provide this service and 2) reimburses the Road Fund for labor, equipment and materials for services provided.

Board Appointments – The Commissioners approved and signed letters dated March 5, 2002, reappointing 1) Jim Van Fossen; 2) Les Rancourt; and 3) Mike Halligan as members of the Larchmont Golf Course Board of Directors to three-year terms which will run through March 31, 2005.

Other items included:

- 1) Chair Curtiss was nominated to be the Commissioner Representative to the Planning Policy Committee.
- 2) Commissioners Evans and Carey stated they will attend the MAEDC (Missoula Area Economic Development Corporation) Annual Membership & Awards Luncheon to be held on March 15, 2002. They will also attend the Economic Opportunity Input Session to be held that same morning.
- 3) A discussion was held on the Missoula Development Park Lot configuration, Phase 5.
- 4) A discussion was held and information given regarding JAIBG (Crime Control) Funds for State employees.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### WEDNESDAY, MARCH 6, 2002

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners met with the Golden West Homeowners regarding the proposed Mullan Corridor Sewer Project, held at the Sunset Memorial Funeral Home.

Claims List – The Commissioners signed the Claims List, dated March 6, 2002, with a grand total of \$1,274.40. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 6, 2002, with a grand total of \$351.90. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, no items were signed. An update was given and a discussion was held on the Mullan Corridor Sewer Project.

Permit – The Commissioners signed a 310 Permit for the Orchard Homes Ditch Company, extending the permit for one year to complete the Clark Fork River Project (to repair inlet structure and overflow and deepen channel). The permit will expire on March 28, 2003. The Commissioners had reviewed and approved this extension request at the Public Meeting on February 27, 2002. The document was returned to Marnie McClain in the Deputy County Attorney's Office for further handling.

RSID Documents – After approval at the Public Meeting (3/6/02), the Commissioners signed a Certificate as to Resolution and Adopting Vote, and Resolution No. 2002-021, creating Rural Special Improvement District ("RSID") #8473, for the benefit of RSID #901, Lolo Water and Sewage District.

Also signed was a DNRC Commitment Agreement (Water Pollution Control State Revolving Fund Program) for RSID #901 between Missoula County and the Department of Natural Resources and Conservation of the State of Montana, in a principal loan amount not to exceed \$714,000.00.

The documents were returned to Jesse Sattley, RSID Coordinator of the Public Works Department, for further handling.

#### PUBLIC MEETING – March 6, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

#### Pledge of Allegiance

Frenchtown Fire Chief Scott Waldron led the meeting in the Pledge of Allegiance.

#### Public Comment

None

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**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$220,965.38. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Resolution of Intent to Create RSID #8473 – Improvements to Existing Lolo RSID #901 Wastewater Facility and DNRC Commitment Agreement**

Jesse Sattley, Public Works Department, presented the staff report.

This is a request to create RSID #8473 for the design, construction and installation of improvements to the existing Lolo, MT RSID #901 sewer facility.

The general character of the improvements is the design, construction and installation of improvements to the existing Lolo Wastewater Facility to improve near term capacity and correct deficiencies, consisting of site work and utilities, influent pumping and headworks, secondary biological treatment and biosolids digestion and storage. The total estimated costs of the improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative costs and capitalization of the revolving fund, exclusive of any interest charges, is \$1,576,990. The costs of the improvements are to be paid from the Rural Special Improvement District bonds, an Environmental Protection Agency grant in the amount of \$475,000 and available revenues of the Wastewater Facility. There are approximately 860 properties included in the district. The RSID will be assessed over a period of 20 years and will be based on an Assessed Valuation method. The district engineer will be Dan Harmon of HDR Engineering of Missoula, Montana.

No protests were received.

Commissioner Evans asked how much each home would pay for this RSID?

Greg Robertson stated that would be difficult to determine because the assessment method was based on the value of the property. An average home would pay about \$1,000 over 20 years for the improvement.

Chair Curtiss opened the public hearing.

Elmer Palmer, Chairman of the Lolo Community Council, stated that at the preliminary hearing and presentation on this project, it was determined there was sufficient money in RSID 901 to cover this cost. His question was what has happened to the money and why is a new RSID being created to cover the cost?

Greg Robertson stated the process the Commissioners have to go through to do any improvement associated with any facility has to go through creation of a new construction RSID to fund it. The existing maintenance RSID cannot be used to pay those costs. Over the last several years, the maintenance RSID assessment that is in place has been artificially elevated to escrow funds away for either a "rainy day" or to match Federal EPA grant money received to assist with upgrades. The amount that has been escrowed over the years is roughly identical to the debt service the construction RSID will have. The net effect to the landowners will be no increase in assessments, other than typical annual increases for electricity or telephone, things that are beyond the County's control.

Elmer Palmer stated that in other words, RSID 8473 will not have any effect on the tax bill for those in the RSID 901 area.

Greg Robertson stated it was his recommendation that the existing maintenance RSID be adjusted downward to compensate the difference. In answer to Mr. Palmer's question, this will have no net impact to existing property owners.

Elmer Palmer stated there is the possibility of 270± more residence connections with Phase I. What will be done with those additional connections in regards to this RSID and the existing maintenance RSID.

Greg Robertson stated that nothing is being done with those additional connections right now. The first step is to get the plant recertified for the increase in capacity. That is an approval process through the State that they are currently engaged in. Once that is done and it is known how many more connections are available, then there will be a meeting with the Lolo RSID 901 Advisory Board and the County Commissioners to establish some ground rules on how additional connections will be offered and to whom and what the appropriate fee will be. It would be his recommendation to use any future connections to pay down the debt service to the existing RSID landowners, but it is the decision of the Board of County Commissioners.

Elmer Palmer stated the Lolo Community Council has fielded questions on this matter. The feeling of the people in Lolo is if these extra connections do come about, they be utilized to backfill the areas in the community that are not currently served by RSID 901 and possibly look at commercial areas as well, rather than go out to some of the newer construction sites. There is one lady who comes to Community Council meetings all the time who has wanted to connect to the facility for years. People on three sides of her have connections. She can't be connected at this time because of the capacity issue.

Chair Curtiss stated that once the plant is recertified, the Board and the Advisory Council will involve the community in setting criteria for additional connections.

Greg Robertson stated there has been interest expressed from developers and the lady that Mr. Palmer referred to. He has compiled a mailing list of interested parties and they will be notified for inclusion in the discussions once the plant has been recertified.



There being no further comments, the public hearing was closed.

Mike Sehestedt stated that this action is to create the RSID. The Resolution of Intent had been previously signed and has gone through the necessary protest period.

Commissioner Evans moved that the Board of County Commissioners create RSID #8473 for the design, construction and installation of improvements to the existing Lolo, MT RSID #901 Sewer Facility based on the recommendations of the Public Works Director and the fact that no protests have been received. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Broemeling Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as a tract of land located in the southwest one-quarter of Section 32, Township 16 North, Range 14 West, Missoula County, Montana.

Alice Broemeling has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 8 acres in size, located near Salmon Lake, Montana. She proposes to create an approximately 2 acre parcel for transfer to her daughter, Karla Lambert. She will retain an interest in the remaining 6 acres. Both will be used for recreational purposes.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Seller	Buyer
COS 2117	1979	Occasional sale	Phil and Clarice Heffner	Larry and Alice St. Onge

Ms. Broemeling (formerly Alice St. Onge) purchased the property in 1979. Ms. Broemeling used the family transfer exemption to transfer property to her daughter, Kim L. Roth, in 1994 in the Butler Creek area.

Chair Curtiss opened the public hearing.

Steve Roth stated he was married to Kim Roth, one of Ms. Broemeling’s daughters.

Chair Curtiss stated it was the Board’s responsibility, through the law, to determine if this was truly a transfer to a family member and not an attempt to the evade subdivision law. She asked if Ms. Broemeling intended to transfer this property to her daughter.

Steve Roth stated that this property was indeed going to his sister-in-law Karla Lambert and it was not an attempt to evade the subdivision law.

Commissioner Evans stated that the request indicates access to the property is by a waterway. Was there a road as well.

Steve Roth stated that there were no roads to this piece of property.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Alice Broemeling to create a new 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 Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated that Ms. Broemeling would receive an approval letter. The approval was for the split of land only. It did not grant permission for a septic permit or anything else that might be necessary to build a home.

**Hearing (Certificate of Survey): Nordstrum Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer for that parcel described as Tract 68 of COS 129, located in the southwest one-quarter of Section 29, Township 13 North, Range 15 West, Missoula County, Montana.

Dale Nordstrum has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 40 acres in size, located near Potomac, Montana. He proposes to create an approximately 10 acre parcel for transfer to his wife, Lorene Bansom Nordstrum, for residential purposes.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Seller	Buyer
COS 219	1974	None necessary		
Warranty Deed	1979	N/A	Bellmore	Nordstrum

Mr. Nordstrum received the land from Lorene M. Nordstrum by quit claim deed on February 17, 2002.

Chair Curtiss opened the public hearing.

Dale Nordstrum stated this is being done for his daughters' inheritance. He has two daughters and wanted to make sure each one receives half the land without any problems.

Chair Curtiss asked if there were plans to develop the transferred property.

Dale Nordstrum stated one daughter currently lives on the property and he and his wife want to move to the other half.

Commissioner Evans asked if Marilyn Foss has something to do with this request.

Colleen Dowdall stated that both of the deeds that were filed in mid-February were to be returned to Marilyn Foss. There was a deed on this property from Lorene Nordstrum to Dale Nordstrum and a deed on another property where Dale Nordstrum quit claimed his interest to Lorene Nordstrum. Both of those deeds were recorded on the same date and were to be returned to Marilyn Foss, a local realtor.

Dale Nordstrum stated Marilyn Foss has been a friend and realtor for a long time. He is medically disabled and it was decided to take everything out of his name and put it in his wife's name, except for this piece of property.

Commissioner Evans asked if there were plans for the property to be sold.

Dale Nordstrum stated that none of the property was planned to be sold.

Chair Curtiss asked if the other parcel was adjacent to this parcel.

Dale Nordstrum stated it was not.

Commissioner Carey asked Mr. Nordstrum for his assurance that he was not trying to evade subdivision laws.

Dale Nordstrum stated that was correct, he was not trying to evade subdivision laws.

There being no further comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Dale Nordstrum to create a new 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 stated that Mr. Nordstrum would receive an approval letter. The approval was for the split of land only. It did not grant permission for a septic permit or anything else that might be necessary to build a home.

**Consideration: Holbrook Subdivision for Lease or Rent (2 homes on 60 acres – Bear Creek area near Potomac)**

Liz Mullins, Office of Planning and Grants, presented the staff report.

This is a request to create Holbrook Subdivision for Lease or Rent on a 60 acre parcel.

Allen and Evelyn Holbrook are requesting approval to add a second dwelling unit. There is currently one existing residence on the 60 acre property, approximately 200 feet away from the proposed building site. The subject property is 3 miles south of Highway 200 in the Greenough-Potomac area, accessed from Bear Creek Road to West Fork Bear Creek Road to Bear Acres Road.

The subject property is timbered with gently rolling slopes and some steep slopes. The adjacent land uses include large acreage agricultural, timber and residential land uses. Adjacent parcels range in size from 20 acres to 640 acres.

Three variances from Subdivision Regulations have been requested. One is for Bear Acres Road and West Fork Bear Creek Road to vary from the requirement that all new subdivisions have paved streets and roads. The second is to allow Bear Acres Road to vary from the required 24 foot road width to an existing 15-25 foot road width. The third is to vary from the requirement that all subdivisions outside of the Urban Growth Area (UGA) and located on private roads provide internal pedestrian connections. Staff recommends approval of the three variance requests and approval of the Holbrook Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the recommended conditions.

The property is unzoned. The 1975 Missoula Comprehensive Plan designates the property as Open and Resource which has a recommended maximum residential density of one dwelling unit per 40 acres. The proposal is for 2 residences on 60 acres, for a density of one dwelling unit per 30 acres.

Bear Creek Road is a County road. West Fork Bear Creek Road is a 30 foot wide graveled County road within a 60 foot right-of-way. This enters the parcel and becomes Bear Acres Road, a private road, approximately 15-20 feet wide with a clay and gravel surface. The Holbrooks maintain Bear Acres Road on this property. The existing and proposed residences will access from Bear Acres Road via private driveways. The gravel driveway serving the existing home is 14 feet wide and 40 feet long. The proposed driveway serving the new home will be a loop gravel driveway, 15 feet wide and 80 feet long.

The two residences will have a shared well and individuals septic systems. The property is currently under agricultural production for grazing. The applicant has stated that the subdivision will not result in changes to the agricultural land uses on the property.

There are no riparian or wetland areas on the property. There is deer habitat on the property. The subdivision is located within the Wildland/Residential Interface.

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There are three conditions of approval. The first is that both residences post addresses at the driveway entrances and street signs prior to final plan approval, subject to review and approval of the fire district. The second and third conditions are for development agreements for an RSID waiver for upgrading the streets within the subdivision and that the final plan addresses Wildland/Residential Interface standards, subject to review and approval.

Chair Curtiss asked for public comments.

Allen Holbrook stated that he and his wife own the property. This request is to add a rental cabin to the property, in addition to the existing rental cabin. There is a good well on the property. They felt another cabin could produce some needed income.

Mike Sehestedt stated for the record that Sidney Wills and his wife had called regarding this proposal. They are the property owners whose property is crossed by Bear Creek Road where there is only a prescriptive road right-of-way. They expressed concern over any County approved changes up above their property that increases use on this prescriptive road. This has been a problem for the County recently in terms of maintenance. Mr. Wills was told that once the road became public by prescription, additional use by the public would be permitted. He felt the Board should be made aware of the concern raised by Mr. Wills. There was nothing specific the Wills wanted done, just for the Board to be aware of their concern. The history of the road is that it was built as a by-pass several years ago. It has been used prescriptively for many, many years. It would be something to be aware of as other development requests are made above this prescriptive section of road.

Colleen Dowdall stated that she spoke with Mrs. Wills this morning and specifically asked her if there was anything she wanted done at the meeting. Mrs. Wills' response was that she hoped that in the future, the people who are doing these proposals will come talk ahead of time and there be some communication about the increased use of the roadway and an acknowledgement that it is a prescriptive use roadway. Mrs. Wills did not want to stop the subdivision.

Jennie Dixon asked if there were any changes to the findings or conditions that counsel would recommend.

Mike Sehestedt stated he did not see anything that required changes.

Chair Curtiss stated that a subdivision of this size did not have to notify neighbors or post signs.

Jennie Dixon stated that was correct but OPG did place a poster as a courtesy to the neighbors.

Bob Thompson stated he was an adjacent property owner to Allen and Evelyn Holbrook for the last six years. The road that the Wills were speaking about has been greatly improved over the past few years and he thanked the County for their work. He had about 20 to 25 cars go by his place in a 24 hour period. One more tenant with maybe 5 or 6 trips a day would not be an increased detriment.

There was no further public comment.

Commissioners Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(G) of the Missoula County Subdivision Regulations for Bear Acres Road and West Fork Bear Creek Road that requires all new subdivisions have paved streets and roads; approve the variance request from Article 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations that requires all subdivisions outside of the Urban Growth Area (UGA) served by private roads to provide internal pedestrian connection and pedestrian connections to school buses and adjoining neighborhoods; and approve the variance request from Article 3-2(3)(B) and Article 3-2(I) of the Missoula County Subdivision Regulations for Bear Acres Road to vary from the required 24 foot road width to the existing 15-25 foot road width; all based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Holbrook 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 Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Holbrook Subdivision for Lease or Rent Conditions of Approval:**

1. The existing residence and proposed residence will post addresses at driveway entrances and street signs shall be posted prior to final plan approval subject to review and approval by the Fire District. *Subdivision Regulations Article 3-2(F)(G) and Greenough-Potomac Fire District recommendation.*
2. A Development Agreement shall be filed prior to final plan approval that shall constitute the assent of the owners to any future RSID, based on benefit, for upgrading the street within the subdivision, including, but not limited to, paving, curbs, gutters, non-motorized facilities, street widening and drainage facilities, and may be used in lieu of their signatures on an RSID petition for West Fork Bear Creek Road. *Subdivision Regulations Article 3-2(3)(E).*
3. A Development Agreement shall be filed prior to final plan approval addressing Wildland/Residential Interface (WRI) standards, subject to review and approval by the Fire District. *Subdivision Regulations Article 5-3(5)(R).*

#### **Hearing: Wheatgrass Acres Subdivision (9 lots on 140 acres southwest of Pulp Mill Road and Highway 10 West)**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Stanford and Marjorie Lucier, represented by Ron Ewart of Eli & Associates, are requesting approval to subdivide a 140 acre parcel into 9 lots; 8 lots would range in size from 2 to 4 acres and be clustered in the northern section and Lot 9 would be about 114 acres.

7:00 PM 03/02/02

The property is adjacent to Pulp Mill Road and Highway 10 West, about two miles northwest of the Wye. The northern panhandle is vacant and has been farmed by the Lucier's for many years. It has fairly gentle rolling topography. The southern portion contains the O'Keefe Creek corridor, the Lucier's home and farm outbuildings and over 100 acres of farmland. It also has fairly gentle rolling topography.

The lots will have individual wells and septic systems. The area is served by the Frenchtown Rural Fire District and the Frenchtown School District.

The applicants request two variances; one to not provide for sidewalks along Pulp Mill Road and Highway 10 West and the other to not apply the Primary Travel Corridor standards along Highway 10 West. OPG recommends approval of both variances. OPG also recommends the approval of the subdivision subject to 10 conditions. No oral or written comments were received regarding this project.

The property is unzoned. It is outside the Urban Growth Area and Sewer Service Area, but inside the Urban Comprehensive Plan boundary. The 1998 Missoula Urban Comprehensive Plan Update designates the property and the surrounding area as Open and Resource, with a recommended density of one dwelling unit per 40 acres. This designation was originally set for this area by the 1975 plan because the area was primarily rural farmland not ready for development. 25 years later, it is still relatively rural, but the predominate parcel size has gone from 20 acres to 5-10 acres. Because the design of the project keeps the development away from the riparian resource with a "No-Build Zone" and because a large portion of the site will remain as farmland, OPG has concluded that the project is in substantial compliance with some of the goals of the Comprehensive Plan.

The O'Keefe Creek Corridor has been designated as a "No-Build Zone." That zone may not be wide enough to adequately protect all of the creek and riparian vegetation. A condition of approval recommended by Fish, Wildlife and Parks is that in the spring when conditions allow, the corridor be inspected to determine if it is wide enough. If it is not wide enough, it shall be increased to insure protection of the creek and riparian vegetation and reflected on the final plat. It is also recommended that the "No-Build Zone" be changed to a "No Improvements Zone" which is more protective as it does not allow for fencing, grading, vehicle access or disturbance of riparian habitat.

There will be a new cul-de-sac from Pulp Mill Road constructed that is approximately 600 feet long. The cul-de-sac will access Lots 1 through 6. A shared driveway provides access to the northern edge of Lots 7 and 8. Lot 9 is accessed from Highway 10 West through what will become a recorded reciprocal easement on a piece of private property.

There was a recommendation by Public Works that the cul-de-sac bulb be moved to the south and placed at the northern boundary line of Lots 7 and 8 and that a conditional access easement for potential future development be shown that would extend down to the southern boundary of Lots 7 and 8. The Planning Board agreed with that recommendation. New language was added for two new conditions as shown on the staff report. One condition was that instead of Wheatgrass Lane being a private road that it be designated as a public road and the other was that the cul-de-sac bulb be moved and a conditional access easement be designated to the southern base of Lots 7 and 8 and an access easement also be placed between either Lots 5 and 6 or at the base of Lot 8, for potential future development to the east or the south. OPG does not recommend those conditions as there is a 15% to 20% grade south of Lots 7 and 8 which drops into the O'Keefe Creek Corridor. The subdivision regulations state that an 8% grade is the maximum allowable for roads. Also, road construction is strongly discouraged across or through riparian resources and Lot 9 has direct access along Highway 10 West. That access would not cross the riparian resource and the grade is fairly gentle. During Planning Status, another potential condition was discussed as outlined in the memo dated March 8, 2002. That condition was to pave the shared driveway from the cul-de-sac bulb through Lots 5 and 6 to the northern boundary of Lots 7 and 8. The purpose is to control dust. The Planning Board's proposal to move the cul-de-sac bulb was also to control dust. Staff feels this condition addresses the issue of mitigating and minimizing dust and protects the riparian area without more cut and fill.

Staff was in support the sidewalk variance because there are no sidewalks in the area with which to connect. The applicant has agreed to an RSID waiver so that in the future, sidewalks can be a coordinated effort. The variance to the Primary Travel Corridor standards is supported because the area along Highway 10 West will be maintained in agricultural production and no development will need buffering as is the intention of the standards. If Lot 9 is ever developed in the future, then the standards could be applied at that time.

Ron Ewart, Eli & Associates, Inc., developer's representative, was present as was the developer Stan Lucier. He thanked Jackie Corday for her work on this proposal. The Primary Travel Corridor standards will be applied along Pulp Mill Road. Trees will be planted on both side of Wheatgrass Lane, along with a 5 foot wide paved boulevard walkway on the east side.

Commissioner Evans stated that Primary Travel Corridor standards were not required along Pulp Mill Road.

Ron Ewart stated that the developer chose to do all the site amenities possible to make this an attractive subdivision. It will be covered in the covenants and will make the site look much nicer, currently there are no trees on the site. They are in agreement with staff's recommended conditions, the 10 originally proposed and the new condition about paving the shared driveway. They agree that the two conditions recommended by Planning Board be deleted. The current location of the cul-de-sac is the best location based on topography. The site was designed with topography in mind. He questioned Condition 2 which states that final driveway design plans be reviewed and approved by the Frenchtown Rural Fire District prior to final plat approval. This type of condition is usually included, however, the driveways probably won't be built until long after the plat is filed. He wanted to know if there was some way to address this issue, perhaps by using a Fire Safety Permit. Having this tied to the final plat was problematic.

Scott Waldron stated he had no problem with changing Condition 2. As long as the driveways meet standards based on topography, there should be no difficulty. There are no steep grades. The soil types will make it necessary for a strong road base or the fire trucks could sink in the clay.

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Ron Ewart asked if the phrase "prior to final plat approval" could be deleted.

Scott Waldron stated that he was confident that the driveways would be built properly.

Jennie Dixon stated that it could be tricky to have this condition met when the final plat comes in because there would not be a letter from the Fire Department. Perhaps it could include something that allows for specific driveway plans to be reviewed at time of construction. A letter from the Fire Department is needed that states that they approve general driveway plans. Perhaps it needs to be clarified as "preliminary" driveway plans.

Colleen Dowdall stated that a letter could state that the driveway plans need to meet the standards of the Subdivision Regulations and that specific plans will be reviewed by the Fire Department prior to construction.

Jennie Dixon stated that the condition could be reworded to: "Driveway design shall meet the standards of Subdivision Regulations 3-2. Final driveway designs shall be reviewed and approved by the Fire Department."

Ron Ewart stated that the submittal has a picture of how the driveways could look and that each contains a turnaround. Also, there are two places in the covenants that address driveway construction. Preliminary driveways plans are included in the packet.

Chair Curtiss asked if this included the driveway from the cul-de-sac bulb as well as those to each individual house.

Jennie Dixon stated that was correct, it was a driveway.

Scott Waldron stated that as long as the driveways meet subdivision standards for slope and grade and all weather surface, he would be comfortable. If OPG needs to modify the language, that can be worked out.

Chair Curtiss stated that she understood the suggestion from Jennie Dixon was to approve the final driveway plans later as long as subdivision standards are used in the preliminary design.

Jennie Dixon stated that an addition to Condition 2 could be: "Final driveway design plans shall meet the Subdivision Regulations standards in Article 3-2 and shall be reviewed and approved by Frenchtown Rural Fire District." The only time OPG can check is prior to final plat approval. Something needs to be received from the Fire Department that says the driveways are okay prior to final plat approval.

Colleen Dowdall stated that would be needed only if the Fire Department has expressed that there is a design concern. The Fire Department is saying that as long as the driveways meet subdivision regulations they will be okay.

Scott Waldron stated that there were not any terrain issues, just the soil types and improving the driveway to an all weather surface.

Colleen Dowdall stated that an all weather surface is part of the subdivision standards. She felt that Condition 2 could be deleted. All the concerns are covered in the subdivision standards which they must be built to.

Mike Sehestedt stated that this highlights the fact that wherever there are subdivision regulations that specify some standard for private improvements, once the final plat is filed there is no effective lever to make sure those private improvements are put in as the subdivision regulations require. The subdivision regulations give leverage up to the point the final plat goes on record. Public improvements can require a bond sufficient to cover the costs of the improvements. For private improvements, there is not that assurance. He did not want to hold this subdivision up to solve this issue, but it does require further discussions. More thought needs to go into how to implement and guarantee private improvements are done. It isn't a burden that should be placed on this subdivision, developer and representative at the last minute. It does highlight an ongoing concern and problem.

Scott Waldron stated that homes in the Wildland/Residential Interface area can be addressed through a fire safety permit so there is some control. Could that be done in all situations.

Mike Sehestedt stated that would be a discussion for another time. He just wanted to put it on record that this is a potential weakness or problem in the regulations.

Commissioner Evans stated this would not be solved right now. If this is something that Scott Waldron felt was needed, she would like him to begin a public process to have the regulations changed.

Scott Waldron stated he had some ideas and would begin working with Colleen Dowdall to address the issue.

Mike Sehestedt stated he was not suggesting a special mechanism for this particular subdivision, but this is an example of a recurring problem that needs to be addressed. If this requirement is being imposed because it mitigates an impact on one of the conditions of subdivision approval, then the regulations need to be revised or a method devised to address the concern more effectively than just good faith. His comments in no way reflect on this particular applicant or project. It only points out that there is a problem that needs to be addressed.

Jennie Dixon stated that this was made a condition because the Public Works Department was to review and approve final driveway plans, but because these are private driveways accessing onto private roads, it didn't seem that Public Works was the appropriate office, so it was done with review and approval by the Fire Department. Now, it comes back to the point where the condition has been deleted. She felt Mike Sehestedt and Colleen Dowdall make a really good point, that OPG would also echo, for a way to determine that subdivision regulations requirements are met after final plat approval.

Mike Sehestedt stated that there were several issues that needed to be looked at, including public versus private roads, a driveway versus a road dedication, etc. Those can be reviewed and discussed at a later date.

Ron Ewart asked counsel if he was correct in assuming that private roads had to be built just like County roads and the process is the same – design, engineering, testing, approval, as built certification, guarantee, etc. – prior to filing the final plat? That has always been his understanding.

Mike Sehestedt stated that is true, but he was focusing on the driveways which would not be built until the property has been sold and built on. There are lots of chances for misunderstanding during that time.

Colleen Dowdall stated that it depends. She is currently going through the regulations to determine what those differences are and put them in a form that is easier to read than the current regulations. The part that is clearly not permitted is an improvements guarantee for private roads. There is some wording about an improvements guarantee on a sample form but that is incorrect.

Ron Ewart stated that they proposed this as a private road because it is a short cul-de-sac and will be relatively easy for the homeowners to maintain. They could probably do a better job than the County, as the County has many, many thoroughfares to get plowed. They were planning to do the road as if it were public, in regards to design, engineering and guarantee, prior to final plat filing.

Commissioner Evans asked if this was something that needed to be decided today.

Mike Sehestedt stated that the subdivision could be approved as recommended and the details could be worked out later.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey stated that he would like to discuss the Planning Board's recommendation for Conditions 11 and 12. He asked staff what the harm was to create these public easement to perhaps prepare for future development, in this case having a conditional public access between Lots 6 and 5 and Lots 5 and 7.

Greg Robertson stated that Clint Harris had wanted the cul-de-sac extended to the north boundary of Lots 7 and 8, which made sense. His office often receives complaints on common driveways with one neighbor not doing their part in keeping it clear. It is much better if all lots have access onto a public or private right-of-way that is established. Once the final plat is done, the planning staff doesn't have much to do with it, but the maintenance issues and complaints continue. That is what Mr. Harris was trying to avoid. There is a difference of opinion between Public Works staff and OPG on this issue. He would concur with the Planning Board's recommendation.

Jackie Corday stated there were two different issues. One of the reasons for public dedication was if there was future development on Tract 1, it could be connected. If it was private, it could not be connected. This was discussed in Planning Status and it was unlikely that any development on that lot would happen any time soon. The other consideration was that it was so close to Highway 10 that it did not provide an important connection. The other issue is connection to Lot 9. Staff felt very strongly that was not the best idea because of the slope and drop off to the riparian corridor. They did not see the need to go through a riparian corridor when there was such good access from Highway 10. She understood the objection to cul-de-sacs, but in this case it was a better scenario than disturbing a sensitive riparian corridor.

Commissioner Carey stated that if in 20 years somebody wanted to develop Tract 1 with access from Highway 10, there should be some connection to this subdivision, rather than another cul-de-sac.

Colleen Dowdall stated it would have to be a public access, which means the cul-de-sac, Wheatgrass Lane, would have to be a public road, otherwise the developer of Tract 1 would not have the right to use the cul-de-sac that is in this subdivision. If that conditional access is wanted, then the cul-de-sac has to be a public road. That is what Planning Board chose to recommend. The point that Jackie Corday made was that access to all of these parcels by Highway 10 is adequate and preferred.

Chair Curtiss stated that the topography supports the cul-de-sac much better in its proposed location.

Greg Robertson stated there were two issues. The grade did not concern him that much. He thought moving the cul-de-sac could easily be done. The other issue was no development in riparian areas, which means that all culverts and bridges should not be there. An issue that has not been addressed is access control on arterials and collector routes. Part of the reason the Planning Board was suggesting internal access rather than access to Highway 10 was to control access points along collectors and arterials, which is the goal to be achieved in any corridor to protect its integrity. Anytime a driveway or approach is introduced, it creates a conflict point where accidents can occur. It is better to keep those at a minimum and use local access which then provides access to the arterials and collectors. He would prefer both Tract 1 and Lot 9 access off an internal road system rather than Highway 10 West.

Colleen Dowdall stated that was a good point but not the one the Planning Board made. Their point was based on a grid system philosophy. Having internal access would be a good discussion point early in the process during agency review.

Jennie Dixon stated there are two access points for Tract 1 at this time. It did go through subdivision review but was never filed. There is at least one home on that tract which has a driveway approach approved onto Highway 10 West. Any subdivision that would be done on Tract 1 would most likely connect to Highway 10 West and not be proposed off of another road. That doesn't mean the connection is not a good idea, but all the facts are not known to make that determination. This wasn't presented early enough to prepare all the facts. The subdivision for Tract 1 that was not filed was Intoto Farms.

Stan Lucier stated there were three entrances to Tract 1 already established.

Commissioner Evans stated that in this case she was persuaded by staff's argument regarding the riparian area and topography. She would support their recommendation.

Commissioner Carey stated that he agreed that each subdivision should be looked at individually. However, Troy Kurth, president of the Planning Board, did raise a legitimate issue in terms of consistency. One thing is done on one project and something else is done on a different project. Developers find this problematic.

Mike Sehestedt stated again that some clearer criteria needs to be development regarding public and private access. For a long time the position was that all subdivision roads should be public. That philosophy was moved away from over the last six or seven years with the concern that the County was taking on more public roads than they had the capacity to maintain. Because this was the result of drift rather than ad hoc, it has resulted in some inconsistency. Again, it is not something to be resolved with this particular subdivision. It does highlight an important policy issue that needs to be addressed.

Commissioner Evans stated she agreed with Mike Sehestedt. At one time the County did not have an "anti-cul-de-sac" attitude which has now crept in and become more prevalent. This is another example of inconsistency. Each subdivision needs to be looked at individually as to what works where.

Horace Brown stated Pulp Mill Road and Highway 10 West are maintained by the State. The County doesn't maintain them.

Commissioner Carey stated his concern was that things that happen in the future happen in a rational, sensible way with easements granted where they might be needed. He did not like not having very many options.

Colleen Dowdall stated that part of the review process is to react because a developer has a right to propose. These are not standards that are required unless there is agency comment with findings that support something different than what the developer proposed. The developer typically proposes either public or private. If there is a compelling reason to do it the opposite way, then findings need to be made to support the change. If there was a compelling reason to make this a public road with public access, then a condition would have been recommended supported by findings of fact and conclusions of law. The structure of reviewing subdivisions in Montana is one of reacting to what is proposed within a general Comprehensive Plan.

Commissioner Carey stated it would helpful to Ron Ewart and other land planners to be able to tell their clients what would most likely be required on a certain piece of property. The County should provide more guidance.

Mike Sehestedt stated that was his point precisely.

Jackie Corday stated that in this case the regulations did guide the developer in this directions because they do state a strong preference for keeping out of riparian areas and keeping the grade to an 8% maximum.

Chair Curtiss reopened the public hearing.

Stan Hendrickson stated he had received a letter concerning this proposal. He likes the design and feels it will be good for the neighborhood. It will help the County and him.

There being no further public comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-14 of the Missoula County Subdivision Regulations for the Primary Travel Corridor standards and approve the variance request from Article 3-2(8) of the Missoula County Subdivision Regulations to not provide sidewalks along Pulp Mill Road and Highway 10 West, both based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Wheatgrass Acres Subdivision, based on the findings of fact in the staff report and subject to the conditions as amended: delete Condition 2, delete Condition 11, delete Condition 12 and add new Condition 11 as recommended on the March 6, 2002 memo from Jacquelyn Corday (which will become Condition 10). Commissioner Carey reluctantly seconded the motion.

Commissioner Evans stated for the record that in this particular case she was persuaded by what staff had to say. She did discuss it with some Planning Board members and she understood their concerns. There are adequate accesses to Highway 10. Given the topography and riparian vegetation, she was persuaded by the staff this time.

The motion carried on a vote of 3-0.

Commissioner Evans thanked staff for the written copy of their presentation. It made it easier to follow the discussion.

#### Wheatgrass Acres Subdivision Conditions of Approval:

1. Plans for grading, drainage, erosion control and stormwater improvements shall be reviewed and approved by the public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2 and Public Works Department recommendation.*
2. Final road plans shall be reviewed and approved by the Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J) and Public Works Department recommendation.*



3. The applicants shall obtain a reciprocal access easement and driveway maintenance agreement from the owners of Tract 1, COS 3901 (David and Wendy Fife), to secure permanent access to Lot 9 from Highway 10 West. The easement shall be reviewed and approved by the County Attorney's Office and OPG and recorded in the Missoula County records prior to final plat approval. *Subdivision Regulations Article 3-6.*
4. A water supply for firefighting must be established by the developer prior to final plat approval by one of the following methods:
  1. Provide a centrally located hydrant and a well that produces 350 gallons per minute (GPM) and a minimum 2,000 gallon storage tank or back up power source; or
  2. Add a provision to the Wheatgrass Acres covenants that requires every residence to install residential sprinklers prior to occupation.

If Method 1 is chosen, a plan for the upkeep of the system must be addressed in the covenants. Final plans for the firefighting water supply shall be approved by the Frenchtown Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7 and Frenchtown Rural Fire District recommendation.*

5. The final plat shall designate the O'Keefe Creek Corridor and the O'Keefe Creek tributaries in the southwest and northwest corners of the property as "No Improvement Zones," and include a note as follows:

"No motorized vehicle access, no placement or any structures or fences, no landscaping or plantings of lawn or non-native species and no disturbance of native vegetation is permitted in the areas designated on this plat as 'No Improvement Zones.'"

These areas shall also be labeled on the final plat as "Area of Riparian Resources." *Subdivision Regulations Article 3-13, Montana Department of Fish, Wildlife and Parks and OPG recommendation.*

6. The Wheatgrass Acres Covenants shall be amended as follows:
  - a. Change the title of Section 17 to "No Improvement Zones," delete the first sentence and replace it with the following: "No motorized vehicle access, no placement of any structures or fences, no landscaping or plantings of lawn or non-native species and no disturbance of native vegetation is permitted in the areas designated on the Wheatgrass Acres plat as 'No Improvement Zones.' Weed control is required as stated under Section 15 of these covenants. Plantings of native riparian species is permitted and encouraged."
  - b. Delete the last sentence of Paragraph 2.A regarding the "No-Build Zone" (in order to keep Section 17 as the sole paragraph addressing this issue).
  - c. Delete the second sentence of Section 21(B) and replace it with the following: "Prohibited uses are described under Section 17 of these covenants."
  - d. Change the reference to "No-Build Zone" in Section 21(E) to "No Improvement Zone."

*Subdivision Regulations Article 3-13, Montana Department of Fish, Wildlife and Parks and OPG recommendation.*

7. The final plat shall accurately show the area of riparian resource throughout the O'Keefe Creek corridor, subject to inspection, review and approval by OPG and Montana Fish, Wildlife and Parks. *Subdivision Regulations Article 3-13, Montana Department of Fish, Wildlife and Parks and OPG 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, subject to review and approval by OPG. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*
9. The applicant shall petition into the Missoula Urban Transportation District prior to final plat approval *Subdivision Regulations 3-1(1), 3-2(1)(3) and Missoula Urban Transportation District recommendation.*
10. The applicant shall pave the shared driveway that serves Lots 7 and 8 to a minimum width of 12 feet. *Subdivision Regulations Article 3-2(1)(I).*

#### **Other Business**

Scott Waldron introduced Cindy Crittendon who will be doing fire prevention in subdivision review for the Frenchtown Rural Fire District.

There being no further business to come before the Board, the Commissioners were in recess at 2:55 p.m.

**THURSDAY, MARCH 7, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated March 5, 2002, with a grand total of \$16,777.23. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 5, 2002, with a grand total of \$136.25. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 6, 2002, with a grand total of \$1,679.38. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 6, 2002, with a grand total of \$3,587.39. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 6, 2002, with a grand total of \$18,522.49. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 6, 2002, with a grand total of \$40,063.94. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-022 – The Commissioners signed Resolution No. 2002-022, dated March 7, 2002, a resolution to abandon the westerly four feet of Woodville Avenue, South from Third Street, adjacent to Lots 1, 2, 3, and 4 in Block 14, East Clinton, located in the SE¼ of Section 27, T 12 N, R 17 W, PMM, Missoula County, Montana.

Resolution No. 2002-023 – The Commissioners signed Resolution No. 2002-023, dated March 7, 2002, a Budget Amendment for the County Extension Office and Weed Department, for the purpose of establishing an interest-bearing account. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Other items included:

- 1) The Commissioners approved (with Commissioner Evans Abstaining/Voting “No”) a proposal by Leslie McClintock, Grants Administrator in the Office of Planning and Grants, to use \$500 in grant money to help sponsor the President of NOW to come to Missoula to speak against hate crimes. The \$500 would come from the Rural Domestic Violence Grant, and Ms. McClintock will contact the program officer for approval of this use of the funds.
- 2) A discussion was held regarding the Missoula County Bus Passes. Chief Financial Officer Dale Bickell informed the Commissioners that the contract ends on March 31<sup>st</sup> each year. He is working to get the contract changed to match our fiscal year. *Missoula in Motion* has subsidized the bus pass program, and that subsidy will cease in Fiscal Year 2003. The bus pass benefit will move to the Human Resources budget in FY03.
- 3) Chair Curtiss and Commissioner Carey will both attend the MACo District 10 and 11 meeting from 10:00 a.m. until 12:00 noon on Wednesday, April 10, 2002. Commissioner Evans will not attend.
- 4) An update was given on the (Mullan) Interlocal Agreement with the City of Missoula. The Missoula City Council of the whole voted on March 6, 2002 in favor of the amended Interlocal Agreement and to forward it to the City Council meeting on March 11, 2002.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **FRIDAY, MARCH 8, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Chair Curtiss attended an Economic Development Conference held at the University of Montana.

Claims List – The Commissioners signed the Claims List, dated March 7, 2002, with a grand total of \$13,075.64. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 7, 2002, with a grand total of \$22.90. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 7, 2002, with a grand total of \$19,554.53. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 7, 2002, with a grand total of \$71,851.23. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 8, 2002, with a grand total of \$16,673.49. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 05 - Pay Date: March 8, 2002. Total Missoula County Payroll: \$863,994.55. The Transmittal Sheet was returned to the Auditor's Office.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

#### **MONDAY, MARCH 11, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated March 8, 2002, with a grand total of \$43,496.87. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 8, 2002, with a grand total of \$24,017.68. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Barbara Jaques as Principal for Missoula County Public Schools Warrant #107819, issued March 1, 2002 on the Missoula County Payroll (28) Fund in the amount of \$218.74 (payment for wages), now unable to be found.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Western Door Company as Principal for Missoula County Public Schools Warrant #58168, issued November 21, 2001 on the Missoula County General Fund in the amount of \$885.84 (payment for miscellaneous items), now unable to be found.

Agreement – The Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and the Missoula Westside Little League for the installation of paved pathways to provide accessibility to participants and spectators with physical disabilities at the Renny Malach Complex. The total amount shall not exceed \$15,000.00. The term will be March 8, 2002 through February 28, 2003. The document was returned to Cindy Wulfekuhle in the Office of Planning and Grants.

## TUESDAY, MARCH 12, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated March 12, 2002, with a grand total of \$31,333.40. The Claims List was returned to the Accounting Department.

### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-024 – The Commissioners signed Resolution No. 2002-024, dated March 12, 2002, a Budget Amendment for the Missoula County Public Library, in the amount of \$458,483, making the Library Shared Catalog Project Account an interest-bearing account, adopting same as part of the Fiscal Year 2002 Operating Budget for Missoula County. This fund will hold over from year to year.

Contract – The Commissioners signed a Contract, dated March 12, 2002, between the Missoula County Airport Industrial District and LS Jensen Construction and Paving for Schedule II, Missoula Development Park, Phase 4, Sewer and Street Construction. The work must be completed within sixty (60) days after the Notice to Proceed is given, as coordinated between LS Jensen and the County. The total cost of Phase 4 infrastructure is \$440,596.00 (the cost of Schedule II is \$331,224.60). The contract was returned to Barbara Martens, Projects Officer, for further handling.

Other items included:

- 1) A discussion was held on the Missoula In Motion Transportation Survey. It was agreed that Melissa Wangler of Missoula In Motion could use Commissioner Carey's name and print the survey results on the Commissioners' letterhead.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### PUBLIC HEARING

#### PROPOSED MULLAN CORRIDOR SEWER PROJECT: OPTION 3, OPTION 4 – EAST AND OPTION 4 – WEST

#### HELLGATE MIDDLE SCHOOL LUNCHROOM

March 12, 2002

The Public Hearing at Hellgate Middle School Lunchroom was called to order at 7:15 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Chief Administrative Officer Ann Mary Dussault, Environmental Health Department Director Jim Carlson, Director of the City Public Works Department Bruce Bender and Dan Harmon from HDR Engineering

Chair Curtiss: Good Evening. I'd like to thank all of you for coming and thank Hellgate School for letting us use their facilities. This is a Public Hearing so we will be taking testimony after we do the presentation. Because it is a public hearing it has to be recorded so that it can be transcribed and kept as a record, so therefore, if you have public testimony that you would like to give, we will need you to come to the microphone at the front of the room and identify yourself for the record. If your name is not a commonly spelled name, if you could spell it, it's helpful. There are a lot of materials up here which, because of the number, can be confusing. Everybody should have four pieces of paper that are white, four different packets. If you live in El Mar you should also have two that are blue. If you live in the Flynn Lane area, this side of Mullan Road and around the school here, you should also have the kind of cream colored papers, two of them. And if you would sign in, that's also helpful, cuz it can help us spell names and that kind of thing. We will begin this evening by having Ann Mary Dussault give a presentation that explains what we call Option 3, which is the white papers, Option 4-West, which is the blue papers and Option 4-East which are the cream colored papers. So, Ann Mary will give that presentation, then we will open up to public comment or questions. We have Jim Carlson here, maybe I'll introduce the head table first. Ann Mary Dussault is on my far right, Dan Harmon is our consultant engineer on this project, then we have Jim Carlson from the City-County Health Department and he will be glad to answer any water quality issues, Bruce Bender is from the City's Public Works Department, Patty Rector is our secretary. On this side we have Barbara Evans, County Commissioner, Bill Carey, County Commissioner and I'm Jean Curtiss, the other County Commissioner. So, at this time, we'll have Ann Mary do her presentation and because the acoustics in here aren't real great, if you could keep

the conversations down so that we can understand. And also joining us is Mike Sehestedt who is one of our Deputy County Attorneys. Thank you. Ann Mary?

Commissioner Evans: What happened to our flag. I would like to do it whether there's a flag or not.

Chair Curtiss: Barbara had asked that we start with the Pledge of Allegiance and none of us managed to connect with the school to find a flag, but I'm sure we all know what it looks like. So, if you'd like to stand and join us in the Pledge of Allegiance.

### Pledge of Allegiance

Chair Curtiss: Thank you.

Ann Mary Dussault: For the record, my – can you all hear as we test this mic. If any of us are not speaking loud enough for everyone in the room to hear, if you'd raise your hand and that will give the Chair an idea that everybody is not speaking loud enough. For the record, my name is Ann Mary Dussault, I'm Missoula County's Chief Administrative Officer. On March 4th, the Commissioners mailed to you a letter that essentially informed you of three things. Number 1 is that the Commission did not adopt the original resolution creating the RSID, and I forget the number of it now, 8471 I believe was the name of it. The Commissioners did not create it because during the public process, as they said in the letter to you, they heard a number of issues from you that they felt that they might be able to address before bringing another option or options out to you. And in particular, the issues that the Commissioners heard and were concerned about as you indicated, were Number 1, planning issues; Number 2, financing issues; Number 3, questions about subdistricts; and Number 4, public opinion, meaning specifically that many of you felt that your voice in the original RSID was not heard individually because it was outweighed by the larger property owners. So, the Commissioners made the decision to do their best to try to clarify or resolve some of these issues and so that's what we're doing here tonight is to try to explain to you the options that the Commissioners are now considering and I believe we, in the letter, indicated that there are really three options. Option 3 is in a white map that you should have, as well as a white packet that shows you first of all what infrastructure would be built and what the cost of that infrastructure is in Option 3, and it's the map that Dan's going to point to as I walk through it. The second thing that this white packet does is, by property owner, by alphabet, by group, and I'll explain those groups, shows you what your assessment would be under Option 3, and I think most of you will see that it's significantly different than the first option. So, let's go to Option 3. Dan is standing next to the map of Option 3 and you will probably recognize it because it looks almost exactly the same as the original boundaries of the first RSID. There are only really two changes to the boundaries. If you look at the east end of the project, in the original RISD there were two collectors servicing that portion of the district, it was the Airport Interceptor and the Grant Creek Interceptor. After discussion with multiple engineers, it was concluded that in fact that area could be served by a single collector as long as that collector was upsized. So you only now see a single collector. The net result of that was that there is a small corner, that Dan is pointing to, of properties that are now taken out of the district because they are not easily served by this new collection system, and I believe there's about 12 properties, individual parcels in that, Dan, 12 to 16. They would eventually, if they wanted to hook to sewer, would be hooked by a lateral line that would eventually come up on that, the far east side of the district. But for now, they were dropped for assessment purposes. Other than that, in terms of the look of the district, it should look very familiar to you. I think the easiest way to explain to you the funding mechanism is if you turn to the back of your white sheet, your white packet. The most significant change in this proposal is due to the fact that the City of Missoula made the decision and affirmed that decision last night at the City Council meeting, to grant a grant-in-aid or a contribution-in-aid, to the district of one million dollars. The City said, however, that they really wanted their money targeted not to the undeveloped lands, but they wanted their money targeted toward those of you that have existing plumbed units on your property. So, existing plumbed units means your household or if you're a business up on Broadway, it means your business. And what they allowed us to do was to divide the land in this area into two buckets, in essence. The first bucket are those lands that, in fact, are undeveloped and have no plumbed units. If you will look at Page 19 of Exhibit B, for those properties, they will still be assessed on a per acre basis, just like in the old system. The per acre cost for those properties is \$3,114.54 an acre and that's down a little bit from the previous RSID, due primarily to the fact that one of the interceptors was dropped on the east end. So for undeveloped parcels over one acre in size, they still pay on a square footage basis. For those properties that have plumbed units, essentially households, residential units or commercial units, regardless of the size of the parcel on which you sit, whether it's a third of an acre, a full acre, 5 acres, 10 acres, 20 acres or in some cases, even 40 acres, you pay a single assessment called an Equivalent Dwelling Unit Assessment, an EDUA. And that cost, I think we told you in the letter we expected that cost to be about \$1,500. That cost actually came in at \$1,488.02. So let me say that again. Whether you have your house on a third of an acre, an acre, 5 acres, 10 acres, you are assessed one EDUA of \$1,488.02. Now there are some properties like mobile homes or where there's a slightly different way of costing out that EDUA, for example Katoonah Lodges may be an example. They are assessed on their water meter size servicing that property, so within the assessment for the EDUAs, you may see that some properties are assessed three EDUAs, that may mean there's three individual households on that property or it may mean that that was the calculation for a group of mobile homes, for example. So, there's a multiplier in there based on water usage. The second number I want you to look at, particularly if you are in El Mar and New Meadows. I think we've talked about this before but I just remind you if we haven't. The El Mar/New Meadows subdivision, because their system has been troubled for quite awhile, were granted an EPA special projects grant about two years ago, and so we applied that Federal grant and the match to your EDUA assessment and that drove your assessment down to \$799.15 a unit. So that was the impact of the Federal money that was specifically granted by Congress for El Mar/New Meadows. If you'll remember the two buckets I talked about, we have undeveloped land that is one acre or more, I mean, over one acre, that has no plumbed units. What we've defined as developed lots, and I know this sounds a little bit silly, but it ended up working for assessment purposes, in that bucket are properties that have a plumbed unit or are one acre or less even if they don't have a plumbed unit. So, if you have an acre of land that has no house on it, no plumbed unit on it, you will be assessed one EDUA and the idea there is that's probably what the build out of that particular lot would be and Bond Counsel advised us to include that not in the square footage or the per acre assessment, but in the EDUA assessment, if that makes sense. In the Interlocal Agreement, and let's see if I can find the reference in the Interlocal Agreement, you also have a white sheet that's called Interlocal Agreement, I mean a white packet. What you're looking at is the original Interlocal Agreement amended for this purpose, because we thought that even though it may look confusing, it's the easiest way to show you how things have changed. If you look at Page 7, where there's a lot of new language, what Section 5 essentially talks about is what happens if properties that are not in the district use the pipes that have been built by the district within the life of the bonds, and remember the bonds are 20 years,

and that's called, you want to get that map, that's called the Extended Service Area. So let's take the easiest one, we always use Kona Ranch. Because Kona Ranch is not in the district and is not being assessed, in the future, if Kona Ranch comes in, they will be assessed on a per acre basis, just as if they had been in the district. Okay. I'm going to talk a little bit in a minute where the money goes, but that's what happens. The other thing that could happen under the new assessment methodology for plumbed units is, let's say you do have a 10 acre parcel and you have one house on it. One of the things I think the Commission heard you saying is, 'look, I don't want you to force me to subdivide and the way you were assessing me before would force me to subdivide, and I don't want to do that now.' But let's say you have a 10 acre parcel and 5 or 6 years from now you do want to subdivide and let's say on that 10 acre parcel you add another 10 plumbed units so these are brand new plumbed units. What you would pay at the time those units are hooked to the sewer would be 10 new EDUA assessments, so you pay when the land is developed, you're not assessed in a way that forces you to develop. Does that make sense? As I hope I said clearly at the beginning, the City's aid-to-construction is a loan to this project and their million dollars plus their interest and financing costs will be paid back to the City in this way. Any properties in the Extended Service Area that come in or any of the new EDUAs will first go to the City to pay back their loan. When that loan is paid off, any properties that come in through the Extended Service Area or through new EDUAs, that money will go into the RSID account to pay down the bonds that are still outstanding and it will therefore retire your bond debt earlier. But the first obligation of those funds under the Interlocal Agreement as described in Section 5 goes to the City to repay that loan. Okay, let's switch to the other two options. The other two options are fall back options in the event Option 3 is not satisfactory to you. I'll go through the process that we're going to go through, just like we did before. You remember, there was a protest and all of that. We're going to go through all that again and if Option 3 is not acceptable to a majority of folk in this area, then the Commissioners wanted to create two fall back positions and these are the two areas where we have the most time sensitive need for sewer. So, in the event Option 3 fails, Option 4 East would include only that area on the map, and I believe it's ivory, if you happen to get an ivory map, so it includes essentially the majority of those properties are undeveloped but not all of them. There is no City aid-to-construction in this option. The infrastructure is the same here as the east end in Option 3, but there is no City money, so if you go, for those of you who live in this area and if you go to your ivory handout and look at what's titled Exhibit C, that shows you the infrastructure that will be built and what its cost is and if you flip it over to Exhibit B, you will see that there's only one method of assessment for Option 4 East and that's back to the square footage or the per acre assessment. And in this case, the cost per acre is \$3,225.00. What we found out by doing this is what we believed would happen, is by starting to break up the bigger district, that the cost to the segregated parts go up, so the cost here is higher than in the original RSID, which I think was, and the answer is \$3,167.00 was the original RSID. So, this becomes incrementally slightly more expensive and it's only assessed on the square footage or a per acre basis. Option 4 West includes El Mar and Golden West, I'm sorry, El Mar and New Meadows, the Washington development property, Washington Corp. property and the Snively property to the south, and I believe there's a corner of Sunset Memorial Land just south of Mullan Road in the corner there. This information is on your blue sheet and again the front Exhibit C shows you what infrastructure would be built and I think the most important thing to point out is if you look at the middle portion of Option 3, you will see a significant amount of infrastructure that is gravity sewered in order to serve that middle drainage in Option 3. That is totally absent here and there is only a force main, one force main that goes from the pumping station on the very northwest corner and then is forced all the way down Mullan Road where it connects then to the East Mullan interceptor on Option 4 West. The important thing to know is that this is not designed and will not serve the middle part. It is not designed for the middle part and will not serve the middle part. So, these are the two fall back positions. Let's go through the cost on this before I forget. If you look at the last page of the blue handout on Exhibit B, again, there is no City aid-to-construction in Option 4 East or West. So, there's no City aid-to-construction, so we're back to the per acre or per square foot assessment methodology and in this case the square footage or the per acre assessment has gone up to \$4,721 an acre. For those of you in El Mar and New Meadows, that's an increase in cost for you above the original RSID. It remains less than what we believe it would cost you to remedy your current system, but it is a higher cost, and again, it's just demonstrating that breaking this up into bits and pieces is incrementally adding cost to each section. Let me quickly go through the Interlocal then and address the other issues that I think were of concern or the Commissioners felt were concern. Let's go to the planning issues. We heard a lot of concern from you about the status of Missoula County's Growth Policy and the Wye/Mullan Plan and if you look on Page 1 of the Interlocal Agreement in the "Whereas," the Commissioners have directed, this is on Page 1, the fourth paragraph, the first underlined, the Commissioners have directed the staff at the Office of Planning and Grants to complete the Growth Policy, or their work on the Growth Policy, by May 2002 and it will then be referred to the Planning Board and the governing bodies. They have directed, in the second paragraph, the Office of Planning and Grants to complete their work on the Wye/Mullan Plan by February of 2003 and to refer that Plan to the Planning Board and the governing bodies no later than February of 2003. This is the Commissioners attempt to memorialize for you what they have done. These activities are in the staff's work plan and the Growth Management Plan, at least, is well under way right now. In terms of financing, we've discussed that. The best financing option the Commissioners could create was the Equivalent Dwelling Unit Assessment for plumbed units and that's embodied in Option 3. For subdistricts, there was concern about what are the conditions under which subdistricts would be created. And if you go to Page 9 of the Interlocal Agreement, Section 6.02, this is new language to the Interlocal Agreement, which says there are three conditions under which RSIDs would be initiated or created. The first is if a petition is received to create the subdistrict and we wanted to articulate for you what the various governing bodies policies are. For the County, it requires a petition, I'm told it's 50% plus 1, or 51%.

Mike Sehestedt: There's an error in the draft, it was my drafting error, I prepared this. It says 50%. The actual County policy is 50% plus 1.

Ann Mary Dussault: So we will change that and if it requires, we will send that amendment over to the City for concurrence. So current County policy requires a petition for 50% plus one of those property owners paying the cost. City policy has no number required for a petition and they will look at the question if asked to by an individual. So that's their policy. So, that's the first condition. The second condition is if there is a clearly established threat to public health, community septic system failure or standards violation which requires sewer to address. This would be more equivalent to eventually what happened in Linda Vista, as an example, or a failed system that occurred in the Rattlesnake. And the final one is if the City or the County has obtained local, State and/or Federal funds to pay at least 55% of the cost of the project. I think it's safe to say that it's certainly their intent to try to subsidize 55% of the cost regardless of whether A or B is the origination method. The final thing that the Commissioners wanted to address which was addressed in their letters and it's a matter of how they will proceed. So let me run through how they will proceed. You didn't get a letter. Who didn't get the copy of this letter. Okay. Could you maybe at the end of the meeting just give us your name and address and we'll check on that. At tomorrow's meeting at 1:30 in the Courthouse, which is the Commissioners regular public meeting, they

have on their agenda whether or not they will adopt the Resolutions of Intention to create these three options. If they do that, on Friday all property owners of record at the close of the assessment rolls for taxing purposes, last November, will be mailed a letter as you were last time and it's an official letter whereby you are notified of the Commissioners action and you are notified of your right to protest the creation of one or more of these districts. So if you live in El Mar you're going to get two notices, you're going to get a notice for Option 3 and you're going to get a notice for Option 4 West. If you live in the Flynn Lane, you're going to get two notices. You're going to get a notice for Option 3. You're going to get a notice for Option 4 East. If you're in the middle, you're going to get one notice and that's for Option 3.

Commissioner Evans: Ann Mary, would you explain to the folks that last time we had some protest letters that just simply said 'I protest.' You must sign your names and if there's two of you in the house, you both need to sign your names, so make sure your protests are valid if you choose to protest.

Ann Mary Dussault: I think Mike wants to clarify.

Mike Sehestedt: Well, I don't know whether I want to clarify or not, but the protest needs to be signed by all of the people that are on the deed, not how many people are in the house, and I know Barbara, this is picky, but ...

Commissioner Evans: Picky, picky.

Mike Sehestedt: If husband and wife are on the deed jointly, which is very common situation, they both need to sign. And, while we're not religious about trying to compare signatures to voter registration cards, when we get something that's signed Mr. and Mrs. One Line, obviously, they both didn't sign it and that's a real problem for us. We have no reason to doubt that they both don't object, but we can't count it if they both don't sign. So, in honesty, make it easy for us, both of you sign and sign separately. We'll accept anything that gives us an identification of the property. One other issues on protests that I want to clarify a little bit. We're required to send the notice based on the last completed assessment roll, but property changes hands all the time. And if you bought property out there and you don't get a notice, you still have the right to protest as you're currently the record owner. What we did whenever we got a protest that didn't match the notice list, was go to the Clerk and Records deed records and check to see whether or not the person had acquired the property after the assessment roll was completed. So, just to make sure that everybody understands. If you've bought the property, whether you get the notice or not, you have the right to protest and it's unfortunate that we have to have a cut point, and State law specifies the last completed assessment roll for our notice obligation. It also says if you bought property since then and are the record owner, you have the right to protest.

Ann Mary Dussault: So, the protest period begins at the point at which you receive the letter and they will be mailed on Friday, assuming the Commissioners act. The protest period runs until April 1st at 5:00 p.m. and your protest must be into the Courthouse, preferably to the Clerk and Records Office, but if it comes to our office, to the Commissioners Office, we send it down there, by 5:00 o'clock on April 1st. On April 3rd, there will be a public hearing wherein the Commissioners hear from the Clerk and Recorder who tallies the protests, whether or not there was sufficient protest to kill the RSID. Now, what the letter told you is the Commissioners, for Option 3, have added an additional burden in order to create this district. So there is, first of all, the legal burden and that's that money one, if 50% plus one of those paying the majority of the assessments protest, then it's dead, and that's the one I think we heard from most of you that you were concerned about, because that really put the power for that protest in the hands of the larger landowners. The Commissioners have said, and they said this in that letter to you, that in addition to that, they will accept a second threshold and that is the tally of the EDUAs, the tally of the EDUAs. If that tally is negative in the majority, if there's a negative majority on the EDUAs protesting, then the district will not be created. So that is as close as the Commissioners could get to, in essence, looking at a popular vote. With that, I do believe I'm done. I apologize for taking this long, but we wanted to be sure that you had all the information and if there are other questions, we'd be happy to try to answer them.

Chair Curtiss: Thank you Ann Mary. We'd also like to recognize that the Senator for this district, Senator Mahlum, is here with us tonight and your representative, Holly Raser, is here. And I'm sure Tyler Jourdonnais is probably here and he's running for the same seat Holly holds, so, those folks are here to hear your comments also. At this time we'd like to then open the hearing for public comment. As I stated before, we're appreciative of the school district for allowing us to use their facilities but we do have to be out of here by 10:00 o'clock and that means our stuff picked up and out, so we have about two hours to make comments. So, therefore I would ask that, because of that time, we would first of all like to give, I know there's some people here who don't actually live in the district but it's an area of concern to them, but we'd like to let folks who live in this district have the opportunity to speak first. We'd like to have your comments remain respectful and if possible, from looking at the size of the room, if everybody wanted to speak we'd actually be here way over two hours. If you could keep your comments to a couple of minutes and if someone ahead of you has made a comment of something you agree with, you could just let us know that. And you might want to do like this gentleman and kind of make a little bit of a line so we move faster. And also, if you have a question that you would like to direct to someone specific up here, let us know that. So come to the mic and state your name and let us know your comments. Sir?

Jay Rondone: Hi, my name is Jay Rondone, I live on Mullan Road. I just, my biggest concern is the zoning question. Why is there not zoning before this is all being done?

Chair Curtiss: Okay, most of the County is not zoned but it does have Comprehensive Plans which are now being changed to area plans that fit within our Growth Policy, so that planning process, as we said in the agreement with the City, will be finished in about a year, so it will be done before the pipes are ready to connect to anybody.

Jay Rondone: Okay, I guess, my opinion is that I'm against this right as of now because people have ruined the environment in which we live. We all know we moved here for, to get away from the crowded conditions. My, just my feeling on this whole agenda is that you're going to cram seven houses on an acre or more and there goes the quality of life out here. I think that this is what a lot of people are concerned about. I don't know that if, without zoning, if what's going to happen out there. I paid a lot of money for my house and I don't want to live in a huge metropolitan area, that's why I moved to Missoula so my concern is with the zoning. Naturally high rises can't go up but what about these developers want to put 10, 15 houses on an acre. You know, what's to stop them.



Chair Curtiss: My best advice to you would be to get involved with Wye/Mullan Planning which will be making those kinds of decisions for what it should like out here and protect the rural atmosphere that you'd like to have. But, like I said, most of the County isn't zoned partly because if zoning happens in the County, it's different than in the City, so if the majority of the folks out here protest zoning in the County, the Commissioners have no recourse so we don't usually do a lot of zoning, but if there's certain things that need to be protected, that would be something that we'd like to hear from the folks out here and we could zone to protect that. So if you wanted some areas to be one house per five acres, that could be done.

Jay Rondone: So, there's no way this can be zoned ahead of time, it's ...

Chair Curtiss: It will be, the plan will be done before the sewer is ready for anybody to connect.

Jay Rondone: It will be?

Chair Curtiss: Yeah.

Jay Rondone: Okay, well that's all I had to say. I would hate to see Missoula become like any other large city where people will have, be forced to move away to get away from the crowded conditions and there's got to be a limit to growth in every city, you can only put so many people in a small area and then you sacrifice the quality of life, so I would hope that everyone is considering that. Thank you for your time.

Chair Curtiss: Thank you sir. Yes?

Jean Sautter: Hi, I'm Jean Sautter, we own a home in County Crest. Tonight we've talked about 4-East and 4-West and 3 and we've talked about 1 not being considered anymore. Everybody's pushing under the table that there's still Option 2. Option 2 would be to hold off until we know what funds are available. The people at the table are going to remind you that Option 2 means we lose the million in the Interlocal Agreement, but Option 2 also means that we won't have a pipe built up the middle of Mullan Road and not be able to hook to it because funding didn't come through for our subdistricts and we end up back in the \$20,000 plus per house to connect. So please remember that they aren't talking about 2, but 2 is out there and consider 2 as an option when you're considering your protests. Thank you.

Chair Curtiss: And just to remind you or clarify a little bit, Option 3, the backbone numbers you were given tonight for your piece of property is not reliant on Federal money for the backbone, so that number won't change and Commissioner Evans is going to Washington, D.C. next week to again talk with our Congressional delegation about Federal money for the subdistricts and any extra could be applied to this backbone. But if you'll look at that Interlocal Agreement again, it says there that we won't force you to put in a subdistrict if we don't have 55% of the money.

Vicky Bostick: Vicky Bostick, 2051 Flynn Lane. First I would like to ask a question to clarify something that was said tonight, Ann Mary. You talked about the assessments that would be done for the Extended Service Area. Would those be at the current rate that will be charged to us per square foot or would that rate change, you're talking 10 or 20 years down the road, will that rate be evaluated at that time and go up with the cost of living?

Ann Mary Dussault: No, Vicky, it's designed, the Extended Service Area is bare land and it comes in at the same square footage or per acre assessment as if they had been in the district at the time that it was created. That would be true. At the point at which the bonds are paid off and the outside time there is 20 years, after that period of time there would be no assessment.

Vicky Bostick: And then I would just like to make one other comment at this point. Jean, you mentioned that to be part, the first speaker talked about zoning and whatnot, and your suggestion would be to get involved with the Wye/Mullan Plan. Many of us did that quite some time back as you all know. And that did not go forward and I guess that is, I know at least for myself and I think many other people in this room, is still a frustration, we still would like to see that plan in place and it would, I think, put many of our minds at rest as to what is going to happen out here. That, and, here again, slowing down once again so that we have some Federal funds or least know if there are going to be Federal funds before we go forward.

Chair Curtiss: And all of the input that those of you who were involved at that point is now being put into, actually, at the end of the month we're, the 27th we'll be looking at the Lolo Plan then staff will focus all their attention to the Wye/Mullan, so that all of the input that you had will now be put in the draft form to bring it back to you so that you can say 'yes, that's what I meant' or 'that isn't what I meant.' What you did, I know it's been frustrating for you not to have seen a plan come out of it sooner, but all of your input will be there for you to then review, so we're about where we were with Lolo last year and we will begin those meetings so that you have plenty of input to see it in a written form and make comments and make changes and affect that plan.

Vicky Bostick: And I do understand that and I appreciate the fact that it's finally going to go forward, but I still wish that some of these things would happen before we go forward with a plan for the sewer.

Chair Curtiss: Thank you.

Unidentified Speaker: Jean, I have just a couple quick questions.

Chair Curtiss: Could you identify yourself please.

Lou DeMarois: I'm Lou DeMarois.

Chair Curtiss: Thank you.

Lou DeMarois: I own the corner lot at Frye and Homestead. My first question is in your request for Federal funding, is there any way we can get a copy to see what exactly you're requesting, how much money?



Chair Curtiss: What we have requested is, Congress at this point in time doesn't, when we ask for Federal money for a project they don't ask for how many dollars it's going to cost for the piece of pipe that runs down Frye Lane, we take them the whole concept and say this is what the whole project is going to cost and the project is \$7.4 million. Now with the City's million dollars added to, or taken off the front end, we'll be financing \$6.3 million, then add in the subdistrict costs, it gets pretty close to \$12 million. So that's what they're looking at, is the whole project. They don't really care exactly the breakdown, we can offer that to them if they want it. Commissioner Evans would like to address that just a little bit more.

Commissioner Evans: I have one copy of what I took to Congress in September. These are \$25 a piece for us to make them, so I don't have any to give out. I could certainly get you a copy of the narrative and the maps are all here. Would also be happy to give you a copy of the letter that we will be signing in the next day or so that I will take with me which is simply generic discussion of the problem and a plea that they help us to find ways to help you. Be happy to share that with you and anyone who wants to can come to my office and look at this. I simply don't have any more copies to give out because of the cost of them.

Chair Curtiss: And it does list on there, for example, what the costs to the different homeowner groups, let's see, you're in the Frye/Homestead, so it says here that the Frye/Homestead subdistrict is \$806,000 additional cost, so, it's \$15,300, so they can see, there is a breakdown to that degree that we can say, so they can see that it is, especially the subdistricts are a big burden to the folks that live there.

Lou DeMarois: Does it make any sense not to ask for a single amount, I mean, personally, I just, I feel that you would get further ahead trying to get money if you would say, 'we need \$20 million dollars,' and hope to get ten.

Commissioner Evans: We're asking for \$7.4, that's the original number that we had, that's the proposal that we took. The letter that we're sending with me this next week doesn't have a number, it refers back to this \$7.4 request. You need to understand that the way it generally works with Congress is that nobody gets exactly what they ask for because there isn't that much money to go around. So, what we will get? I can't promise you, I'm going to hope we get \$3 million. I'm going to hope that. We may get nothing, but I do believe and I feel very confident that Conrad and Max and Denny will do their best for this community because they always have. If we come home with \$3 million this time, that doesn't mean that that ends our asking. We'll be right back the following year for additional help if it's possible. There may be no Federal money next, the following year. This may be all we get if we get any. But that's where it is.

Chair Curtiss: The one other thing is, is that there used to be a program just for sewer projects, there isn't anymore. So, it is now, really, what most of us call 'pork.' And we know that we can get, 55% is the most you can get for each project, so, there's never any guarantees with Federal money. We didn't expect the Trade Centers to get hit last fall and have lots of money be diverted there, so, we're taking the advice of our Congressional delegation in how to approach this and we just know that they've all committed to help us get it.

Lou DeMarois: Okay, in the process of trying to get this money though, a lot of these costs are contingent on that Federal money.

Chair Curtiss: Not any of the costs in what the RSID is though. Not the backbone.

Lou DeMarois: No, not the backbone, but the subdistricts.

Commissioner Evans: The way I understand it is ...

Lou DeMarois: The subdistricts are where there's roughly \$3 million of money going to those subdistricts ...

Commissioner Evans: No.

Lou DeMarois: ... in help.

Chair Curtiss: Right. That's why we probably, we won't try to do them all at once. We get enough Federal money, we get the 55% for three or four subdistricts, then we initiate those. Then we go back for more. If we get 55%, then we initiate those, that's what we've promised.

Commissioner Evans: I think we have some confusion between what you're asking and what you're answering.

Chair Curtiss: Okay.

Commissioner Evans: You want, I want you to repeat your question please.

Lou DeMarois: My question was, is, maybe I should clarify the question. Is the money you're going for, Barbara, for the subdistricts or is it for the backbone?

Commissioner Evans: What we have agreed to is if we get, I'll use \$3 million as an example. The first roughly, and I'm going to emphasize and underline 'roughly,' \$700,000 would go to the first three districts that are having serious problems. That's for their subdistrict costs. They've already got some that will help. So that's where the first \$700,000, roughly, would go. Anything over that, we have agreed we will put into the backbone that will help all of you. The next time we go back to Congress we will ask for money to help on the subdistricts. In addition, there's other monies available that we will look for, and please, staff, jump in if I step too far afield here. There is money, we believe, that can help folks who are on reduced incomes because we will look for that kind of money. There's also TSEP money, which is a limited amount of money each year, I think it's four to five hundred thousand dollars, and that's money that I believe can be allocated by the State legislature and Senator Mahlum has indicated a great willingness to try and help you on that. So, we haven't got in our mind a clear idea of how much money from various sources we can put in the pot, but we're going to continue mining to do that.

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Lou DeMarois: Okay. In the aspect of this, and it all comes back to the money, you know, Barbara, a month and a half ago you were on the record as saying you wanted to wait a year and you ...

Commissioner Evans: I still would like to wait.

Lou DeMarois: ... wanted to find the money first and you've changed that view and I'm curious why?

Commissioner Evans: I've changed that view because the City was willing to put in a million dollars to help you to get the figures down from what I thought were an unconscionable amount of money to what appears to be a far more reasonable fund or figure, that's why I changed my mind.

Lou DeMarois: But you knew that at the Library meeting and that's when you were on record

Commissioner Evans: If you will remember, I didn't have very much to say at the Library meeting. I would still like to wait until I know how much Federal money there is but if we do that, the large developers will go away and your costs will go up anyway. So, I'm trying to be honest with you, I'm certainly not trying to mislead you in any way.

Lou DeMarois: Just to clarify something too, the meeting on March 18th is for the community by the Mullan Road Coalition and everybody here is invited. Thank you.

Roger Bergmeier: My name is Roger Bergmeier. I own a mobile home in El Mar Estates where my mother and father-in-law live. I live in the City, and what I'm about to say is probably going to cost me more money. We're concerned about the sole source aquifer in the Missoula Valley. It's just one great big sponge out there. And some information that I have on just exactly what the nitrate levels are in this aquifer, it's kind of interesting when you look at going from east to west. If we're looking at, is it milligrams or micro-milligrams per liter in the water, there's a test well near Karl Tyler Chevrolet, has about 3.12. You go south of that to Mullan and Reserve, it goes to 1.9. Hellgate School, up a little bit to 2.05. Mullan Road at Topaz Drive right out just below Sunset Gardens, 1.61. Council Way up on the hill near El Mar Estates, just the other side of El Mar Estates, is .51. You go down over the hill into the Kona Ranch Road area, it drops, it raises a little bit back up to .77. So there's an indication there really isn't a problem as far as nitrate levels out in the El Mar Estates area, or at least the further west you go until you get to the Kona Ranch, there doesn't seem to be a problem. So I'm asking this question, well, why are we having all these problems with sewers and when we have a real problem with what's happening in the City. Some other interesting data, Mountain Water Company, their average micrograms per liter, and I'm not a scientist on this stuff, but it's 2.1. Perrier water you buy in the bottle, really good stuff, is 6.3. The EPA limit for nitrates is 10. The Missoula City Sewer Plant is putting stuff in the river that averages 18. In 1997 in the month of February it actually went up to 22.6 and they were pumping out about 15 million gallons a day at that time. Now, up in Waterloo, there's a treatment plant up there where they use a passive system and they're removing, with an alternative system to what we have here, 97% of the nitrates and a considerable portion of the phosphorous. The Missoula treatment system is at 28%. City households not on the sewer in the City limits of Missoula right now, there are over 2,000 of them, I'm not sure of the exact number, but I think it might be as high as 2,400 maybe, maybe Bruce, you know what that number is?

Bruce Bender: Of which?

Roger Bergmeier: Of residential tracts, residential houses in the City limits of Missoula that are not on the sewer.

Bruce Bender: I don't know that number.

Roger Bergmeier: We have about 1.5 to 2 million gallons a day of sewage water that leaking out of the City sewer system now. One of the things that bothers me is the sewer treatment plant is pumping the water, the treated water, into the river, is upstream from most of the Mullan Road area we're talking about. If we have this sole source aquifer which is just nothing but gravel and water moves relatively freely back and forth, it seems to me like we have a real threat to the wells in the areas west of Reserve Street because of the problems with sewage leaking out of the pipes in Missoula. Well, I've got some conclusions. There just doesn't seem to be a problem on the lands west of Mullan Road as far as nitrate levels in the water. Expansion of the sewer system that is linked to a treatment plant that does not meet EPA regulations now will only make that problem worse. And I know you guys are looking at spending more money to make the treatment plant better. The new sewer line will increase the risk of polluting wells downstream from the treatment plant with higher levels of nitrates and maybe even higher levels of coliforms. So my recommendation is let's get everyone in the City on the sewer in the first place and let's fix those leaking sewer lines and let's improve the efficiency of the treatment plant and apply for grants to test and install alternative and more effective sewer treatment systems. And lastly, and I'm not against growth, I'm certainly for managed growth, but if we're going to have growth out here in the Mullan Road area, that's fine, but we should require sufficient impact fees for all new development for collection, transportation, treatment and disposal of any sewage produced. Thank you.

Chair Curtiss: I'm going to have Bruce Bender from the City's Public Works Department address some of the things that Mr. Bergmeier said.

Bruce Bender: The treatment plant meets all State and Federal guidelines currently. The City of Missoula Wastewater Treatment Plant meets all State and Federal standards for discharge currently. It is not in any violation of any discharges, in fact, it is quite a bit below the required standards. The upgrade to the treatment plant was a voluntary agreement that was made with both the State and the Clark Fork Coalition and also others, Deer Lodge, Stone Container, we all agreed to reduce our nutrients that were being contributed to the river with the VNRP, so that particular upgrade is in the process of being designed. We expect to begin construction this summer, complete it next year. That will reduce the amount of nutrients we put in the river by 50%. Regarding the leaking sewer lines, there is no documented data about how much actually leaks out of the system. Basically, you're talking about, you're talking about a gravity system. It is basically not under pressure. Any problems we have with sewer lines are due to blockages and those problems have to be corrected, otherwise the sewage backs up. The problem we have with the sewer lines is infiltration from ground water and our problem is below national and State standards quite a bit actually, we're probably one of the lowest infiltration pipe

systems in the State. So, therefore, from the point of view of exfiltration, it is considered to be rather minor, hardly any at all. We also have an annual program where we are constantly upgrading and repairing and replacing sewer lines. For instance, right now we have, we will be replacing a large interceptor on Broadway in the next year or two that replaces an old sewer line that carries quite a bit of the flow from the downtown area and that's being replaced. We've replaced the major lines that went down Broadway before. So we constantly are always upgrading and replacing sewer lines.

Chair Curtiss: Next.

Sabe Pfau: My name is Sabe Pfau, I live in the Mullan Trail Subdivision, and I've been to a lot of these meetings and I've looked at the plans and Option 4, if you're going to be, accept or create an RSID, will not do us any good at all in the event that our sewer fails. Right now we have a very good sewer system there, we've had it checked and we have no problem there but whose to say, 5 years, 10 years or next year. That drainfield can plug at any time. To me, Option 3, with the help and the numbers that you've give us, if these numbers are right, is the best option to go and that's what I'm for and I didn't understand an answer that Ann Mary give just awhile ago, and that's what happens to the money if a big landowner waits 'til this RSID is paid off, what happens to the money. Will he pay the \$1,450 or \$3,000 an acre to join again, or is this just free gratis to him because he waited out the bond issue? And what happens with that money if the money does come in?

Ann Mary Dussault: Sabe, the notion of an Extended Service Area was created by us and it was in the first proposal that we brought to you because we knew that there was at least a possibility that in the future some other properties would join in at the time when you're paying the RSID and so that Extended Service Area is a creation in the Interlocal Agreement and terminates when the bonds are paid off.

Sabe Pfau: That's what I mean, so if somebody comes in after the bonds are paid off, they don't have to pay all these fees.

Ann Mary Dussault: No, but, and Bruce may want to address this, but remember to that under Option 3, the City is paying an additional, besides the million dollars in aid-to-construction, the City is paying an additional \$834,000 in upsizing costs and the idea of that is for future buildout. And I guess in this case, in future means after 20 years.

Sabe Pfau: Okay. But, I mean, that was one of my questions. But I guess it's not going to cost us a lot of money in the Mullan Trail Subdivision. It's going to cost us some money to join in but if Option 4 is adopted and then we have to do something with our drainfield, we're looking at probably, the numbers I seen said three times as much but I'll bet it will be 10 times as much and that's foolish on our part, so if you're going to create an RSID, I would like to see Number 3 created.

Chair Curtiss: Thank you. I think just a little bit more clarification is that if folks come in after the bonds have been paid off, it doesn't mean that they're going to get the hookup free, I'm sure there'd be some other way that they would be paying impact fees, it just wouldn't benefit this, the bonds for this, because they had already been paid off so it wouldn't do any good to collect money for this RSID. Next?

Jim Mocabee: Hi, Jim Mocabee, 1540 Topaz Drive. Here we go again. It was nice to see the previous RSID go down, thank you very much. It really wasn't very representative of the people and I think that we have a few additional problems with this one as well. The first thing I'd like to mention, if I may, is the Mullan Road Coalition does have a meeting here tomorrow night, I'm sorry, next Monday night, on the 18th at 7 o'clock. It's open to all residents of the Mullan Road area and please come for a real good meeting. Last night I went to the City Council meeting and I asked 'what's the hurry?' And I'm going to ask that again and again and again and again. And I think most of the people in this room will have the same question. But before I even get into that, I, the Mullan Road Coalition has obviously been talking with you folks about a number of issues, 28 issues to be exact. And we've gotten certain responses from you and we appreciate the dialogue. However, the responses have not been exactly what we had hoped and my initial question is this. I would like to receive a copy of the original draft of the Interlocal that was submitted to the City to see what positions were actually represented of what we have asked. And I'd like to get that if I can tomorrow, yes, of the new proposal. When you went to the City you hopefully negotiated for us this new Interlocal. And what I'd like to know is what exactly you negotiated from and what you exactly asked for of the City. It seems in this new Interlocal for this million dollar carrot that you're flaunting in front of us that you've really bent over backwards to do everything that the City probably would have ever have dreamed for starting with, well the list of issues is quite substantial, but none the less, it seems that we were not represented well, the County was not represented well, or the bargainer for the County maybe needs a new occupation. The zoning and planning the people have been asking about is addressed in the Interlocal, as one of the issue we've been talking about. However, there still is no guarantee that it will be completed or even accepted by the residents of the area on the dates that you have submitted. The funding is all hypothetical. In your new Interlocal, one of the areas that we had asked to be addressed still is not addressed properly. Under 6.02, which I pointed out to the City Council last night and looks like that you've committed extra effort to note what the County's current policy is, the RSIDs subdistricts would be created with: a) a petition received to create the subdistrict. Now, it's the County position that currently that you would create that subdistrict if it was petitioned by 50% plus one of the homeowners in that subdistrict. The City policy obviously is one resident can submit the petition. If that happens and you will notice that in this section, everything is or, or, or. 'A' is if a petition is received, or, if there's an immediate, well you've taken out the word immediate, a clearly established threat to public health, established by who I'm not quite clear on, or 'C' if the money is available. It's or, or, or. So, essentially, one person with a failed septic system who cannot get a permit to put in a new drainfield and this is what happens if we are annexed or even if we're not annexed, because it's in the Interlocal, would be able to create a subdistrict, a subdistrict without any Federal funding, without any State funding, without any funding, which would put a heck of a burden on every resident in this room. So, those issues have not been addressed and without an address on those issues, I don't see how this is any better than the previous RSID mentioned. Furthermore, annexation has not been changed. There's been no change to the annexation, you did not negotiate, apparently, a change to being able to accept annexation from any and other means other than from the sewer. So, obviously there's no stated, don't know where we're at with that then, so obviously we haven't presented anything to the City on that area. The golf course which hasn't even been submitted, the plans have not been submitted for public review for public comment or for anything else. My understanding is that to take a large project like that forward takes a great deal of time but we haven't seen that, so how the immediacy of this can be stated, I'm not quite clear on. In Option 4, which you say if Option 3 goes down, Option 4 would be created because as Mr. Carlson had said last night that the immediate danger of the El Mar folks have with their

septic system that there just has to be something taken care of for them and this golf course development just has to have a sewer and these immediate things have to be taken care of, but then Golden West, who also has this tremendous problem, is not mentioned in Option 4. It doesn't make any sense. If they have an immediate problem just as El Mar has an immediate problem, why are they not in Option 4. There's a lot of problems here and I don't see them being addressed well and I think that what we need to do is slow down, take another look at this, solve the problems before we take it any further. Again, I still don't understand the reason why we have to hurry this process through without proper planning, without proper zoning, without proper funding in place, to try to sell these poor folks and me on an idea and a concept where there's only hypothetical funding, where you show people, like the meeting that I did attend for the people that lived in, I forget the name of the subdivision, but where you've taken the numbers that you were showing that originally was going to be twenty thousand and some odd dollars and there numbers are now only five thousand and some odd dollars, that's all hypothetical. Under 6.2.a, you would get no funding for them and they would still have to pay the full amount. This is going too fast. Reconsider, send this back to committee, talk to MRC, talk to the residents more, don't make a vote on this on Wednesday. Thank you.

Chair Curtiss: Thank you. Mr. Mocabee, this is the Interlocal that we took to the City, this is the draft, so that's what you can look at, all the underlined stuff is the new wording that we added.

Jim Mocabee: If this is what you presented to the City for as a negotiation tool and you didn't ask for anything additional to this, then you did not represent us.

Chair Curtiss: Okay. This is what we asked so we don't need to give you a copy because you got one. When you get to 6.02.a, while it is true that the County and the City have totally different policies on this, there are further steps beyond this. So, in the County if 50% plus one petition us to form an RSID, then we go forth with the same kind of process that we've done for this one, in, you know, seeing what the costs are and all of those kinds of things, and then the people have the right to protest, just like you do with this one. In the County, however, State law is different. I want to finish, well, with the County, the State law is different than the City in that if there is a protest of more than 50% the State law allows that if it is for a sewer, a unanimous vote of the Commission can override that, so I'm just giving you the whole policy. Now, in the City, one person can ask for an RSID to be formed, then they too, theirs is called an SID because ours says 'R' is for Rural, so they can ask for an SID to be formed, then they have to go through the same thing where the folks still get the right to protest, but if 75% of the people in the area do protest, if one person asks, 75% protest, the City does not have the option to override that. So, while there are some differences, we put it in here so that we weren't trying to pull the wool over anybody's eyes. And the City can't initiate this in the County, it would only be in areas that had been annexed at some point in the future. As to the annexation rules, we don't have the power to change State law. And in the legislature, I'm sure that Senator Mahlum and Representative Raser could tell you that in the last legislative session folks did go forward and say they would like to change annexation laws, in fact I think maybe Holly carried this bill, to say that if the City wanted to annex people, they had to vote on it, it did not pass the legislature. We don't have the power to change State law. So, we did negotiate for the sewer method, but that's the only one that we had the right to do.

Jim Mocabee: You know, in this Interlocal you can negotiate any issue as long as both governing bodies approve and if you ask for something and the other body agrees with you, then that is then part of this Interlocal. And so, if you had asked for these other conditions, then possibly the City would have agreed to those other conditions and we wouldn't be negotiating these now. But you didn't ask for them, you didn't ask for any of the conditions or protections that we have asked for and that we really rightfully deserve.

Chair Curtiss: Okay, thanks. I think there was another gentleman.

Tom Moran: Tom Moran, 3622 Biggers Lane.

Chair Curtiss: You need to speak kind of close to the mic.

Tom Moran: Can we get a taller mic. No, I'm not good at holding things either. First question is, Ann Mary, I'm going to ask you, on the little triangle right there, no, little triangle, right to your right and up, it's white, right there. Okay, originally that was included, correct. Now, that's deleted from it so they're exempt from this.

Ann Mary Dussault: Correct.

Tom Moran: And the reason being what?

Ann Mary Dussault: I'm going to let the engineer do it, but before I do that, this RSID also has an Extended Service Area agreement, so, and these guys are in that, so at the point at which they hook to anything that is added in here that flows into this interceptor, they would also pay that per acre assessment. So, that's the first thing, but Dan's going to explain when we reduced this to one interceptor instead of two, what the conditions were that existed for those properties.

Dan Harmon: Just simply that these properties couldn't be served by gravity from this interceptor. Originally there was an additional interceptor that went up this way that picked these properties up, but because that is no longer in the district, these parcels are out.

Tom Moran: Okay. You've got new business being built there that they're pretty much exempt from it right now too then, there's a piece of property there that just sold, a business. The owner of that property got hit with this, although none of this has even gone through to this time. The owner got hit with it and was forced to drop his price on his property because of all this sewer problem we're having. We bought our property knowing nothing about this back in June, which I don't know whose fault that is, but I don't, you know, it just doesn't, I can understand your engineering point and I do see the changes that you've made to the interceptors and all that, but it only makes sense to me, you guys, you're all putting more of the burden back on the people. If we go with, I'm going to call it phase three or what, Option 3, okay, Option 3, yeah, it's better for everybody except the people that live between your two, I'm going to call them, maps over here right now. You take the population of the people, in one closest to Mary Ann there, you don't have a whole lot of people living in that little area. I'm one of the few that does, that does live in that. You taking the burden off of those businesses and throwing it back onto us. If Option 3 goes, we're all right, \$1,500 isn't bad. If Option 3 doesn't go, or Option 2 doesn't

go, and Option 4 goes, that doubles the burden on me and I don't, I'm not a businessman, I don't have to be, but I'll guarantee I don't take home per year what they do and I don't have the write-offs that they do and I know a little bit about engineering and I know about gravity and I know that this shortest distance between two lines, or two points, is a straight line. You can make it work. Yeah, it's going to take some doing. The money you'll spend in that 'J,' or that 90 degree you put there, you can do it in a straight line and you can still pick up that, and still do it without that interceptor, it will carry it. But my biggest thing, I will say, is that if 3 fails and 4 goes, the few people that you have living in those districts, we cannot pick it up, most of that land, if you look at this sheet, is bare land, okay, and you look at the cost that these people have to bear, yeah, that's a lot of money, compared to the cost of development, it's not much money at all. Right now it's a lot of money but five years from now, it's not going to seem like much. And, yeah, there'll probably be a couple hundred houses there that will pay for it, but at the present time, I'll guarantee I can't pick up, you know, well, I can pick up my share now, but I'm not opposed and I'm not for, I'm trying to be open minded about this whole thing. The longer this is put off, the more it's going to cost. I know that, Barbara, you go to Washington, D.C. Bill, have you ever gone to do anything.

Commissioner Carey: Not as a County Commissioner, no.

Tom Moran: Can you, are you?

Commissioner Carey: Well, I could but. I was asked if I've gone to Washington, D.C. on behalf of the Board of County Commissioners. I haven't yet. Frankly, Barbara has much more experience than I do at this time. She's been, well we won't talk about how long she's been on the Board, but she's developed a lot of experience and contacts back in Washington, D.C. and I think it's more fitting for her to go at this point than it would be for me.

Tom Moran: Okay.

Chair Curtiss: And also our County budget gives us each, it's budgeted for each of us to have \$2,000 a year for travel and it just, she'll be carrying a letter from the three of us. We have all talked to our legislators, but to us it was not a good use of taxpayer money for all three of us to go when one of us could carry the message.

Tom Moran: Okay, thank you.

Chair Curtiss: Next person?

Mitch Royce: My name's Mitch Royce, 1815 Homestead, and I got a question that was addressed, or brought out in one of the other meetings that I went to and it is, is it not true, I just need some clarification on a few things, is it not true that once we're hooked to the annex, or hooked to the sewer system, that we're automatically annexed into the City.

Chair Curtiss: No, that's not true.

Mitch Royce: Okay. So, that's one, I wanted to be clarified. Another thing is that the City wouldn't be putting in a million dollars if they weren't going to benefit from it and in the television transmission last night they made a statement that they were going to make money off of this, so that they're willing to put in a million dollars so that they can make money on it. So I want to know, the only way they're going to make money on it is to get us into the City tax structure. So, and has anybody figured out, the question I have, I want to be clarified is, is that why would our County Commissioners be pushing so hard on getting this into the City infrastructure. Aren't we supposed to be representing us so that we will remain a County and not be brought into the City.

Chair Curtiss: Yeah, but we don't have our own sewer system and there has been a study done as to whether or not it's better to add on to and Mr. Bender can elaborate on this if he'd like, but it's more cost efficient and effective to use, to service this area with the current plant than it is to build another one. The other thing is, is we're trying, what we're trying to do is we know growth is coming out here. I don't know how long you've lived out here but I'm sure there's been a lot of growth since you came here, so we're trying to make sure, it's always cheaper to put infrastructure in when there's not a lot of houses in the way, that's why a lot of the subdistricts are so expensive, it's because we're going around existing houses. We don't want things to happen like they did in Linda Vista, where there was a lot of houses and their water quality got to the point where the State said you have no choice and it took nine years for that water quality in that area to come back to where it met standards. So, we're not trying to force you to become part of the City. We're trying to work with the City and use their facility, but mostly, it's a public policy issue and a water quality issue that we just, we know that the majority of you don't have any problems yet, but we don't want, it takes a couple years to build such a thing, so we don't want to get to the point where you're in trouble and we have to do this without planning, things like the City's million dollars, Federal money coming in, different things like that, so.

Mitch Royce: Well, I can't believe that the City would contribute a million dollars if they didn't think we were going to become part of their structure and their tax base.

Chair Curtiss: Once you connect to the sewer, even though you're not annexed, you will pay the same fee that I pay to be on the sewer living in town, so, it goes to the running of the sewer plant. I don't know, Bruce, I think, wants to address it a little more.

Bruce Bender: The rationale that we brought the million dollars into it is because it is, we want to complete this regional sewer system. These monies do not come from the City taxpayers, it comes from the City Sewer Fund, all the rate payers pay into that system and all the new rate connectors pay into that. We are obligated to pay for what we call oversizing the sewer lines and when you break up a project into increments and sections, our costs will rise in how much we have to oversize it, so in looking at that, we could rationalize to put in an additional million dollars because we recognize if you break this up into chunks, we probably would have to invest another million dollars in order to do that, so we wanted to have the whole integrated system built, rather than having chunks of it built. The rationale that you were referring to last night at the Council meeting where we had done a review that we'd asked to look at, what it basically concluded was, if you looked at all of the properties with plumbed units on it, these Equivalent Dwelling Units on it, if we looked at all those and we said approximately half of those were to develop additional units on it and 100% of those half developed that the

City could eventually receive it's million dollars back. Now this agreement limits us to that million dollars, it says that once we receive our million dollars back, then anybody that goes beyond that would pay back into the district and so that everybody would benefit from that. So, the City is not going to make money off this million dollars, it will get it's money back, plus the interest and the financial cost to have that million dollars. So, we are going to get our return back of what we loan, we basically loan this money and the reason we're doing it is because we see that investment for the benefit of building a regional system rather than a broken up system.

Mitch Royce: Getting back to the City and the County division, there is a chance that if we're on the sewer system that we will be annexed into the City, is that correct?

Chair Curtiss: In the Interlocal Agreement it says that the City agrees not to use the sewer method of annexation, in other words, they can, by law, require you to be annexed into the City in order to provide sewer service, but in this agreement they have agreed not to use that method until the year 2016, or until 50% plus one of all the houses in this district change hands, so, change ownerships.

Mitch Royce: So by the year 2016, if we're hooked to the sewer system, then it's basically ...

Chair Curtiss: They can annex. They have said all along that it doesn't make sense to them to do hodgepodge annexing, it makes sense to do it in a more organized fashion, but they will be able to.

Mitch Royce: So, my question goes back to why would the County Commissioners be supporting where you would take away, the people that voted for you are people that want to stay in the County, they're not people that want to go into the City. I've lived here since 1954, born and raised here and there are people that want to live in the City and they make a choice to live in the City. Me, as a person that lives in the County, can't even vote for the City sewer system and so, we have no vote on the City sewer system, how it is proposed or how it is built or anything, but yet you're telling me that I have to hook into the City sewer system and we don't have any vote on it. It doesn't make sense to me that the County Commissioners would be supporting a proposal where we would hook to the City sewer system. Second of all, as far as sewer systems, there is a sewer system out here, it's at El Mar ... why can't we expand the sewer system that's in our County that's at El Mar Estates that has government proposed money already allowed for it. It seems like we're taking that money and giving it to the City if we're going to hook to the City sewer system. If we take that money and expand the sewer system that's out at El Mar Estates, we could keep the money in the County instead of giving it to the City.

Chair Curtiss: And I believe that's been looked at. Dan is the engineer that we had study El Mar's sewer. The system that's there needs work to even serve the folks that are there.

Dan Harmon: Yeah, regarding the question about why can't you expand El Mar to serve the rest. El Mar, the folks there, can expand their facility to be able to serve just them, however, it comes at a price probably four times greater than what they would be looking at to connect. In addition, right now El Mar has about 490 homes connected to it. We're talking in this larger district, another 600 homes out in the County. Right now El Mar does not have sufficient land area to serve the current residents that are connected there so to expand that facility, you'd be looking at having to find a considerable amount of land area to be able to serve this entire district. In our analysis and also in the City of Missoula's wastewater facility planning analysis, it's determined it's much cheaper to regionalize these facilities rather than go out and build pilot or, not pilot, but separate treatment facilities.

Mitch Royce: Okay. And on a question on that basis, if we hook to the City sewer system, the City sewer system, can it handle the burden that we're going to put on it?

Bruce Bender: The current treatment plant right now is treating about 8.5 million. We will expand the plant to 12 million gallons per day, so we're basically expanding the plant capacity by 50%. And then with that expansion also we will improve our treatment level also.

Mitch Royce: And in that \$7.4 million that we're paying, does part of that go to the expanding the treatment plant.

Bruce Bender: No, no, your, this contribution in this RSID is totally to build the pipe system that you're extending from an existing line that's already by Wal-Mart. You'll be extending that line all the way down toward El Mar and up toward Broadway. That's the full scope of what you're paying for in this RSID.

Mitch Royce: And whose going to pay for the expansion?

Bruce Bender: Whose going to pay for the expansion of the treatment plant.

Mitch Royce: Right.

Bruce Bender: That is integrated into the sewer rates. We did receive an EPA grant for \$5 million, so a third of our cost is coming through a Federal assistance. The remaining two-thirds is paid for by, through the sewer rate system and right now the annual sewer rate is about \$140 per single dwelling house. And that would, you would not pay that sewer rate until you're connected and receiving the service of the sewer or once you're annexed into the City, if you have a pipe available to your house, if it's going by right by your house and you've chosen not to connect, then within two years after notice, you also then would have to pay sewer user rates too, once you're inside the City.

Mitch Royce: Right. And you keep on saying once we're inside the City. So I still don't understand why the County Commissioners are voting for something that's going to put us inside the City. It seems like this whole thing for me seems like it's based on us being annexed into the City.

Bruce Bender: The driving issue is water quality, protecting water in a central urban collection system and treatment system is a standard to provide for urban community. And as we said we looked extensively, we spent a half a million dollars in our facility's plan looking at alternatives and the costs to have separate treatment systems quadruples or doubles



the price to have one central treatment system. And that was also reviewed, that was also reviewed in the, even in the regional analysis here on El Mar that that kind of number starts showing that too.

Mitch Royce: Well, it's already been testified, and I just want to say one more thing, the gentleman that had the studies on the nitrates on the test wells, it already proves that our water system's better than what in the City right now. So I don't understand why ...

Jim Carlson: It's a delusion.

Mitch Royce: Well, has there been a study that says it's a delusion. I don't believe that.

Unidentified speaker: Where are your facts at that it's an illusion.

Chair Curtiss: No, he said it's a delusion. And I'll have Jim Carlson explain a little bit about the aquifer and how the river feeds in and out.

Many audience members expressed their objection to this suggestion.

Commissioner Evans: Let's not then.

Chair Curtiss: Okay. Next.

Virginia Schmautz: Hi, my name's Virginia, I go by Ginny Schmautz and I live at 8028 Haven Heights. I don't think anybody else has been up here and spoke on behalf of our subdistrict, but my big concern is in our subdistricts, and looking through some of these papers and I have you, it listed here that I'm looking at the Option 3 subdistrict scenario with Federal EPA/VA HUD funding and you have us listed on there as having 48 units in our subdistrict. That must include that undeveloped parcels within our subdistrict. And so are you including ...

Chair Curtiss: Right, that's because it makes sense for them to be served together.

Ginny Schmautz: Okay, that's 75 undeveloped acres within our subdistrict which really has control of our subdistrict, so the builders or whoever owns that property, if they decide they want to develop those 75 acres, are we automatically forced then to form our subdistrict. I know before we had brought this up at some of our meetings and I think somebody had expressed at that time that, no we would not be forced to, we could just let the builder come in and he could do his part and lay his lines and then a little later we could add on to those. But my question is, is a subdeveloper or developer comes in there and he's going to develop that, I don't think that he's going to be really nice and say, 'hey, you guys don't have to join and help pay for this.' I think he'll force us to pay so, is there a way to divide our subdistrict so that is, those undeveloped acreages are outside our subdistrict.

Commissioner Evans: Ginny, I'm going to ask you to explain that to me one more time, because I'm unaware of this.

Ginny Schmautz: Okay, we have 75 undeveloped acres within our subdistrict and I think there's approximately 40 homes, does anybody know how many homes is in our subdistrict. There's 42 homes, developed homes, that are on either one acre or two acre parcels. So those 75 acres really control what happens with our subdistrict.

Chair Curtiss: Ginny, I believe the reason that land is included with your subdistrict is because it would flow that direction, right? So that your subdistrict would need to be, your homeowners association would need to have pipes going through that other piece of property in order to connect to that pipe to the west. So that's why it was done that way. However, whenever we do an RSID, the boundaries are always a thing that can be changed, right Michael? So, in other words if ...

Ginny Schmautz: Well, the cost on here, if you'll look at the cost, 45% of our total match is the highest of any of the subdistricts.

Chair Curtiss: Right and it would actually, if you went together with those other folks, it would probably reduce your numbers, but ...

Ginny Schmautz: What do you mean, the other folks. We're all included together.

Chair Curtiss: No, what I'm saying is that undeveloped piece of land in the future.

Ginny Schmautz: But that's included in it.

Chair Curtiss: Right.

Mike Sehestedt: Yeah, but it, but it ...

Ginny Schmautz: So. I mean, you're asking me to say this is going to be a good deal, when I don't know how much it's going to cost me and I have a feeling we're going to be one of the first ones formed into, forming our subdistrict, because of these undeveloped acreages.

Ann Mary Dussault: Ginny, let me try, because I think the answer is yes and yes, but let me try this.

Ginny Schmautz: Okay.

Ann Mary Dussault: When we first went out, we tried to give you the maximum amount of information we could and part of that was trying to establish subdistrict boundaries based on drainages. And it is true that in your case, in order for you to get to the backbone pipe, it includes those undeveloped properties. So, a method was developed to calculate what a



density might be on those acreages and then it was divided and that's how that cost came out. However, but, there is no reason to assume that if development comes first across the Snavelly property, which would be the first, and then into the intervening acreage, that you would be forced to participate in a subdistrict because development was bringing the pipes your way.

Ginny Schmautz: I'm not sure that that's Snavelly's property there. It's already been sold, it's already in a developer's hand, those 75 acres.

Ann Mary Dussault: Whomever owns that property.

Ginny Schmautz: We would have the option, I mean our property is right across the street from Golden West. Could we at, one option that would be cheaper for us to pay it ourselves and go across and hook into Golden West than it would be to pay the cost, we have two acres, pay the costs probably going the other way.

Dan Harmon: That certainly would be an available option. When we took a look at those original subdistricts, one of the criteria we were doing was to try and serve as much of the area as possible by gravity, thus eliminate lift stations. It's, over a long term, a much more cost effective way to handle sewer, but that's not to say that if your neighborhood did want to form their own subdistrict and connect even before, say the larger landowners to the west developed, you could certainly do so. It would require a lift station and, you know, whether that would be acceptable to the City, I can't tell you at this point, but, it's certainly possible.

Ginny Schmautz: To the City, or to the County. I mean, I guess I have no assurance that right now that I'm not going to be forced to pay when they develop that property which probably will happen fairly soon.

Chair Curtiss: Ginny, again I want to let you know that when an RSID comes before us on roads or sewer or water districts or whatever, the folks who are, there can be a proposed boundary. So the developer could propose that you were part of that district for your subdistrict. But, your homeowners association would always have the opportunity to let us know that you prefer not to be part of that at this time, your systems are all okay and all of that kind of thing. We do that all the time, is change boundaries a little bit. I just confirmed that. So the Commissioners would hear you saying that.

Ginny Schmautz: I guess I'm just leery, because of the way this was all set up to begin with, you know, it seemed like it was stacked against us homeowners that live there already and we're in the kind of the same scenario. Somebody else might control our fate and we might have no voice. So, that what I, that was my question. I've put my two cents in.

Chair Curtiss: Thank you.

Kandi Matthew-Jenkins: Kandi Matthew-Jenkins. I am a citizen of the City and the County. I'd like to clarify some terminology before I make my comments. One, there is no such thing as Federal dollars, State dollars, City dollars or County dollars. It's all our dollars and each and every one of you, except for the man from HRD, lives off of our dollars, okay, so it's not your money, it's our money, okay, let's not forget that. So when somebody says it's not coming out of City taxpayers dollars, it's coming out of Federal dollars, it's all in the one same bucket. Now, first of all, the reason why this is going on and I firmly believe this as I did run for mayor last year, is that Mr. Kadas would love to see this area annexed because it brings more money into the City coffers. Now if you want to say that's not true, that's fine, but it is. I don't appreciate the Mayor of our City trying to bribe my neighbors in the County with City taxpayer dollars, not your dollars, not the Federal government's dollars, but people who work for a living and I understand you work for yours too and I understand that you pay taxes too, but that's just double and triple taxation, as far as I'm concerned. The basis here is money, not concern for water and Jim, I don't need to hear about the aquifer anymore nor do I need to hear about the wastewater treatment plant that's being built up to 12 million gallons a day, that has all, is also going to be taking on East Missoula waste that's taking on more waste from the City limits because of the building that's going on there and that there are 70 miles worth of leaking pipes. And yes it does leak out into the aquifer. Missoula pollutes the aquifer. You can argue about it all you want, you can put forth all your arguments and all your statistics, but you can't make that go away. There is a lawsuit called the PEER lawsuit that is being fought against the taxpayers of Missoula with taxpayer money because one very brave man decided to tell the truth. And the truth is that the wastewater treatment plant cannot handle what it's already got. Now you can argue it and argue and argue, but those are the facts and I do not see that these people out here that probably make \$20,000 to \$30,000 less than all of you are being paid, want to deal with an outdated, non-working sewer treatment plant. It has been proven over and over again, you can ignore it. Now, the only way to deal with this situation is to get an Environmental Impact Statement done that was ordered years ago. And if you want to cry sole source aquifer, let's see what we got it on, one event up the Rattlesnake of giardia. Now this has been going on long enough, enough people are getting hurt on a constant basis, you guys don't have any feelings left for the taxpayers and I'm getting tired of it. I get tired of working for you guys to tell me lies. Now, another point I do have is that I'm wondering about the contractors. How many contractors are you going to get bids from and are they going to be the same contractors that you use every single time, the ones that control the City and the County building, or are we going to see some different bids come in and how much time do they have to bid. I'd sure like to see that done. So, and as far as El Mar is concerned, if you are responsible for something as a human being, you are responsible for it and the County took that system over and if it's gone down, it's your fault.

Bruce Parks: Hi, I'm Bruce Parks, 1580 Crest Haven. First of all I had a question regarding the Interlocal Agreement. The money that the City is, the one million dollars that the City is loaning. It states here in Section 5.05.c, the City shall require a contribution equal to the per acre cost to the original district. This contribution less a 10% City administrative fee, shall be transmitted to the County and used to pay an RSID. I just, could somebody explain that to me.

Chair Curtiss: Yes, that's for the, once they've got their million plus the interest back, any new property or additional EDUAs that come into the district, the money will go to pay down, but because this system, once it's completed, is given to the City, they get a 10% administrative fee, that's kind of a standard practice. So, if you added a new house after the million's been paid, it's \$1,488, they would keep \$148 and the rest would pay down the bonds.

Bruce Parks: I understand. It's basically my point. The City is making money on it, just to answer a question that was asked earlier. And the rest of mine is basically on some questions on the Haven Heights, like, following up what Ginny

was saying. One of my questions, the Haven Heights, I better put my glasses on here, the Haven Heights pumping station is over in the Snavelly property and I understand that this is all done, you were saying the boundaries were determined by the slope of the land, Dan. I'm going to kind of go in reverse of what Ginny was saying. If that's the case, if the boundaries are by the slope of the land, then why wasn't the Snavelly property, including the 75 acres between us and them, and the Haven Heights area all included in one subdistrict.

Dan Harmon: The question being asked is over on the west end of the district, there's a smaller lift station called Haven Heights Lift Station that's right here and most all of you are familiar with this area, the grade of the land continues to drop and in reality you can actually, by gravity, kind of run around the corner here and come right on back into this lift station. So the question is, is why did we put the lift station here and that is because there's also another boundary besides the topography that was used for dealing with the whole area and that is the Service Area boundary that was established during the City of Missoula's Wastewater Facility planning, some people even called it the Growth Management Boundary, and that's this jagged line all the way along the west end of the district. And so we stopped the service at this point, right on that boundary.

Bruce Parks: Oh, I'm sorry, my question was, was why wasn't Haven Heights, the Snavelly property and the 75 acres in-between them all joined as one subdistrict because the lay of the land, as you said earlier, is used to determine subdistricts, why were they all three included as one larger subdistrict.

Chair Curtiss: I believe the Snavelly property, that 98 acres, annexed in after we gave out those first numbers, is that right, for the subdistrict estimated subdistrict cost.

Dan Harmon: No, the Snavelly ground was part of that, I'm not sure ...

Chair Curtiss: Is it part of it.

Bruce Parks, Dan Harmon and Ann Mary Dussault has a brief discussion at the map to discuss the boundaries.

Bruce Parks: Okay, I see by your map that it is actually one large district, so Ginny to answer that question, we are right now included, Haven Heights, the 75 acres and the entire Snavelly property is all added as one larger subdistrict.

Ginny Schmautz asked a question but did not use the microphone so it was inaudible.

Bruce Parks: Well, it isn't right now, I'd like to see some more accurate figures, I'm going by the figures that were given to me today. I'm very disappointed when I see these subdistrict costs and subdistrict names, scenarios, I know they're just estimates, that the Washington area for development and the Snavelly area for development weren't included. We have Tipperary, El Mar, Golden West, Mullan Trail. But the areas to be ...

Chair Curtiss: That's because we don't, we don't plan to do a subdistrict for Mr. Washington, he would put his pipes in as he developed, so that would be his own expense. So if he wanted to form an RSID for it, that would just be paid for by the homeowners that are in there, it's ...

Bruce Parks: I see. That's going to become complicated in the Snavelly, Haven Heights, because Snavelly is an area where it's going to be subdivided on its own but it's also mixed with a group of current homes. I'm curious ...

Chair Curtiss: And we often, when there's a new subdivision, require them to dry lay the pipes so they're ready.

Bruce Parks: Boy, as you should, I'm a big advocate for that. But I am curious to know how this is going to happen, how we're going to mix the two in one subdistrict.

Chair Curtiss: And I think that's what we just tried to address with Ginny, is that the subdistricts that we drew up and tried to give some estimated numbers for, we gave high numbers, we, a lot of times the subdistricts are designed because we knew we had right-of-way down the middle of the road and that's the most expensive thing to do would be to put pipe down the middle of the road and have to repave it. So, there ...

Mike Sehestedt: Jean?

Chair Curtiss: The subdistricts would be totally separate issue in the future.

Mike Sehestedt: I think I can respond to your question. It's nowhere written in stone that when the time comes to create, we're showing subdistricts here as drainage basins, and as we've said and I'll say again, they are to kind of give people in a particular area the very worst possible news. Haven Heights is going to be complicated. I would expect that the existing homes won't be sewered until there's been development down below them. Currently, I think that that property is in at least three different ownerships. Snavelly owns I believe, or owned at the last word I had, was the yellow piece that shows as an appendage on Exhibit 4 and then there are three fairly large tracts that were once Phillip Miller and each of those tracts has passed into separate ownership now so I think we kind of await the development pattern there and it may well not make sense to include the existing Haven Heights homes in a district with new development down below. I think I hear your question, it's a very legitimate question and it's one that would have to be resolved somehow before there was any movement on a Haven Heights subdistrict.

Bruce Parks: Well, the reason why I'm bringing it up is because the Haven Heights pumping station is so far from the Haven Heights, it's actually River Heights is the legal name, but, subdivision, it's so far from it I think that's why it drives our costs to be the highest in the entire area all of a sudden, when we only have listed 48, counted 42, homes in the area.

Mike Sehestedt: I think there are, my guess is there are 48 lots with 42 homes constructed on them in those subdivisions, but I'd have to go count them again to make sure.

Bruce Parks: Yeah, actually, they're all filled up except for the 25.

Mike Sehestedt: Okay, so that may be why those three show up.

Bruce Parks: Well figure, using those figures, I'm coming up with a full price, worst scenario, subdistrict cost for the Haven Heights residents of as \$29,122 per home, plus the \$1,488, that's the subdistrict costs only, plus the \$1,488.02 backbone costs, plus whatever, what would the hookup fee be.

Mike Sehestedt: Well, that, oddly enough that's capitalized in the subdistrict costs. I mean, that's, the City's connection fee is part of that subdistrict cost. I, you know, we can ...

Bruce Parks: So, \$30,500, worst case scenario.

Mike Sehestedt: Well, I think that that, and I'd have to go over your math, I was just doing something along the same calculation, saying okay, we've got, I was saying we've got 48 two-acre lots, if we have 75 blank acres and we divide them into two-acre lots then I was dividing that number into the Haven Heights subdistrict costs, I was coming up with something I didn't like very much, which was about \$16,000, but I'm about half of what you are, so maybe we can sit down and cipher together.

Bruce Parks: Actually, the majority of the lots in the Haven Heights area are one acre lots.

Mike Sehestedt: Well, in that case, you'd get 75 additional lots if that ...

Bruce Parks: But we don't want to subdivide any further than where we are.

Chair Curtiss: No, I think he means the piece to the west.

Mike Sehestedt: There's 75 blank acres, if they get subdivided to basically a one-acre density, then we'd be dividing that subdistrict number by the new lots plus the existing lots, and that would give us that number.

Bruce Parks: I don't want to take up any more of their time.

Mike Sehestedt: You and I can do this.

Chair Curtiss: I think the Commissioners all agree that we hear your concern there in Haven Heights and it probably will be better to maybe not lump you all together, but we would look at that at that point.

Bruce Parks: Actually, it might be better, if it's going to cost, if it's going to cost me \$30,500, which I mean things are looking like it's getting better, using the figures I got from you today, is \$30,500, plus the fact that in 14 years, I can be annexed to pay that amount, yeah, 14 years, plus it can happen sooner if there's a 50 plus one percent. Now how I read it in here, it's 50 plus one percent at the time that this goes through, so any subdivisions that come in, any new building that comes in is not counted, it's the current plumbed homes that are there right now.

Chair Curtiss: Right, there are approximately 1,000 homes out here, so 501.

Bruce Parks: Theoretically, in five years, 50 plus one percent could happen. We could be annexed and I could owe \$30,500, worst case scenarios.

Bruce Bender: You'd have to have the collection system, you'd have to be connected to City sewer.

Chair Curtiss: So, if 50% of the homes turned over but the pipes, if you didn't have your subdistrict done at that time, you wouldn't be annexed.

Bruce Parks: Well, I think.

Chair Curtiss: Or you wouldn't be paying that.

Bruce Parks: No, I would be paying that, because if we were being annexed, I think the City would require us to pay that. The City would require us to hook up to the City sewer if we were being annexed. Not correct.

Mike Sehestedt: Well, first of all they can't annex you and second, you just heard lots of people testify that they've got people that they've annexed in the City, particularly in the Rattlesnake, that they haven't yet compelled to hook up. It's not automatic.

Bruce Parks: That's true, 2,400 homes currently. But worst case scenario, we're still looking at \$30,000.

Mike Sehestedt: Actually, if you're looking at 75 blank acres developing at one home per acre, same density as yours, that puts us to right about 120 homes in the area, that puts you to about \$11,000 a unit, which is still a real large number, but it's a whole lot less than \$30,000.

Bruce Parks: Personally, I would like to see the subdistrict with the pumping station being as far away as it is. I would like to see the Snavely property stay in that subdistrict, because if we go a house an acre or a house every half acre, that would help us.

Mike Sehestedt: That is what I would anticipate that this subdistrict would not be created because, won't be created until there are lots of additional houses to share the cost, but if that 75 acres is included and assessed on the same basis as the existing houses and I'll just say one per acre if that's what you say the lot size is, 75 additional houses will bring, and when I say it brings it down to \$11,000, I'm not pretending that \$11,000 is a small number. It's just a much smaller number

than the \$30,000. But you and I can sit down and you can check my math and I'll check yours and we can decide between us.

Bruce Parks: Yeah, another hundred from Snavely's would bring it down even that much farther.

Mike Sehestedt: Well, if that is, if that property is in addition to the 75, then that would be additional housing.

Bruce Parks: Thank you.

Chair Curtiss: Thank you.

Commissioner Evans: Thank you Bruce.

Jim Carlson: I think it's important too to understand that if that land develops, a lot of developers put in their own pipes and the City would, if a pipe larger than 8 inches is required, the City would require that they install that and pay for the upsizing, let's say to a 10 inch pipe and then you may be able to connect to that from the top end of that fork, the City connection fee only, and which is a very likely way that's, because that's the way developers that want to deal with SIDs in the fees and bidding and, you know, all of the costs that are involved in that. So, if that land to the, that's downhill of you develops, it's likely that you'd be able to hook onto that system for the cost of the normal City connection fee.

Chair Curtiss: Okay, next.

Vicky Bostick: Hi, Vicky Bostick. This whole Haven Heights question has really muddled the waters for me, I guess, in trying to understand 6.02 in the Interlocal Agreement. And, so, I guess, and the best I can do is try to make my own scenario and see if that makes me understand better. If my subdistrict, if we have, for an example, one property owner who decides he wants to subdivide and put homes in and they ask for connection to the sewer, then it's my assumption that then that can go forward with the City and we'd have to go through the whole protest process with the City and their 75% in order to have that.

Chair Curtiss: If you were annexed into the City at that point. Otherwise you would be doing the County method.

Vicky Bostick: So we would have to be annexed into the City before that would take place.

Chair Curtiss answered affirmatively.

Commissioner Evans: For the City rules to apply, you have to be in the City, Vicky, otherwise the County rules apply.

Vicky Bostick: So for the annexation to take place, then we still go back to the County rules of the 50% plus one.

Commissioner Evans: In the whole district.

Vicky Bostick: Okay, that's what's been real confusing to me tonight about this particular.

Chair Curtiss: Right. So the City can't use the sewer method of annexation for any of the areas until ...

Commissioner Evans: Until one of those three criteria have been met.

Chair Curtiss: Until the five, either 2016, or 501 houses have changed hands, right, about 500.

Jim Dougherty: Commissioner Curtiss, my name is Jim Dougherty.

Commissioner Evans: Jim, can you get closer to the mic so I can hear you better.

Chair Curtiss: Just tip it a little, maybe.

Commissioner Evans: Thank you.

Jim Dougherty: My name is Jim Dougherty, Barbara, Bruce. I have just a question, I'm not in the east-west corridor, I'm kind of in the north-south. My question is, is on here, the 5.05, the extension of facilities, I think Bruce you could probably answer this. The, Ann Mary brought up that your hookup fees for the future growth from the airport to the Wye, after your million dollars, those hookup charges would go to retire that indebtedness of a million dollars. That is correct. For the City's million dollar investment.

Bruce Bender: That's with Option 3. If Option 3 is created, then the City would loan the million dollars and that is one of the methods the City could be repaid back would be services in which is called the extension area, the service area, which has a very specific boundary that would be in this Interlocal Agreement, so if somebody extends their collection system and can be served by the pipes that are built in the RSID, and they're outside the RSID, they would have to pay that same rate if that system has a collection. Now the stuff to the north, you know, like up to the Wye and stuff, they would be building another interceptor, they would not be part of this Extended Service Area cuz they have to build their own interceptor pipe.

Jim Dougherty: Correct.

Dan Harmon: Yeah, the Extended Service Area for Option 3 is all the areas that are shown in kind of a light blue, I guess, or green color, so, what Bruce was saying is, is that everything that would go up north to serve the airport right now is not in that Extended Service Area.

Bruce Bender: Because they'd have to build their own interceptor, they'd have to continue that interceptor pipe that would be built in this first phase and run it all the way up to the Wye or whatever.

Jim Dougherty: Okay. Well, I'm going to meet with Dan in the morning and we're going to discuss that in some detail. I have a little problem with that. I'm not going to take up that kind of time, okay Bruce.

Chair Curtiss: Thank you. Are there further comments?

Unidentified speaker: I just couldn't resist. I was going to sit down but then I decided no. Oh, I guess ...

Chair Curtiss: Can you give us your name first please?

Dalton Tessier: Dalton Tessier, I live on Lazy H Trail which might be Haven Heights something, I don't know. I do know it's going to cost me a lot though unless you guys really come through. So, but I do, would like to congratulate you because you've moved from where you were, so I do believe progress is being made. I still believe you have the cart in front of the horse cuz you really don't have the plan out there and the need is not really well demonstrated. The area that I concern was mentioned once before and only once, but in that 6.02.a stuff, you have 'or' and 'or' and that second 'or' should be an 'and' cuz if you can't commit to coming up with money then I shouldn't have to commit with coming up with my money, so I think that funding part is really critical and I think it's being taken too lightly and I can appreciate you have no budget for you all to go to Washington, D.C., and I know that Barbara works really hard at her part, but I don't feel like there's a real commitment on the part of the other two Commissioners. So that does concern me.

Chair Curtiss: We actually considered, but decided it was probably a better use of, and Bill went to a difference conference because sewers aren't the only thing that we need to fight for as County Commissioners.

Dalton Tessier: Well, being, I know that you live in the City and you don't live in the County so that makes me nervous.

Chair Curtiss: Well, the City is in the County and I own other property in the County, so.

Dalton Tessier: Well, good, but, the bottom line is we need a commitment to the money. The price is still too high, you really have just kind of shift the numbers around a little bit and you're making the Option 3 look certainly more attractive than the other options, but I would say why does the option have to stop there. Why don't you just expand the whole thing out to the Wye and include everybody and then it gets divided up even more instead of backing it up and dividing it up less and having additional costs, so, I just don't think you've look at the big picture that well.

Commissioner Evans: Dalton, may I say a couple of things. First, I appreciate your compliment. Secondly, it doesn't take all three of us sitting in the Congressional office to convince them how desperately we need this help. Jean has contacted Max's office, Bill has talked to Max's office, they know from all of the Commissioners that we need the help, so, it isn't that they aren't going, they've signed the request, they've made it clear that they would like to help you as well, I just happen to be the one that had the ticket.

Dalton Tessier: Lucky you. I still request commitment on your part, as opposed to 'I'm going to try hard.'

Chair Curtiss: Right, and I think that the commitment that we will not initiate until there's 55% of the money unless those other two things happen that are circumstances beyond our control is about as committed as we could be.

Vicky Bostick: Vicky Bostick. One more quick question, or comment, and I will quit for tonight. Barbara is going to speak for us but I guarantee you from the things that I've done, I've been on the hill and I've spoken at both the State and National level, the Federal level. Our voices do count and I guarantee you that Barbara or the Commissioners going by themselves will not speak as well as everyone one of you getting on the phone and calling or e-mailing and putting your voice behind what she and they as a group are asking for. We need to do our part in this particular situation as the Coalition and everyone that lives out here and let them know that we are behind looking for the money that will help, however we go forward. We all need to speak and help that part of this process because it does make a difference. I have heard Max Baucus in a meeting or in a, actually, a convention, say that he very seldom hears from the people who will help sway what he has to do. We need to get on the phones and we need to help them so that when they go into their committees, they can say, 'I have heard from 500 people in my State that need help.' It will make a difference.

Commissioner Evans: I appreciate that Vicky, and I would like to say on Max's behalf because, and recognizing he's a democrat and I'm a republican, that doesn't matter. He has personally called Senator Mahlum to find out how this project is coming. Nobody made him make that call. He does care enough to be checking on it. But I'm sure it would be nice when they go to committee to be able to say, 'gees, I got 200 letters last week on this subject.' I agree with Vicky.

Chair Curtiss: Right. And I also have heard Senator Baucus say the same thing, that it does make a difference to hear from constituents other than just elected officials. More comments.

Unidentified speaker: I'm pretty sure everybody wants to hear from me, right?

Chair Curtiss: Right, but we need to know your name, sir.

Mike Flynn: My name's Mike Flynn and I live at 2275 Roundup Drive. And I had a list of 5 issues that I wanted to discuss ...

Chair Curtiss: You might want to hold that mic so you don't have to keep bending.

Mike Flynn: I had a issue, a list of 5 issues here, but somebody spoke about every one of them, so I don't have anything to say, except, 10% is too damn much money to administer the RSID. I'd like to have the job for 10%.

Chair Curtiss: It would give you gray hair, Mike.

Bruce Bender: The rationale behind the 10% comes from the numbers that the City is putting in \$800,000, we're putting in the million dollars in order to deal with the Equivalent Dwelling Unit, but on top of that we're putting in another \$800,000 for oversizing the system. Now this system, if we did not put that \$800,000 in it, this system could not serve anything in this blue area. These pipes are dependent on, that area cannot be served unless you put \$800,000 into it, so \$800,000 versus the \$6 million RSID is actually more than 10% of the cost, so actually the City, the County did a good job of negotiating that, because what we started out with was that we should receive, in the extended area because we are enabling it to happen with the \$800,000, at that basis. So, they negotiated, well, but we want to have help to the RSID and so that's how we came down and actually the oversizing was less, it used to be a \$7 million RSID, we were putting \$700,000 in, 10% match, that kind of number. Now we're actually putting in \$800,000 and this RSID is \$6,000,000, so actually the number, it's changed.

Chair Curtiss: Mr. Flynn?

Mike Flynn: Yeah, my name is Mike Flynn, I live at 2275 Roundup Drive. How many acres are in that blue area? 2,000? 3,000? If the yellow area is 2,100.

Dan Harmon: It's really close to 2,000 acres, but ...

Mike Flynn: That's \$6 million bucks.

Dan Harmon: Ask me tomorrow, I guess, and I could tell you.

Mike Flynn: 10% of that is \$600,000. That's a hell of a lot of money after the RSID is retired and the land ...

Chair Curtiss: No, that's not after the RSID's retired.

Mike Flynn: If the land in that blue area doesn't come on until the RSID is retired ...

Chair Curtiss: Then they won't collect any.

Bruce Bender: We won't collect any.

Chair Curtiss: It's only during the time that the RSID ...

Mike Flynn: Okay, say, so say 300 acres of it comes on before it's retired, that's a thousand bucks, so, or that's a million bucks, so, it's a hundred thousand to administer a million bucks, that's too damn much money.

Chair Curtiss: Okay, we got about 20 minutes, is there further comment?

Ted Stetler: My name's Ted Stetler, I'm one of the owners of Sunset Memorial Gardens.

Chair Curtiss: Could you speak closer to it, please Ted.

Ted Stetler: Bend down, okay. One of the questions that I'm not clear on, if I heard right, the statement was made that you're not trying to force people to subdivide their property. But under plan 3, if you have, say, a 12 acre piece of ground and you have a house on it, the fee is \$1,500. If you have a 12 acre piece of ground with no building on it, the price is \$36,000. I have a little trouble with that. Could I be given some kind of rationale for why that makes sense, cuz it doesn't to me.

Chair Curtiss: Well, it makes more sense than doing the square footage all the way around. We have to, by law we had to, there has to be a definition of difference and maybe Mike or somebody can explain this, but, bare ground and land with houses on it have to be in a different way and we did the acre and less the same as if it had a house on, because it's assumed that that person bought that to put a house on, not a horse on, because a horse eats more than an acre, but if somebody's like to explain the funding, why we have to do the assessment method.

Ted Stetler: Well, wasn't the acre a requirement for sewage septic?

Chair Curtiss: Right, if you have an acre without sewer you can put a septic on one acre, by State law.

Ted Stetler: Or if you use a common water system, you can put more houses on one acre.

Chair Curtiss: Two.

Ann Mary Dussault: Could you ask your question one more time, please, so I'm sure I'm clear on what you're asking.

Ted Stetler: What I'm asking is what is the rationale that discriminates between the same piece of ground costing one person \$1,500 and someone else \$36,000, because there's one dwelling on it, or one business that would require one sewer hookup.

Ann Mary Dussault: The statutes allow for different methods of assessment and an Equivalent Dwelling Unit Assessment is one methodology, but you can only use that where there's a plumbed unit, so you can't apply that methodology to a parcel of land where there is not a plumbed unit, except under the threshold for a single dwelling unit, which is one acre. So, the bare land over an acre in the whole district is assessed on what's called the Area Assessment methodology. Another alternative that we looked at in the very, very, very beginning, was on taxable value and that didn't make any sense looking at everybody's taxable value and using that, because the cost to the homeowners just rose exponentially. So, there are simply limitations in how properties can be assessed and I don't know how you would take a 12 acre parcel without a plumbed unit and give it one Equivalent Dwelling Unit Assessment.

Dan Harmon: I guess I wanted to add one other thing to that, in that, under the method of assessment we took and split out the developed or EDUA parcels from the undeveloped and it's about a two-third/one-third land area and also costs the district that those two entities are carrying, one-third of which the cost of the backbone system was being carried by the EDUA properties of the developed properties, but I think one of your questions is why such a large disparity between this developed parcel versus an undeveloped and it's important to remember though that there's also a million dollars in City funding that's directed specifically to buy down those parcels that are associated with a current plumbed unit on them.

Ted Stetler: But the undeveloped piece, if it doesn't get developed, has paid quite a bit of, you know, it's not an equal share. We're talking about reserve land here.

Dan Harmon: You are correct. The bare ground does pay more. There's a big question mark and that is will that bare ground have just one house built on it or will it have four houses per acre. We don't know which way that will go.

Ted Stetler: That's the assumption then, that that ground will get developed so that that can be, some monies can be paid for hookups and taxes and things like that. That's the assumption why you justify it's okay to use that kind of a disparity.

Chair Curtiss: Mostly, the State law says we have to do it that way.

Ann Mary Dussault: The issue Ted on the parcel that you're talking about is that it's not platted for gravesites and the land that you own that is platted for gravesites is not assessed at all and the parcel that you're talking about is not platted for gravesite, it is simply a piece of bare land 12 acres in size that might be used for all kinds of purposes in the future, so I think that's the specific answer to your question about your particular piece of property and how different ones were dealt with. Some received an EDUA, some were not assessed because they were platted for gravesites and the bare land that is undesignated legally is assessed on a square footage basis.

Ted Stetler: Well, sure, well some of that land, of course, is going to be developed. The people who own those big pieces want to develop it and you folks want them to develop it too, I understand that. But even the land around the cemetery, you know, right adjacent to it between the funeral home and the mausoleum and our caretakers house, that's considered square foot land that's assessed as well, which is kind of ridiculous, but I don't mean to get off just on my piece of ground, but the only way then you could recover would be to subdivide that property, if we had to pay that fee now. If I kept the ground and did in fact use it for cemetery and I paid the thirty-some thousand, whatever the assessment is, is there some vehicle whereby I could get that back, because people in the cemetery don't flush. No, okay.

Chair Curtiss: No.

Ted Stetler: Thank you.

Chair Curtiss: Unfortunately. Okay, we need to take just one or two more folks with short comments so that we can make sure we get out of here by 10:00.

Rick Kamura: Hi, I'm Rick Kamura of 1715 Homestead Drive. What is the estimated time for construction to begin with Option 3, if it does go forward.

Chair Curtiss: If you look at the handout that we gave you before, we would begin construction this fall.

Rick Kamura: And, with Barbara going to Washington for Federal funds, what is the time for knowing what Federal funds are available.

Commissioner Evans: When I come back I'll have some idea what the committee, what the staffers feel they're offered, that they're liable to be able to try for, and we may know ...

Rick Kamura: So, it might be like in the spring or this fall or ...

Commissioner Evans: Oh, no. We will likely have an indication and I'm going to put that in capital letters and underlined, an indication of what they think we may be able to get but the money itself won't be there until next year. They have to appropriate, they will vote on it but then it has to be appropriated.

Rick Kamura: But isn't there a way to get the two times to jive?

Chair Curtiss: The, all the Congressional delegation has signed a letter saying that they would know for sure this fall, but remember that the numbers that we're giving you for the backbone are not reliant on that Federal money, that will all be gravy. If we get the Federal money, we want it to go toward those first three or four subdistricts and then any extra would pay down your cost, so instead of paying \$1,488.02, you might pay \$1,200 or something.

Commissioner Evans: I think we'll know by June what our likelihood is and their Federal fiscal year begins in October so we may not have the cash in hand then, but I think we'll know by this fall.

Chair Curtiss: And it won't be on your taxes until November of 2003, so that gives us time to put the Federal money in the formula before it goes on your taxes.

Rick Kamura: Okay, I was just thinking it makes more sense to, don't start digging until we actually know what our worst case scenario is, is all, I mean it just makes sense. Another thing too, I'd like to say we appreciate you coming out here during the week night when people can attend versus the day before a major holiday which you did back, the day before Thanksgiving, in the middle of the afternoon. Thank you.

Commissioner Evans: Thank you Rick.



Chair Curtiss: Thanks.

Jim Mocabee: Uh, Jim Mocabee, 1540 Topaz Drive. Just one quick comment. You know, I, I, I truly, I'm looking for reasons to support Option 3 and really I, in reading the Interlocal, there really isn't anything there for me to want to support it from. It makes sense that it, there's just nothing there. By you also having put the two options, Options 3 and Option 4 together, however, I really think you've given unfair burden upon the El Mar Estates residents because once the golf course is plotted and you take the fairways out from paying their assessment and all the people in El Mar continue to get, have to pay all their assessments, I think it's very unfair, I think everything has been unfair in this whole process. I really think you need to delay this. I really think you need to rethink this and come up with something different. Thank you.

Chair Curtiss: Thanks Jim. Is there further comment? Did either Commissioners want to make any statements tonight?

Commissioner Evans: I guess I'd ask you to take a good neutral look at this and as Jim said, try and find a reason to support Option 3, because I think it's the, it's certainly far better than the first option that we gave you. I think it's as good an option as you'll probably get, money-wise. We will try very hard to bring you home Federal money to help cut your costs even more. I do think that the sewer is an important thing. I think that we all ought to care enough about our aquifer to want to protect it.

Unidentified speaker: I have a question.

Chair Curtiss: Yeah, let's let Barbara finish.

Commissioner Evans: Can I finish first. And I think it's also fair to the folks in Option 4 East and 4 West who want to develop to not say to them you can't develop. Now it was said recently that their project has not been turned in. Well, you need to understand how a project is done. First, someone gets an idea they want to do something. It is a very long process from an idea to an accomplished plan. In the case of the golf course, I think it's like three or four years they've been working on it. 'Til they have a project done and ready for someone to look at, it isn't ready to look at. Now I was told recently that the drainage and grading plans have been approved by the County Surveyor. Now that's one of things you do before you take it to the Planning Office. It will be submitted to the Planning Office, I understand, very soon, then it will go either through the City or through the County, depending on whether they decide they want to be annexed before they go through subdivision review. So, it isn't that they've tried to keep their project away from you, it's simply the project. The process wasn't at the time where it was ready to bring forth. It's now ready to bring forth, I expect if you want to look at it, that'll be ready to be seen at the Planning Office before long. So, but they have a right to want to develop their land the same as you guys would have a right if you wanted to. I'm hoping you'll support Option 3. I'm hoping we can make it as financially feasible for you as is humanly possible, but I wouldn't deny you guys the right to develop your land and I won't vote to deny them the right to develop theirs. So, if they want to develop, I will vote for it unless there is some legitimate land use issue, but just simply saying someone else doesn't want to develop theirs so we won't let them develop theirs, I can't do that. First I don't think it's legal and second I don't think it would be moral.

Chair Curtiss: Would you like to.

Dave Bauer: Dave Bauer, 119 New Meadows. And you guys talk about the aquifer over and over and over again, for months now we've been talking about this is a water quality issue. How could you even bring up Option 4 and leave the whole middle out and still call it a water quality issue. Let's call it a golf course issue and that's what it is. If we were to take the golf course out of the picture, we wouldn't even be here right now because be a non-issue and everybody on that panel right here knows it because it would go to protest and it would fail in protest so let's just, let's call an apple an apple and an orange an orange, instead of calling it a water quality issue.

Commissioner Evans: Dave, what I'd like to say in regards to that is that if the golf course weren't wanting to develop, we probably still would be somewhere at least with El Mar, and then their costs would be like \$3 million.

Dave Bauer: Yeah, well, that's what I want to talk about. And my personal opinion, I can't talk about anybody else, I'd rather pay four times as much and get ours repaired than be in the City limits. Okay. Why wasn't the EPA grant for El Mar Estates ...

Chair Curtiss: Dave, can you talk a little bit closer to the mic, I'm sorry, but we need to record.

Dave Bauer: Why wasn't the grant from the EPA used on the El Mar Estates sewer. Why has it never been used to repair it? You talked about an EPA grant.

Chair Curtiss: Right, because we were looking at the options and it's cheaper ...

Dave Bauer: And that was two years ago.

Chair Curtiss: Right.

Dave Bauer: And if you knew it was failing, why didn't you use that money to make repairs.

Chair Curtiss: We were trying to make the best decision for El Mar that saved you the most money.

Ann Mary Dussault: Dave, in the event the only option is to remediate the El Mar/New Meadows system, then those Federal dollars will be applied to the cost of remediating the system.

Dave Bauer: Well, I let you guys go home, it's been a long day. Thank you.

Chair Curtiss: And Dave, here, since you said you didn't get the letter, I'll give you mine so we don't have to mail it. Commissioner Carey did you want to say anything? Okay. Thanks to all of you for coming and the hearing is now closed. We are in recess.

There being no further business to come before the Board, the Commissioners were in recess at 9:55 p.m.

**WEDNESDAY, MARCH 13, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Chair Curtiss attended the Missoula Forum for Children & Youth held at the University of Montana's Continuing Education Building.

Claims List – The Commissioners signed the Claims List, dated March 12, 2002, with a grand total of \$17,479.13. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 12, 2002, with a grand total of \$11,766.88. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 12, 2002, with a grand total of \$5,469.98. The Claims List was returned to the Accounting Department.

CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, no items were signed.

Request for Action – The Commissioners approved a request from Emergency Services Director Jane Ellis to designate the Disaster Planning Committee as the coordinating committee in Missoula County for all WMD grants.

Request for Action – The Commissioners approved a request from Emergency Services Director Jane Ellis to revise the voting membership of the Disaster Planning Committee to include representatives of the following: Missoula County Sheriff's Office; Missoula Police Department; Missoula Rural Fire; Missoula City Fire; all other fire jurisdictions; Office of Emergency Services; Missoula City-County Health Department; Emergency Medical Services; County Public Works; City Public Works.

Other items included:

- 1) The Commissioners approved additional funding for the Animal Control facility in an amount not to exceed \$105,625 from the CIP for Fiscal Year 2003.
- 2) The Commissioners approved (with Commissioner Evans Abstaining/Voting "No") a request from Chief Financial Officer Dale Bickell to prepare a budget amendment to pay \$1,500+ for the three-month interim period (April, May, June) for the Missoula County Employee Bus Passes. This action will allow the contract to be in line with the current fiscal year, as the Missoula in Motion subsidy expires March 31, 2002.

Following the Public Meeting, the following items were signed:

Agreement – The Commissioners signed an Interlocal Agreement, dated March 13, 2002, between the City of Missoula and Missoula County with respect to the design, construction, operation and maintenance of the Mullan Road Corridor Sewer Project and superseding the earlier agreement with regard to the Mullan Road Corridor Sewer Project, contingent on final review by respective Counsel. All terms and conditions are as set forth therein. The document was given to Chief Administrative Officer Ann Mary Dussault for further handling.

Agreement – The Commissioners signed an Interlocal Agreement, dated March 13, 2002, between the City of Missoula and the Missoula County Airport Authority regarding participation by the Airport Authority in the Mullan Road Corridor Sanitary Sewer Project and superseding the prior Interlocal Agreement between the parties regarding the Mullan Road Corridor Sewer Project, contingent on final review by respective Counsel. All terms and conditions are as set forth therein. The document was given to Chief Administrative Officer Ann Mary Dussault for further handling.

Resolution No. 2002-025 – Chair Curtiss signed Resolution No. 2002-025, dated March 13, 2002, relating to Rural Special Improvement District ("RSID") No. 8474 (Mullan Road Corridor Project); declaring it to be the intention of the Board of County Commissioners to create the district for the purpose of paying a portion of the costs of engineering, design, construction and installation of sanitary sewer trunk lines, pumping stations and force mains that will enable district property to connect to the City of Missoula's sanitary sewer collection system and wastewater treatment plant and financing the costs thereof and incidental thereto through the issuance of RSID Bonds secured by the County's RSID Revolving Fund. The document was given to Chief Administrative Officer Ann Mary Dussault for further handling.

Resolution No. 2002-026 – Chair Curtiss signed Resolution No. 2002-026, dated March 13, 2002, relating to Rural Special Improvement District ("RSID") No. 8475 (East Mullan Road Project); declaring it to be the intention of the Board of County Commissioners to create the district for the purpose of paying a portion of the costs of engineering, design, construction and installation of sanitary sewer trunk lines, pumping stations and force mains that will enable district property to connect to the City of Missoula's sanitary sewer collection system and wastewater treatment plant and financing the costs thereof and incidental thereto through the issuance of RSID Bonds secured by the County's RSID Revolving Fund. The document was given to Chief Administrative Officer Ann Mary Dussault for further handling.

Resolution No. 2002-027 – Chair Curtiss signed Resolution No. 2002-027, dated March 13, 2002, relating to Rural Special Improvement District ("RSID") No. 8476 (West Mullan Road Project); declaring it to be the intention of the

Board of County Commissioners to create the district for the purpose of paying a portion of the costs of engineering, design, construction and installation of sanitary sewer trunk lines, pumping stations and force mains that will enable district property to connect to the City of Missoula’s sanitary sewer collection system and wastewater treatment plant and financing the costs thereof and incidental thereto through the issuance of RSID Bonds secured by the County’s RSID Revolving Fund. The document was given to Chief Administrative Officer Ann Mary Dussault for further handling.

**PUBLIC MEETING – March 13, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown, County Public Works Director Greg Robertson and Chief Administrative Officer Ann Mary Dussault.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$337,034.71. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): King Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Section 19, Township 14 North, Range 22 West.

Winona King has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The applicant did not provide the size of the current parcel which is located in Petty Creek, near Alberton, Montana. She proposes to create a parcel of undisclosed size for transfer to her daughter, Lynn Della, for residential purposes. She will retain an interest in the remaining parcel, which will be used for forestry.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Grantor	Grantee
Section 19, T14N, R22W	2001	76-3-207(1)(b)	Jay and Winona King	Dusty Rice, daughter

Jay D. King and Winona Cheatham King purchased the property in October, 1996 from Crown Pacific Limited Partnership. They previously used the family transfer exemption to create a parcel for transfer to their daughter Dusty Rice on October 13, 2000. She has subsequently transferred the parcel back to her parents on June 14, 2001.

Winona King was present and came forward to answer any questions the Board may have.

Chair Curtiss stated it was the Board’s responsibility, through the law, to determine if this was truly a transfer to a family member and not an attempt to the evade subdivision law. She asked if Ms. King intended to transfer this property to her daughter.

Winona King stated the property is 20 acres.

Chair Curtiss asked about the property that was transferred to Dusty then subsequently transferred back.

Winona King stated that Dusty was given the property but developed some financial difficulties and needed to sell the property. So Dusty would not be faced with capital gains taxes, the property was quit claimed back to the Kings prior to sale.

Commissioner Evans asked if Ms. King intended to transfer this parcel to her daughter.

Winona King stated that was correct.

Commissioner Evans moved that the Board of County Commissioners approve the request by Winona King to create a new 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.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

The motion carried on a vote of 3-0.

Chair Curtiss stated that Ms. King would receive a letter showing approval of the family transfer request. The approval was for the split of land only. It did not grant permission for a septic permit or anything else that might be necessary to build a home.

Hearing: Transportation Improvement Program (TIP) Project Proposals for FY 2003

Horace Brown stated that the Surveyors Office advertised for projects and received two bids.

The first project is the A.J. Memorial Bike Path in Frenchtown from Touchette Lane west to the Huson interchange, and about 0.25 miles east from the Frenchtown interchange to Mill Creek Road. Those are the areas proposed for more of the bike path. Frenchtown has raised \$20,000 toward the match for this project. This is a continuation of the project which will be built this spring.

The second project is from the Seeley Lake Historical Museum and Visitor's Center, near Highway 83, to do landscaping and install a parking lot and some other amenities.

Commissioner Evans asked if the Frenchtown walkway was as long as what the people wanted.

Horace Brown stated that was correct.

Chair Curtiss opened the public hearing.

Sandy Johnson stated she was Treasurer of the A.J. Memorial Bike Path. She presented a spreadsheet showing the money that has been raised over the past two years. Two golf tournaments have been held which raised \$4,200. Two carnivals have been held which raised \$3,100. One community garage sale raised \$1,600. Individual and business donations amounted to \$2,300. Raffles raised \$1,100. Donation jars throughout the community have accounted for \$1,500 and are ongoing. Football concessions totaled \$1,300. The Frenchtown School Third Grade class held safety fairs and raised donations in the amount of \$1,800. The Junior High Council has donated \$700. School sponsored donations have raised \$1,500. This project is important to the community. In the last two years since A.J. was lost, parents no longer allow their children to ride their bikes on the Frontage Road. They are deprived of riding their bikes and it is harder to get to the Frenchtown Pond. The residents wish to continue with this project and will continue to raise funds. They were granted non-profit status last fall and have applied for a grant from Fish, Wildlife and Parks. They will continue to look for more funds for this project.

Chair Curtiss stated that the community is to be commended for their work on this project.

Dennis Norman stated he lives in Frenchtown and is also the Cross County and Track coach at the school. The community has really stepped up for this project, with the help of Sandy Johnson. It is a daily event that people comment about this problem. It is of great concern. When he began coaching at Frenchtown 20 years ago, the kids could run on the road in either direction without any concern. In the last 5 years, it has become almost impossible. The last cross country season it was decided that the kids could not run on the road. There have been too many close calls and it is too unsafe to run there anymore. As a coach and community member, he supports this project and it is greatly needed. The high school has become a center of the community and there is nowhere the kids can bike in either direction to get there. Fish, Wildlife and Parks has been doing a lot of work at the Frenchtown Pond and will be installing a trail, but without connection to this path, it won't be that useful. Over the last three years, there has been a large decrease in the number of children riding their bikes on the road, parents just won't allow it. He won't allow his children to ride their bikes on the road. When drivers encounter a bicyclist now, they go so slow as to be dangerous. The community as a whole is really conscious of the problem. When the children do their bike ride fundraiser, they have to ask Scott Waldron from Frenchtown Fire to use a fire truck to slow the traffic. This is a community and school concern and something needs to be done. To complete the bike path would do a lot for the community. He thanked the Board for what has already been done and hoped for continuing support.

Commissioner Evans asked Horace Brown about the Clements Road walkway.

Horace Brown stated the projects today will fall in behind the other two that were approved last year, a part of the Frenchtown bike path and the one on Cote Lane, as well as the streetcar project. The walkway along Clements is done partly with CMAQ money and partly with CTEP money. It will be built before these two projects.

Scott Waldron, Frenchtown Fire District, reiterated what the other two speakers said. There are a number of new subdivisions coming in the area which contributes to the traffic on the road. Safety for the children is a big concern. There is no way to get from the west side of the community to the center of the community without using the frontage road or Mullan Road and neither have sidewalks.

Zoe Mohesky stated she was a board member with the Seeley Lake Historical Museum and Visitor's Center. She was available to answer any questions about the project. There is a lot of community support for this project. The plans include several parts which will enhance the visuals to the site and attract more visitors. It will offer an opportunity to learn more about the area and what to do when visiting. An itemized list has been prepared with estimated costs. There are a lot of fund raising efforts planned for this spring and summer to raise the matching funds for this project. Contractors and heavy equipment operators in the Seeley area have been very supportive and have offered their help.

Horace Brown presented a petition from Seeley Lake to accompany the information included in the packet.

Chair Curtiss asked if 'in-kind' donations could be used as matching funds.

Horace Brown stated they could not be used as matching funds but could be used to reduce the final cost.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners accept both projects and give the Frenchtown project first priority and the Seeley Lake museum project second priority. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Submission to Electors the Question of Authorizing a Two (2) Mill Levy for the Historical Museum in Addition to the Current Mill Levies**

Sue Talbot stated she was co-chair of the 'Yes to History' campaign. The other co-chair is Fern Hart. She thanked the Commissioners for their years of support to the Historical Museum, especially the extra support that has been given over the years – the restroom building under construction, the new sewer connection, \$25,000 a year for five years during the 1990s, which provided air conditioning, furnaces, fire suppression system, etc. It has been marvelous and they are very grateful. Without that kind of help, the museum could not have done what it did last year. In 2001, they had 36,893 visitors. In 2001, they gave tours to 3,096 school children. They thanked the Commissioners for the help they have provided in the past.

John Rimel, President of the Friends of the Historical Museum, thanked the Board for the opportunity to speak today. The Historical Museum is a County museum and it is important to remember that. Last year, the museum received \$64,409 in non-cash contributions and 205 volunteers who gave 6,240 hours of their time. There is great community support. Part of the two mill proposal is to set aside money for a capital improvement grant program to help small local community historical organizations such as the Seeley Lake museum get funding. He urged the Board to help them preserve the local history and help keep the community a place that people are proud to call home.

Ron Ewart, 521 Skyview Drive, stated he first read about this proposed mill levy in the paper a few weeks ago. He spoke with Fern Hart about the proposal and said he would come speak in support of the proposal. He is very much in support of the mill levy. The cost per average taxpayer won't be that much, about \$8 a year. Fort Missoula is a very special place. A friend has called it Missoula's Central Park. It is a place to take your dog or play ball and the centerpiece is the museum. It is fascinating and a great place to take the family or out of town guests. There are 32 buildings that the museum cares for on the grounds. If this is placed on the ballot then it will take some hard work to get the word out and get the initiative passed. He felt this would be a really good thing.

Gary Glen stated he was an alternate on the County Board of Trustees for the Historical Museum. In the past few years, the County has had some budget limitations and it has been a struggle to find money for the museum. He thanked the Board for the money that had been found. The museum has 32 acres and 13 historical buildings to maintain. There are 23,000 artifacts that Missoula residents have donated to the museum. It is a constant struggle to maintain and preserve all the grounds, buildings and artifacts. If the mill levy passes it will enable them to do a lot of routine maintenance that has been deferred for years. It will allow the museum to be open later in the evening and on Sundays. It will allow free tours to school children. The last couple of years they have had to charge for these tours. The educational programs and exhibits can be expanded. A recent survey showed that 88% of visitors rated the museum either good or excellent, but they wanted to see more lectures, more educational programs and more maintenance of the buildings. He thanked the Board for their past support.

Bob Tutskey stated he is Chair of the County Board of Trustees for the Historical Museum at Fort Missoula. If the County Commissioners allow this on the ballot then why would the voters vote for it? Because it preserves the past and provides a viewpoint that makes Missoula a wonderful place to live. It is equally important to have the museum for new and old residents of the County. This is an ever changing world and more and more new people are coming to the community. The Historical Museum provides the grounding that reminds people why this is a special place to live. He hoped the levy could be placed on the ballot and passed to provide a stable source of funding for the museum. He thanked the Board for their support over the years. He also thanked Horace Brown for his support in finding funding for the trolley.

Carson Vehrs stated he was a member of the Board of the Friends of the Historical Museum. He could go on and on describing what the museum is, but it is a very special, important place to many people. It is the repository for the culture, history and pride in the County and they wish to continue to be a repository for that information. They are in the business of educating, informing and entertaining. Education through the school outreach program and children's tours, education for those attending their lecture series. They are there to inform people who have questions. The news media often uses them for exact dates of historical events. Individuals seek the same kind of information. They are very much in the entertainment business. The 4th of July program, lecture series and other activities are examples. The charges are minimal, most are free of charge. The maximum charge is about \$2, or \$3 for a family, which is very affordable. It is one of the best entertainment values in the County. Through the County's support in the past, they have been able to maintain that and keep their doors open, but they could always use a little bit more. There have been many small projects over the years that did not have the seed money necessary to proceed. Only \$200 to \$500 would have been needed. The money that they have spent is usually 25 cents on the dollars. They work closely with the U.S. Army Engineers, their staff and equipment and the Missoula Correctional Office. Most of the construction has been completed by these folks and volunteers. A vote for history in June will make history and will define where the museum goes from here. He asked for the Board's support to place this on the ballot and the support of the voters.

Dale Mahlum stated he was a citizen of Missoula County and did not expect to be speaking about the museum today. However, he is on the Montana Heritage Commission which is charged with acquiring and maintaining properties in Montana that have a historical significance, such as Virginia City and Nevada City. The Fort Missoula Historical Museum is one of the greatest things that has happened for Missoula County. It shows the young children what the community was like 100 years ago. Those young children are the greatest asset to the community. He asked for the Board's support to place this on the ballot.

There being no further comments, the public hearing was closed.

Commissioner Evans asked the Historical Museum Board members if it was critical this be on the June ballot. If something unexpected happened and it had to be put off until the November ballot, how would they feel about that.

John Rimel stated he would prefer to move ahead with the June ballot. They have been planning for that date.

Commissioner Evans moved that the Board of County Commissioners approve submitting to the electors the question of authorizing a levy of 2 mills each year for the support of the Historical Museum, if there is a June ballot, otherwise it will be on the November ballot. Commissioner Carey seconded the motion.

Mike Sehestedt stated that if the question is approved on the June ballot, the money will be available for the fiscal year beginning July 1, 2002 as taxes can be levied in November to support that fiscal year budget. If this is delayed to the November ballot and is approved then, the funding is not available until the next fiscal year.

Commissioner Evans stated that the June ballot is an uncertainty. In order to have a primary elections, there needs to be a specific number of contested races. So far, there are not that many contested races. It costs approximately \$70,000 to have an election. If it is not really necessary, the County would rather not spend that money. No decision has been made, she wanted that to be clear.

Chair Curtiss stated that if there are not enough contested races, the Board has the choice of not having the primary election.

Mike Sehestedt stated that he believed there was already a contested race which would make the primary necessary. It is a potential issue and there is another week before the filing deadline.

The motion carried on a vote of 3-0.

Chair Curtiss stated that the decision on whether to have a primary election needed to be made by the first part of April.

**Hearing: Submission to Electors the Question of an Increase in Property Taxes to Support the Seeley-Swan Cemetery District (One (1) Additional Mill)**

Derrick Ellinghouse stated he was the manager of the cemetery in Seeley Lake. They would also like to be on the ballot in June, if there is an election. The cemetery has been in business since 1994 with four mills and has grown so much, so fast. They have approximately 10 acres of land available for cemetery plots. From the money raised since 1994, they have been able to fence the property, build a storage shed and office and install landscaping. They are still looking for more to improve the area for the people of the valley. The lots are available at a reduced rate for the people of the Seeley Lake Cemetery District. They want to stay in business for as long as possible. He asked for the Board's support to place this question on the ballot.

Chair Curtiss opened the public hearing.

Rod Kvamme stated he finally achieved one of his life goals to be Chairman of the Board, even if it is the Cemetery Board. Without a cemetery a community loses its history. There is no place to go to get leads on old-timers in the community. The location is at Mile Marker 3 on Highway 83 which was chosen because Plum Creek donated some land. This was started without any expertise and they have learned a great deal, including how optimistic they have been in some areas. The price of a plot is one of the best deals in the County. The income has not been what was expected over and above the four mills. There is a shortfall of money that allows them to maintain as is but does not provide any money for growth or improvements. He would appreciate the Board's support to place this on the ballot. They are optimistic the voters will pass this request. In 1994 when it was on the ballot it passed with about 82%. They feel there is a good base for this to pass.

There being no further comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve submitting to the electors the question of authorizing a levy of 1 additional mill each year for the support of the Seeley Swan Cemetery District on the first available election. Commissioner Carey seconded the motion.

Chair Curtiss asked if these could be on the school board election.

Mike Sehestedt stated they could not be on the school board election.

The motion carried on a vote of 3-0.

Mike Sehestedt stated he would prepare a resolution fixing the form of the ballot for the Commissioners signature.

**Adoption: Resolutions of Intent to Create RSID #8474, RSID #8475 and RSID #8476 (Mullan Corridor Sewer Options) and Interlocal Agreements**

Commissioner Evans stated that although this was not a public hearing she would like to give those in the audience who wished to, the opportunity to speak on the matter.

Chair Curtiss asked for public comments.

Sue Mathewson stated she had missed a lot of the overview on this matter. She did sit in on the wastewater facilities update and went to a number of meeting with the folks that oversee the water quality district. She is very concerned about the water quality and what's happening on Mullan Road. The land applications out there could be expanded and used and it would keep from impacting the Clark Fork River as the sewer does. She knows that a lot of time and money have gone into the facilities update plan. Even back in 1995 and 1996 the plant was exceeding capacity which allows more pollutants into the river. That is not acceptable to many people in Missoula. At some point Missoula might get sued. It is important to look at possibly expanding El Mar and Golden West's systems. People should not be forced to take out second mortgages or sell their homes to pay for sewer pipes that may put more filth in the river.

Chair Curtiss stated that El Mar and Golden West cannot be expanded to take on more people than they already have with the land that they have and the sewer plant is being expanded to handle the increases.

Sue Mathewson stated that she had a conversation with Tom McCarthy and that El Mar is only at one-tenth of capacity. To land apply and stay away from the river would be the right thing to do. How can there be talk about removing the dam when there is a system that doesn't work because of political reasons. This is just wrong. She knows that some officials will tell her something in private that is different than what is said publicly and it is useless to argue with them in public. There is an opportunity at El Mar that must be explored. If this is passed and the money is taken for the City sewer, then it is all tied into the same boat. The sewer plant already smells and isn't working and will only get worse. It will be extremely costly to remedy the problem.

Tyler Jourdonnais stated that he would go to Target and purchase a mat to cover the cables from the microphone as they pose a health hazard.

Jay Rondone, 1495 Crest Haven, appealed to the Board's ethics and morals in this issue. He hoped they would make the right decision. His feeling is that zoning and planning should be done first. There has been a lot of talk about putting the cart before the horse. None of these options address the zoning issues that people are concerned about. Where is the planning for growth, will there be parks, will there be walkways, open space, high rises; nobody really knows. He is not against sewer, he is against poor planning. As the City grows, there is urban sprawl, higher crime rates, more congestion. These are all parts of growth. He hoped the Board would make the right decision and this is not being pushed because of political pressure or certain parties. He felt the Board should hold off on making a decision right now. Give planning some time to happen. Part of the problem with El Mar is too many people in a small area. Overcrowding is a problem the whole world faces today. One of the nice things about Missoula is its aesthetic value, there are no high rises and there are views of the mountains. Let's keep that quality.

Dave Scott, 2670 Peregrine Loop, stated the County Commissioners have tried to provide a cost effective sewer system for the Mullan Road area. There are water quality and health and safety issues in the area that need to be dealt with. He would be in favor of submitting Option 3 to the people and let them make a decision.

Mike Sehestedt stated for the record that Paul Fredericks had faxed a letter with his concerns to the Commissioners.

There were no further public comments.

Ann Mary Dussault stated that separate motions should be made for each action, especially for the Resolutions of Intent to create the three separate RSIDs.

Commissioner Evans stated that she did not support the first proposal. She felt this is a much better proposal. It isn't perfect, there isn't anything in life that is perfect. The costs of this are more reasonable. The quest for Federal money will continue to happen. Additional funds will try to be made available to bring the costs down even further. She agreed with Mr. Scott to allow the residents to make the decision. She will support all the options and will make her final decision to vote for it or not based on the protests received. If there is a majority of residents expressing their protest of the project, regardless of the cost implications, she will know that the people don't want the project. Her vote will be based on the people's response. She will try to get as much Federal and other money as possible. The sewer is important and there has been a lot of hard work involved in this other option.

Commissioner Carey stated that he agreed with Commissioner Evans and believed there could be honest disagreements about what is best for the community. From his view, allowing the people to vote on Option 3 and Option 4 East and West is best for the community. He did not feel that a more affordable or equitable deal could be reached. Option 3 goes away if they wait. He knows that \$10 a month could be a hardship for some people and they will continue to look for assistance. With the backbone in place now, then the infrastructure can be planned for in a way that makes sense on the ground. The subdistricts are more expensive because driveways and roads will have to be torn up. Having the infrastructure in place first is the best way to proceed.

Chair Curtiss stated for the record that although only one Commissioner is going to Washington, D.C., she is going with the support and endorsement of the other two Commissioners. It was felt that all three of them did not need to be present to make their point.

Commissioner Carey moved that the Board of County Commissioners adopt the Resolution of Intention to Create RSID 8474 (Option 3). Commissioner Evans seconded the motion.

Commissioner Evans stated that this action is merely opening the door for the residents to say 'yes' or 'no.' This is not a final action.

The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners adopt the Resolution of Intention to Create RSID 8475 (Option 4 East). Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners adopt the Resolution of Intention to Create RSID 8476 (Option 4 West). Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners adopt the Interlocal Agreement between the City of Missoula and Missoula County with respect to the Design, Construction, Operation and Maintenance of the Mullan Road Corridor Sewer Project, contingent on final review by respective Counsel. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners adopt the Interlocal Agreement between the City of Missoula, Missoula County and Missoula County Airport Authority regarding participation by the Airport



Authority in the Mullan Road Corridor Sanitary Sewer Project, contingent on final review by respective Counsel. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated that she was not happy the Wye/Mullan Road plan was not done. It should have been done a long time ago and she apologized that it was not yet complete. A commitment has been made that it will be done by the date stated and every effort will be made to see that does happen.

#### Other Business

Kandi Matthew-Jenkins: Kandi Matthew-Jenkins. This is not about the sewers but it's about something just as dirty as that. For the last two months I've been doing some intense investigation in the Department of Health and Human Services, mainly Child Protective Services and all the different protective services and I have come to find out that of all the departments, this is a department that nobody seems to have any desire or ability to come out against because everybody seems to be so fearful of it or they don't want the stink of the department on them. Tomorrow I'll be accompanied by about 40 or 50 different family members that have been abused by this system to Helena. We were to meet with the Governor but she's pretty much backed out of that because she doesn't want to deal with it either so we'll be meeting with whomever we can. Considering this department is missing \$5 million dollars at this audit and has been missing millions of dollars in previous years we thought that this would be an open door to bring this up before them. In considering the sensitivity, I guess, of the issue, I had written a letter to the Missoulian which they accepted and then turned down and when I questioned Steve Woodruff about why he did turn it down after it was accepted, I asked him if the department had gotten to him and his quote to me was, "Well, I guess you can just," what was it, "I guess you can just imagine it," or something like that, you know, if they did or didn't get to him to pull this letter. So I've read it into the City record and I want to read it into the County record.

*"The beginning of the Constitution, the preamble, says, 'We the people of the United States, in order ...' and goes on to say various other things. One is to secure the blessings of liberty to ourselves and our posterity. There are laws in the United States that make it illegal to trade human life for profit or exploitation – child pornography, child labor laws, slave labor, sweat shops, forced prostitution, black market adoptions, etc. After the case studies that I have read, we have a governmental department that stands accused by many of abusing and ripping apart our Montana families for profit. Again, this is a follow the money situation. Today in Montana, the Department of Health and Human Services is a cash-flow cow that feeds on the constant flow of children, adults, the disabled and the elderly under the guise of Protective Services. They prey on those that cannot defend themselves financially or physically. The Department of Health and Human Services can accuse without evidence of an actual crime; therefore denying our inalienable right to due process and seems to have no law enforced over them. In closed courts our families are raked over the coals. The poorer you are, the longer the abuse of these powers go on. The greater the guarantee of more taxpayer money will flow into the system thus providing for governmental job security. It is not just the \$5 million of taxpayer dollars that is missing and unaccounted for in the last year's budget, but the abuse of power that funnels our money into this unholy and evil department. I will not dispute the fact that there are cases of abuse, but the rule of law in America, not 'Amerika' with a 'K,' is innocent until proven guilty and I feel that it's a time to take a stand and take our families back and stop this abysmal money pit from getting fatter on our dollars by abusing our Montana families."*

As I said, for two months, I have been living this situation day and night. I spend at least 12 hours a day in one way or another with families on the phone. The first phone call that you get from a family lasts an average of three hours to be able to tell you in detail all the broken statutes, the policies they don't follow and what has happened to their children or their grandchildren, their husband, their wife, the grandmas or grandpas. It doesn't stop just at children. The children are the easiest because you can make more money on the children because they can be adopted out. There's an incentive system across the United States, we call it a bounty, for every child that is adopted out before a year, at least in the year 2000, the case worker gets \$400. In the State of Oregon it's \$2,500. Five or more State statutes are broken in case after case. The department does not even adhere to their own policies. Many times in the past, individuals have tried and tried again to get legal help. Attorneys won't touch them. I have read cases and seen case files and read the lists of legislators and senators that have been contacted, the letters written to Governor Mark Racicot and Governor Judy Martz that have gone unheeded and unheard. Nobody wants the stink of this department on them. In our constitution in the first and fourth amendments, the first amendment says that we have a right to redress. These people are not given a right to redress because this is supposedly not a crime so they have no redress, no recourse whatsoever to due process. In the fourth, it says the right of the people to be secure in their persons, houses, papers and effects against all reasonable searches and seizures, I would say a police officer kicking in a door, coming up to a woman holding her 9 month old child, choking her to the floor, kicking her in her back and her stomach while ripping the child out of her arms is a little bit unreasonable seizure. These are all documented cases. These cases have been turned over to our legislators, over to our County Sheriffs, our law enforcement officer to no avail. Tomorrow I will be very, very proud to accompany these families for redress of grievances and to ask for a case by case investigation into the procedures that this department uses and doesn't use in the State of Montana. Millions and millions and millions of dollars are being wasted every year on false accusations. The accuser never have to stand before a judge and jury for what they have done because somebody's sister-in-law doesn't like the way her other one, her sister-in-law cleans a house, decides to make a phone call, should not have somebody's children taken away. Everybody has problems, there is no perfect family. I am the mother of six children, all of them extremely extroverted, extremely mouthy, much like their mother, and I've always had problems dealing with them mostly at home than in the school systems or anything like that, but each child is different, each person is different and there is no perfect home but these people run by a rule book that is just out of line, out of line. I know there are some of us right here, right now, that either had a switch or a hair brush or a wooden spoon applied to the seat of line. It's perfectly legal in the State of Montana but this department doesn't see that discipline is in any manner. If a kid calls or the neighbor calls because you swat your two-year-old for running out in front of a car, that two-year-old is gone, possibly put in the foster care system. They propagate their own, they take one person's child and keep it out of the home, they create situations where this child grows up in an atmosphere that is not nurturing, being passed around so then they get another client out of that kid and out of the next kid and out of the next. This is a terrible, terrible evil system and it needs to be stopped and too bad there aren't more courageous people out there trying to stop it, but I can guarantee you I've talked to a lot of them and nobody wants to deal with it. Thank you.

There being no further business to come before the Board, the Commissioners were in recess at 2:45 p.m.

**THURSDAY, MARCH 14, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Chair Curtiss attended the Heartwalk Breakfast at the Double Tree Inn; Commissioner Evans attended and participated in *Leadership Missoula* during the day; and in the evening, Chair Curtiss participated in the TDM (Transportation Demand Management) Congress held at the Holiday Inn.

Claims List – The Commissioners signed the Claims List, dated March 14, 2002, with a grand total of \$53,779.95. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – Chair Curtiss signed a Traffic Safety Bureau Agreement (#02-01-03-01), dated October 1, 2001, between Missoula County and the Montana Department of Transportation for a Missoula County Mobile Data Computer System in the amount of \$484,791.73. This contract replaces an older contract (approved May 9, 2001 in the amount of \$502,000), fulfilling the agreement for the balance of money spent after October 1, 2001. The document was returned to Don Morman in the Sheriff's Office for further handling.

Other items included:

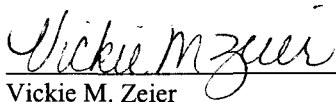
- 1) A discussion was held, and it was decided that the Missoula Chamber of Commerce would be asked to help develop a pitch for the MACo Convention Bid for the Year 2004. If Missoula wins the bid, an events coordinator would have to be hired.
- 2) A discussion was held on Commissioner Evans' request for Federal dollars during her upcoming trip to Washington, D.C.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, MARCH 15, 2002**

The Board of County Commissioners met in regular session; all three members were present. Chair Curtiss attended the Office of Economic Opportunity Input Session all forenoon, held at the Boone and Crockett Club. At noon, Commissioners Carey and Evans attended the MAEDC Annual Meeting held at the Boone and Crockett Club. In the afternoon, Commissioner Carey attended the Mental Health Board Meeting held at Fort Missoula.

Request for Action – Chair Curtiss signed a letter to Thomas E. Martin, P.E., Montana Department of Transportation, Helena, Montana, notifying him that County Surveyor Horace Brown is designated as the Environmental Certifying Official responsible for all activities associated with the environmental review process to be completed in conjunction with the Frontage Road Path in Frenchtown, Montana (Project #STEP 32(37)).

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**SUNDAY, MARCH 17, 2002**

In the afternoon, Chair Curtiss attended the St. Patrick Hospital dedication. In the evening, the Commissioners attended a dinner with the Fair Commission held at Jakers Restaurant.

**MONDAY, MARCH 18, 2002**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Chair Curtiss attended a Fair Planning Workshop held at the Fairgrounds. Commissioner Evans was out of the office all afternoon.

Claims List – The Commissioners signed the Claims List, dated March 14, 2002, with a grand total of \$59,021.68. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 15, 2002, with a grand total of \$7,218.19. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 18, 2002, with a grand total of \$36,044.24. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Garlington Lohn & Robinson as applicant for Accounting Warrant #401810 issued December 4, 2001 in the amount of \$3,821.40, which was not received in the mail. No bond of indemnity is required.

Resolution No. 2002-028 – The Commissioners signed Resolution No. 2002-028, setting the date for the Historical Museum Mill Levy Vote for June 4, 2002, and fixing the form of the ballot. The question will be submitted to the electors in substantially the following form:

"Shall Missoula County be authorized to levy annually a tax not to exceed 2 mills for the purpose of supporting the Historical Museum at Fort Missoula. Passage of this proposal will subject a home with a market value of \$100,000 to a tax increase of \$4.77 per year and a home with a market value of \$200,000 to a tax increase of \$9.55 per year."

Resolution No. 2002-029 – The Commissioners signed Resolution No. 2002-029, setting the date for Seeley-Swan Cemetery District Mill Levy Vote for June 4, 2002, and fixing the form of the ballot. The question will be submitted to the electors in substantially the following form:

"Shall Missoula County be authorized to levy annually an additional tax not to exceed 1 mill for the purpose of supporting the Seeley-Swan Cemetery District at Fort Missoula. If approved, the additional 1 mill will result in a maximum levy of 5 mills for the support of the Seeley-Swan Cemetery District. Passage of this proposal will subject a home with a market value of \$100,000 to a tax increase of \$2.39 per year and a home with a market value of \$200,000 to a tax increase of \$4.77 per year."

Lease Modification – Chair Curtiss signed a Business Lease Modification between Missoula County and The Confederated Salish and Kootenai Tribes, Tribal Lands Department, for the Point 6 Translator site. The rental payment shall be \$1,712.00 annually. The 25-year renewal option commences on November 1, 2000 to October 31, 2025. The document was returned to Beverly L. Petticrew at The Confederated Salish and Kootenai Tribes, Division of Lands, Pablo, Montana.

#### TUESDAY, MARCH 19, 2002

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans traveled to Washington, D.C. for meetings with members of the Congressional delegation through Friday, March 22<sup>nd</sup>, 2002, regarding funding for various County projects.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 18, 2002, with a grand total of \$21,427.87. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 18, 2002, with a grand total of \$147,683.52. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 18, 2002, with a grand total of \$200.00. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 18, 2002, with a grand total of \$12.40. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 18, 2002, with a grand total of \$3,210.39. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 19, 2002, with a grand total of \$492.49. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated March 19, 2002, with a grand total of \$8,462.12. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-030 – The Commissioners signed Resolution No. 2002-030, dated March 19, 2002, a Budget Amendment for the Financial Administration Department in the amount of \$1,575.00, for the Employee Bus Pass Program (for the three-month interim period of April, May and June). This Amendment was approved at the March 13, 2002 Administrative Meeting and adopts these expenditures as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Contract Amendment – The Commissioners signed a Contract Amendment (#DIR-01-001-0-MCDF) between the State of Montana, Department of Corrections, and the Missoula County Detention Facility, amending Section 5 (C), "Per Diem." For the contract year beginning July 1, 2001, the standard rate of per diem for General Population Inmates will be \$48.12 per inmate, per day; for the contract year beginning July 1, 2002, the standard rate of per diem will be negotiated between March 1 and June 30, 2002, based on actual expenditures. The document was returned to the Sheriff's Office for further handling.

Request for Action – The Commissioners approved a request to remodel the Missoula County Courthouse Deli area so that the Missoula City-County Health Department can license on-site food preparation. The project will cost approximately \$2,684.00, and will be paid by the Vendor (1/3), the Employees Council (1/3), and Missoula County (1/3). The County's share can be absorbed in the Facility/Maintenance budget.

Other items included:

- 1) The Commissioners voted to refer the legal question on domestic partners to an attorney with Garlington Lohn & Robinson. Risk Manager Hal Luttschwager was asked to contact the law firm and to provide necessary documents and questions. Mr. Luttschwager was also asked to pursue compromise language regarding County Employee Plan benefits for full-time students and dependent children.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, MARCH 20, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

At the Chief Administrative Officer meeting held in the forenoon, no items were signed. A discussion was held with County Attorney Fred Van Valkenburg and Margaret Borg regarding the ACLU lawsuit.

**PUBLIC MEETING – March 20, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey and County Surveyor Horace Brown. Commissioner Barbara Evans was in Washington, D.C.

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$337,552.85. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

There being no further business to come before the Board, the Commissioners were in recess at 1:30 p.m.

**THURSDAY, MARCH 21, 2002**

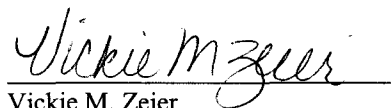
The Board of County Commissioners met in regular session; a quorum of members was present.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Pleasant View Homes No. 2, Phase II, Lot 5, a subdivision located in the W½ of Section 7, T 13 N, R 19 W, PMM, Missoula County, a total area of 11.03 gross acres (7.47 net acres), with the owner of record being Pleasant View Homes, Inc. (by John Diddel.) The Improvements Agreement and Guarantee are for improvements that shall be completed no later than March 1, 2004 (per items set forth in the Agreement) in the estimated amount of \$474,673. The Improvements Agreement has been guaranteed by an Irrevocable Letter of Credit from First Security Bank.

**FRIDAY, MARCH 22, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending February 28, 2002.



Vickie M. Zeier  
Clerk & Recorder



Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, MARCH 25, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Chair Curtiss attended a meeting held at Sunset Memorial Funeral Home with the River Heights and Kona East Homeowners regarding the proposed Mullan Corridor Sewer Project.

Audit Review – The Commissioners reviewed and approved the financial review of the Greenough Potomac Volunteer Fire Department for the period beginning July 2001 and ending February 2002, as submitted by the Missoula County Auditor. The review was forwarded to the Clerk & Recorder's office for filing.

Audit Review – The Commissioners reviewed and approved the financial review of the Western Montana Fair (August 2001), as submitted by the Missoula County Auditor. The review was forwarded to the Clerk & Recorder's office for filing.

**TUESDAY, MARCH 26, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated March 25, 2002, with a grand total of \$4,719.93. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 25, 2002, with a grand total of \$58,503.80. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 06 - Pay Date: March 22, 2002. Total Missoula County Payroll: \$845,202.31. The Transmittal Sheet was returned to the Auditor's Office.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter – The Commissioners signed a letter, dated March 26, 2002, to the Montana State Historic Preservation Office, heartily supporting a grant proposal for The Historical Museum at Fort Missoula so it can continue to preserve and interpret the history of Fort Missoula.

Agreement – The Commissioners signed an Agreement between Missoula County and George and Dianne Grutsch ("Grutsch"), Gary J. Gallagher, Trustee of the Gary J. Gallagher Revocable Living Trust ("Gallagher"), and Johnson Brothers Contracting, to reallocate between Grutsch, Gallagher and Johnson Brothers their assessments for RSID #8470 for the paving of a portion of Expressway Boulevard in Missoula, Montana. The total estimated amount of the assessments is \$148,021.29; the individual amounts levied are as set forth therein.

Letter – Per recommendation by the Missoula Development Authority, the Commissioners signed a letter, dated March 26, 2002, approving the request from Big Sky Brewing Company for reimbursement of the sidewalk installation cost along Trumpeter Way on Lot 2, Block 9, Phase 3A, Missoula Development Park. The total cost of the sidewalk is \$3,657. The letter was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved a request from the Public Works Department to advertise a contract for the construction of an asphalt surfaced bike path and walkway, 2.2 miles in length, adjacent to the Frenchtown Frontage Road, Frenchtown, Montana. This is a CTEP project, largely funded with Federal FHWA monies (approximately 86%). The total estimated costs of the project are \$300,000; Missoula County's share of these costs will be approximately \$39,000.

Contract – The Commissioners signed a Contract, dated March 26, 2002, between Missoula County and Missoula Concrete Construction Company, for the construction of a small precast, prestressed bridge to span an irrigation ditch on Clements Road. This is part of CTEP project (STPE 1899(29)); the total cost will be \$10,700 (of which \$9,200 will be reimbursed to the County). The work is estimated to be completed on or about April 15, 2002.

Resolution No. 2002-031 – The Commissioners signed Resolution No. 2002-031, altering a portion of Old Petty Creek Road (declared a public highway by the County Commissioners in 1902), generally lying on the west side of Petty Creek and located in the S½ S½ of Section 19, T 14 N, R 22 W, PMM, Missoula County, Montana. The new altered alignment is as set forth therein.

Other items included:

- 1) The Commissioners authorized administrative approval by the County Attorney's office for an Agricultural Restrictive Covenant for property owned by Charles M. and Nancy A. Deschamps which is being purchased by the Washington Development Company, Inc. for the development of a golf course.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, MARCH 27, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated March 22, 2002, with a grand total of \$124,825.07. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 22, 2002, with a grand total of \$1,527.39. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 22, 2002, with a grand total of \$12,359.43. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 22, 2002, with a grand total of \$19,597.97. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 26, 2002, with a grand total of \$44,305.17. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 26, 2002, with a grand total of \$93.16. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 26, 2002, with a grand total of \$46,136.88. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated March 26, 2002, with a grand total of \$12,674.91. The Claims List was returned to the Accounting Department.

CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Lease Modification – Due to corrections made by the Tribal Legal Review, Chair Curtiss re-signed a Business Lease Modification (originally signed March 18, 2002) between Missoula County and The Confederated Salish and Kootenai

Tribes, Tribal Lands Department, for the establishment of a micro-wave tower for communication purposes. The rental payment shall be \$1,712.00 annually. The 25-year renewal option commences on November 1, 2000 to October 31, 2025. The document was returned to Beverly L. Petticrew at The Confederated Salish and Kootenai Tribes, Division of Lands, Pablo, Montana.

Request for Action – Chair Curtiss signed the Annual Report for the U.S. Department of Housing and Urban Development, which is required to receive grant funding for the Share House transitional housing program. The document was returned to Kristina Swanson in the Office of Planning and Grants for further handling.

Agreement Amendment – Chair Curtiss signed an Agreement Amendment, between the Missoula Urban Transportation District and Missoula County, extending the current Bus Pass Program Agreement by three months. The amended agreement is effective April 1, 2002 through June 30, 2002. All terms of the original agreement apply.

Easement – Per a request by the Missoula Electric Cooperative, the Commissioners signed an Easement, dated March 27, 2002, by the Missoula County Airport Industrial District, to each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, and their successors, heirs and assigns. This utility easement is located across Lots 6, 7, 10, 11, 12, 14, 15, and 16, Block 3, Missoula Development Park – Phase 4. The document was returned to Barbara Martens in the Projects Office for further handling.

Contract and Addendum – Per recommendation by the Missoula Development Authority, the Commissioners signed a Standard Listing Contract between Missoula County and Properties 2000 to market the Missoula Development Park, per the work described within. The term will be for three years (April 1, 2002 through March 31, 2005).

The Commissioners also signed an Addendum to the Listing Contract which allows Missoula County to reject a full price or better offer for a lot without liability for commission payment if (in Seller's opinion) the offer will or may result in development which is not in the best interest of the development and future of the Missoula Development Park. The documents were returned to Barbara Martens in the Projects Office for further handling.

Letter – The Commissioners signed a letter, dated March 27, 2002, to Perry Ashby of Wesmont Builders and Developers, approving their request to move the deadline for installation of a culvert under Expressway (West of Kendrick Place at Canyon Creek Village) from June 1, 2002 to June 1, 2003. The letter was returned to Barbara Martens in the Projects Office for further handling.

Other items included:

- 1) The Commissioners moved to hold a public hearing (April 17<sup>th</sup>) on the following: 1) Resolution adjusting permit fees for Approach Permits; and 2) Resolution adjusting permit fees for Excavation Permits.
- 2) An update was given on the Price List for the Missoula Development Park.

#### **PUBLIC MEETING – March 27, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$324,743.71. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing (Certificate of Survey): Workman Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 430, Page 1031, located in Section 4, Township 14 North, Range 14 West, Missoula County, Montana.

Victor Workman has a buy-sell agreement to purchase the above property from Frank M. Vannoy and Shirley J. Vannoy. Mr. Workman has submitted a request to create four parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 165 acres in size located near Greenough, Montana. Mr. Workman proposes to create one approximately 20 acre parcel for transfer to his wife, Catherine W. Workman, 20 acres for transfer to his son, Riley Andrew Workman (age 15) and 45 acres for transfer to his mother, Pearl Viola Workman. He will keep the remaining approximately 80 acre parcel. All the created parcels are designated to be used as a family investment. Mr. Workman could not be present due to a serious illness in his family. In his letter to the Commissioners, he indicated that the 80 acres may be transferred to the adjoining rancher.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Book 51, Micro Page 1432	1973	N/A	Frank L. and Clara M. Vannoy	Walter M. and Clara E. Vannoy
Book 97, Micro Page 254	1977	N/A	Frank L. and Irene Vannoy	Walter M. and Clara E. Vannoy
Book 181, Micro Page 78	1982	Railroad Right-of-Way	Robert Knight, Trustee	Walter M. and Clara E. Vannoy

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Nick Kaufman stated he would be happy to answer any questions the Board may have.

Commissioner Evans asked about the possibility of transferring the 80 acres to an adjoining rancher.

Nick Kaufman stated the property is located on the Blackfoot Highway almost to the Clearwater Junction. The property has frontage along Highway 200 to the Clearwater Junction and frontage on Sunset Hill Road. This is some of the most productive hay land on the property. Mr. Potter owns the adjoining ranch. Mr. Workman's family is interested in land on the Clearwater River side, so if this could be transferred back and become part of the larger ranch, it would be in everyone's best interest.

Commissioner Carey stated that the adjoining rancher is not a relative, so Mr. Workman is creating this to effectively transfer property not under the jurisdiction of a family transfer.

Colleen Dowdall stated the part Mr. Workman is proposing to transfer would be under his ownership, the remainder that is a legally created parcel. In that respect, the transfer would be appropriate.

Commissioner Evans asked Mr. Kaufman if he was satisfied Mr. Workman was not attempting to evade subdivision review.

Nick Kaufman stated he was satisfied. This property has been on the market for over a year. Mr. Workman has horses and spends a lot of time in the Bob Marshall Wilderness with his family. He has looked at this property and discussed it in this context from his first meeting.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans asked that Mr. Workman's letter be entered into the record.

*"Request to give gifts to family members – Dear Commissioners: Please accept my regrets that I cannot attend the hearing on Wednesday. My father has a massive stroke on Sunday and is not expected to live. My immediate attentions are directed toward my family and their needs. I have requested WGM Group to express our plans for the property. My family is acquiring the 165 acres as a family investment. Ultimately, we plan to build and live on the property. The 80 acres that I will retain may be transferred to the adjoining rancher. Sincerely, --Victor Workman"*

Commissioner Carey moved that the Board of County Commissioners approve the request by Victor Workman to create four new 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. The motion carried on a vote of 3-0.

Chair Curtiss stated that Mr. Workman would receive a letter showing approval of the family transfer request. The approval was for the split of land only. It did not grant permission for a septic permit or anything else that might be necessary to build a home.

#### **Hearing: TSEP Application (Van Buren Street Footbridge Rehabilitation and Replacement of LaValle Creek Bridge and Finley Creek Bridge)**

Greg Robertson stated that this request is to hold a public hearing on a TSEP grant application for replacement and improvements to three bridges that Missoula County has the responsible to maintain. They include the Van Buren Street Footbridge within the City limits serving primarily the Kim Williams Trail and the University of Montana; LaValle Creek Bridge on Deschamps Lane just below the clay hills; and Finley Creek Bridge in the northern part of the County just off Highway 93. The process is a required public hearing for solicitation of input from the public on these three projects. Jim Scholes from Morrison-Maierle has been hired to assist with the TSEP grant and the preliminary engineering reports required by the grant application process. This morning there was a meeting with the Missoula Redevelopment Agency and they have committed to financial participation in upgrading and rehabilitating the Van Buren Street Footbridge in the amount of \$30,000. That is not reflected in the staff report.

Keith Belden stated he was the Office Manager for Morrison-Maierle in Missoula. Jim Scholes is a bridge engineer from Helena and Corinna Sauter is an office assistant also from the Helena office who is helping write the preliminary engineering report. They have been working with Barb Shubert, Joe Jedrykowski and Greg Robertson to inventory the bridges. The staff is to be complimented, the bridge inventory is excellent and made their job very easy, to put the County in good competition to get the TSEP funding. The intent of the engineering report is to put it together with the grant to secure funding from TSEP to replace 2 bridges and rehabilitate a third bridge. They have followed the TSEP process. The TSEP program is intended to replace or rehabilitate bridges and also can be used for sewer infrastructure and water infrastructure. The bridges were a late-comer to the TSEP program. It allows Counties or Cities to apply and get matching grants to help repair or replace bridges that are unsafe. The County's bridge system is in excellent condition and bodes well for the staff. The Treasure State Endowment Program was created to assist communities in attaining grants to be able to fund certain projects. They will fund up to 50% of the cost of the project. As Greg Robertson indicated, MRA was contacted and a pledge of \$30,000 was received toward the Van Buren Street Bridge. Missoula is in competition with other communities and cities for the funding. The TSEP program looks at the health



and safety issues of the bridges and it's important to rank them and attack the most critical elements of the infrastructure.

Jim Scholes stated that they got involved about six to eight weeks ago and the work of Barb Shubert and Joe Jedrykowski made it easy to track down structures that need to be fixed. The bridges were selected based on the condition of the components, the structural adequacy, how essential the structure was to the County as a whole, safety features of the bridges and functional obsolescence. The bridges were ranked taking into account those factors. He and Barb Shubert looked at some 15 bridges and came to the conclusion of the top three, which are LaValle Creek Bridge, Finley Creek Bridge and the Van Buren Street Footbridge. Finley Creek Bridge was inspected mid-summer last year. During that inspection they found eight rotten girder lines, eight cracked girder lines and substandard guardrail. There has been a long history of inadequacy in the hydraulic openings and there is scour at the abutments. With those findings, the County elected to narrow the roadway and put in an additional guardrail. The County did some structural analysis and determined that narrowing the roadway was an appropriate immediate solution to the problems with the structure. The road was narrowed putting the traffic in the middle of the roadway where there is a higher likelihood of strong girders. There is some scour at some of the abutments because of the way the hydraulic openings do not match the roadway and the bridge is deficient in length, it should be about 10 to 15 feet longer. The bridge was built around 1945 and improvements were made in 1974. During 1974 they added a few additional girders.

Barb Shubert stated that the existing girders were left in place and new girders were added. All the girders in the structure are untreated.

Jim Scholes stated that in 1977 the LaValle Creek Bridge was modified and many of the wooden columns were replaced or upgraded due to rot. The existing structure has rotten pier columns which were not replaced in 1977, narrow bridge width, deck spalling, sagging girders and load restriction. Spalling is deterioration of the concrete on the bottom side of the bridge. The primary deficiency is the substructure, the columns in the creek. Abutment columns were added in 1977 but the interior columns were not replaced as the entire bridge deck would have to be removed to do that. The column has continued to deteriorate and its structural adequacy is questionable. It is still holding traffic load but that should probably be reduced. The girders are sagging as well. In the event of seismic activity, the bridge would collapse as there is no mechanical connection between the girders and the cap. The maximum weight posted for this bridge is 36 tons. Finley Creek Bridge is not currently posted with weight restrictions because of the redirection of the traffic. It is used for logging trucks.

Commissioner Evans asked for an example of a 36 ton vehicle.

Jim Scholes stated that 36 tons would be approximately a fully loaded cement truck. The weight restriction on LaValle Creek Bridge has not been updated since 1977.

Greg Robertson stated that based on some of the deficiencies he has seen, the County will have to re-evaluate this bridge for its structural load rating.

Commissioner Evans asked if there was another access besides the bridge.

Greg Robertson stated that LaValle Creek Bridge is on Deschamps Lane and is a fairly heavily traveled route for trucks that use it as a bypass. There would be another access if the load restriction is lowered on the bridge.

Jim Scholes stated the fear is logging trucks that use the bridge and don't follow the weight restriction. The rehabilitation of the interior columns would be difficult and more costly than a new structure.

Commissioner Evans asked if the replacement would be built along side the existing bridge or if it would be removed and then replaced.

Greg Robertson stated it would be removed and replaced in the same location.

Jim Scholes stated that the Van Buren Footbridge is a high profile structure. The responsibilities of ownership are less than exact. To his knowledge, the superstructure, the main components of all the truss and hand railing system are owned and maintained by the County. The deck and approaches to the bridge are under the jurisdiction of the City, making for an interesting situation.

Commissioner Evans asked how that happened.

Greg Robertson stated that is a reflection of State law. The County is responsible for maintenance of the structure itself, however the City is obligated under State law to pay all or a proportion of the decking, redecking or replanking for any bridge within the City. It has been the decision of the Commissioners to assess the City the full amount of their proportionate share.

Mike Sehestedt stated that the City has ownership and jurisdiction on the approaches, but that is common with all bridges within the City. They also have a statutory obligation to contribute as Greg mentioned, should it be determined maintenance requires decking or re-decking. It isn't that complicated legally, but practically and politically, it becomes more challenging.

Jim Scholes stated the deficiencies include severe deck deflection, deck deterioration, inadequate deck stringers, severe corrosion of floor beams and substandard railing. There is a sizeable amount of foot traffic on the bridge after a football game, indicating how important it is that the bridge is up to code. Back in 1981 an analysis was done by Fred Crisp and was reviewed by a consultant. The analysis looked good but at the time the code didn't have stringent requirements on pedestrian loading. It was determined that it would never see people shoulder to shoulder on the bridge. Times have changed and the bridge now sees a load large enough so as the elements need to be upgraded. The truss elements are adequate. Some of the elements are substandard, like the deck, the deflection and the stringers.

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Commissioner Evans asked what deflection of the deck means.

Jim Scholes stated it is the bouncy feel when you walk on it. It is not necessarily unsafe but does leave the user with an uncomfortable feeling.

Greg Robertson stated it was a comfort issue.

Jim Scholes stated that some of the bounce has led to a shortened life of the deck which was replaced in 1982. The floor beam that runs right below the deck has severe corrosion. A cover plate could be used but it would not fix the problem. The problems that exist were analyzed and determined that it was adequate for load, however deterioration will continue. There could be substantial health and safety issues if something were to happen. The vertical members have some patches that were done in the 1950s when it was changed from a highway structure to a pedestrian structure.

Mike Sehestedt stated it did not become a pedestrian structure until about 1972. It was closed when the Madison Bridge was opened in the late 1950s. It stood there unused until 1972 when it was put back into service as a pedestrian facility with a half deck. In 1982, the full deck was put on it.

Jim Scholes stated the deck has severe cracking and deflection of the deck from the weight of the rail itself. The deck is reaching the end of its useful life. The spacing of the rails does not meet standards. It is a liability concern for the City and County. If an impaired college student would hurt themselves, even though it would seem to be the college student's fault, the County would have the liability as the bridge is substandard at this time. The maintenance on the bridge is high due to its age as well. The report for TSEP requires that all alternatives be looked at to fix the problem, posting, replacement, rehabilitation, closing the structure, etc. Then a preferred alternative was selected based on long-term solutions to the safety issues, cost effectiveness, long-term maintenance, the environmental impacts and aesthetics. Aesthetics was a consideration for the Van Buren Bridge due to its historical nature and being a key element of the Missoula landscape. The recommendations, costs and financing for the three bridges is as follows:

	Estimated Cost	TSEP Funding	County Funding	City Funding
Finley Creek Bridge (replace)	\$210,000	\$105,000	\$105,000	\$0
LaValle Creek Bridge (replace)	\$210,000	\$105,000	\$105,000	\$0
Van Buren Street Pedestrian Bridge (rehabilitate)	\$360,000	\$180,000	\$90,000*	\$90,000*
	\$780,000	\$390,000	\$300,000	\$90,000
*Approval pending; additional funding required				

Commissioner Carey asked what the cost would be to replace the Van Buren Street Bridge.

Jim Scholes stated they looked at six different alternatives, one which would look similar to a highway bridge and that cost was \$750,000. The cost would be \$1.4 million if it were to look like the Orange Street Bridge. All the alternatives were more than twice the value of the rehabilitation. Different alternatives were looked at for deck types and railing types, from wood to steel. Those are weighed against a cost history and life cost analysis to come up with the recommended alternative that is the most reasonable over the life the structure. The same is true for LaValle and Finley bridges, all the different types of bridges was looked at. Input was received from the County as to what might reduce these costs. The costs shown are based on letting the project to bid. If the County has time to do some of the work, the costs may be reduced. These figures are the easiest to use in the TSEP process.

Chair Curtiss asked what kind of deck and railing was chosen based on the \$780,000 cost.

Jim Scholes stated the \$780,000 cost is the total for all three bridges. For the deck on the Van Buren Bridge, five types were looked at which will be given to the County for input and discussion. Steel grating was eliminated because the view through the deck is unsightly for pedestrians. Another alternative was a concrete deck which would be very low maintenance but increase the load. A nail laminated wood deck is what is on the bridge currently and it was also looked at as a replacement, as was the similar glue laminated wood deck. The final alternative was a high end hardwood from South America, very dense, very durable.

Mike Sehestedt stated that the Northside Pedestrian Walkway uses that wood.

Jim Scholes stated it is commonly used for pedestrian bridges. There are pluses and minuses with all the alternatives and that is where input by County employees is important. The high end hardwood is the alternative that is currently being recommended.

Chair Curtiss asked if the manufactured "treks" decking was looked at.

Jim Scholes stated the estimate for using the "treks" decking was almost double. It ran about \$25 per square foot. Potentially it would last twice as long, but funding was a concern. The City is looking at about \$65,000 as their half match. If the high end hardwood is used, it could bump that to \$75,000 and the "treks" would be considerable more, plus it would require modifications to the structure based on loads. All the alternatives will need to be discussed with everyone. For the railing, several alternatives were looked at, chain link, vinyl, steel and wood. The chain link was rejected; it is very durable and very low maintenance, but quite ugly. MRA has volunteered to help cover the cost of railing. Wood railing has the same problems as what is currently there in regards to wear and maintenance. The recommended alternative is ornamental, steel picket fence painted black, but it is very expensive. This is still in the draft stages and there will be discussions with County employees to determine the final choices. Other items on this structure that need work are the truss members, some are slack which means the others carry the load. The floor beams also need work, there is corrosion on many of them and they will continue to deteriorate. There are two alternatives to fix this problem and the recommended method is to replace the whole member. The longitudinal stringers is where the deck deflection is coming from. Two stringers were placed on the structure and if either one should fail, the bridge would collapse. One additional stringer is needed which would also get rid of the bounce.

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Commissioner Evans asked what the ramifications would be if none of these could be fixed for two years.

Jim Scholes stated the Van Buren Bridge deck has a reserve capacity, it will be need to be fixed within the next five years. The life threat on this bridge is large, if something was going to happen it would be when it was heavily used after an event and if something happened, the fatalities could be large, it's a 30 foot fall to the river. The rail will require continuing maintenance and be a source of liability. The analysis of the load capacity of the structure shows there is not an immediate life threat, however the bridge does need to be fixed in the near future. The bridge needs to be monitored for all these deficient elements. On Finley Creek Bridge, many of the short term problems have been resolved by the narrowing of the roadway. It will continue to deteriorate and the County has slated it as number one for replacement for a reason. The TSEP process aids the County. The LaValle Creek structure is sagging and if there is any seismic activity, that bridge will fail.

Mike Sehestedt stated the central pier of the Van Buren Bridge were cribbed with rock that has disappeared over the last 30 years. Does that need to be replaced?

Jim Scholes stated that hydraulic analysis has not been done. He was not sure if it would be necessary to replace it.

Mike Sehestedt stated that over time the cribbing by the central pier has disappeared and the County was unable to replace it in 1982 because the bridge would not support heavy equipment. The other question comes from experience with the California Street Bridge. The piers were saved after removal of the bridge for possible future reconstruction. It was discovered that the metal pilings surrounding a driven wood core had completely rotted away. Would that same sort of thing be a concern on this bridge.

Greg Robertson stated that in 2000, those same structural issues were raised by Barb Shubert so a condition analysis of the entire structure was done by an outside party. There was no evidence of scour in or around the piers which would be an indication of a problem. The rip rap that was used is gone but was probably washed downstream. Typically rip rap is put in to fall into scour holes that develop around piers. There was no evidence of that. The channel appears to be quite stable.

Jim Scholes stated that during his inspections, nothing significant jumped out at him with regards to a problem in the channel. He has not done a detailed examination of the wood.

Mike Sehestedt stated that he has significant history with the bridge and has watched the river take the cribbing over the years. He just wondered if that posed any long-term threat to the bridge.

Jim Scholes stated the grant application is due May 3, 2002. Funding would be available July 1, 2003 if the grant is successful. The grant is coming together very well and there is a lot of community support. The Van Buren Street Bridge is key to the community and many people are writing letters of support. Multiple funding sources make the grant really strong. At this point there is a commitment from the City, County and Missoula Redevelopment Agency which shows a lot of support over and above any bridge project submitted in the past. They are hopeful the grant will be successful. These bridges have high usage unlike some smaller counties. The design of the project would be completed between fall of 2003 and 2004. Construction would be between fall of 2003 and 2005, project dependent. The Van Buren bridge construction would take place during the summer when it is not used as much. He hoped the Commissioners would write a strong support letter to accompany the grant proposal. There are other more detailed documents the Board could view at their discretion.

Keith Belden stated that the cost estimates for LaValle and Finley are \$210,000 each. That is the engineers estimate based on a construction firm doing the work under contract and does include the engineering design costs. Under the TSEP funding, if these projects are accepted, TSEP would pay half of that, \$105,000, leaving the County with a liability of \$105,000 for each bridge. Depending on the style of bridge accepted, the County has the work force, equipment and skill to do the work. If the County does the work with its own crews, as much as \$70,000 could be saved. That means that the actual total cost would be about \$140,00 and TSEP would pay \$105,000 of that amount. Even though the County is putting in the labor, TSEP would fund half of the total cost of the project. The County would be getting more than \$200,000 in value and only paying about \$35,000 for it.

Commissioner Evans asked if TSEP money could be granted retroactively. If the bridge needs to be done prior to the grant being accepted, could the money be used retroactively.

Keith Belden stated that would not be possible.

Corinna Sauter stated there was a process to receive a loan through TSEP but she did not know much about the process. If it is something the Board would be interested in, she would investigate it further.

Greg Robertson stated that in order to do these bridges, it would be incumbent upon County forces to do the work on at least Finley Creek and LaValle Creek. The bridge fund cannot afford to do that. The complexity of the Van Buren Street Bridge lends itself to letting a bid to a contractor, so the bridge fund would have to shoulder that cost. The other two could be done by the County work force. To maximize the return from TSEP these have been formatted to put out to bid. The reality is the TSEP portion would not go down, but the County's portion would, because of soft match.

Jim Scholes stated there is a huge savings using the soft match. If there is \$80,000 in materials and \$50,000 in equipment and labor, it adds up to \$130,000, divided by 2, TSEP pays \$65,000, which just about pays for the material.

Greg Robertson stated that Finley and LaValle bridges need to be addressed. The chances of them getting funded through Federal Highway or MDT is fairly remote. In the Missoula urban area, trying to get the Maclay Bridge reconstructed has taken most of that money. It has high vehicular traffic and is functionally obsolete and needs replacement.

Commissioner Evans stated that was now on the State list and the County did not have to do anything.

Greg Robertson stated that was correct, but there is an inordinate amount of time involved in securing funds, as was the case with the Glacier Creek Bridge. Half of it has fallen in the river. They did not want to get into the same situation with these bridges, they would rather take a proactive approach. The bridge on Deschamps Lane would significantly impact a lot of folks if it were to be closed.

Commissioner Evans stated her concern is if there are two projects and TSEP only funds one, how can the work be done with half the money.

Greg Robertson stated that was a decision the Commissioners would have to make.

Jim Scholes stated that the sewer issue has been brought to their attention. They will wrap up the preliminary engineering report as the grant is written and hopefully hear back positively.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Greg Robertson stated that no action was needed until the Board has made a decision on which way to proceed with respect to either sewer or bridges. Only one application can be submitted. Every available source of funding for bridges is being investigated, but they are limited.

There being no further business to come before the Board, the Commissioners were in recess at 2:40 p.m.

#### PUBLIC HEARING

#### LOLO REGIONAL PLAN – LOLO COMMUNITY CENTER

March 27, 2002

The Public Hearing on the Lolo Regional Plan at the Lolo Community Center was called to order at 7:15 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Deputy County Attorney Colleen Dowdall, Office of Planning and Grants Associate Planner Laval Means, Office of Planning and Grants Data Specialist David Gray and Office of Planning and Grants Senior Planner Jeff Schalow.

Chair Curtiss: Good evening, thanks for joining us tonight. I'm Jean Curtiss, County Commissioner, Barbara Evans, our other County Commissioner. Bill Carey is attending a conference in Bozeman so can't be here tonight. We also have Colleen Dowdall, who is a Deputy County Attorney, Patty Rector, our secretary, Laval Means, one of our planning staff that many of you have seen many times. And back at the other table we have David Gray and Jeff Schalow. Before we begin tonight, the Lolo Community Council asked if they could have just a brief moment to challenge you to a run for office, I think. So, Diana Mitchell.

Diana Mitchell: Hi, I'm Diana Mitchell, I'm Vice-Chair of the Lolo Community Council. Anyway, I'm here to ask you folks to think a little bit about what brings you to this process and I would like to think it has to do with community involvement and the willingness to maybe take a stand and the Lolo Community Council has two vacancies that we are wanting to fill and we have two options for filling them. One is by Commissioner appointment which still requires an application process. The other is to come to the May 14th Lolo Community Council meeting and we could do a voice vote. Applications are available through the Community Council secretary Sandy Finch. Her phone number is 273-0805. They are also available through the Elections Office at the County Courthouse. I think going through this land use process which has been incredible extensive, I'm hoping it maybe shows you that you have a say in what happens to your community and here's an opportunity to do a little, put a little effort on the community's behalf and I hope you will. Thank you.

Chair Curtiss: Thanks Diana. As you know, the Planning Board came to the Lolo community and had a public hearing then they had a couple more in town and I know that several, in Missoula, and I know several of you, many of you took part in those also. So tonight we'll begin with Laval giving us a presentation on some land use map changes and some things that happened that the Planning Board recommended and then we will open it up for public comment.

Laval Means: You're going to run the machine. I'm not going to mess with this. I like it, it's a great little tool, but ... My name's Laval Means and I'm a planner with the Office of Planning and Grants and we're here tonight to present the Lolo Regional Plan with the Planning Board recommended changes to the Board of County Commissioners for their consideration for adopting as an amendment to the Comprehensive Plan. Before I really get started, what I want to do is orient you a little bit to some of the documents that we had in the back table, especially for some folks that aren't familiar with the planning process so far. This document right here is the final draft that we've been working from. It was printed in November and Planning Board changes are a separate attachment so I didn't go back and make changes to the base document, but have this attachment that would in effect create changes to the base document. So, we're operating with this as a base and the land use maps of the three key development areas as a base and then, for four months Planning Board spent time making, recommending changes to the documents and subsequent land use map changes, so you would see a copy of this at the back table. It has a cover letter on it to interested folks and gives a little bit of a brief background. The other things that's back there if there's any left, I don't know, are the partial maps. They only show particular areas where the changes occurred from the Planning Board review. The other items are some things that I'm going to introduce briefly today and will likely take up in more detail over coming meetings with the Commissioners, is first off a list, a set of staff recommended changes, it's just a one sheet with writing on both sides and I'll go over that in brief detail at the end of this presentation. The second set is some recommended changes to the plan, again to the base draft, the base document, that are based on some additional information regarding the wildlife crossings. And then the final piece of information at the back there is really just some background information that I think is helpful for everybody and helpful to have into the record in terms of the amount of time and degree of participation and outreach that has occurred over the last six plus years. So with all of that I will get into the presentation. I'm going to just really quickly go over the general concepts and then get right into, and then get into the Planning Board changes, just a little more detail. Since I just finished talking about the outreach and that list of public participation, we'll start with that. Starting back in November 1995, that was the kickoff to this process. Over a period of several years there were workshops, there were subcommittee meetings, there

was student workshops. In 1999 there was a Travelers Rest Design Charette that had a lot of participation in it and media coverage during that workshop, it was a two day workshop. In 2001 we really started cranking out the draft. We produced a Working Draft #1, gathered community comments, came back with a Working Draft #2, gathered more community comment, came back with a Final Draft in November. That Final Draft again is the one that I was pointing to here. Between November and the 12th of February, Planning Board had spent five meetings going over the plan in great detail and made recommended changes to it and that's what brings us here today to the Commissioners. The Planning Region covers about 367 square miles and is one of the seven County regions. In order for us to get a handle on that large of a square area, we focused on three key development areas. Those are the three places where land use designations, development type land use designations, are being recommended or being amended. The other areas outside of those development areas would be recommended as the Open and Resource. A lot of those areas are primarily more remote, steeper slope areas. The three development areas that we have highlighted here are the places that have primary travel corridors going through it and more development activity. Those three areas are the community of Lolo, the north Bitterroot valley and the Lolo Creek valley. The plan itself is divided into three key areas. The first one is the historic and cultural resources, with the key concept being to protect and preserve the cultural and historic resources. The next section is the natural resource section and key concepts out of that are the hillside development guidelines, the grading and drainage guidelines, conservation design techniques, discouraging development in floodplain, areas of significant flood risk, this is a key concept that is like an overlay to certain portions of the plan area that take floodplain but other issues into consideration such as having known that past areas have flooded or are wetlands or such things that sometimes FEMA mapping doesn't always catch, and then the transfer of density is a concept that we're introducing into this plan in certain ways. The development resources key to that is planning for changing demographics, concentrating development in particular areas, considering transition between uses, I think that's something that we altogether as a community have been talking about in how to accomplish, plan for a diversity of housing types and plan for a diversity of jobs, develop an integrated transportation system and insure that there's adequate community services. Within the community of Lolo itself, some of the key things that are within the plan, the concept of gateways which is intended to communicate important places where you want to start communicating you're entering into a place now. It could be done through things like signage or landscaping, you know, numerous things, but to say now you are within the community of Lolo. The idea of town center coming back from an historic concept of the main street that once was in Lolo. Highway beautification and street-scape design, linkages between places in Lolo, just knowing that the community center somewhere down here, the post office is over here, the school is up here and through things like trails, sidewalk improvements, we can work together to try to make the connections, to kind of glue the community together. And then the relationship of Travelers Rest being south of Lolo Creek to some degree, its relationship to the rest of the community. In the north Bitterroot valley, some of the key concepts are clustering of development, decreasing density as you got closer to the hills, community crossroads which describes the concentration of small lot and limited commercial node, the discouraging of strip commercial development and retaining large rural areas. And then in the Lolo Creek valley some of the similar concepts of clustering development, retaining the rural character and the idea of balancing development with the Wildland/Residential, the parameters of Wildland/Residential Interface. This is the proposed land use plan that many of you have seen from the November 1st final draft. One of the things that was important in working on the land uses in the community of Lolo was to recommend a broad range of residential types, a broad range of commercial types and include a portion, and include the industrial designation as well. So, we go from a one dwelling unit per 10 acres in more constrained lands to six dwelling units and four dwelling units within the core of the community and some places with 16 dwelling units as you get even closer to some of the concentrated areas. Similarly, those two levels of commercial designation, a general commercial and then a less intense type of community commercial that might fit more of a side street kind of activity. And then an industrial designation and places also that have a combination of the commercial and industrial. So either way, either one of those would fit and we've got those in a few different locations. The white, just so you know, is the Open and Resource around the perimeter in this area and the other key thing was from the past plans that floodplain, Lolo Creek and north Bitterroot valley was designated as Parks and Open Space. We use Parks and Open Space in this plan to really only indicate things that have a public connotation to it or used as park land. So we used the Open and Resource to indicate the floodplain areas for the most part. Then, what I'll show you next is some of the Planning Board changes. One of the particular areas that Planning Board made change to is in the lakes neighborhood. The plan on the top indicates what we were showing in that November 1st draft. We were indicating a four dwelling unit per acre pretty much just in the areas where development was already, had already occurred. We were aware that there was other places where floodplain that was not in the FEMA mapped floodplain but we also know that there's a study that is going on to better give us an idea of what the floodplain really is, so our, the staff, this draft was indicating that keep the Open and Resource throughout this area and once that flood study was done, then what was determined to be outside of the flood elevation or above the flood elevation would have been a designation for residential development. What we ended up doing instead of that concept, what Planning Board recommended was using what is the most recent flood information that we have which was from a 1999 study of this area and used that as a way of mapping what is outside or above the flood elevation and go ahead and place those as a residential density. So, that's what this is showing, areas that are above flood elevation and that gives the landowner some idea of what to move from, where to go if you were to be proposing some development in the near future until such time as the flood study was done. Another area where Planning Board made some land use changes is north of Lolo and west of Highway 93. This is just a portion of that Lolo land use plan and I hope that you're able to orient yourself. But what we had here is a land use designation of one dwelling unit per acre. That stayed the same with the Planning Board recommendations but it was pointed out that sometimes this land is at an elevation, not sometimes, it is at an elevation below flood so, and it's really the highway and railroad that function as a berm and kept it from being mapped with the FEMA mapping as a floodplain. That's one of those things that would qualify as being called an area of significant flood risk so what Planning Board did is try to identify that area that is below flood elevation and bring in that area of significant flood risk with that broken line. Similarly, just north of that around Bird Lane there's another area, in this case it actually is FEMA mapped as flood elevation and we should have shown an area of significant flood risk around it but we didn't. So we picked up both of those things with this Planning Board recommendation. Closer within the community of Lolo, what you're looking at here is a blow up of a portion of Ridgeway, the top one again is the original recommendation and this is Ridgeway this way, north is up, and the highway, or Highway 93, is running right here and what Planning Board recommended was to bring the commercial designation all the way to this existing road, you can see it right here, bring the commercial to this existing road and then the multi-family designation on the other side of it. This is a lot of yellow and what you're looking at, again, this is Highway 12, west of Highway 93 and then this is north of Highway 12 and Guy's Steakhouse might be right around here. The designation was for six dwelling units per acre. The recommendation for change is to bring in an area of special value. It was pointed out during the public process with the Planning Board that this particular area, well, it's incredibly beautiful, it has some historic structures on it and it has, so it has historic value, it has scenic value, it has natural resource value on the understanding that wildlife and birds are flying

over this area often. So the thought is by indicating this as an area of special value and writing into the plan the importance of development in this area, taking into consideration the historic value of the area, will help to address or to shape some of the development that might come in the future. This is back along Highway 93 again and here's Lolo Creek crossing across it and this is a land use change that was recommended south of Lolo Creek. In the original draft from November 1st, we had recommended general commercial along Mormon Creek Road and Highway 93, spanning from Highway 93 to Travelers Rest and then from this line that is essentially like a mid-way bench before you actually get to the floodplain, that that little area right there would be designated one dwelling unit per five acres. Our reason for that one per five acres was because we were trying to communicate less intense development should occur there and that it should be carefully buffered as you get closer to the creek. What ended up as a recommendation from Planning Board was to bring the commercial to the floodplain and eliminate this little bit of one per five, but write into the land use rationale which is a very important part of the planning document, write into the rationale that importance of reducing the intensity of development as you get closer to the creek and buffering as you get closer to the creek. Then, one of the other places where land use changes occurred within the community of Lolo are as you got closer to the Bitterroot River and we are east of Highway 93. Highway 93 would have been here, I think Allamont Drive is right in here and this is school land owned right here. What we had recommended earlier was a reduction in density as you got closer to the creek from six dwelling units to one dwelling unit and an Open and Resource buffer, essentially, that follows the river. Additionally, we had recommended a 200 foot setback for development from the river that kind of overlapped with the Open and Resource designation. What we heard during public testimony was for one thing, a lot of concern about this one per one designation. This designation, this area, is inside the sewer study area and it's close to existing sewer already. It's flat, developable land and it's close to school land. It's within the community of Lolo. What Planning Board ended up recommending was to bring the six dwelling units per acre to the Open and Resource designation. What they also ended up recommending was increasing the concept of setbacks from the 200 feet to a 300 foot setback. I might point out that we got numerous letters from different folks about various ideas on how much a setback should be, so they went with the idea of a 300 foot setback and have that Open and Resource fit with the setback, so there wasn't that overlap anymore. But, also in addition to that, the setback could be reduced based on certain criteria that's written into the plan and it could be reduced to as much as 100 feet, so you really have to look at this line as kind of a flexible line and it really will depend on analysis at the time of a project review and meeting this certain set of criteria for the final setting of that, I guess. Primarily it's 300, indicating through consideration of this set of criteria how it could be possibly less than that. That covers that one, thank you. Down in the north Bitterroot valley, again, I'm not going to spend a lot of time on the land use designations from the original draft, but primarily we were focusing on a couple focus areas in this original draft, one being around the old highway and the Highway 93 intersection in this particular area and another focus area that was around the Carlton Creek Road and Highway 93 intersection. This particular one, you can see how the colors change as you go further away and similarly, it did that down here to some degree. This was a community crossroads designation with a one dwelling unit per acre residential, to just a one dwelling unit per acre to a one per five, to a one per ten, and then one per forty. Again, that concept of density decreasing as you got further up the hill. And it was similar in this place here, except that there was some existing zoning in place already that we were trying to match. Let's move to the Planning Board recommended changes. It was pointed out during Planning Board review that down in the Carlton Creek area, that's what you're looking at here, it's a blow up of the Carlton Creek area. This is Carlton Creek Road and this is Old Highway 93 and then Highway 93 is next to it. The top map is the original recommendation from November 1st and it was pointed out that this place has an historic homestead on one of those corners and a stream running, the creek running along side the road here, not an easy place to do a lot of development in and not a lot of interest in development that might include commercial use. So, what Planning Board recommended instead is to bring one per five all the way to the Carlton Creek Road and then still retain some of the one per one on the other side, on the south side of Carlton Creek Road, some of it to match the existing smaller lots. The other thing that we did with this plan change, was there was an area of significant flood risk that was indicated south of Carlton Creek Road here, it was pointed out to us there really wasn't any sign of that and, you know, questioning why we had done it. We went back out into the field to look at it and kind of wondered it ourselves. We recommended along with the Planning Board to take the area of significant flood risk off of this particular portion of the plan. The other place that we made a change is north, is further north in the plan. This is Manor Boulevard and Highway 93. This is north of the old highway, old intersection, the old, I'm getting it all mixed up now. Highway 93 and Old Highway intersection.

Chair Curtiss: It says on the map Maclay.

Laval Means: Oh, it's Maclay. Maclay. Thank you. It was pointed out to us there also that this portion that we were showing as areas of significant flood risk really wasn't. We went out there, we looked at it, Planning Board recommended taking that portion off. That's another land use change. Next is over in the Lolo Creek valley. What we had here is various designations from one per one, one dwelling unit per acre, in particular areas where development had already occurred, to one per five, and then once you got past Mill Creek, we were recommending one per five continue along Highway 12 to a certain degree, but when you got on the other side of the creek, we recommended a one per ten, less density, because of more remoteness and less access once you got on the other side of the creek. What we did, what occurred with the Planning Board recommended changes, now in this one, you've got to look at the bottom as the November 1st draft. Further analysis was done of soils in this area, and slope and vegetation and as a result of that, some of the changes were to take some of the land that was recommended as one per ten out and put it back in at more of a floodplain designation, the Open and Resource, and in other areas increase, you can see it right here, the designation of the one per ten. Additionally, on the north side of Highway 12 they increased some of the one per five a little bit in this area, and all of that again, came from some further slope analysis and soil analysis. Finally, some of the planning, the other Planning Board recommended changes, I'm just going to highlight some of them but not all of them, you get all of them actually from the document, are clarifying that some improvements were made to address the flooding concerns around Rowan Road, including the conference center as a part of a type of specialized recreational commercial, including residential as a part of community commercial designation, recognizing existing commercial uses, clarifying that home industry is recommended on parcels greater than one dwelling unit per five acres. Next. The 300 foot setback, I talked about that a little bit already. The 300 foot setback for development from the Bitterroot River and Lolo Creek with criteria established for reducing the setback to no less than 100 feet, suggestion of a pedestrian overpass for improved pedestrian access on Highway 93 in Lolo, reduce the amount and set criteria for possible density increases with the Open and Resource cluster option and Rural Residential cluster option. That's it for the Power Point presentation. The final other document that the Board of County Commissioners are going to be looking at, that I've prepared already, have to do with first off, the staff recommended changes. The first two items that are part of the staff recommended changes are essentially like clean up items from Planning Board review. They had asked us to look at how we might draft some



language for more flexibility with parking standards. I took a stab at that and that's included in this document here, and the other one has to do with how to better define what we mean by Open and Resource cluster. It was described as, you know, there was some concern about clustering resulting in a set pattern of numbers of homes along a road without any break along it for wildlife crossings. The final set there, Number 3, has five items on it. A lot of them are clean up items, noticing that I'm missing a word and then the final one is realizing it was pointed out that one of the places, one of the areas on the hill off of Ridgeway, we were designating as Parks and Open Space but in fact it's not a dedicated parkland, so therefore we should be recommending a Urban Residential at six dwelling units per acre. This next document focuses specifically on some research that we've been doing regarding a study that's occurring, that's ongoing, for wildlife crossings and we're introducing some language here for the Board of County Commissioners to consider that are, that would be part of the biology section with some additional policies for that and then also part of the transportation section with an additional strategy in that portion as well. That pulls it all together to date. Thank you.

Chair Curtiss: Thank you Laval. I had one more map in my packet that showed the Leo Hansen Park.

Laval Means: Wow, thank you.

Chair Curtiss: There is a Parks and Open Space in the Leo Hansen Road area that ...

Laval Means: Would you like me to explain it, just briefly.

Chair Curtiss: Sure.

Laval Means: What Jean's referring to is I spent some time with the County Parks Board and they noticed in our plan that we were referring to a Leo Hansen Park down in the Leo Hansen Tracts Subdivision area by the Carlton Creek Road and, but that we weren't showing anything that looked like a park on our map. I told them we'd look into it further and that they should jive. If there isn't such a park, then we'd make a change to the plan document, if there is, if it is County land, then we'd make a change to the map itself. We researched it and discovered that indeed that is County land and it's good land for conservation land, part of it is in floodway, part of it is in floodplain and are recommending that it would be Parks and Open Space.

Chair Curtiss: Thanks Laval. So at time we'll open the public hearing and if you could, because we have to record public hearings, we need you come and use the microphone and if you could identify yourself and if your name is spelled other than the normal way or a hard to spell name, please spell it for us. And can we have somebody turn the lights on now. Just go ahead and come on up to the microphone if you'd like to speak.

Mark Behan: I'm Mark Behan, a resident on Lakewood Drive. Thank you Laval for the terrific job you've been doing putting this complicated plan together. My comments deal with Partial Map #1. Since the floods of 1997, the communities located on the designated serious flood threat area onto one of your earlier maps on Lakeside Drive, Lakewood Place, Red Fox Road, Peninsula Drive and River Road, have been working on long range solutions to the flood hazard. During that period we've talked to representatives from the Natural Resource and Conservation Service, the Federal derivative of the Soil Conservation Service, especially Mike Odegaard, Brian Maiorano, who has been extremely helpful with the flood management group in the County. Just last night, we met with Mike Odegaard who is helping us understand a major revision to their flood plans that's been made possible by their development of a very high resolution contour map. This map has two foot contour intervals which is much finer resolution than you normally see and through it have been able to identify why our particular neighborhood is at flood risk. There are essentially two zones, one the Bitterroot is trying to recapture the lakes at the corner that it makes at the end of River Road, there's a horse pasture there, at the end of the horse pasture there's a corner and the river is attempting to recapture the lakes at that particular point. The other one is the clear identification that the sewer plant's location causes the river to back water up into the lake region. The floodplain above and below the sewer plant is hundreds of yards wide, at the sewer plant it's reduced to zero. We've been looking at different ways to alleviate that. One of the things that Mike Odegaard is looking at, at the present time is the value of this region behind the Pitch and Putt areas, as a flood zone. Your map clearly indicates one of the old channels extending back up to Lakeside Drive which is currently blocked by Lakeside Drive. Mike mentioned in his review last night that we should be looking at old flood channels in this particular area as a means of alleviating backwater flow into the lakes. Now this is a work in progress, it's not done yet. There's a number of things we're still looking at in means of trying to alleviate that flood problem, but this is one of them, and for that reason, Laval, I'd like to discourage you from changing this from Open Space into the residential area that you have got plotted on this until we can work all this thing out with the Federal flood group and with the County's flood folks and thank you very much for considering it.

Chair Curtiss: Thank you Mark. Is there further comment?

Michele Landquist: Hi, I think most of you know me, I don't know everybody that's here. My name's Michele Landquist. I want to thank you for the hard work and all the time that has gone into this plan. It's been a long time coming. I've followed it from the onset to its fruition and I know for a fact it's been a long, long time and lot of hard work. I want to thank you for allowing the public to express its concerns and voice their complaints and I think from everything that I've followed so far, pretty much everything has been addressed and this is indeed becoming, I mean it's still in the works, becoming our land use plan, ours as in Lolo, not Missoula, okay. There is one thing that is being left out and this is in Chapter 6 in the Community Character section, for anybody that wants to follow along. This is where it describes the existing character of each development area, the desired character that the residents wish to maintain or enhance and recommended land use policies and implementation to achieve the character. At each workshop that was held, citizens were asked to describe the qualities and issues of Lolo. I'm taking bits and pieces of this and I'll tell you when I turn the page. Generally, residents of Lolo consider it to be a small community nestled within a rural area with incredible views and natural amenities. The people, history, wildlife, river, creek and views make this place unique. Lolo is a gateway to many nearby features, the Bitterroot Valley to the south, historical trails and recreational opportunities to the west and Missoula to the north. Turning the page, I'm now on 6A-2. A major detraction from the character of Lolo is the visual chaos created by a variety of signs, light poles, power lines and asphalt. These features tend to distract from the view of otherwise enticing uses beyond. I'm now on Page 6A-3. Three key qualities that contribute to the character of the area are development, aesthetics, preservation of natural areas and a balance between the built environment and the natural setting. Many residents expressed positive hopes for enhancement of community character because they do not consider



the area spoiled yet. Then if we turn to 6A-11, Number 3, preserve the natural features that distinguish Lolo from Missoula: a. Preserve scenic vistas that serve as backdrops for the community of Lolo, such as Miller Creek Divide, the Big Hill, the Sapphire Mountains, prominent ridges and upper slopes and ridges in the Bitterroot and Lolo Creek Valleys. It is with this in mind that I want to present to you something that I discovered when I was taking care of my father last year in New Jersey. These cell phone towers that we've got cropping up all over the place can actually be disguised as Ponderosa pine trees, and in urban settings as clock towers, bell towers and other odds and ends without them interfering with the way that they function. The citizens, it's kind of ironic, in New Jersey had a problem with this because Ponderosa are not indigenous to New Jersey and didn't blend well with their hardwood species. However, when I saw it I didn't feel like a fish out of water anymore. From a distance I was like 'Oh my God, you guys have Ponderosa.' My dad starting laughing. He took me closer and closer and I continued to take pictures of what I thought was this Ponderosa pine tree and I said I have to do something when I get back. I have to make this known to people, that there's a better solution instead of looking at these antennas. So, I've taken the liberty to make some blowups of the Ponderosa antenna as well as the ones in Missoula. I wasn't able to get a clear day with the sun in right spot to get the two big ugly ones in Lolo, but I'm asking that something be put in place that any future antennas be cryptically designed and that perhaps when the lease is up or just like you did with the sign ordinances and making people lower signs that some of the ones that really look like antennas in the middle of our town become changed into something more scenic. I tried to take the pictures in such a way cuz it was fall there and spring here, but I tried to show the fact that we've got a lot of deciduous trees here and rooftops and from a distance I swear they really do look like a tree. I hoping that this not only goes in our plan but that you'll consider this for Missoula's growth policy as well. There's one that catches my eye every time I go up on the 'Res' in the mountains and it just sticks out and it's right in with all those pine trees, it would blend so beautifully. I would appreciate you considering making that change in that section.

Chair Curtiss: We've also been challenged by another group to look at a policy on cell towers.

Michele Landquist: Is that SAVE or something like that.

Commissioner Evans: You know, you might want to know that we did require, or we did agree with a fellow who wanted to paint his cell towers green so that they blended with the mountain. We thought it was a great idea and we went along with it, so we appreciate your thinking.

Chair Curtiss: Next?

Dick Ainsworth: My name's Dick Ainsworth, I'm with Professional Consultants, Incorporated, or PCI, a consulting engineering surveying firm in Missoula. I'm also here tonight on behalf of the Missoula Building Industry Association. Both myself and the Building Industry Association have written letters to the Planning Board and I believe also to the County Commissioners regarding sort of a general concern that we have with regard to some language proposed to be included in the Lolo plan that deals with the setback from the Bitterroot River. The concern started out with the proposal to setback, put a standard setback of 300 feet along the Bitterroot River for its entire length and I think the original discussions regarding that started in the area of the Orchard Park Subdivision, which had been through several years ago and was quite controversial and there was a lot of information in that area about the river bank and what was there and what needed to be done to protect it, and that kind of grew into a blanket concern of the entire length of the Bitterroot River through the planned area and ultimately became as is proposed presently in the revised documents you have from the Planning Board would be 300 feet on both sides of the Bitterroot River. One of my concerns and the Building Industry Association's concern was that those setbacks shouldn't be established arbitrarily at some blanket setback that all rivers, streams and riverbanks are different, they all vary, in some cases 300 feet might be no where near enough, in other places it might be twice as much as it needs to be and that those ought to be looked at on an individual basis rather than just applied to the river sort of carte blanche, if you will. The concern was also that if this was adopted as part of the Lolo plan that the next plan that came along or the next development that was proposed somewhere on some other river or stream in Missoula County they might say, 'well, that was a good idea in Lolo, let's just put that on this one,' be it the Clark Fork River or Grant Creek or whatever the creek or river may be in Missoula County. That concern I see was well founded because from the original draft of this plan that had the 300 foot setback on the Bitterroot River we now have it proposed for the Bitterroot River and all of Lolo Creek. So, it just jumped from covering only the Bitterroot River to covering both sides of Lolo Creek. 300 feet is the length of a football field, on both side of the creek and on both sides of the river, that's a huge amount of property that is just arbitrarily, in my opinion, being said you can't develop it. The language in there now says it's got to be 300 feet unless you can prove to us using this set of criteria that you should be able to make it less, down to no less than 100 feet. I think that's the reverse of what it ought to be. I think we ought to look at these areas and that's what a plan ought to do, is look at areas and say, 'because of what is in this area we shouldn't be closer than 100 feet or 300 feet or 50 feet or 500 feet from this creek or this river,' and that ought to be included in the plan. We shouldn't just blanket it and say you can't do anything here unless you prove to us that you should be able to. And the set of criteria here is such that I think anybody in the room could sit down and probably argue either side of these with almost any piece of property and have a difficult time determining whether or not it ought to be one thing or another. These are a very vague and general set of criteria. So, I'm very concerned that the 300 foot setback will become that and that it will be very difficult to try to get it lowered and again, I'm not saying that in some areas it shouldn't be 300 feet or perhaps more, but I think we ought to be looking at all of these streams and riverbanks on a case by case basis and establishing the setback at what the circumstances at that particular location dictate, the topography, the vegetation, in some cases it's floodplain already so certainly it couldn't be developed there. It also took another leap in this revised plan now because it also says 50 feet from all other water courses in the planned area. So we started at 300 feet back from the Bitterroot River and Lolo Creek, then we went 50 feet back from both sides of all water courses in the Lolo plan. The only justification that I heard for that was that the State of Montana's best management practices and they have a manual out that's called Water Quality Best Management Practices that's part and parcel to stream side management law and regulations that have been adopted by the State of Montana several years ago that were designed for logging and there is a streamside management law presently that says that you can't do all of the nasty things that logging does within 50 feet and it varies on slopes of a drainage so this is already in place in the State law to protect these areas from logging and I think that's good but we've taken a leap and said if it's good to say that you can't log within 50 feet, which is probably one of the most destructive things you can do along a water course, that we ought to take the next leap and say well you can't do any development period within 50 feet of any water course. And again there's nothing in here that says let's look at each stream on a case by case basis, let's see what makes sense in this case and adopt that, so my plea for you would be to not adopt this plan with a blanket setback from any of the water courses, be it the Bitterroot River or Lolo Creek or the 50 feet from all other

water courses in Lolo. I think those need to be looked at. The original language in the plan had the 300 feet from Lolo Creek, but it said 'and an adequate distance from other streams and rivers within the planned area to protect the stream bank stability.' Any development that you folks review, obviously a subdivision or any of that type of development, gets a great deal of scrutiny with regards to that very issue and so you're not going to have a subdivision, Orchard Park was a good example, that would come along and propose to do something against a stream bank without getting reviewed subject to a much more detailed set of criteria than the one that's proposed in here. So I would ask that you not include that very loose and sort of broad brush language in the plan with regards to the setbacks from those streams. Thank you.

Chair Curtiss: Thank you Dick.

Sterling Miller: Thank you. My name is Sterling Miller. I'd like to, I live in Lolo, right next to the, or in the area that's covered in this Partial Map 10 and I'd like to discuss that a little bit. I agree with the preceding speaker that the criteria are set for reducing the setback from 300 feet to 100 feet are vague and can be interpreted either way, therefore I suggest, though, that's the only thing I agree with the previous speaker on, I suggest that therefore that the commission should instead follow the recommendation of all the expert testimony that has been received by the Planning Board by the Office of Planning and Grants and through letters and testimony from experts on riparian systems and on wildlife corridors that these area need to be large and need to be wide along riparian systems especially in order to protect resource values that make the community of Lolo and the County of Missoula places where people like to live and recreate. The controversy over the Orchard Park subdivision that occurred several years ago was only, that subdivision was not approved by the Commissioners and by the Planning Board only because the area in the Orchard Park was designated as Park Land and Open Space, that meant that it could only be developed, it could only be a maximum of two units built on those 13 acres in that proposed, on that site. The current plan would allow that area to be developed at a density of 6 units per acre, subject to this setback that is, the way it currently reads, it's vague and difficult to interpret. Therefore, my recommendation to you is that you set this and this is the same recommendation that the Commissioners have received and also the Planning Board has received from the Department of Fish, Wildlife and Parks, that the setback be set firmly at 300 feet, subject only to reduction based on conclusion showing that the resource value that the setback is designed to protect would not be compromised by reducing the setback from 300 feet. And I point out that I'm not recommending something that is for somebody's else land, land that I own, I own two parcels of land that would be covered by this setback and so I'm certainly not recommending something for somebody else's land that I'm not willing to accept on my own. The reason I and others live in this area is because it does have rural values and resource value that we want to preserve and I think that I encourage the Commissioners to give more consideration to protecting the resource values that are associated with the Bitterroot River which I believe are probably the most important and significant credential that Lolo has. If it weren't for the Bitterroot River, there would be no Lolo and Lolo Creek and therefore I think it's entirely appropriate that special consideration be given to protecting those kinds of resource values. You can always go to less dense development, I mean from less dense development to more dense development, but you can't go the other way around. One other thing I'd like to comment on what the previous speaker said, he said that logging in the 50 foot setback associated with logging in the DNR resource plan was the most destructive thing that you could do next to waterways and that is obviously incorrect. By far the most destructive thing that you can do adjacent to waterways relative to resource values that the plan wants to correct is to put a subdivision there and particularly a subdivision with a density as dense as six units per acre. Therefore, I think that that's far more destructive on a long term basis to the resource values of the riparian system than logging and therefore there's all the justification in the world for the kind of setbacks that have been recommended by the experts who have sent in letters and have testified. Thank you very much.

Chair Curtiss: Thank you Sterling. Next?

Jim O'Neill: My name's Jim O'Neill, I'm here representing my wife Carol. What I'd like to talk about is the same issue that was just talked about by the last two speakers. Carol and I own property along the Bitterroot River in the Allamont Orchards area, 1.8 acres and I'll show you that in just a moment. We think that the plan that's being proposed is a good plan, I really have to compliment Laval and the planning staff in doing a nice job and being, I think, really sensitive to a lot of special issues that are found here in Lolo. But what we object to is the rather arbitrary decision to setback or to tell us that we have to have our home setback from the river a certain distance. Several years ago when we bought property along the river it was for the expressed purpose of wanting to build along the river. If you all could come out and look at the lot that we own, all of you would walk right up to the river and say this is where we'd like to have our house, it makes no sense to own that property and not have a view of the river and if you're setback 300 feet, well you can't see the river, you might as well be in Missoula and that wasn't what we had in mind. The parcel that I'm talking about is right here and notice that when you set back this far it takes about half and that's the 200 foot. When you setback this far it takes about two-thirds of our property and so for us that's just like saying we're taking your land, we're saying that you can't develop on that land the way that you'd like to develop on the land. I'm okay with a 100 foot setback if it were to be the so called riparian area, we agree with Laval that the 100 foot setback has to do with trying to make a correlation between the floodway, floodplain and the open and resource area but fundamentally in that area and probably a bit farther to the south there's a whole series of errors that have been made over a long time. The floodway map, the floodway lines are actually established originally by Sandbourn Insurance maps and if you've ever looked at those maps you can see that somebody drew with a pen that was about two inches wide and it's very difficult to understand where the perimeter of that is. The thing that's wrong about the mapping on the map here that we have from the Office of Planning and Grants is that it shows the floodway way up on the bank and the floodway is not up on the bank. I've hired a surveyors, WGM Group, and it's been mapped that the 100 year floodplain is about half way up the bank right there, so that's a high bluff, that's not a floodway and so there's no correlation there between the open and resource area if that's supposed to be a floodplain. There's just no correlation there. The other thing I guess that's a concern to Carol and I is that notice it's gone from one dwelling unit per acre on November 1st to the now recommended six as Laval mentioned, but when you take our land that's this wide and you stretch it down and it's this wide and you say okay well, here you can have one house, well almost two houses on that two acres and then you shift it down to here and oh by the way now you can put six houses on that, okay that's saying to us we'll build away from the river, we're not going to build a single family home, we should build a six-plex on our acre and I don't want to do that, I don't want to do that in Lolo, I don't want to do that to Lolo, so that whole change there in a single family neighborhood doesn't make any sense to me at all. The last thing that I guess I wanted to mention is that a lot of these issues are sort of theoretical about what happens but the fact is, is that awhile back Carol and I decided that we wanted to sell this land and it's been for sale and I have a buy sell agreement on the land right now but two days ago the buy sell agreement fell through because my buyer went into the County and talked with Dave Loomis in the County and Dave wouldn't give that person an answer as to where they could site the house and I think it

had to do with the fact that all of this was tied up in this meeting coming in and it could be 300 feet or it could be 200 or it could be 100 or it could be unzoned land which is what it is now and so the next that I know is that I have a mixed offer on our buy sell because of this and that makes me fairly angry and I think it's unfair and I think that's not right that that's happening and I'd just like to have you consider that. Thank you.

Chair Curtiss: Thank you. Is there further comment?

Dave Haverfield: Jean Curtiss, Barbara Evans, I'm Dave Haverfield, the Lolo Sewer and Water Superintendent. I just wanted to make you aware of something that you might not be and maybe members of the media and the community. Mr. Behan earlier had talked about some of the flood problems down in that area. Thought you'd just like to know that RSID 901, with the cooperation of Brian Maiorano and Mr. Odegaard, HDR Engineering and Greg Robertson who is the Public Works Director, we're going to, we're looking very, very closely at removing about 100 feet of the original dike that's down there really close to the sewer plant right along the river. We're going to take those spoils and put them inside our lagoon. This will be a new aerated lagoon we expect to be breaking ground here in a month or two and maybe by this fall it will be done so there will be 100 feet of that removed and the floodplain people tell us that will help reduce some of the flood problems that are down, for the back pressure that's down in that area. Just a little piece of good news, it looks like a win/win situation, we get the material or real close we get to maybe mitigate a little bit of some of this backwater some of the stress and wanted to make you aware. Thank you.

Commissioner Evans: Thank you David.

Chair Curtiss: Thanks Dave. Next?

Don Bedunah: My name's Don Bedunah. I want to also talk about the 300 foot setback. I'm concerned also basically about the ability of the plan to protect the river and I think like Sterling said, the Bitterroot River is a very special natural resource that we have in Lolo, it's culturally important, it's important because it functions as a wildlife corridor in that particular area because areas to the south in newer Allamont area are very wide open spaces so there is a lot of movement of wildlife in that particular area. I do live in this area, I live 300 feet from the river and I disagree with the gentleman that spoke a moment ago that there's no reason to live in Lolo if you can't live on the river. When I want to look at the river, I can walk down to the river. It's a beautiful river. I can walk down there, I can allow the wildlife to move through that particular area and it doesn't take away any of my desires to live there besides the area that he's talking about, he has a great view of Lolo Peak also. I also disagree very strongly about the criticism with logging and the damage that it may cause in these areas because that logging damage is a relatively short term influence of these riparian areas. I'm certainly not stating that the regulations to prohibit logging within 50 feet of the stream is not necessary, but that is in my opinion a relatively insignificant impact as we move away from these waterways in comparison to putting homes adjacent to these waterways because that does very much disrupt wildlife movement through those areas. We know that these homes in these areas, yard chemicals, pets, other problems do affect water quality of our waterways and the cumulative impacts over time can be quite high. I've lived in this area for approximately 10 years. The 300 foot setback hasn't bothered me whatsoever. There's been that Open Space law in since 1978 and I feel like that open space line was a legitimate line but I do as I stated before very concerned about the ability of the plan actually to protect this very valuable resource. We look at what's happening in our community and we do obviously get more and more pressures from just the increase in population and I think we have to look at some of these areas that we can protect and that do need to be protected and I think the Bitterroot River is probably one of the better and prime examples of an area that should be protected. I stated this before but in the area to the south of me and I believe the gentleman before me owns the area to the north of where I actually am, but somebody came into that area and said I wanted to build on the river but I hear there's a problem. And I said yes there's an open space line back there and he seemed to be very very concerned and upset about that but again I don't see the problem with people having the property and being able to just walk down to the river and enjoy it occasionally and not block our wildlife corridors in these uses because it does have an impact. Thank you.

Chair Curtiss: Thank you. Is there further comment?

Karen Knudsen: My name is Karen Knudsen and I am speaking on behalf of the Clark Fork Coalition. The Coalition is a member supported group of citizens, scientists, business people and recreationists who are dedicated to protecting and restoring water quality in the Clark Fork River basin. I hope the issue of river setbacks has not been completely exhausted yet because I have a few remarks about that topic as well. Some general remarks but I think that might help the discussion some. Communities throughout the Clark Fork watershed we've discovered particularly up here up the Bitterroot as well as the Blackfoot, the Clearwater, the Flathead even and the Clark Fork and other areas I think have learned over the last decade or two that unplanned riverside growth isn't always kind to our waterways. First off, there's the matter of runoff. When development replaces open space with roads, with driveways, with parking lots, with rooftops and other impervious surfaces, the end result is more runoff into our streams and rivers. In fact the increase is quite dramatic. For example one acre of undeveloped grass land that is paved over by asphalt ends up increasing the runoff into rivers and streams sixteen fold and that water is not exactly clean water, it generally contains sediments and pollutants such as fertilizers, pesticides, herbicides, motor oil, antifreeze, all of these end up in our surface waters and the trouble doesn't end there. Accelerated runoff also leads to or speeds up stream bank erosion, it destroys riparian habitat, it undermines flood storage capacity and also causes other river alterations that ultimately degrades water quality. The runoff issue is only part of the story. One other part also deserves mention. It pertains to the boundaries of communities. When they continue to push outward we end up with people moving too close to riverbanks and into the floodplain and as a result when we end up with people manhandling these fragile ecosystems trying to control flood waters, trying to stop property loss, trying to enhance views, trying to prevent drinking water contamination. These are some of the issues that surround the issue of building too close. There is good news though at least from our perspective which is that much of this development and much of this discussion or much of this development and much of this unplanned growth along riversides has taken place unwittingly. The people in the past have not been aware of some of the problems that riverside growth can cause our water quality and now we know better so this is the time I think to take into account some of the lessons that we've learned, incorporate that into some of the planning tools that we have and insure that we don't repeat the mistakes from the past, insure that we can even correct some of those mistakes and move forward, so that's why I think it's heartening to see this Lolo Regional Plan emphasis on floodplain protection, it's promotion of natural stream functioning and stability and also it's recognition of the benefits, I'm talking about not only the environmental benefits but the economic benefits and the biological benefits of just letting rivers be. So I would say that probably one of the best investments that the Board of County Commissioners can

make at this juncture in assuring clean, safe and healthy waters for future generation is to go ahead adopt these generous river setback and the other water provisions in the Lolo Regional Plan. I think if anything is clear from the discussion it's that managing growth in a way that's economically sound, environmentally sensitive is no easy task but insofar as we have a focus on water protection, on protecting our high quality waters, which is something that cannot be replaced, something we cannot do without, I think this Lolo Regional Plan is something that can take the community down the right path. Thank you.

Chair Curtiss: Thank you Karen. Other comments?

Myra Shults: Good evening, my name is Myra Shults. I live at the north end of what is on Partial Map 2 on Mull Road. I appeared before the Planning Board and made a request they change the one dwelling unit per acre area to five dwelling or one dwelling unit per five acres and the Planning Board decided not to change that. There is a change however from the November 1st partial map and that is the area of significant flood risk. This is an area of significant flood risk but and that was evident a couple of weeks ago when the water came up when we were having runoff, but the density in that area is still one dwelling unit per acre. I talked to Laval about that before the meeting and she said well we can leave it like that and they can take precautions. I'm glad I followed the gal from the Clark Fork Coalition because the reason the water comes up in that area is because it's coming up from and flowing back down into the water in the Bitterroot River. If we keep one dwelling unit per acre in this flat area and I'm talking about the flat area and not up on the hill where I live, we're going to increase the nitrate concentrations in the Bitterroot River. Now, I just want to confirm that a thought I always had about a plan before last week when I lost a case in Lewis and Clark County was that a plan is a guide and that we're not talking about zoning because I know a lot of people since day one have been concerned about these maps and that they are zoning their property. I'm hoping that this plan is a guide and that if a proposed development comes in in an area that the County Commissioners will look at that as a guide but maintain some flexibility so I ask you either to change the area of significant flood risk to a higher density or eliminate any development in that area or at least when the subdivision application comes in take into consideration the effect that homes in this field are going to have on the Bitterroot River. Thank you.

Chair Curtiss: Thank you Myra.

Gary Buehler: My name's Gary Buehler. I wonder if Laval could put up Partial Map 2, November 1 and then the Planning Board proposal. I would request that you reconsider the top map the Planning Board proposal. In, I think it was the meeting prior to the last one, the subject of significant flood risk in this area was brought up and Mr. Fred Reed asked if any of the existing structures that were there were affected and I'm pretty sure you said no. We can check the minutes but I'm quite sure on that. But if you look at the map that shows, that's outlined showing the area of significant flood risk is now, right in here, where Valley Grove Drive comes off of Highway 93, there is a triangular shaped piece of property that's owned by Teton Lumber Company and then the next rectangular piece, 1.21 acres, that is my property, that's designated as Tract 9C, but if I'm quite surprised now to see this map and find that both of our pieces of property are now within areas of, within an area of significant flood risk whereas again going back to the meeting where Mr. Reed asked that specific question, if there were any structures there that were affected, you told him no. I guess two things, you know, if you can go down to McLain Creek and just observe that land and say that well it's not within the flood risk I would either like you to do that for my property or I would like to see the geological survey that places us in that situation. This has as you would imagine could alter the property value of my place significantly so I would ask that you re-evaluate this delineation where our property lies because certainly when we came in and applied for a commercial building permit we went through the appeal process, we were granted the building permit as a veterinary clinic and certainly nothing was ever said about the floodplain or flood risk. So I would request that you re-evaluate this delineation.

Chair Curtiss: Mr. Buehler, yours were those two pieces of property north of Valley View Road, is that right?

Gary Buehler: The little triangular shaped, this is Teton Lumber Company and this is mine, Tract 9C. Thank you.

Chair Curtiss: Thank you.

Greg Martinsen: My name is Greg Martinsen. I'd like to also address the areas of significant flood risk throughout the whole of the plan. After looking at them and several discussions with several individuals, I fail to see where most of these designations have been made by sound scientific principle or engineering practice, and I would encourage the Commissioners and the planning staff to try to find a way to more accurately and correctly using sound principles and accepted principles determine the true location of these areas instead of what I kind of suspect is a knee jerk reaction and the plan would be only strengthened by using sound principle. Thank you.

Chair Curtiss: Thank you Greg.

Harold Dye: My name's Harold Dye, I'm here speaking for John and Gertrude Moe. Mr. and Mrs. Moe live in the same area as Myra Shults near the end of Partial Map 2 and I'd like to talk about the same concern. I would like to join in some other speakers compliment of the planning staff and the Planning Board for the tremendous amount of work they did here. In a sense, I'll second what Mr. Martinsen said. I think it is critical to determine what the flooding area is here and if what's down on this map isn't correct, it shouldn't be, it should be altered to be correct, however, if once it is determined where there's the flooding, I think what the planning document should do is be consistent. We have a portion of significant flood risk on the same map just north of it in which it's Open and Resource and yet just down in this one, the southern part of Partial Map 2, that area of significant flood risk is just more or less a footnote and it seems to me that once the area of the flood risk is there, there should be some restriction because of the obvious problems of flooding and that might be, if the determination is, and I think it has been in other parts of this plan, that areas of significant flood risk should be at a lower density than this particular parcel should be a lower density also but if what's down on this map is not correct, then what's down on the map should be changed. I will say that the Moe's are my in-laws and I can tell you from my own observation having gone up to the house many times over the years that there is subject to standing water during the spring in this area but it should be the correct, the correct designation should be made. Thank you.

Chair Curtiss: Thank you.

Ken Allen: My name is Ken Allen and I own the particular portion that's being discussed on Map 2 there and the one dwelling unit per acre is half of what the previous plan had, that previous plan had it as two dwelling units per acre. A significant portion of this land is already zoned on a special zoning district, as minimum lot size of one acre. The standing water that Myra Shults was speaking to here as of last week wasn't from the water coming up, it was from the snow melting and the ground being frozen. It sat there for about a day and then when the ground became unfrozen where the water could penetrate it, it went out. I do know that there is a possibility of some minor water coming up in some of the lowest portions of this property during the high water in the spring but the majority of the water that you will see out there in the early spring when it's frozen ground underneath and whatnot and that way water can be taken care of very easily with swales and whatnot if a development is put in and that's what would be done if we decide to develop, how we decide to develop it. So I would recommend you leave it as the one dwelling unit per acre and I appreciate all the work the planning staff has done on this. I have met several times with members of the staff and I think they have done a good job on the entire Lolo Comp Plan. Thank you.

Chair Curtiss: Thank you.

Stan Hendricksen: My name is Stan Hendricksen. I'm going to speak to this property. I wasn't aware that this had been changed. I think the developer has had the rules changed on him several times and having lived here in Lolo drove back and forth to Missoula for 55 years I know that that is ground water that comes up, it is not a flowing stream, it doesn't go back into the river, it comes up and goes down. It's not a flowing river bed. So I don't think there's any concern with polluting the river and there are rules that the ground water, you have to put your septic tanks away from it and I really don't see any problem with developing that ground as they have proposed but I think they've, when I saw this map and I have no financial interest in this property and I could care less one way or the other but I think they've been just dealt a dirty blow and I think you're finding a lot of the old timers around here that say hey I'm selling out, I'm getting out of here and I have property for sale this last couple years has made me rethink my plans.

Chair Curtiss: Thank you Stan. Is there further comment?

Bruce Bugbee: Bruce Bugbee. Appreciate the opportunity to visit with you all once again and I do appreciate the responsiveness of the staff and by that I mean the willingness to listen and explain and not just rigidly insist on one thing or another but it has been a reasoned response and that's really appreciated. There are a few things that I'd like to comment on and these are for the most part clarifications. On details in the December 4th recommendations on Page 4, or excuse me, the January 22nd recommendations, Page 4, Item 4-B-9, there's a reference to flooding around Rowan Road and that is being caused by an overflowing irrigation ditch. There are a variety of ditches in the area and it's some concern whether or not this is actually the cause or a suspected cause and the solution that I would suggest is to just say 'may be caused.' It has other implications in terms of the management of that ditch system. We don't argue with the fact that there's flooding on Rowan Road, just the cause. If it is specific, we'd like to know based on what, what evidence, but if it's not, if we could just make it a general reference that it may be. The next thing is the, in the February, it's an exciting adventure to track all the changes here and I can't imagine how this affects a person's sanity in the long term. That would be high risk pay for this.

Chair Curtiss: We're going to give them a day off when they're done.

Bruce Bugbee: Oh good. The section I'm looking for is 4-B-13 and that's the, this is a slightly different issue on the 300 foot question. And it's really a clarification and that is I understand the 300 foot setback and I understand the reference to the average high water setting back, but where the river goes into a broad floodplain that may be half a mile or more and you have an area abutting that that is out of the floodplain. What applies there? Is that another, is it 300 feet again, is it 100, or is it basically controlled by on-site development standards. I can't tell from the text and you could help me either showing me how it is clear or make it clear, then I'd appreciate that. In general there are changes regarding 7-A-4, some, a number of changes regarding, this is having to do with the clustering incentive and the incentive for the density transfer and I think there may be some confusion in the current language there that may not, that may kind of work against itself. I'm not sure that it gets to where we need to be and that is, has to do with the references to contiguity in the, when someone makes an application that an area, that that clustering is being applied for is, there's a reference to contiguous property and yet we have the density transfer provision which I think is a very interesting concept and one that could in the long term really encourage keeping the open space in the Lolo area and there's the idea of being able to apply for density transfer within a non-contiguous parcels. And it's something I didn't catch in the earlier, it's not from the latest revisions, but in one of the earlier ones and I just, again, it's a clarification that'd be helpful there. And my advocacy would be for the allowing density transfer on non-contiguous parcels, as well as on contiguous. The latest handout that you had with regard to the staff recommendations to the County Commission that's dated today, those are really interesting, the wildlife information regarding crossings and my request there is we be given a chance to take a look at the information that's been developed so far and what kind of recommendations are shaping up there. There are a number of standards for individual applications for development relating to wildlife habitat and how those patterns then shape up, potentially have, could have a substantial impact on actual use patterns. I'd just like to be aware of those, it sounds like new information that is not generally out there yet but there is an opportunity to review that and then comment, I'd appreciate it.

Commissioner Evans: Let me explain a little bit about that Bruce. There is a project called the 93 Corridor Project that the Forest Service has jumped on board and is going to be doing GIS studies, they've just given a bid or a project to, they've awarded a bid to GeoData to begin doing that work and we wanted something in the document that will allow us to provide for the wildlife crossings when they're identified and in order to protect them. And I'd be more than happy to have you participate when we get something back to look at.

Bruce Bugbee: Okay, it's a great concept. Thank you.

Chair Curtiss: Thank you Bruce. Further comment?

Heidi Weaver: I didn't, my comments didn't have to do with those properties so I was trying not to break it up. There's two comments ...

Chair Curtiss: Could you say your name for the record?



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Heidi Weaver: Oh, I'm sorry, I'm Heidi Weaver. We do not have, or from some of our perspectives, we do not have a lot of industrial allowed in the new maps. I'm trying to visualize that one behind you, I'm not phasing out, but all we got was a small checkerboard area which had some light industrial in it. It's of concern to us because of course we think of light industrial as being a logical thing for our rural area to have and we also are of concern that the industrial park in Missoula needs to be filled and we are hoping that there's not a correlation between us being eight miles away and not getting any industrial and needing to fill an industrial park in Missoula.

Chair Curtiss: I can guarantee you that's not been any of the discussion.

Commissioner Evans: I'll even agree with her.

Heidi Weaver: And the appearance is on the wall, so. The other thing is, is that I have real concerns on Map, gosh I think it was 10, I've been involved in a project lately with several other people with mapping out all the roads in Lolo and trying to figure out how much road surface area and, interesting concept, alley surface area in Lolo, and there are roads on Map 10 that don't exist, can't exist and there are, and these, this, these roads have been brought up at every meeting I've been to, so I'm not understanding why they're still on the map and we are really concerned because they aren't roads that we can count because they don't exist and can't exist and there aren't right-of-ways for them. I'm not understanding how these maps can continue to be put out with these very large errors on them. Terry Lane for instance is not there at all, that's all private property. Terry Lane is just down in the green and ends in a cul-de-sac. Pertilly Lane does not go clear across along the river there and we would not be able, for the project that we're working on we certainly can't count those roads and they aren't roads that could ever be developed because there's no room there, I mean, like 15 feet or something and there's no right-of-ways and my concern is that's been brought to the attention for two years that I know of and yet again tonight the maps are still with those roads there.

Chair Curtiss: Thank you.

Commissioner Evans: We'll make sure we check that out, Heidi.

Bill Wagner: My name's Bill Wagner, I represent the Murphy family that owns the relatively infamous Orchard Park Phase 3 land, and that's been the subject of a lot of the discussion about the 300 foot setback. I concur with several, most of the comments made by Dick Ainsworth and also by Jim O'Neill with regard to that setback. I think that the history of this property is interesting. There was a subdivision application before the Commissioners. It was referred back to the Planning Board for further study. That study was done, a scientific study was ordered, accomplished by Land and Water Consulting, that recommended 100 foot setback from the Bitterroot River. During the Planning Board hearings, there have been a number of other suggestions but I'm not aware specific agency suggestion of a 300 foot setback. OPG staff recommended 200 feet, some of those who testified recommended a greater number of feet, but Fish, Wildlife and Parks, to my knowledge, has not, in their agency comments, recommended a specific 300 foot setback. It was stated at the introduction of the (a gentleman from the audience handed Mr. Wagner a letter) ... thank you.

Chair Curtiss: It's a recent letter.

Bill Wagner: It is a recent letter, this was not submitted as part of the record.

Commissioner Evans: Let's keep the comments to the ...

Bill Wagner: This is a letter dated March 12, 2002 that was not part of the record, not part of the Planning Board record and I would object to anything being brought in at this time in that regard. Nonetheless, I think that my client can live with a proposal that will benefit, I think, everyone. Before I get to it, you need to understand, I believe, who the Murphy family is. They've owned this land for many, many years. Evelyn Murphy is in her late 80s, her father was Ray Hughes who owned a lot of land around this area. This land has been in the family for a long time and the family cherishes that land and the Bitterroot River. They do not want to develop this at the rate of six units per acre. That is the land use designation that is being recommended I think because of the fact that there is no distinction and there is testimony in the record to that effect, there is no distinction between the relative characteristics of the Murphy land and that which is immediately adjacent to it and designated and in some instances perhaps zoned at six per acre. Earlier in the introductory comments this evening, the Orchard Park Phase 3 land was described as flat land, developable, within the sewer district study area, near a school, within the community of Lolo and I think that well describes this particular piece of land. What happened, I think, with the setback requirement is that this land started being singled out and in trying to deal with density and development concerned about this land a 300 foot setback has been recommended for the entire Bitterroot River through its length within the plan study area and I think that's going to not affect many of the lands like it will my clients, the reason is that in many instances there is floodplain adjacent to the river and there is not, in this particular situation. I would also remind the Commissioners that wildlife protection, riparian protection, water quality and sanitation issues will all be addressed in the subdivision review process, they have to be by regulation and they will be in this instance. We would recommend that you look at a 100 foot setback that can be increased to as much as 300 feet by applying perhaps the criteria that are listed in your proposed recommendations from the Planning Board. Again, in that regard, we're turning the tables as was suggested by a previous speaker. Start with the hundred feet and if you have to for reasons that are shown by the application of the criteria, extend it perhaps 300 feet. Thank you.

Chair Curtiss: Thank you Bill. Is there further comment?

Michele Landquist: It's me again, Michele Landquist. I'm not going to address anything regarding the floodways and the setbacks but I do have something concerning the Orchard Park development that I think needs to come into the public light and that is when they first began and got approval for the initial subdivision, they were allowed to have their roads more narrow, less wide, I couldn't say it before, because everybody was going to have garages and there wasn't going to be allowed any on street parking. That was going to be strictly enforced. The first house, it was a modular, that was built there with an attached garage, the first thing that owner did was build into the garage and make it part of his home and there's on street parking throughout that little development now. My concern is if that development is allowed to continue under the same regulations that they were operating off of, giving narrower streets because they weren't allowed to park on

the street, yet now they are and once a covenants is violated everybody can violate it. I think, and I hate to say this, I think maybe that subdivision needs to go back to the whole review process and look at their road structure, how wide their roads are and what they're going to do about that not supposed to be allowed on street parking when there's cars parked there all the time. I'm concerned with emergency services being able to access that at this point. So, I hate to add more sticks into the pot that's brewing here regarding that subdivision but I guess I feel like I'd be remiss if I didn't say something at this time and call it to the public's attention.

Chair Curtiss: Thank you Michele. Is there further comment?

Stella Van Ostrand: My name is Stella Van Ostrand and I've been to a couple of the meetings and I have a couple questions about our property up Lolo Creek. It's designated as one dwelling unit per five acres and I'm wondering, that dwelling unit, is that like, can it be a duplex, four-plex, one unit. What I'm worried about is say I get a, too old to live by myself and move in with the kids, is that going to be allowed. Do we have space for it or can we change it now. I'm wondering if all these recommendations are going to be carved in stone right now or if they can be changed later once this is final.

Chair Curtiss: I'll let Colleen answer that.

Stella Van Ostrand: I know they have one section in here where they're kind of worried about aging and I'm aging, so I'm wondering about it too.

Colleen Dowdall: The answer is that the density typically refers to the number of dwelling units, whether it's a duplex or something multi-family. We do have a process where you can go through Subdivision for Lease or Rent if you want to add another dwelling unit onto your property and one of the considerations is to review the Comprehensive Plan to determine whether you're in compliance. However, Comprehensive Plan is not set in stone, it is a document that guides the Commissioners and one of the elements in this plan that we have not had in other plans is an area that talks about why we designated your property as one unit per acre and when development comes to the planning office and before the County Commissioners, if you have a different density than that which is on the map we will go to the language of the plan and see what it was we were attempting to accomplish by designating the one per acre and if those same goals can be accomplished regardless of the density, we could put conditions on the subdivision in order to accomplish that.

Stella Van Ostrand: Thank you. Hopefully I won't have to deal with that, die first. But anyway, something else I was wondering, with something as big as, with a big scope like this, can this be done without the vote of the people or would it be more, after you have it, be, have the people have a vote in it, like put it on a ballot or something, instead of the Planning Board deciding.

Chair Curtiss: Actually the Planning Board recommends to the Board of County Commissioners and the County Commissioners are the ones that adopt. Colleen, would you like to address the other option.

Colleen Dowdall: The Commissioners can elect also to place it on the ballot.

Stella Van Ostrand: Okay, and then another question I have, can, after this is all passed and that, can Lolo still become an incorporated town.

Chair Curtiss: Yes.

Stella Van Ostrand: Okay. Thank you.

Commissioner Evans: Thank you Stella.

Chair Curtiss: Is there further comment? I thought there was somebody else.

Clarence Rule: My name is Clarence Rule. And I was one of the people who protested the one acre, or the one dwelling unit per acre, my property is on Partial Map 10. It abuts Pertilly Lane. It is the east half of that tract that abuts Pertilly Lane and the reason that I protested that to a previous, in a previous meeting was because I felt that it devalued my property if it wasn't changed to the six dwelling units per acre which it was and I was unaware of course that it extended over into that area along the river. So I'm sticking with that, excuse me I'm getting a bloody nose here looks like, with that opinion. Something else I would like to mention is that that map, I'm going to have to quit, I've got a bloody nose, I'm sorry.

Commissioner Evans: We're not going to close the hearing tonight, Clarence, so you'll have April 10th, you can come and speak to us again or you can send us a letter.

Clarence Rule: Thank you very much.

Chair Curtiss: Thank you Clarence. Further comment? Go ahead Todd.

Todd Schule: Todd Schule, I live at 5355 Cherry Lane here in Lolo. Listened to Bill Wagner's comments and I have to agree with him. There's a takings argument, people have the right, I mean, the Murphys have had that ground for God knows how long. I should point out that my property abuts the Phase 3 of Orchard Park and the school property. I've been there approximately 16-17 years. When OPG has given this property subdivision route, any of it down there is going to go through very stringent scrutiny. But this 100 foot or 300 foot, I can live with what OPG and the Planning Board has put together. I think there's been a lot of wisdom, there's been a lot of compromise, it takes care of takings, it takes care of community interest, but when that property comes up, any of it, a big flag is going to go up and it's going to go under a lot more scrutiny than just subdivision review. You're going, I don't remember the gentleman's name, but he was talking about the whole river, talking about each piece needs to be looked at. That is basically what they've set up, they come there and the alluvial floodplain they're going to have something different than like where Phase 3 is, it's a big bluff overlooking the river. The people that have bought it should have the say, as long as they're within the guidelines of what



the OPG has put out as well as this 100 or 300, I have no problem with either one of them, I think if it's at 300 feet and then we can look at it and all of you can look at it, the community can look at it, and say well, okay, like in this area they've already said they believe it's alright to be within 200 feet, there might be some place else that would be fine at 100 feet and like the gentleman said, you know, it might be 1,200 feet, but each piece is going to be looked at individually along the river. I think this has been a really tough complex issue, I think they've done a wonderful job of coming to compromises that we should all be able to live with. Thank you.

Chair Curtiss: Is there further comment? Seeing none, we going to recess the hearing and make our, so it will come up again in our regular County Commission meeting on April 10th at 1:30 in the afternoon. There were a few, because Commissioner Carey couldn't be here, we wanted to make sure that he had the opportunity to be part of the decision-making. So, if you have further comments, you can mail them, e-mail, fax them to OPG or us and we will be looking at it again then. So thanks for coming.

Michele Landquist: What is the rest of the process after the hearing on the 10th. Is that when you're liable to adopt it or do you have to hear it three times.

Commissioner Evans: I'm just going to speak for myself Michele. I have been somewhat convinced that an arbitrary 300, 100, whatever, needs some scientific principles in my mind in order to set something that makes sense to me, I don't know we can get that done by the 10th of April so after we've had ample time to look at that is when I'm going to want to make a decision. I want to do what's appropriate here and that may not be a hard and fast anything. I'd also like to thank all of you people for the hard work that you've done, and our staff that have apparently been able to satisfy a good share of you and believe me, that's much appreciated that you are happy with our staff's efforts. Thank you.

Chair Curtiss: So Michele, we don't have to have any more hearings, but we will finish the hearing, I believe, on April 10th unless something new comes up so we could adopt that day unless there's some more information as Barbara said, but we would ...

Michele Landquist: Any of the other changes and recommendation, how you're going to proceed with those.

Chair Curtiss: We'll continue to keep them on the web-site if there are changes made.

Michele Landquist: Will you be accepting public comment at the Commissioners meeting?

Chair Curtiss: Yes.

Colleen Dowdall: I was going to say no other changes will be made between now and then that anyone will be making any decisions on. This is just a continuation of the public hearing and in order to make notice valid we have to state that it will be on April 10th and at that time if it's going to be continued further it will be announced there, otherwise we have to re-notice it.

Chair Curtiss: So there will be notice if there's not a decision made that day.

Commissioner Evans: We can just continue it without further notice because that's part of the same ongoing process.

Michele Landquist: Okay.

Chair Curtiss: Did you have something else, Todd?

Todd Schule: I just have a question. Todd Schule. You guys brought up something earlier that I wasn't aware of, now, it can be your decision to yes or no this, but you said something about a vote?

Commissioner Evans: It could be put on the ballot if we chose to do that.

Chair Curtiss: We have the legal right to do that if we would want to. It would, of course, entail time, money, all of that.

Todd Schule: No, I was just curious, I wasn't aware of that was even an option.

Colleen Dowdall: It would also be the vote of the entire County.

Todd Schule: Eewee!!

Commissioner Evans: Does that change your mind.

Chair Curtiss: So, thank you for coming and thanks to staff for all your hard work.

There being no further business to come before the Board, the Commissioners were in recess at 9:10 p.m.

#### THURSDAY, MARCH 28, 2002

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in Bozeman where he attended the USDA Rural Development Housing Co-op Program held at the Bozeman Holiday Inn.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated March 28, 2002, with a grand total of \$13,469.02. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated March 28, 2002, with a grand total of \$14,995.49. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated March 28, 2002, with a grand total of \$4,821.99. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated March 28, 2002, with a grand total of \$45,704.89. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated March 28, 2002, with a grand total of \$19,371.61. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Carla Perrigo as applicant for Accounting Warrant #398596 issued September 28, 2001 in the amount of \$28.45 (payment for Jury Duty), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter – The Commissioners signed a letter, dated March 28, 2002 to George Maclean of L.S. Jensen Construction and Paving, allowing their request for the Notice to Proceed to be issued in order to begin construction of Missoula Development Park, Phase 4, Schedule II, with certain conditions stated therein. The letter was returned to Barbara Martens in the Projects Office for further handling.

Shoreline Permit – Pursuant to the recommendation of the Office of Planning and Grants, the Commissioners approved and Chair Curtiss signed an application by Tim Miller to construct a new 348 square foot fixed dock on Big Sky Lake. The property is described as Lot U-8 of Big Sky Lake Estates. The document was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Request for Action – The Commissioners reviewed and approved a list of possible Fiscal Year 2003 Review Team members, as recommended by the CBO (Community-Based Organizations) grants staff. The request was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

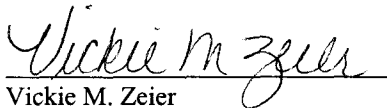
#### **FRIDAY, MARCH 29, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated March 29, 2002, with a grand total of \$809.74. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Melodee Smith-Burreson as applicant for Target Range School Warrant #5261 issued January 10, 2001 on the Missoula County Payroll Fund #23 in the amount of \$760.30 (payment for MEA Dues), which was not received in the mail. No bond of indemnity is required.

Covenant – The Commissioners signed a Restrictive Covenant, dated March 29, 2002, by and between Charles M. and Nancy A. Deschamps ("Deschamps"), Washington Development Company, Inc. ("Washington"), and Missoula County. Washington is purchasing real property (as described therein) from the Deschamps, and they have utilized the Agricultural Exemption from the Subdivision and Platting Act, and have committed to limit the use of the real property to develop a golf course only. No clubhouse, residential housing or any other purpose generating sewerage or requiring water or sewage facilities shall be developed. The document was returned to Deputy County Attorney Mike Sehestedt for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, APRIL 1, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Request for Action – The Commissioners approved a request submitted by Chief Financial Office Dale Bickell and the Flex Plan Committee to pursue a contract with the best price available with Intermountain Administrators.

Acknowledgment – The Commissioners signed an Acknowledgment of Receipt of Summons and Complaint, dated April 1, 2002, *in re* Larry White, Candace Bergman, et al. V. Governor Judy Martz, et al., Montana First Judicial District Court, Lewis and Clark County.

**TUESDAY, APRIL 2, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners attended a Settlement Conference regarding Schramm Bridge held at the Christian, Sampson, and Jones Law Offices. At noon, Chair Curtiss attended the Award Celebration for the MicroBusiness of the Year, Le Petit Outré, at 129 South 4<sup>th</sup> West.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 2, 2002, with a grand total of \$192,003.63. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 2, 2002, with a grand total of \$4,534.88. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 2, 2002, with a grand total of \$19,428.20. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated April 2, 2002, with a grand total of \$20,824.85. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated April 2, 2002, with a grand total of \$6,996.90. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated April 2, 2002, with a grand total of \$7,202.11. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Terry Hamilton, Lolo, Montana, as Principal for Hellgate Elementary School Warrant #23165, issued March 20, 2002 on the Missoula County General Fund in the amount of \$3,735.90 (payment for wages), now unable to be found.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Print Link, Ltd., Stevensville, Montana, as applicant for Mountain Line Warrant #57997, issued January 11, 2002 on the Missoula County Urban Transportation Fund in the amount of \$41.62 (payment for W2 and 1099 Forms), which was not received in the mail. No bond of indemnity is required.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the afternoon, the following items were signed:

Resolution No. 2002-032 – The Commissioners signed Resolution No. 2002-032, dated April 2, 2002, creating Rural Special Improvement District (“RSID”) #8470, Expressway Road Construction (an asphalt roadway extending from Butler Creek to DeSmet Road).

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-012 for the Health Department, transferring \$75.00 from the Lab Services Fund to the Postage Fund (because an object code was needed), adopting same as a part of the Fiscal Year 2002 Budget.

Resolution No. 2002-033 – The Commissioners signed Resolution No. 2002-033, dated April 2, 2002, a Budget Amendment for the RSID Administration Fund, per the items as set forth therein. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-034 – The Commissioners signed Resolution No. 2002-034, dated April 2, 2002, a Budget Amendment in the amount of \$2,399.00 for the District Court, Department 4, for the replacement of a returned computer. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-035 – The Commissioners signed Resolution No. 2002-035, dated April 2, 2002, a Budget Amendment in the amount of \$40,000.00 for the Health Department, for the “Click It or Ticket” Grant. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Task Order – Chair Curtiss signed Task Order No. 02-07-4-31-031-0 to the Missoula County Unified Government Master Contract with the Montana Department of Public Health and Human Services for the conduction and fiscal management of the Immunization Program. The term will be January 1, 2002 through December 31, 2002. The total amount shall not exceed \$27,431.00. The document was returned to the Health Department for further signatures and handling.

Extension Request – In a letter to Dick Ainsworth of Professional Consultants, Inc., the Commissioners approved a request for a one-year extension of the final plat approval deadline for Many Rivers Summary Subdivision, in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is April 18, 2003.

Request for Action – The Commissioners approved a one-year Lease Agreement between Missoula County and Bat Around, LLC (Batting Cages); an extension of the water line will be delayed until next year, as per recommendation of the Park Board. The Lease will be signed at a later date. The request was returned to Lisa Moisey in the Parks Office for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, APRIL 3, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated April 2, 2002, with a grand total of \$20,168.95. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 2, 2002, with a grand total of \$1,236.34. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending March 31, 2002.

CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-019 for the Medical Benefits Department, transferring \$15,000.00 from the LTD Premiums Fund to the Supplemental LTD Premiums Fund, adopting same as a part of the Fiscal Year 2002 Budget.

Memorandum of Understanding – The Commissioners signed a Memorandum of Understanding between Missoula County and Missoula Aging Services, enabling Missoula County to use volunteers from Aging Services. There are no budget implications. The document was returned to Marie Pruitt in Human Resources for further signatures and handling.

Amendments – The Commissioners signed thirteen (13) Amendments, dated April 3, 2002, to the Missoula County Employee Benefits Plan. All amendments become effective as of July 1, 2002. The amendments are as follows:

- 1) Exhibit 7a49 – *Regular Enrollments*: When premium is paid and the enrollment requirements are met, your coverage begins on the first of the month following 90 continuous days of employment.
- 2) Exhibit 7a50 – *Dependent Children*: Dependent children remain eligible under age 20, or under age 23 if enrolled as a full-time student in a university, college or vocational school.
- 3) Exhibit 7a51 – *Medical Plan*: An employee of an outside agency that participates in this Plan, but does not participate in the Montana Public Employees Retirement System (MPERS), is eligible to continue health insurance as a retired employee provided the employee, in the opinion of the Plan Administrator, would have qualified for retirement benefits of MPERS had the employee been a member of MPERS.
- 4) Exhibit 7a52 – *Medical Plan*: The surviving spouse of a deceased employee shall be eligible to continue health insurance as a retired employee provided the deceased employee was, on the date of death, eligible for retirement benefits through the Montana Public Employees Retirement System.
- 5) Exhibit 7a53 – *Medical Plan*: Prescription Drugs – Medication requiring a written prescription and provided by a licensed pharmacist or physician is covered at 70%.
- 6) Exhibit 7a54 – *Medical Plan*: Prescription Drugs – This Plan will not pay for prescription drugs unless they are purchased with the prescription drug card provided by this Plan, except for hospital take-home drugs, coordination of benefits claims (when this Plan is not the primary plan), medical emergency or pre-authorized drug expense.
- 7) Exhibit 7a55 – *Medical Plan*: General Exclusions – This Plan does not pay for breast implants or replacement of breast implants except as required by the Women's Health and Cancer Rights Act of 1998.
- 8) Exhibit 7a56 – *Dental Plan*: Coverage is provided for dental emergency services rendered by a physician.
- 9) Exhibit 7a56 – *Dental Plan*: Dental implants do not require pre-authorization or evidence of benefit greater than other prosthesis.
- 10) Exhibit 7a57 – *Vision Plan*: You are covered for either one pair of lenses and frames or contact lenses or corrective eye surgery during each benefit year. The Schedule of Maximum Benefits Payable shall state: Corrective Eye Surgery . . . \$125 both eyes.
- 11) Exhibit 7a58 – *Claims Administration*: The Board of County Commissioners shall not participate in appeals of claims or determination of eligibility for benefits of this Plan.
- 12) Exhibit 7a59 – *Medical Plan*: Transplant Surgery – Stem cell transplants identified as the standard of care for a disease are not excluded solely by virtue of the exclusion for experimental/investigational drug, device, medical treatment or procedure.

- 13) Exhibit 7a60 – *Life Insurance/AD&D Insurance*: The Life Insurance and the Accidental Death and Dismemberment Insurance benefits shall be deleted from the provisions of the Missoula County Employee Benefits Plan. These benefits shall be described in the contracts and summary plan descriptions provided by the insurer(s).

#### **PUBLIC MEETING – April 3, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

#### **Pledge of Allegiance**

#### **Public Comment**

Phyllis Jamison: I'm Phyllis Jamison. The new Animal Control Facility will probably be completed this year and then the City's new cat control ordinance will take effect, offering some protection and rescue for Missoula's felines. The Chair of the Commissioners was quoted in the March 24th Missoulian as saying, "The City and County are charged by the State with animal control, but we want it to be humane control, not just throwing them into a pen somewhere." Yet, that's exactly what's planned for all cats entering the new shelter. The cat problem is worse than the dog problem, according to the Director of Animal Control, because there has never been cat control in Missoula and yet less than 10% of the square footage of the new facility is planned for cats which are all going to be crammed into pens in a very small room. Barbara Evans has stated she is hoping to raise enough money to build an outdoor cat exercise yard and that would be a great help because there are 12 exercise yards planned for dogs as well as a dog "get acquainted" yard. It makes one wonder why the City and County did not provide and budget for humane facilities for our cats when the building was first designed. When I talked to the Animal Control Director this morning, she said that there are no plans to have an observation room for cats, where incoming cats would be separated from the main cats like the Humane Society has, so the Director told me, if incoming cats who may have the deadly and highly infectious feline leukemia virus, if they are separated, it will have to be a makeshift arrangement with the incoming cats using the dog isolation kennels if the dog isolation kennels are available. The main cat room is so small there is not enough space for even one large cage for the cats to take turns playing indoors. A cat observation room and an indoor exercise area are basic to humane kennel care for cats and are essential to prevent the spread of infectious diseases yet neither of these facilities is planned for the cats. The Director of Animal Control also told me this morning that there are no plans to have a secured area to drop off cats after hours although a fenced in tie-down area has been budgeted for dogs. So, any cats dropped off at the shelter after hours will be left to roam the neighborhood, trying to find shelter at neighboring businesses or homes and left on their own to suffer in the weather and to breed feral cat colonies. It is a shame that less than 10% of the new facility has been designed and designated by the City and County for use by cats and it is a shame that the needs of Missoula's cats are not being provided for in a humane way at the new Animal Control Facility.

#### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$373,833.60. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing (Certificate of Survey): Devlin Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 52, COS 1925, located in the northeast one-quarter of Section 17, Township 13 North, Range 20 West.

Tommy D. and Reba A. Devlin have submitted a request to create four parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near O'Keefe Creek. The Devlins propose to create one approximately 5 acre parcel (52B) for transfer to their son, Patrick C. Devlin, for residential purposes; one approximately 5 acre parcel (52C) for transfer to their son, Joseph Devlin, for residential purposes; one approximately 5 acre parcel (52D) for transfer to their daughter, Kimberly M. Muncy, for residential purposes; and to keep the remaining approximately 5 acres (52A) for themselves for residential purposes.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1925, 20+ acre tracts created by Geneva Cates (The Meadows)	1979	N/A	Geneva Cates	

The Devlins purchased the property in 1996. The property is located off Fire Bucket Loop, an area where there have been a number of recent requests for family transfers.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Tom Devlin was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Devlin really did intend to transfer this property to his children?

Tom Devlin stated that was correct. His daughter already has a builder lined up to start construction whenever she can.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Tommy D. and Reba A. Devlin to create four 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Mr. Devlin would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing (Certificate of Survey): Alsaker Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract B-1, COS 3413, located in Section 5, Township 13 North, Range 20 West, P.M.M.

Thomas and Laura Alsaker have submitted a request to create one additional parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The Alsakers own two parcels totaling 20 acres in size located off Mullan Road between Missoula and Frenchtown. The Alsakers propose to create an approximately 5 acre parcel for transfer to their daughter, Kim Lucostic, for residential purposes and relocate the boundary between the remaining parcels leaving one five acre parcel, previously created by use of the mortgage exemption, and a 10 acre remainder.

Parcel History	Year	Exemption Used	Owner	Transferee
COS 3413	1986	Mortgage Exemption	Applicant Alsaker	N/A

According to the records kept by the Missoula County Surveyor, the applicant has previously used exemptions to the Subdivision and Platting Act including two mortgage exemptions in this same area and two court-ordered divisions of land in this same area.

Tom Alsaker was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Alsaker really did intend to transfer this property to his child?

Tom Alsaker stated that was correct.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Thomas and Laura Alsaker 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Mr. Alsaker would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Consideration: Houle Creek Subdivision (2 lots on 3.75 acres) – Houle Creek**

Dale McCormick, Office of Planning and Grants, presented the staff report.

Tim Wall is requesting approval to subdivide a 3.75 acre parcel into two lots. Lot 1 is proposed to be one acre and Lot 2 is proposed to be 2.75 acres. There are two existing dwelling units on the property as a result of a Subdivision for Lease or Rent approved in September 1999. The property is located on Houle Creek Road, approximately 1.5 miles north and 2 miles west of Frenchtown.

The land is unzoned. The 1975 Comprehensive Plan designates the property as Rural Low Density Residential with a density of one dwelling per 10 acres. The density of the proposed subdivision would be one dwelling per 1.8 acres. Portions of the site are greater than 25% in slope and designated as no build zones. Both lots are served by a well on Lot 2 and both have septic systems. The drainfield for Lot 2 is on Lot 1 with an easement.

Houle Creek Road runs along the edge of the property. It is a public right-of-way and was improved by the Forest Service and any additional improvements require the permission of the Ninemile Ranger Station. The County does not maintain the road. It has a gravel dirt base width of 17 to 21 feet wide and has drainage ditches and culverts. The nearest pavement is over 2 miles away to the south at the Frontage Road intersection.

The driveway to the house on Lot 1 is approximately 190 feet south of the access to Lot 2. It is an existing private road that also serves several lots to the west. The road that crosses Lot 1 is approximately 12 to 17 feet wide within a 30 foot wide private road easement.

The applicant is requesting a variance from the requirement that no road be allowed to divide a lot, a variance from the requirement to pave a portion of Houle Creek Road, a variance from the required 24 foot road width for Houle Creek Road and the road through Lot 1, and a variance from the requirement to provide pedestrian walkways in the subdivision. Staff is recommending approval of all the variance requests.

Some of the conditions that are recommended are RSID waivers for improvements to Houle Creek Road, future water and sewer, a maintenance and use agreement for all shared facilities addressing the shared well and septic systems, a development agreement relating to fire department access and Wildland/Residential Interface (WRI) standards.

A letter has been received from Connie Bauer addressing the 30 foot private access easement that runs through Mr. Wall's property providing access to their property to the west. There is concern about the lack of a maintenance agreement and the width of the road. Per a phone message from Mrs. Bauer, she has spoken to Scott Waldron from Frenchtown Fire and the road width is not as much of a concern as the maintenance of the road.

OPG is recommending approval of the subdivision request.

Chair Curtiss asked for public comments.

Tim Wall stated that his renter would like to purchase the acre of land that he is currently renting. As it is a bit stressful being a landlord, his doctor has recommended he sell the land as well. The subdivision for lease or rent was done a few years ago and he would like to make it legal so his renter can purchase the property.

Commissioner Evans asked if the concern about road maintenance had been addressed.

Tim Wall stated Houle Creek Road is a Forest Service easement. The road that goes through Lot 1 is more or less a driveway to access the lot and other property beyond and has no maintenance agreement.

Commissioner Evans stated that Scott Waldron was concerned about access in the event of a fire.

Tim Wall stated that was addressed in 1999 when they did the Subdivision for Lease or Rent review.

Colleen Dowdall stated that in the letter from Connie Bauer it appears this easement benefits their property and crosses Mr. Hall's property, so they are responsible for access to their own house. Because this subdivision does not increase the use on the road beyond what was already present, requiring these folks be involved in a road maintenance agreement is not appropriate.

There were no further public comments.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-3(1)(D)(ii) of the Missoula County Subdivision Regulations to allow a road to divide Lot 1; approve the variance request from Section 3-2(1)(G) of the Missoula County Subdivision Regulations to not pave a portion of Houle Creek Road; approve the variance request from Section 3-2(3)(B) of the Missoula County Subdivision Regulations to vary from a 24 foot road width to the existing 17 foot to 21 foot road width on Houle Creek Road; approve the variance request from Section 3-2(3)(B) of the Missoula County Subdivision Regulations to vary from a 24 foot road width to the existing 12 foot to 17 foot road width on the road through Lot 1; and approve the variance request from Section 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, 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 Carey moved that the Board of County Commissioners approve the Houle Creek Subdivision, based on the findings of fact and subject to the conditions set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated that the Board is aware of the dust problem on Houle Creek Road. The approval of this subdivision does not mean that dust abatement will happen on the road.

#### **Houle Creek Subdivision Conditions of Approval:**

1. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for improvements to Houle Creek Road including, but not limited to, the installation of paving, drainage facilities, curbs and gutters and pedestrian walkways or bikeways, 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." *Subdivision Regulations Articles 3-2(E), 3-2(8)(A)(ii) and staff recommendation.*

2. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public sewer and water systems, based on benefit. The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Articles 3-1(1)(D), 3-7(2) and staff recommendation.*

3. A maintenance and use agreement for all shared facilities shall be reviewed and approved by OPG and the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-6, and staff recommendation.*
4. A development agreement shall be filed, subject to OPG, fire district and County Attorney approval, to include the following items related to providing fire department access and addressing Wildland/Residential Interface (WRI) standards:



- A. Turnaround for fire apparatus shall be provided for the new home site, as shown on the site plan. *Subdivision Regulations Article 3-2(10)(E) and staff recommendation.*
- B. The driveway driving surface to the existing and proposed home site shall be a minimum of 12 feet in width with a minimum unobstructed width of 20 feet wide and 13 feet, 6 inches high. *Subdivision Regulations Article 3-2(10)(E)), Fire District and staff recommendation.*
- C. The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting, the property owner shall select trees, shrubs and vegetation from native vegetation stock when possible that limit or retard fire spread as suggested below:
- i. Perennial: Choose hardy perennial flowers that are adapted to the climate of the area. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.
  - ii. Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily; avoid them unless well spaced.
  - iii. Trees: Deciduous trees can be clumped, scattered or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced accordingly.

See Missoula County Subdivision Regulations vegetation reduction guidelines and use applicable slope for required standards. *Subdivision Regulations Article 5-1(5)(J), Appendix VIII, fire district and staff recommendation.*

- D. Only Class A or B fire-rated roofing materials shall be used for any new construction. *Subdivision Regulations Article 5-1(5)(J) and staff recommendation.*

#### **Hearing: Travelers Rest Estates (13 lots) – Lolo**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Hello, my name's Liz Mullins and I'm an Associate Planner with the Office of Planning and Grants and today I'm presenting Travelers Rest Estates. Earlier, I handed out a draft of our recommended motions and conditions of approval that I will be referring to throughout my presentation and it is on the green sheet of paper. I've also placed an outline of my presentation in front of you.

Dan Cahalan, represented by DJ & A, is requesting approval of a 13 lot residential subdivision located in Lolo, on the west side of Highway 93 South. (Liz Mullins was going to give a PowerPoint presentation but was experiencing some technical difficulties). I will just continue with my presentation. (Information Services was consulted and the problems were fixed. Liz Mullins continued with her presentation).

I have outlined the proposed subdivision in yellow. You can see the road is roughed-in inside the yellow circle. Highway 12 is south of the subdivision and Highway 93 I've also outlined in red, east of the subdivision. The site is accessed from Cap De Villa to the proposed Mari Court cul-de-sac. The proposal is to subdivide this 25.33 acre parcel into 13 lots. Lots 1 through 12 range from 0.42 to 4.23 acres in size and Lot 13 is 12.37 acres in size. The applicant owns and resides in the existing home on Lot 13. The development is concentrated on the northern side of the proposed Mari Court. The property is located on a hillside surrounded by semi rural and suburban residential uses with varied slopes ranging from relatively flat to over 25%. The property is open grassland with scattered pine trees. Portions of Lots 10, 12 and 13 with slopes greater than 25% have been proposed as no build zones on the plat. I've hung the plat to the right of the projector and you can see the no build zones are colored in diagonal red stripes. Sewer and water will be provided by the Lolo RSID 901 District per a previously signed agreement between the property owner, Dan Cahalan, and Missoula County. The agreement provides for an easement across the Cahalan property and states that the subject property will be included in the RSID 901 District with 12 future water and sewer hookups. In an original comment letter on the subdivision proposal from the Lolo Sewer and Water District 901, it stated that the proposed lift station shall be eliminated from the subdivision. Although the applicant has eliminated the lift station, after this comment was received, Greg Robertson, Director of Missoula County Public Works has not seen the revised plans. He recommends that a condition be added that eliminates the original planned lift station proposed to serve Lots 9, 10 and 11, and that the applicant develop an alternate method to serve these lots such as individually maintained lift stations. Should the Board of County Commissioners choose to add this condition, it could be combined with Condition 11 which is revised on the green sheet that I handed to you earlier. It could be combined with Condition 11 that requires detailed utility plans and construction on water and wastewater improvements be reviewed and approved by Lolo Sewer and Water District. There are two variances being requested. The first variance request is for Mari Court to vary from the maximum cul-de-sac length of 1,000 feet to 1,250 feet. Staff originally recommended approval for the cul-de-sac length variance. Staff is also providing an alternate recommendation of denial for the cul-de-sac length variance. The second variance request is from the requirement that slopes in excess of 25% shall be deemed unsuitable for building sites. Staff does support the variance that deems slopes exceeding 25% unbuildable and is recommending denial of this variance. Staff is recommending that Travelers Rest Estates be approved based on the findings of fact in the staff report and subject to recommended conditions. The property is unzoned and the 1978 Lolo Land Use Plan designates the northwest portion of the property as Residential with a recommended maximum density of six dwelling units per acre and the southeast portion of the property is designated as Parks and Open Space. Most of the Parks and Open Space designation has been protected on this property by designation of a no build zone. The property is accessed via Ridgeway Road onto Cap De Villa Road. I'm going to continue going through some of my slides and show you some of the lots of the proposal. This is the proposed Mari Court Road into Travelers Rest Subdivision. These are taken from Cap De Villa Road coming into the subdivision. Here are some slides of Lots 5 and 6. The first one is taken from Lot 4 looking south and the second one is taken from Lot 7 looking northeast and these are the two lots that mainly fall within the building on over 25% and the reason for the variance request. This is Lots 5 and 6 looking up at the Westview Subdivision. This is Lots 6

through 9 taken from Mari Court looking south toward the end of the cul-de-sac. Here's Lot 12 and a little bit further beyond is the no build zone where the trees are, looking north toward the existing Lot 13 where the owner resides. Here's Lot 13. This is the no build zone highlighted in the red diagonals on my plat, adjacent to Lot 13. The existing residence on Lot 13 is accessed directly from Cap De Villa Road via a 210 foot long driveway. Mari Court is proposed as a paved public cul-de-sac road that will serve Lots 1 through 12. The applicant states that Mari Court already exists in this subdivision and has been there since the 1960s in roughed-in form. The fourth condition in the staff report is a plan for mitigation of post development road dust emissions resulting from additional hillside road sanding because considerably more sanding material must be applied to roads during the winter to maintain safe driving conditions. The fifth condition is an RSID waiver for future road improvements on Cap De Villa Road and Mari Court. The Planning Board has removed this condition for approval of the subdivision and this is, you can see the revisions on the green sheet for number 5. The subdivider has proposed a five foot wide concrete walkway on the northwestern side of Mari Court. The subdivider has proposed a 20 foot wide non-motorized public access easement between Lots 4 and 5 to provide pedestrian connection to the proposed parkland. I have highlighted the parkland above Lots 1 through 4 on the plat, it's colored in green. The required parkland dedication for this subdivision is 0.62 acres. The subdivider is proposing parkland dedication in the amount of 1.27 acres on the northern end above Lots 1 through 4. The proposed parkland dedication is adjacent to the existing Cumberland Westview Park, approximately 2 acres in size. Lisa Moisey, County Parks Staff, stated that the Missoula County Park Board does not have the resources for ongoing park maintenance, including park mowing. The Park Board depends on partnerships with neighborhood organizations to meet these needs. The applicant prefers that the County maintain the parkland and does not want the park maintenance to be mandatory of the homeowners association. In addition, County park staff strongly encourages that the Ponderosa pine trees in the proposed parks be preserved. And if you refer to the green sheet for Conditions 6, 7 and 8, these conditions all pertain to the parkland. Condition 6 requires that the covenants are amended to require park maintenance by the homeowners association and until enough development has occurred to support this homeowners association, a development agreement will insure maintenance by the developer. The condition includes an RSID waiver for park improvements and/or maintenance. Planning Board amended this condition to exclude the RSID waiver for park maintenance. Condition 7 addresses a park management plan including several elements and among them is trail maintenance and tree preservation. Condition 8 requires that the 20 foot wide public non-motorized access easement be relabeled on the face of the plat as a linear park. The subdivider shall construct a Class 3 low impact trail 2 feet wide with a gravel surface within the linear park. This condition insures trail access to the park within the subdivision. One of the two variance requests is from hillside regulations that require slopes in excess of 25% to be deemed unsuitable for building sites. The applicant proposes to allow construction on slopes over 25%. The Office of Planning and Grants recommends denial of this variance request based on the following. There are several concerns for building on slopes over 25% that are identified in the staff report concerning hillside regulations, land capability analysis, hazardous lands and severely constrained soil types. The subdivision regulations require homes to be constructed on a minimum contiguous 2,000 square foot area less than 25%. The conditions of this variance request are not unique because each lot within the proposed subdivision does contain 2,000 square feet with slopes less than 25% and the subdivision can be redesigned to allow buildings constructed on slopes less than 25%. The applicant is requesting this variance based on the preferred building location and the desired uniform setback from the road. The subdivision appears to be able to comply with hillside standards by lot line adjustment. In late February, OPG staff and the subdivider's agent met to discuss ways to comply with the Missoula County Subdivision Hillside Regulations. The subdivider agreed that the subdivision could be redesigned by slightly adjusting lot lines, keeping lots in relatively the same place to allow homes to be placed on slopes less than 25% while maintaining the uniform setback. Staff also suggested that relocating one lot from the west side of Mari Court to the east side of Mari Court, next to the existing residence on Lot 13, would be a way to retain 13 lots and allow for construction to occur on slopes less than 25%. The subdivider acknowledged that this was a possibility and in fact requested to amend the proposed subdivision from 13 lots to 14 lots to accommodate a new lot in this location. However, the subdivider has decided to pursue a minor subdivision for the 14th lot at a later time so as to allow construction to begin. Staff has recommended denial of this variance particularly since it is possible to develop homes on the proposed 13 lots less than 25%. Some conditions concerning the hillside variance, denial of the hillside variance, concern driveway plans for maximum grades to be reviewed and approved by the fire department and Public Works. Condition 9 requires that all slopes over 25% be designated as no improvement zones on the final plat and at the Planning Board this was voted 4-4 on the hillside variance. Since this was a tie vote, the variance request is forwarded to the Board of County Commissioners without a recommendation. The other variance request is for the cul-de-sac length. The maximum cul-de-sac length is 1,000 feet and the request is for 1,250 feet. The original recommendation from the Office of Planning and Grants recommended approval of this variance request. Missoula Rural Fire Department has reviewed the cul-de-sac length and finds it acceptable. The application states that the subdivider has had discussion regarding the increased length with Greg Robertson and Curtis Belts and both are supporting this variance request. The variance approval is based on the criteria for public health and safety. However, comments were received after the staff report was issued by Philip Maechling, Historic Preservation Officer, who recommended denial of this variance request. Planning Board felt that they needed more information in order to evaluate this recommendation. The Planning Board voted to recommend approval of the cul-de-sac length variance. At the request of the Commissioners, an alternate recommendation for denial of the cul-de-sac variance length request has been revised with new findings of fact and conditions, if this recommendation is approved. This is attached to your handout along with a letter from the Historic Preservation Officer recommending denial. Please refer to the alternate variance for cul-de-sac length which provides new findings of fact and Condition 14 based on denial of this variance request. The subdivision is located on a hillside across (Highway) 12 from the Travelers Rest State Park, located in the Lolo Creek drainage. The extension of the Mari Court cul-de-sac length creates more visibility of the proposed homes from the historic site. To reduce the visual impacts of development on the national historic landmark of Travelers Rest State Park, Philip Maechling, Missoula County Historic Preservation Officer and Lee Bastian, Fish, Wildlife and Parks, have recommended denial of this variance request. A goal of the Comprehensive Plan is to protect visual and historic resources. The subdivision regulations require that subdivisions shall not result in the destruction, loss or damage of significant natural scenic, cultural or historic features. They also state that the design and development of subdivisions shall substantially preserve or enhance the unique character of an area. Some findings of fact that we have stated in our new variance request include that Travelers Rest State Park is considered one of the eleven most threatened historic sites in the United States, according to the National Trust for Historic Preservation in 2000. It is estimated that 2 million visitors will travel through Lolo to commemorate the bicentennial of the Lewis and Clark Expedition in the next five years and the State of Montana has invested \$500,000 of Federal funds in this site to date. Private funds have been spent to acquire five acres adjacent to this State Park north, to preserve that site from

development. Therefore, staff has recommended that the portion of the property visible from Travelers Rest State Park, Lots 9 through 12, be designated as a no build zone, no improvement area in order to protect the viewshed from this historic site. Staff has also recommended the allowance of up to two additional lots for a possible total of 15 lots. This recommendation takes into account a 20% density bonus when historic resources are preserved and protected. Although the density bonus section does not apply to this portion of Missoula County since it is not in the Urban Growth Area, staff's recommendation is to allow for the increased density beyond what the applicant is proposing because Travelers Rest State Park is being protected through an application of a no build, no improvement area and because the Comprehensive Plan recommends a residential density of up to six dwelling units per acre. Based upon denial of the cul-de-sac variance request, Condition 14 will be included for approval of the subdivision, requiring the plat be revised to designate that area shown as Lots 9, 10, 11 and 12 as a no build, no improvement area. The plat can be redesigned to meet all County subdivision regulations with up to 15 lots that are located in areas not designated as no build, no improvement zones, subject to review and approval by the governing body. Staff is recommending approval of Travelers Rest Estates Subdivision, subject to 13 recommended conditions if the cul-de-sac variance is approved and 14 recommended conditions if the cul-de-sac variance is denied. If permitted, I would actually like to turn my presentation over to Philip Maechling so he could take a few minutes to orient you with Travelers Rest State Park. Thank you.

Philip Maechling: For the record, I'm Philip Maechling, I'm the Historic Preservation Officer for Missoula County and for the City of Missoula. Thank you for letting me take your, take this time, if I can figure out how to get it to go forward. Again, to orient you, the development proposal ... sorry for this technological problem ... is up on the hill in Lolo and as Liz has said, there is existing development all the way around. This illustration shows what I'm calling the limit of existing development which is the development pattern on the hillside. Highway 12 and the Lolo Trail go along from Idaho into Lolo. The Nez Pierce Trail and the Lolo Trail are both national historic trails. They follow the Lolo Creek corridor. The Travelers Rest State Park site is 15 acres that is right here and under study right now is an Environmental Assessment for the purchase of these lands, approximately 20 acres across Lolo Creek to the north. The whole area is being studied right now to verify that this is the campsite that Lewis and Clark, in their expedition west and then their expedition back east, west in 1805 and 1806 back east, camped and it's the longest, it's the site that has the greatest number of days that the Lewis and Clark expedition camped at in Montana. It's important enough that \$500,000 has been spent, as Liz said, to buy the 15 acres. Other funds are being looked at to purchase this portion here with Land and Water Conservation funds. \$125,000 is being spent right now on an archeological investigation on this site right here and that's the verification effort to have it firmly identified as the camp site. Liz summarized our comments fairly well. These comments are coming to you late because I was not given the opportunity to look at this project until after the staff report had been written. This shows the proposed subdivision superimposed on the landscape and our concern has to do with the potential impacts of the development out on this promontory which is visible from the Mormon Creek Road side, this is Mormon Creek Road here, looking across and it's the road cut right there, and the proposal is to put houses out on this promontory which you can see very clearly here. Our recommendation would be to remove and relocate those houses back to the same number, in fact, two more houses if possible, back to a less visible location in line with the current development across the hill. Obviously this is developed, it's not, this is not a pristine landscape that the Lewis and Clark expedition or the Salish or the Nez Pierce peoples would have seen certainly, in the previous, you know, 100 years ago, but we are concerned about the impact, both sides of this extended subdivision development. If we look at the proposal as it exists now from Highway 93, this is that same promontory. If you move it back to the developable part to the existing development pattern, we have again, an increased number of units relocated, all of them having very good views, I might add, but reducing the impact of this important promontory for the folks in Lolo. We have another concern that involves the height of buildings and that's not one that has been addressed yet, but I would ask the Commissioners to take a look at building height also in the same regard, if we know this building, one of the reasons that we have, many things are possible and so I urge you to take a look at this in your considerations. Again, I would recommend that you not grant the request and that the development be, which is on sewer and on a road system, on a water system, be relocated to within the developable area and the limit of existing development and I'd be glad to answer any questions.

Chair Curtiss: Thank you Philip. Now, Liz, it's my understanding that we also have someone who wants to show us a video in relation to this. This is a hearing. Is there someone, anyone from the public who would like to make comments on this. Well, first I'm going to let the developer, the landowner or the developer for the landowner, speak.

Dan Cahalan: And I'm the culprit with the video also. My name is Dan Cahalan. I moved to Missoula in '88. I teach at the University, bought this property in Lolo in 1992 and very frankly, finances have changed recently and where I had been hoping to leave this as my children's college education at some point in the future, some changes recently require that I develop the property to stay in my existing home. I mention that to stress the fact that as I've mentioned all along here, I have no plans of moving out of Lolo or the existing home whatsoever and I say that because I'm hoping to do this subdivision right, I'll be way to accessible if I do it wrong. The property is approximately 25 acres. The photographs, and maybe we're going to overwhelm you with photographs and video today, but I want you to have a feel for the property. It's the ravine behind Guy's Steakhouse. Bill and Ramona Holt are some of my neighbors immediately to the south of me, bordering on Highway 12. I have a photo handy here of looking up through the ravine from Guy's Steakhouse and may I pass photos at this time.

Chair Curtiss: Yes.

Dan Cahalan: That's the view down from the parking lot at Guy's Steakhouse, up through the ravine. The ravine that you're seeing in the photo would be this no build zone that's in the pink here and I have many other photos from different angles of that ravine. It is steep hillside with old growth Ponderosa pines in it. This section is approximately 15 acres as we've designated here, it will remain open space. My home which you can see up sort of in the corner of that shot, sits up here to some degree sort of right at the crack of the ravine. The home was built by John and Dori Hayden, in 1969. John was somewhat famous for owning Glacier General Assurance Company here in Missoula and why I mention this is that Mr. Hayden was also sort of a well renowned for liking to recreate on a bulldozer so Mr. Hayden somewhat recreated on a bulldozer in his back yard here and created what we would be using as the cul-de-sac. So this roughed-in cul-de-sac that exists on many of these photos here, was graded in at some point, approximately 1970 or the early 1970s. Another photo here I think gives you a good view from, and this is from the Lolo Community Center, directly to the hill that would be this cul-de-sac. The area that's outlined in red is the area

that is proposed as developable and in fact, the majority of what's in red on that photo is very specifically the lots on the end that are very much in question today. I believe this view of the property from the Community Center makes a point that this proposed subdivision, it is my honest intent to be filling in within an area that has existing infrastructure and within current boundaries of RSID 901 rather than trying to sort of break open new terrain on the perimeters of Lolo. Another issue you need to know, Lolo RSID 901 and Missoula County and Liz did mention this earlier, requested and was allowed to purchase a water/sewer easement. It goes from a well down on the Holt property, ran, and you can see the easement in many of our drawings, but a pipeline to existing water tanks up on the hill, basically go right up through the middle of the ravine. That was negotiated over a long period of time between 1993 and completed in 1997. This easement significantly increased the water capacity on the hill. I might point out a letter from Mr. Todd Brandoff that you may have. Todd was the chairman of the water/sewer board at that time. He was unable to be here today but he wanted to make sure that if I could I pointed out his letter which talks about how, at the time when the County requested that we do this, he felt that I tried to do everything that I could to make that happen. At this point in time, Todd is very supportive of my subdivision and his opinion, which I believe is a bit extreme, is that in some respects when the County signed off on a roughed-in sketch of this proposed designation granting the 12 water/sewer permits, back in 1997, that his opinion is that at that point the County somewhat allowed or granted the subdivision and he has some concerns of how this is moving forward now. As part of that agreement with Missoula County in 1997, DJ & A drew up a visual description of what is now my proposed property. That was part of the agreement. Also, this property specifically in that agreement was brought into the 901 Sewer District and at that time as mentioned I was granted 12 future sewer hookups. The proposed subdivision is 13 units, simply including my existing home. Before addressing specific conditions in OPG's report, I'd like to point out that some neighbors are here and some of them may have to leave early but some of them took time off of work to come down and show their support. They may have to leave early but I'm sure they'd be more than happy to answer any questions that you have. Two of those neighbors that are here, Skip and Martha Yates, also submitted a letter. I don't know if passing that around is what's appropriate, but this is what this letter deals with specifically is the newer issue here of being in the viewshed of the new State park. Skip and I went and walked my property yesterday. We did take a trip down to the Travelers Rest State Park yesterday and Skip and Martha feel very strongly that this new notion of a no build zone is an extreme position. I don't want to put words in their mouth but that would be included in the letter. Given the timing of, sort of, the Historic Preservation Officer's comments and I do wish to add as he appropriately mentioned he wasn't earlier given an opportunity to review, I certainly want to make mention of the fact that we sent our packets to all 21 entities that we were aware of, no oversight was intended there whatsoever. So, at that, I want to make certain it's not that we've tried to hide anything. But very specifically here, if your conclusion today is to enforce a no build zone that has in essence come up in the last 48 hours on this hill in Lolo, then I do think we need to take some more time very specifically and I have some other photos. In the photo that's from the Community Center parking lot, you'll note additional properties up the hill, very specifically some of you might be familiar with Nadine Dyphalt's property, the house farthest up the hill with the flag pole. But she was just speaking with me in the grocery store in the past 48 hours and spoke of her having 25 acres and I think she would be very interested to know if in fact much of her property is now undevelopable because we have a, we are in the viewshed of the new State park in Lolo. I propose that many of the comments from the Historic Preservation Officer, OPG, Community Council, etc., and private individuals are, as Philip very accurately just pointed out, I believe the problem we're having today is by and large because of the big green house on the hill that everyone knows and despises. I have no intentions of building anything like that. I have no problems with having things in the covenants saying that height restrictions are appropriate, but in addition to that I would like to point out that this was a lot that was sort of sitting with its derriere hanging off of the hill and any proposed houses in my subdivision would in fact not be visible above ridge lines and the hill would serve as a backdrop to any and all residences. So from there I'm going to attempt to address my concerns based on the OPG report that you received today and I'm certainly not, I met with OPG this morning, or with Jennie and Liz. I regret the fact that this process has, within the last week, turned somewhat adversarial here. I thought and they, as professionals, have worked very well with me but I do find it odd here at the last minute we couldn't even and it's not their fault but we couldn't even get a copy of today's report until 1:15 today. So if you would, please bear with me, I'm going to try to take the conditions in the order of the document that you have. Starting with Condition 5 and that's simply to mention this RSID water/sewer waiver, if you will, as ... thank you, do you, would it be appropriate for them to speak.

Chair Curtiss: They could if you'd like to give them that time.

Dan Cahalan: I'd like to. This is Skip and Martha Yates.

Skip Yates: As Dan said, I'm Skip Yates. I live at 237 Cap De Villa, immediately adjacent to Dan's property and I'm directly east across the draw, so if anybody's viewshed is going to be impacted, it's mine. My back porch looks right at this development and I want you to say, I'm right here in this lot, I'm here to support Dan's development, proposed development out here. I have no problem with, I've walked the property with Dan, I've looked at what he plans to do, I have no problems with that. This road has been here and I've anticipated the development would come to that site at some point since I've been here in the early 1980's. And as Dan said, we've walked out here, we've looked toward the State park which we could not see from his site and we also went to the State park and tried to look back up to where the development would take place and from the State park site, this development is almost totally blocked by a very thick grove of cottonwood trees and this is in the middle of winter, there's no leaves on those trees. I think when most of the visitors are here in the summer or the fall that it will be impossible to see his site from the State park. Like I said, we're here to support Dan. Dan's been a great community member, he's volunteered for an awful lot of community sort of activities and I support him wholly on this. If you have any questions, I'd be glad to answer them.

Chair Curtiss: Do the Commissioners have questions of Mr. Yates? Thank you sir.

Skip Yates: You bet.

Dan Cahalan: Back to number 5. As mentioned previously, I did sort of make this an issue or bring this up in the Planning Board so the Planning Board did recommend to delete this condition. I spoke to them about Condition 5 and 6, which they deleted both, while I still don't particularly agree with this language, I certainly figure that we have bigger fish to fry today. Down in Condition 8 and 7 and 8 deal with parks and a park management plan. As we were proposing this development it is in the regs, we needed to come up with some, dedicate some land to park. Here is an existing park, Westside Park. Above that is a utility park that the Lolo RSID 901 maintains and the notion was this

property here was contiguous to an existing park that would make some sense to have that be the park dedication. Sometime later we were asked by OPG if we would consider putting in some access to that park sort of through the middle and there is language in your subdivision regulations about access to the park from within the subdivision. And I understand that. We spoke with them about given our existing lot layouts it might be possible or it would be possible to do some access on the existing water/sewer easement that would go up to in fact the sort of southwest corner of that park. At this point in time or since those discussions, now these lot lines are very much up in question and so the night of the Planning Board meeting, or excuse me, I should clarify and say, shortly before the Planning Board meeting was when the language, when I saw the language of the conditions here that now what I am signing off on is a 20 foot wide non-motorized access easement which shall have Class 3 low impact trail with 2 feet wide gravel surface and I'm creating a linear park. The only other issue I would bring up there is Liz and I believe the letter is dated March 18, Liz received a letter from the Lolo Community Council pointing out that Lolo already has over 50 acres of park, no particular mechanism to develop or maintain them. The proposed park dedication here is 1.27 acres. Requirements for this subdivision would be somewhere in the neighborhood of half of that and now we're adding another linear park here which in fact what the purposes of that park will do is save the property owners out here from having to walk around through this existing park to get to that park and so we're creating a park so that maximum of five or six homes will be spared some distance of two to three hundred feet of walking around if that's what you deem as an appropriate use of the regulations so be it but I would suggest that if it is appropriate to dedicate this as park space I would question whether we need to also dedicate the linear park as well. And I don't know if I assume and Elmer Palmer a neighbor from up here and a member of the Lolo Community Council is in the room today. Maybe he'll address that. I've spent the last six years mowing this park here, the Westside Park. It takes approximately four hours to mow and I see no relief in sight of when I'll be able to pass that along. The language that Liz and Jennie use is that the County works in association with partnerships. Well, you're looking at your partnership. I will sort of try to knock down the weeds up here also, but I believe we're compounding a problem that is somewhat ugly already. I think much more appropriately and there will be a homeowners association here I would much rather see some fees from the homeowners association sort of in fact going to maintaining what's becoming an ever increasing problem of this Westside park has basketball courts, has a few swing sets, had a teeter-totter that was broken a few years ago, and much of that is in very poor condition. If I could, I think what I'm proposing is that I'd love to have my homeowners dues dedicated to somehow or other maintaining the existing park that's right at the end of the subdivision, regardless of what we end up doing. On to Condition 9. The hillside variance. As Liz specifically pointed out, there are over 25% issues on Lots 10, 12 and 13 which is my existing residence, we have no problem maintaining the existing no build zones that we have put to those lots so this issue of hillside development very specifically comes down to Lots 5 and 6, here, right in the middle. As I say to some degree it's the configuration of Lots 5 and 6 would have some ramifications on my linear park here, or with the new proposal of somehow or other cramming 15 lots into where we currently have 8 drawn up, obviously I'm not sure how the, how that fits with taking out these Lots 5 and 6 as being undevelopable. The language in OPG's report states that this property is not unique for the variation. I'm not a developer, I don't know if this is what you look at or not, but in my opinion, John Hayden didn't grade in a road over very much of the rest of Missoula County, I think that does make this property unique and very specifically the point I'm trying to make is that and I don't particularly have the right visual representation here, I have some pictures if I can come up with them quickly, I had visions before coming up here of at some point sort of throwing all of these papers up in the air, we'll hope that doesn't happen. Here are two photographs which try to show how it's the road cut of this existing roughed-in cul-de-sac which significantly contributes to why we end up with a grade of greater than 25% here and I don't think, I'm not an engineer, Steve can address this in a few minutes, but just sort of arts and letters display here a hillside is going to end up with a steeper slope in part of it when a road is put in and so I'm proposing that this variance, and you can look on any of the maps that are here today, there are some bubbles if you will, and that's a word that was used by one of the Planning Board members, there are some bubbles of greater than 25% on Lots 5 and 6 and that's the extent of what we're asking for the variance request on. Sorry, Condition 9 was all the further I got before the meeting. I believe Steve will in fact, Steve Lennis here, will address some issues in Conditions 10 or 11, specifically on Condition 12 dealing with weeds, a revegetation plan, I feel that a big concern on the hillside development, a big concern of many of the citizens here ... these were also supporters of mine.

Commissioner Evans: If they want to speak, let's let them speak before they have to leave. They didn't come down here for nothing.


Kevin Long: Thank you. My name is Kevin Long and I'm at 228 Cap De Villa, directly across the street from Dan Cahalan's house. The view out my front window looks onto his development, or proposed development. I've also been on his property, I know where Travelers Rest State Park is, I can point to it down in the trees. I've got a very good friend who has property right down adjacent to the State park and nine months out of the year you cannot see our hill. The trees, the cottonwoods are right there, it's a very thick grove of trees, there's some deer down in there, I've watched the archeological digs happening last summer and into the fall and when you get into those trees and on the creek bed area, you cannot see back to where we live up on Cap De Villa. The proposed development extending Dan's property, or taking this cul-de-sac out, I don't see the point in arguing over that, it's not going to impede when the majority of the visitors coming to view where Lewis and Clark camped, there's houses, there's barns, there's a barn on one of the pictures that was shown. I really doubt that was there when Lewis and Clark camped there. I don't think someone is going to go and torch that down, I mean, it's 2002, people are going to come to see an historical site, sure, but we also have to consider the fact that the historical site where they were at has changed drastically in the last 200 years. There's now a development there, there's a community of Lolo there and where I live directly across the street from Dan looking up at his property, I enjoy the view but I also know that someday that's going to be developed and in the last four or five years I've seen a lot of development go up that hill. It's the times we live in, people want to move out that way and get out of Missoula a little ways, that's great. You know, my belief and Dan developing his property, I'm all for it, I think it's great for him to be able to do that and have the abilities to be able to do that now, so, that's really all I have to say. If there's any questions, I'd be happy to address them.

Chair Curtiss: Do the Commissioners have questions? Thank you Kevin. Did someone else want to speak before they leave?

Unidentified speaker: I'm just an interested purchaser.

Chair Curtiss: Could you state your name, please, even though I know who it is.





Greg Chapman: Okay, thanks Jean. I'm Greg Chapman and have been a member of this community since 1985 and own a business here out on Reserve Street and Kevin took me up to his house and showed me this piece of property and we've been looking for a place to build a home for the last ten years and we just particularly liked this place because it has a beautiful view and you can see down the valley and up Highway 12 and west and I guess that's the only thing. I was down here interested to see what would happen and whatever I built there, I'd make it tasteful, you know, it's not going to be some gaudy thing. Thank you very much.

Dan Cahalan: May I ask him a question ... would that be appropriate.

Chair Curtiss: Sure.

Dan Cahalan: Would you be as interested, Dr. Chapman, if Lot 8 is the end lot now, with the new no build zone, would that lot interest you in the same fashion that 9, 10, 11 or 12 did?

Greg Chapman: Not at all, not in the slightest.

Chair Curtiss: Okay. Other questions? Thank you.

Dan Cahalan: And I'll try to wrap this up. Condition 12 deals with weeds, simply in trying to address any hillside issue or drainage or revegetation. I have already been in touch with Rockingham Design. I have some photos of theirs to show and this one specifically is of a Tivoli Way development that they helped out on to where I have plans in using their services trying to hydro-mulch whatever may or may not be disturbed in the development or as the subdivision progresses. I've had many of my neighbors, who, of course no one wants a subdivision in their back yard, but many of the neighbors said well, at least it won't continue to be the knapweed patch or thorn in our side that it has been for the last 15 years. On to Condition 12, sort of the pink elephant sitting in the middle of the room, if you will. Excuse me.

Chair Curtiss: Did you mean 14?

Dan Cahalan: I'm sorry, I did mean 14, thank you. As you're aware, it was the night of the Planning Board meeting was the first that this letter from the Missoula Historical Preservation Officer was presented to us and specifically the words in that letter are concerned that my property is in the viewshed of the park. What he used at the time and what was shown here a moment ago was an aerial photograph with a straight line on it. I would propose in a few of these photographs that I've presented today or in the video that you may choose to look at here, a straight line on an aerial photograph can be very deceptive. In the same fashion, I would question what zoom lens was used in the photographs which do involve the barn from the ... you can be back ... okay. And I would just present these two. The first is the photograph that Philip used and the second is a photograph that I took yesterday from not exactly the same location but very comparable. So what I'm, between, sort of, those two photographs and I have another here sort of showing this is a view that is, a picture that's taken from me standing out on what is the end of the proposed cul-de-sac. And at that, you get a feel for how much further we're sticking out than existing development in the area. And I believe again it shows a real distortion in a straight line imposed on an aerial photograph. I was part of, as Skip Yates mentioned, I have young children but when possible, I volunteer for whatever comes up. I was part of the original steering committee under Doug Skiba as they looked at, gee, are we simply trying to preserve the property to turn into Travelers Rest State Park or in fact was Doug's group going to be somewhat of a Lolo economic development engine and I'd simply like to point out how ironic I feel it is that this park has sort of immediately become now a significant governor on any development in Lolo, a governor on any development in Lolo and it's now my understanding that, within the viewshed, and again, I would like to address the viewshed issue with the videotape that I have. One other point to make there was that the, there is also a letter attached to OPG's staff report today from David Purviance and I don't in fact have that with me, but again some of the language in his letter is our desire to see authentic, historical site with views similar to that experienced by Lewis and Clark 200 years ago. I applaud that notion but I have many pictures showing the trailer parks within a hundred feet of that State park and I would point out that no matter what the view here, my property is over a mile away. The other issue brought up in Mr. Purviance's letter is that a public spirited decision by me might be to create a neighborhood park at the end of my cul-de-sac allowing a visual overlook into the valley below. Indeed this very concept was advanced during a public design charrette held back in 1999. I did attend that charrette and some of the work he is citing also included a handicapped accessible trail up through this ravine to get to the overlook for Travelers Rest State Park, which, there's approximately an 800 foot elevation gain in here, I told them we'd have to hold onto those wheelchairs tightly if we were going to use such a trail, propose such a trail. So, I appreciate their efforts and the charrette did many wonderful things but again the charrette did somewhat of a drew straight lines on an aerial photograph and I don't believe it's representative of the property. I'm finished with my oral presentation. Steve Lennis with DJ & A has some remarks to make. Might I suggest, and it's simply to try to get you the best feel for this property, but I have footage of the property itself, would guess the video is three minutes, something like that, footage of the property itself and footage with the video camera yesterday of my property from the State park.

Chair Curtiss: Would you prefer to show the video first or have Steve speak first.

Steve Lennis: I think the video first. I would actually like to speak after everyone else has had a chance.

Chair Curtiss: Okay.

Steve Lennis: If they have any comments, I can address them in my presentation.

Chair Curtiss: Alright.

Dan Cahalan: I assure you it's rated "G." (The video was shown while Mr. Cahalan explained) If I may sort of walk you through. I started on Ridgeway, so I started right here. What you're seeing is our current park, Westridge Park, immediately adjacent to the property here. I'm inside the gate, that shows you how my existing home is at some point here, somewhere in the neighborhood of 30, 40 feet from the proposed cul-de-sac, it's going to be right in my

backyard. This is another 10 feet down the road, somewhat trying to show how steep the hillside gets immediately adjacent to the roughed-in road, or what I'm referring to as the road cut here. That's the existing water/sewer easement up the hill in this area that we would be putting a linear park on and that's specifically Lots 5 and 6, where immediately as they meet the road it is rather steep, it is steeper than 25% there. This is out two-thirds of the way, I would say, out the cul-de-sac somewhat immediately below some of the homes above. One more point I might add is it's been mentioned I can reconfigure and obviously that will always be a possibility, but much of the public comment I've received was that the homeowners above me in Westview Number 2 have been some of the most concerned about what will go in immediately below them and so trying to match future lots to the subdivision sort of across the street in the flat and make them smaller lot sizes doesn't particularly mesh with what I have discussed with the property owners above me where they're very concerned, they have some of the nicest lots, one of their quotes from the public meeting, 'we have some of the nicest streets, some of the nicest lots in Lolo and we're very concerned about maintaining our property values.' What I tried to do was in fact create lots comparable to the Cumberland Drive addresses above and now as I say, the current proposal is that I could reconfigure and jam 15 lots into what I'm, into my eight, but that would still sort of deny the two in the middle because they're too steep.

Chair Curtiss: Steve, which way are we looking now, over.

Dan Cahalan: That is from the end towards, right down there is the State park.

Steve Lennis: Behind the trees, south of the trees.

Dan Cahalan: But I'm out on the end of the cul-de-sac.

Chair Curtiss: So you're standing on what would be part of the road, not the lot.

Dan Cahalan: Yes. And Steve would need to address that because I'm not certain where the roughed-in cul-de-sac ends and the proposed cul-de-sac begins. That using the zoom to try to get to, to try to get to the barn that we've seen in some of the other pictures, but again, that's what a zoom can do and that's what it looks like to the normal eye. And it does go another minute here with the footage from the park, I believe. Although I have a couple of degrees and so my common sense is gone. There's the barn and that's the view without doing any zooming from the current Travelers Rest Park. As you can see, there is development surrounding that park, why we tried to get that land set aside was it was in danger of becoming a trailer park. Here I am zooming into the view of those existing homes on Cumberland from the park, but now I'm, and if you've been out there, the land, I'm right on Mormon Creek Drive there and so initially the first hundred yards is at the level of Mormon Creek Road and then as you'll see here, then there's a berm where you drop down to the State park itself, I'm not certain of the park boundaries here, but then many of these other pictures are from what's down below. This is the point Skip was making that from what is actually, what, as far as I'm aware of, is actually Travelers Rest State Park, even in the dead of winter you can't see the hill for the trees. And really, I think you could shut it off now. So I don't wish to, as I say, this process has gotten a bit more adversarial than I had hoped from before. I'm quite concerned here that I think what I'd like you to consider is the granting of the water/sewer easements earlier and the good faith that that was done in. I know no one's trying to particularly be malicious here but now at somewhat of an eleventh hour and 59th minute, to have OPG end up suggesting by the way, we want to turn a large area into a no build zone, I don't profess to be a litigator, type of attorney whatsoever, but the language that I'm familiar with is something to the effect that if a real property owner has been called to sacrifice all economically beneficial use of that property in the name of the common good, then that is a constitutionally protected taking. I think that sounds terribly litigious and adversarial and I certainly hope we don't go there. Thank you.

Chair Curtiss: Are there others who would like to comment on this proposed subdivision. If you could come forward and identify your name, yourself. Thank you Mr. Cahalan.

David Purviance: Good afternoon. My name's David Purviance, I am the President of the Travelers Rest Preservation and Heritage Association Board of Directors, I'll refer to it as TRPHA, hereinafter so I don't have to stumble over that name. You have a letter, I believe, that Mr. Cahalan referred to that I submitted on behalf of the Board. Just by way of a little background. TRPHA is a non-profit organization that was created within the last year to help administer, maintain and plan for the new Travelers Rest State Park. We work in cooperation, very close cooperation with the Department of Fish, Wildlife and Parks. It's a very unique relationship that I do not believe exists anywhere else in the State park system. We're non-profit administrators of park on behalf of the government agency, Fish, Wildlife and Parks, but that is the situation with Travelers Rest. The Board of Directors as I suggested in my letter, has not taken an official stand and we're not urging a particular vote by the Commissioners, we are simply concerned that historical and cultural significance of this spot was not adequately addressed at least in the initial report that we received. We are urging the Commissioners to weigh in on their decision the historical significance of this spot, the fact that this location was also of some importance obviously to the Salish tribe. One member of our Board of Directors is a member of the Salish tribe and she is the Salish tribe's Lewis and Clark Bicentennial representative. She has expressed to me a great deal of concern about this development and wanted me to pass that on to you, so I do so. I am a little bit, I think I want to point out one thing that is an error and it's an error only because I think that this is new information to everybody. Mr. Cahalan and several of his neighbors mentioned that the view right now from the existing Travelers Rest State Park is not, the proposed subdivision would not be viewed, could not be viewed from the existing Travelers Rest State Park because of the screen of cottonwood trees. That's true, I don't deny that, I've stood in the same position as Mr. Cahalan has and looked up at it as you saw on the videotape. But what the Board needs to know I believe is, is that the Department of Fish, Wildlife and Parks has an Environmental Assessment which Mr. Maechling referred to that is either just been released or about to be released, which would seek to purchase an additional 10 acres and would gain a conservation easement on another 10 acres which is to the north, that is across the creek from the existing Travelers Rest site. Much of this is open range land. I can't say for certain that plans that would be made by Fish, Wildlife and Parks and TRPHA would relocate the entry point into the site but there has been some conversations that this might be the case. Currently, you would access Travelers Rest State Park from Mormon Creek Road. There is a very strong possibility that in the future, access would be from Highway 12 and that any parking lot or any kind of infrastructure would be on open land that would be very much visible, the prominence we're talking about, would be very visible. So, the current situation is very likely to change in the future and so the viewshed would be significantly altered from the standpoint of any visitors to this site. I think I just want to leave it there, I



don't want to urge a vote one way or the other, I just want to urge that you consider the historical significance of the site, the fact that certain national surveys have suggested that 9 million additional visitors will visit Montana as a result of the Lewis and Clark Bicentennial. What amount of those 9 million will be funneled through Lolo we don't know, but it will certainly be significant because, as Mr. Maechling pointed out, Lewis and Clark, on both their westbound and eastbound journeys passed through and stayed at Travelers Rest in Lolo. I would think I would just simply close by saying that the Board, Travelers Rest Board, does not wish to be, as Mr. Cahalan suggested, a governor on any development in Lolo. I would suggest in fact that if anything the State park will be an accelerator for significant economic development with these up to 9 million additional visitors coming through. Thank you for your consideration.

Chair Curtiss: Thank you sir. Is there further comment?

Marge Zaveta: Hi, my name's Marge Zaveta and I'm a property owner that adjoins Dan's property. Live up Highway 12, I've been here since 1977 and I purchased the Cooney homestead which is next to Holt's and I've been there for almost 20 years and raised my kids there, single mom, and have purchased 75 acres of ground that I've had there for a number of years and I support Dan's right to develop his land. I'm certainly not opposed to him doing that. Couple concerns that I had though, were with the Travelers Rest historical preservation. I somewhat agree in that Highway 12 is a designated scenic highway. If you travel up Highway 12, there has already been development up on the hill behind me, I own, if you're familiar with the terrain, the caves in the mountains up Highway 12, and there's already been some development up beyond the caves and there's a spotlight on the top of the house that's very intrusive if you travel up and down there or happen to live at the base of the hill. And I have walked Dan's land and tried to coordinate the map that he provided me, he did send out a letter and said, you know, this is my plan. I do have some concerns with that the house would be out, the cul-de-sac would come out that far, there would be a house at the end of that point. It certainly would be intrusive to the aesthetics of the area. I have some other concerns and I'm not sure, maybe his engineer can address them. The drainage area that is designated, 4.2 acres, the information they provided in the booklet says that the runoff will change somewhat, I imagine when there are half acre lots and you put a 3,500 square foot home on a half acre lot, a two car garage, a driveway, you're cutting down substantial surface area for runoff. I don't know, in the book it says that there are sump pumps designed and I'm not sure where they're located, I don't know what that drainage area is going to drain, it adjoins my property, is that going to create, I have two ravines further west on the property that have been from natural runoff, this would runoff down onto Highway 12, there's native grass up there, native bitterroot plants, I'd have some real concern of the erosion, the ground is very fragile, I've been up there, it's very soft and fragile. I have concerns about that and what that drainage is and where it's going to be draining. My other concern is that that Lot 11 is the cornerstone of my property, again, when you put a house of that magnitude, driveway, garage, there's no yard for the 24 grade school children that are going to play there, I already have problems with kids from the development coming over and playing in my backyard on the caves, they spray paint the caves, they start fires, they spend the night, they throw rocks down on my horses and I know that's not Dan's responsibility to parent other people's children and so maybe that's something I need to deal with in terms of fencing and I've done that and they cut it, so that's a concern for me. What else did I have. Oh, that there's, the only road in and out is by, on Town Pump, that there were fires up in Sleeman several years ago, flames, you know, were encroaching on, came down my way, I would have real concerns that if there was a fire, how would they get out. And I have those same concerns for the other people who live up in the other homes that there is no exit other than the one road. And, again, with the children playing and in Dan's video and I was going to ask to stop it where you were looking out toward the Travelers Rest site and you saw that road which is Hadnots Road, it goes across there, okay, if you stand on Point 11 at the cornerstone and you look just to the west of that, you saw a rock formation, maybe you didn't notice it, that's a historic Indian woman's face, or it's some designated historical rock formation that's documented in the Lolo Creek reflections and I'm sure the Travelers Rest folks, you know, can put a name to it, which is located on my property probably 20 feet from that last lot and I'm sure they're going to play there and so I have some concerns about that, not only that they're playing there but that it's a historical site and again, the erosion of that area is going to be very significant, so I would ask that maybe things can be rearranged. Again, I certainly support his right to develop his land, but maybe the lots can be rearranged to move that back and redesignate that area in some respect. The only other little comment was it's a wildlife corridor and I didn't bring a picture, I've been involved with the Lolo Land Use Plan for seven years and that's just consumed my time, I work full time, I'm a single mom and I didn't have time to bring, grab pictures, but I do have an elk herd that come across the face of that mountain, if you've ever been up there, come through Dan's place, I'm sure and when I walked it the other day, there's certainly elk and deer droppings there, I know that we can't change that and that's where the development needs to go, but certainly could consider that it is a wildlife corridor and they do continue to frequent that and come and then bed down in the draw on the west side of my property. Thank you.

Chair Curtiss: Thank you. Is there further comment?

Elmer Palmer: I'm Elmer Palmer and I'm here to speak for myself and also as Chairman of the Lolo Community Council. For myself, first off, we couldn't ask for a better neighbor than Dan and I'm all in favor of Dan doing some development up there, I'll be glad to see that knapweed gone. The biggest concern that I and several of the neighbors have was pictured up there a bit ago and we've talked with Dan prior to this concerning the size of houses that are going up there. Dan has said a minimum square footage of 2,500 square foot in a house and the neighbors, this area is primarily dwellings of 1,000 square feet up to twenty-five, maybe even 3,000 square feet for some of the latest ones that were built in the neighborhood. The one out on the point plus the new houses that have gone in out up in behind Delarka to the south of Travelers Rest, building monstrous houses, a lot of the neighbors feel that kind of thing is not proper. We've talked with Dan but we would like to, we know that Dan's there now, he may not be when it's all built, we'd like to see some kind of assurance in covenants that we have a maximum size, maybe 3,500 square foot, maybe, I don't know, something that would prevent these monstrosities from moving in. That's from my side and from my neighbors side. From the Community Council side, the first item that we took up is something that is hard for us to do with Dan because Dan has, for the last I don't know how many years been the mower of Westview Park out there, but we have taken a stand with the Community Council, as the Community Council, that all of these developers are coming and offering up ground but no way to maintain these grounds for parks and so we have taken a stand that we will comment to the negative on all of these folks that are doing this, we'd like to see some kind of an RSID or a very strong homeowners association that is going to take care of these parklands. We have about 73 acres of park in Lolo now and more coming in with a couple more developments and we've got about 50 acres of knapweed associated with

these. We are not, we just don't have the funds out there, Liz at Parks says that they don't have the funds, we have to have some means of maintaining these. Another thing that we've addressed from the Lolo Community Council is the fact that Dan's roads, we know he's asked for a variance in length and we're highly opposed to any variance in the width of a road. We had a development come through, one of the Orchard Park developments out there, they come in with the request for variance on road width, stating that there would be no on-the-road parking and so they gave them the variance for the narrower roads and now you can't drive through there because the first thing one guy did was build his garage into a rec room and parked on the street. We want to insure that all of our developments that come before the Community Council, that there are no more variances given on widths of the road, whether or not they promise off street parking. And another concern that we have and again, Dan should not be held accountable solely for this one, is we are approaching and probably possibly now by have even exceeded 400 homes on the top of that hill. Ridgeway is the only road off. In 1988 and 1989, fire seasons, the first year that I was up there, two of our neighbors took and drove their cars down to the mall or the shopping center, parked their cars down there because they figured they could get off the hill faster walking if the fire come over from Sleeman into the top of our hill than they could by trying to get down that road with the amount of traffic that was on there. It's not Dan's problem, but we have to look somewhere soon at stopping development on that hill if we do not have some kind of another access, one or two more roads to handle the traffic to the top of the hill. Thank you very much.

Chair Curtiss: Thank you Elmer. Is there further comment? Then I'm assuming Steve would like to speak.

Steve Lennis: My name is Steve Lennis, I'm an engineer with DJ & A. I've been working with Dan now for almost a year on this project. Let me say that Dan is not your typical developer that you sometimes see before you. This is in his own back yard, he has been thinking about this for close to the last 10 years that I know of and he wants to do what's right and I commend him for a lot of the things that he's had me do that were expensive to him but in the interest of the public good, he wanted to pursue that. I'll just take a brief moment to give you an overview of our preliminary plat here and then I'll get into some of the specifics, variance request and conditions of approval. Like Dan was saying, we have a 25.33 acre parcel of ground right now. Dan does have an existing house on it. The remainder of the parcel was split up into twelve lots of which a majority of Lots 10 and 13 and a portion of Lot 12 are designated as no build zones because of the slopes much greater than 25% on those portions. We did designate a park that's twice the size of the park required, there again, thinking that it would be nice to have a larger park, this is all parkland up here even though it shows a roadway easement, this roadway is actually a gravel, a small gravel parking area that does have grass and lawn and park benches and stuff like that in it right now. The existing road was cut in and that's a key feature of our presentation today is because of the fact that of what your subdivision regulations say about non-buildable or no improvement zones on areas of 25% slope or more. If in fact that road hadn't been cut in, we would have had a situation where we could have reconfigured that road to actually adjoin the lots as you see now and make sure that all of the lots would have had a 2,000 square foot contiguous building area that was less than 25% slope but since the road is in place and it doesn't make a whole lot of sense to now come in and cut a new alignment road that would actually end up disturbing more land than what's disturbed right now we have two lots, 5 and 6, that, yes they do have areas of 25% slope or more on them as they exist now. They also have considerable area that has less than 25% slope on them, but the areas that we wish to build would be next to the road and there was a question that came up before where our 25 foot setback would start from. Our 25 foot setback that we're proposing in the covenants, since this is a non-zoned area of Lolo, would be from the back of walk and so therefore it's not like what came up in the Planning Board meeting where our houses could be within two feet of the back of curb. We proposed that our houses start from two feet behind the curb line, set back 25 feet from there and that would give us housing pads that would be within 40 feet of the actual roadway. If we wanted to build up here, we have the area up there that's less than 25% slope but it puts us right next to these lots up there. It also would make for a very steep driveway accessing those lots, in fact I don't even believe we could meet the driveway slope without elevating the road enough that we would end up needing a retaining wall on the downhill side. So, our variance request was simply to be allowed to build in these portions of the lot and then with proper grading and drainage of each building pad area we would disturb the least amount of land possible on those two lots. We had to build up toward the portion of the lots that is buildable we would end up disturbing quite a bit more area as the majority of this area up here would now become fill. Let me get back on track here. Hazardous lands, there's a couple sections in your subdivision regulations that talk about building on 25% slopes that is prohibited, but there is a section in there that says any land that has a slope over 25% slope is considered hazardous land and that an engineering report can be submitted to mitigate the effects of building on such lands. If you deny our request to, for a variance for building on 25% slope or more we would like it to be a denial as a condition of plat approval subject to an engineer's, a full engineering report being submitted to the Public Works Director that would show how we would mitigate building on 25% slopes or more and how we could demonstrate that it would be no more intrusive building on these areas than it would be on the actual flat areas further to the northwest of our building pad locations. Second portion of your regulations say that a 2,000 square foot buildable area is required, contiguous area is required upon each lot for building. It doesn't really say that you have to build in that area, it just says that it must be available. I would also suggest that in Dan's case none of our houses are going to have a 2,000 square foot footprint on them, they're going, by the nature of the hillside, slopes we're going to have a tiered effect where the garage would be the first level, it would have to step up to a main floor and then step up further, if the homebuilder or the developer wish to add a third floor on top of that, so, in effect we are quite willing to go down to saying something less than 2,500 square feet on one level we would be more than willing to say that because we anticipate that the majority of our building footprints are going to be in the 1,250 to 1,500 square foot range. So, that comes back to the point whereas, if a developer only wanted to build a 1,000 square foot footprint house floor on one level, would your regulations say that lot wasn't buildable because he didn't have 2,000 square foot of buildable area. I would suggest that that's a little bit of a hiccup in your regulations there where you're dictating to the builder that he has to have so much of a flat area when in fact he may not want to use all that flat area, he may like the hillside to be left in its natural state as much as possible. I already talked about the road, if in fact that road wasn't there we may not have even been able to actually build anything way up here, because there may have been occasions where the hillside would have been at greater than 25%. I don't know that for a fact because of the fact that this is a pretty large cut through there right now but as Greg and Horace can attest, the normal road build practice is to build along a contour to try to minimize your cut and fills and therefore are we saying that in any situation where we have slopes over 25% that as it exists now in today's regulation that we wouldn't be able to build a road, anything, even though you can make the road and balance out as you all well know, a four to one slope, three to one slope, even as steep as two to one slopes are common in road building. I mean, anytime you're building in an area that requires, you know, we're not back in the Midwest where they have relatively flat ground, you're going to have slopes that exceed

four to one slopes unless you want to have a hundred foot right-of-way where it's all taken up with slopes coming out of it, so I would suggest that in this case since the road was already there the slopes being cut in at two to one, three to one, four to one even, have a significant impact on this property which gets back to the fact of Dan tried to do this right. If we would have known now what we know, if we would have known then what we know now, his best option would have come, would have been to come in, completely grade out his road, completely grade out all the land and make all of the pads as they were and then come in for a subdivision request. He didn't want to do that because he felt that was skirting the intent of your subdivision regulations. But as Jennie Dixon said, we now must evaluate our subdivision based on the existing land conditions as it exists at the time of the subdivision application. Well, if we go down that path and start denying people the right to build a house on portions of lots that exceed 25% but don't exceed 30% then it's going to be to everyone's, any person that ever had designs of building on their property, they're going to be better served to go out there and grade their property to the condition that they need it to and then come in for a subdivision. I don't think that's where we want to go. I have a, one little small exhibit here and I'll probably need Dan's help on, to show you. A little visual aid for what a four to one slope looks like versus a, four to one is 25% versus at 28% slope which is what we have in pockets on Lots 4 and 5. This is eight feet long from the tip of that to this line here, you come up two feet and that represents a four to one slope, you come up an additional 3 point something inches and that represents a 28% slope. This is over eight feet. Our lot, our building pad would be five times this in width to get to a 2,000 square foot contiguous area which means we would essentially be about 1.25 feet higher at the end of forty feet in length than we would be at a 25% slope. I would suggest that that amount of difference extended over 40 feet really doesn't amount to much. I think with good engineering practice we can design a grading plan that will site those homes that will make them blend in with the surrounding area and provide a public health, safety and welfare at the same time. That's my talk on the general. I'd just like to real quickly because I know we're really running long here, hit on some of the specific comments that I've heard today. One was, and I'll pass this around so that you can see the ..., one is the fact that the existing floor set extends significantly further than even our proposed 1,250 foot long cul-de-sac and so the visual impact that you may have been seeing from some of those existing pictures, our houses would, the last house of Lot 12 would actually sit on that cul-de-sac, it wouldn't be even further away from the cul-de-sac. The second point that I'd like to make, is if you notice the house on Cumberland Drive, even if we're looking at an aerial photo and you draw a line from that last house, the last house over here on Cap De Villa, that line across from it goes through station 11 plus a pair which is 1,100 foot long cul-de-sac. To pull a line even further back to 900 foot, that puts it almost two, three lots deeper on the viewshed so I don't believe that depiction before was quite accurate as far as where the actual houses would sit. Yes it does in relation to the cul-de-sac, it does vary greatly, but if you actually go from house to house at the very least, Dan should be allowed to build Lots 9 and 12, show that ... To get back to the drainage, one of the ladies had a concern that the drainage from this subdivision would run off and erode the hillside. As you all are well aware, part of the proposal will be we will have to submit a detailed drainage and grading plan to Greg Robertson for his review. I'll speak briefly about what our drainage is going to be. With this configuration one of the beauties of this configuration versus if we had to go with 15 lots on both sides of the road is that the majority of the lots are on the uphill side of the road. We have a five foot wide boulevard between the sidewalk and the back of curb which we will use as a grassy swale, collect the water in sumps, pipe it to, for this portion of the road, here's a roadway profile, this portion of the road will pump down to a grassy swale in the corner of Lot 1 that will be designed to contain the post development runoff to the pre-development runoff rate. This portion of the roadway in the subdivision going this way will do the same thing, it will go to a grassy swale here at that point we intend to construct a drainage swale down this lot line and then down this lot line where it would, we would side build back to the natural drainage ravine and so the water, all the water from this subdivision is going to follow the natural drainage patterns that exist right now and the runoff rate will be held to the pre-development conditions. I'll leave that up there for, in case we have any. The other concern was our roadway. It is being constructed to County road standards, except for the length where we're requesting additional 250 foot in length. We are building, although we are not required by the current roadway standards, we are going with concrete curb and gutter on both sides of the roadway and we are going with a five foot wide concrete sidewalk, once again to help make this as aesthetically pleasing as possible and also provide as much amenities as we can to the homeowners around there. That concrete curb also will help us in our road building where we don't have to try to build a ditch on the downhill side nor do we have to worry about runoff coming directly from the roadway down onto the steep soils. There was talk that we had proposed at our original submittal a lift station at this portion of the roadway to serve five lots here. That has now been removed from our current proposal and we're going to have individual grinder pumps on each of those lots that will pump through a small diameter force main into the gravity sewer which connects to the existing gravity sewer of Cap De Villa. I think I've answered everyone's questions that I heard from the audience. Once again I'd just would like to reiterate the fact that a view from an aerial photograph is much more, looks much worse than a straight on view or even a view from down below whereas if you were trying to draw a straight line across that the houses, all of Dan's houses would actually be much lower than the houses even above him and so the visual impact of the houses above him are going to be greater in my opinion than anything that he would be building and all of his roof tops are going to be much further lower than any of the existing roof tops above him just by the nature of the terrain. These are building sections that were actually drawn through, Lots 5 and 6, 8 and 11, to show you the relationship of a possible housing configuration versus the roadway and the lots above them. Our design would be a stepped design like I said before where the actual driveway would come in off of the road at 10% slope. The front part of the house would be exposed possibly up to 27 feet high from, looking from the roadway out here but the back side of the house due to slope and everything, would only be 13 feet high on the back side. There's an additional 30 to 40 feet of elevation gain between the back side of the house and the floor elevation of these houses up here on Cumberland so just visually their roofs are going to be 40 to 50 feet taller than our roof lines on our project. And I think unless anyone has any questions for me.

Commissioner Evans: I have some questions for Mr. Cahalan please.

Chair Curtiss: Thank you Steve.

Steve Lennis: You're welcome.

Commissioner Evans: Dan, I used to live up there on Highmore so I'm a little familiar with some of the problems up there and I can't tell you how many calls I had from folks and I think Deputy County Attorney Sehestedt can verify this, from people complaining and fussing about the motor bikes using the area for jumps, etc. That is one of the

reasons why I personally would not want a linear park. I think it would add a place for the kids to use their motor bikes and ruin that area. I'd like you to comment on that.

Dan Cahalan: Very frankly, I hear those motor bikes, those motor bikes do not try to come on my property. Very specifically, one of the place where they get to and from their terrain a little further up the hill is through the utility park right next to my property where there is a trail going straight up the hill near the water tanks. So at this point in time this is all fenced off. I don't have the motor bikes coming in the property. I concur wholeheartedly. We take out this fence, give them sort of the upper elevation of these first four lots with a nice loop to complete and I think we have created a monster.

Commissioner Evans: And will they use your linear park for that.

Dan Cahalan: Not legally, but yes they would.

Commissioner Evans: I'm real concerned about that because I think they've ruined some of the areas up there, made building lots unsaleable because of their activities. The other thing that I am concerned about is the house I lived in adjoined a County park and there was no maintenance ever so I concur with you that there is no maintenance and I wish you'd have lived next door to me to you could have taken care of my park too.

Dan Cahalan: The best was when someone from the Missoula County Parks Department came out and spoke to, my kids had them come out and speak last summer because the kids wanted to hold some fund raisers and see how they could maybe get some improvements to the park and this person told them when they expressed how they have mowed the park on occasion, this person chastised them for that that kids shouldn't be mowing the parks, it should be left to park people or adults. I'm thankful for the kids mowing the park.

Commissioner Evans: What I would like to suggest is there's a couple different ways we could address this, I don't think adding more park that is not going to be taken care of makes a lot of sense, when you have parks there that need care that aren't getting it. I would suggest that there are a couple ways to do that, cash-in-lieu of parkland, money that could be going into the parks would be a better idea, or a homeowners association or an SID for park maintenance, something where the money would go into maintaining the parks you currently have rather than adding more park that adds to your problems, putting equipment or something in the park you have I think would be a real good service to the folks there so that's something I'd like you to think about.

Dan Cahalan: I have no problem including in covenants. Elmer commented on the covenants, currently suggesting a minimum size of 2,500, I turned to Steve and said where did that come from. The covenants that any of you have seen are sort of the, some uniform covenants, those are not the covenants that would in fact be with this property. As he suggested, most of the homes in here are going to be split level, split entry with somewhere in the neighborhood of 1,300 to 1,800 feet per level.

Commissioner Evans: Those were the major questions that I had. I'd like to find some way to deal with those things and at this point I will let somebody else talk.

Commissioner Carey: Sure, if I may, I'd like Liz to respond to tell us what she thinks the ramifications would be of us doing away with the linear park and finding some way to fund the improvements to an existing nearby park.

Liz Mullins: Okay. In discussion with Lisa Moisey, County Parks Department, we discussed the linear park, well the 20 foot public access easement to be relabeled as linear park to insure design of a trail within the linear park and the main reasoning behind this was for access, but second for drainage plans to be reviewed by Public Works because where this linear, or where the public access easement is proposed, is very steep, one side is 25% and the other side is between, I believe, 10 and 15%, so that was the rationale behind the relabeling for the linear park.

Commissioner Carey: Okay, thanks. Do you have something else?

Liz Mullins: I was just going to ask you if you could repeat the second part of your question.

Commissioner Carey: I was saying if we did away with the linear park and devoted resources to improving the existing park and what you thought about that.

Liz Mullins: That might be something for Jennie.

Jennie Dixon: I would just point out that all we're doing is changing the name on a plat from a 20 foot access easement to linear park, because in the County we've been instructed that it would be difficult to impossible to actually have a public access easement so we call them linear park instead but it's the same difference, it's 20 foot wide public access to the park that they have proposed.

Commissioner Evans: One of the concerns I have about labeling anything park is the implied obligation that our Park Department or Board would have for maintaining it.

Commissioner Carey: Greg, if I could, could I ask you as an engineer to respond to Steve's suggestions on how they'd handle runoff.

Greg Robertson: As far as drainage goes?

Commissioner Carey: Through that particular.

Greg Robertson: They are required to submit a drainage plan with calculations to my office for review and Steve's approach to it is fine with me. Actually the entire approach, especially in dealing with additional, developing the building pads, that sort of thing, will provide a uniform plan of development. The road itself as proposed will

intercept most of drainage and can control on the outlet side, I don't really have any issues with what their proposal is or how they are proposing to do it. I believe they can do it as they suggest.

Commissioner Carey: And that would be putting homes on Lots 5 and 6.

Greg Robertson: Uh huh, oh yeah, sure.

Commissioner Carey: Thanks. Dan, if I would, could I ... you said that height restrictions would be appropriate so I'm, it sounds like you've got a very thoughtful design in terms of how to build on a hillside, so would you accept us putting some sort of height restriction like 30 feet in there just to ...

Dan Cahalan: Yes.

Commissioner Carey: ... accommodate that concern.

Dan Cahalan: You bet.

Commissioner Carey: Okay. Thank you. Could you put homes on what we're now looking at as the new park?

Commissioner Evans: The green part?

Commissioner Carey: The green part.

Dan Cahalan: Right, and, I'm sorry, I walk my dog daily, I wouldn't want my home up there and in essence any of these particular first three lots have some very nice, relatively moderate slope down here and then it does get much steeper toward the back of them, and there just happens to be another issue of the utility easements along this fence are a mess, so that was one of the reasons for its designation.

Commissioner Carey: Thanks.

Chair Curtiss: Barbara?

Commissioner Evans: Dan, you know I've been here a long time and I remember a park that we were given in Donovan Creek, called Slide Rock Park. The hillside is like this and it's all shale rock and if that area isn't suitable for even housing, I don't want it as a County park. Don't want another one.

Dan Cahalan: I appreciate your concern and I think, as I said, I'm not a professional developer so Steve is some help and very honestly, the help from Jennie and Liz has been very professional, very appropriate, but this would be a park created by a regulation that says we need a park and I would much rather see any funds go to trying to support the existing Westview Park that's there.

Commissioner Evans: One of the major concerns that I have is the linear park going through what has been shown to be a very nice, beautiful, untrammled, untouched area, I'd like to see it stay that way and I think Colleen said today, so if Colleen or Mike would speak to this, that the no build areas could count as parkland, I'd like somebody to address that because I really don't want the County to have another park that we have to maintain that is not good terrain, isn't really suitable for park. I'd rather leave the areas that are really choice left alone so they'd stay choice. Colleen.

Colleen Dowdall: The regulations give us lots of flexibility on how we, what would satisfy the parkland or the open space requirement and what it requires is that the property be permanently set aside in some way to protect it as open space so as long as that is done with this area, then ...

Dan Cahalan: Would a conservation easement be appropriate.

Colleen Dowdall: That would be one way of doing it and I don't know, I can't tell from here if that red hatched area was going to remain with your home now, so, yeah, a conservation easement, but it also, you would have a fraction of that hillside area required for your parkland dedication, is that not true, Jennie? I'm sorry. 0.62 is the requirement and the red hatched area is 12-13 acres, so you could satisfy your parkland requirement very easily with that ground.

Chair Curtiss: Would it have to say 'park' on it, or just say no build.

Colleen Dowdall: No, but it would have to be set aside in some way, that could be common area, parkland, conservation easement. State law gives us lots of flexibility and we've reflected that in our regulations.

Dan Cahalan: I'm not prepared to say absolutely, positively, but it was my understanding were the subdivision to be approved, this property would go from agricultural, which it currently is, to residential and at roughly that point in time, or when it would economically make sense to create a conservation easement.

Mike Sehestedt: Probably, you'd lose your potential tax advantages if you used that as conservation easement now to meet your park dedication requirements, so, there's a ton of considerations and before you jump on any of that you probably want to talk with somebody that knows more Federal tax than anybody at least in the front part of the room.

Dan Cahalan: Thank you. On this specific issue, I have also seen the regulation which OPG, which caused OPG to look for an easement or a linear park or what have you, and it says that it would be nice to give subdivision property owners access to the park through the subdivision rather than having to leave the subdivision and going outside. I propose to you that that reg was made for subdivisions that looked much different than this.

Chair Curtiss: Greg?

Greg Robertson: Just with respect to the linear park proposal, speaking on behalf of the 901 Rural Special Improvement District, we negotiated an easement some time ago for installation of a water main through this subdivision. I have a concern of improvements. Periodically we need to get in and maintain, repair, whatever and I would prefer that that easement be free of improvements to reduce costs to the district.

Chair Curtiss: So, just be, continue to be a ...

Greg Robertson: Eliminate it.

Chair Curtiss: So it would be a utility easement.

Greg Robertson: Just leave it as a utility easement, correct.

Chair Curtiss: And I have a question for you also, Greg. One of the things that Mr. Lennis referred to was the fact that our regulations say on a 25% slope an engineer's report can be reviewed by you to mitigate so they could build in a different spot. Is that, and Jennie, you guys know the regs.

Greg Robertson: As far as I'm concerned, that's fairly typical. The approach that Mr. Lennis is using is the most desirable for development in terms of engineering practice and that is doing a full site grading plan to include building pads, etc. That's pretty rare in the development business but it will have a significant amount of control on how the land is developed and it can be done right before houses are built.

Commissioner Evans: Seeing there's only been a prohibition on the 25% in the last few years, for all the 20 some years previous to that, all that was required was an engineers signature on something over 25%, so that was standard around here.

Chair Curtiss: Are there further questions, comments? Yes, Mr. Lennis.

Steve Lennis: On Page 22 of your subdivision regulations, Article 3-1(2), it talks about having this land.

Chair Curtiss: So, Jennie, from your perspective, could we refer to Lots 5 and 6 as hazardous lands and somehow address those two lots differently in regard to the slope.

Jennie Dixon: I'm not sure that I understand your question. Any land over 25, you have a section of your subdivision regulations which describes land over 25% as hazardous land that is considered unbuildable unless or until an engineering design sufficient to alleviate the hazard has been submitted by the applicant and approved by you. So we have not seen that.

Chair Curtiss: Okay, so they have that opportunity.

Jennie Dixon: Yes they do, however, that section of the regulations is quite a bit older than the hillside regulations which now require lots to have 2,000 square foot contiguous buildable area with a slope less than 25% where homes need to be placed. That's the section of the regulations that they're asking for a variance from.

Commissioner Carey: So, could you, Colleen or Mike, provide some verbiage for how we might say that, deny the variance unless and until we get an engineering report saying it's possible to mitigate.

Mike Sehestedt: I would probably make approval contingent or conditional on ...

Jennie Dixon: I mean, what you're looking at doing from what I can discern, is that you want to approve the variance to allow building on over 25%, so you just recommend that you ...

Chair Curtiss: And if we do that, they have to do the engineer's report in order to ...

Jennie Dixon: That's my, that's how I would word it.

Mike Sehestedt: The variance would be granted conditional on compliance with the regulatory requirement.

Commissioner Carey: Okay.

Commissioner Evans: Just, whatever we're going to do, make sure that in our conditions where it says 'and linear park' be deleted and the park be deleted so that we make sure that our regs don't, that our conditions don't include something we didn't intend to include.

Commissioner Carey: Perhaps my first motion then could be to eliminate Condition 8. No, apparently not.

Jennie Dixon: Am I to understand that you don't want any parkland.

Commissioner Carey: Just the linear park piece, that's what I'm trying to get at.

Jennie Dixon: So, the developer proposed a walkway ...

Steve Lennis: No, an easement.

Jennie Dixon: ... an easement, thank you, an easement to provide access to the park. You do not want to have that as part of the subdivision, is that right?

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Commissioner Evans: I don't.

Commissioner Carey: I'm looking at not having a trail built there. Greg, as I understood him, said that it would be better for him not to have to come in and remove improvements in order to deal with problems he may have as a result of having a utility easement.

Jennie Dixon: Right. The trail is 2 foot wide gravel surface.

Commissioner Evans: I don't want to have 2 foot wide gravel surface through that untrammelled land that will make it trammelled in the future. I would like it free for the public to walk on, but not a designated trail for bikes, etc., are going to go. Parks are open, I don't even want it labeled park. I was going to suggest that the developer either give us cash-in-lieu of parkland or that he designates a piece of land equal to whatever we have to have as a conservation easement or something like it, whichever he chooses, prior to final plat approval, assuming our County Attorney would say that that is doable.

Colleen Dowdall: I just want to make clear that the easement that was proposed was just through Lots 4 and 5, is that right, it didn't go down to the gully.

Jennie Dixon: Correct.

Colleen Dowdall: So that's what I thought maybe you misunderstood that, because that's the land that's ...

Commissioner Evans: I did misunderstand.

Colleen Dowdall: ... fairly pristine and ...

Jennie Dixon: So, if I'm understanding, you want to retain the park but get rid of the access to the park through the subdivision, in which case you ...

Chair Curtiss: No, I think what we're saying is that that park they could redesign to include with those lots in front of it and some other property could count as their park.

Mike Sehestedt: I think we're doing two things simultaneously. First of all, we have, maybe this shouldn't be first of all. We've got one, the question of whether or not there should be that, it's labeled Park 1 up in the corner, whether or not there should be any park dedication at all in this subdivision and the other question is whether between Lots 4 and 5 there should be what's talked about in Condition 8 as a linear park. Maybe it would be easier if we resolved the question of whether there should be a park, period, up in that corner. If you say yes, then we still have a live issue about the linear park or the improved access. If you say no, it really pretty much resolves itself. It would be a trail to nowhere, up to the back boundary line to look at the, you know, see what the people on Cumberland were doing in their back yard and then go home.

Commissioner Evans: I would want to give Greg a utility easement if he wants it between ...

Greg Robertson: We have that.

Mike Sehestedt: We have it.

Chair Curtiss: We have that.

Commissioner Evans: I don't want a linear park.

Commissioner Carey: And what Michael is saying is if you don't want a linear park we have to do away with the park.

Mike Sehestedt: No, we don't have to. We got two entirely separate issues. We can have that park with or without the linear park, but if we don't have that park, then we absolutely probably wouldn't want the linear park under any circumstances since it would be a 20 foot wide dead-end. Does that make sense?

Commissioner Evans: And if it is not configured well enough to even build a house on it, I don't think we want another park up there. I would rather have cash-in-lieu of or something else other than another piece of land we can't maintain.

Mike Sehestedt: The big reason it's configured as a park, or part of it, if you look on ...

Chair Curtiss: So what does blue and yellow mean?

Mike Sehestedt: ... if you look on the drawing ...

Jennie Dixon: It's 10 to 20 and 20 to 25, blue is 10 to 20, this is 20 to 25, so the easement for the water line ...

Mike Sehestedt: Comes up ...

Jennie Dixon: ... comes up in this area here ...

Mike Sehestedt: What makes it difficult to build, I think, is its shape and the fact that along the northwesterly edge there's a big jog, there's an easement into it for the buried water line and there's also a utility easement to serve the adjoining property on Cumberland.

Steve Lennis: And we don't have access to a public road.



Mike Sehestedt: Public road without building a lot of cut.

**Commissioner Evans:** I just don't want another park up there that can't be maintained, there's enough of them already. I'd rather have money to put into the existing parks so they can put in improvements and an SID or a homeowners contributions or something that provides maintenance of the current parks they've got rather than another one that nobody can, that poor Mr. Cahalan would have to take a whole day to mow.

Dan Cahalan: I'm not sure of the language here, but what I'd be more than happy to suggest is that the condition turn into approval is based on either cash-in-lieu of park or the appropriate land being designated as some other no build, a conservation easement, something of that ...

**Mike Sehestedt:** I was going to say, some of this we're getting into what will be a major plat adjustment because if the park goes away, you're going to want to reconfigure a number of lots.

Dan Cahalan: I don't believe so.

Mike Sehestedt: Well, obviously, something will happen to all of that ground that's in the park, I mean, it either, and I'm ...

Dan Cahalan: It is heavily forested or there's a great stand of trees.

**Mike Sehestedt:** Right, it, you can see from the aerial that it is timbered.

Chair Curtiss: So it could change from park to common area?

**Mike Sehestedt:** Well, what I'm concerned about, yeah, if we do it as common area with the homeowners responsible for maintaining it, does that solve your problem, Barbara?

Commissioner Evans: I suppose it does, but my point is, it's his land, if we don't make him do park with it, what he does with it is his own business. I just don't want it as another area that we need to maintain in any way.

Mike Sehestedt: Right. What I'm saying is that if we say, gee, take the park out, then we need for you guys to approve this subdivision, I think, to have some idea of what the subdivision is going to look like, I'm concerned.

Chair Curtiss: Jennie.

Jennie Dixon: I share the same concerns that Mike has, which is we're starting, you're talking about some major redesign elements on the floor of the Commissioners of a major subdivision. They have a requirement to either give parkland or common area, or cash-in-lieu, and this is a very new, for us to be able to respond and provide you with the best feedback that we possibly can right here on the spot. The amount of dedicated parkland or common area is going to depend on their net lotted area, which as the lots shrink or expand, it affects how much land has to be then dedicated. They did not provide the information of what the required parkland dedication was here, we calculated it and determined to be somewhat over a half, 0.62 acres. We have conditions recommended on the park that the County not maintain the park, that it be maintained by a homeowners association. The land in the park is relatively flat, half of it is not even over, I think, was it 10 or 20%, so I don't think it's unmaintainable and it's not the County's responsibility as staff has recommended anyway.

Commissioner Evans: I still would prefer cash-in-lieu of and he does what he wants with his land. Don't want another piece of land, the homeowners to take, do you know what, just south of my house were two nice gullies for drainage. They are full of garbage, they are full of clippings from the lawns because nobody takes care of them. The park just adjoining my previous land was never done anything with. None of the parks up there have any maintenance by County crews that I'm aware of. And Elmer has said they don't want any more parks that nobody takes care of. I would rather have cash-in-lieu of, if that's the only other option without all this major stuff.

**Mike Sehestedt:** Part of this, I guess, is the frustration that anybody coming before us must feel, because the Commission has had a pretty strong policy about preference in these kind of situations for park dedication. They've come in with a proposal, they're dedicating park ground and here we're, we're doing all, we've got all kinds of redesign considerations on the floor and I hear what you're saying, but these are some things that probably need to be addressed more in up front policy so that when people come in they know what we're expecting of them and the policy has been to ask for park ground in these large developments, larger developments in the past. They've done what was expected of them, come in with a design and now we're kind of flip-flopping on it.

Chair Curtiss: So, if we leave the park, then can we still take away number 8.

Mike Sehestedt: Sure.

**Commissioner Carey:** From a planners perspective, does that work?

Jennie Dixon: That's not a problem.

Commissioner Carey: Okay, I think staff has come up with wording that allows, that provides for a maintained park. I mean, the developer will maintain it until the homeowners association can and it's just a matter of trying to find a way to make that actually happen.

Commissioner Evans: Are you planning to take out number 8, is that what I hear?

Commissioner Carey: That's what my motion would do.

Commissioner Evans: Alright. That's the full content of this first motion.

Commissioner Carey: Yes.

Commissioner Evans: I will second that motion.

Chair Curtiss: All in favor of the motion to remove Condition number 8 say 'Aye.'

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Commissioner Evans: And I would ask on number 2 that you remove the word 'linear park.'

Commissioner Carey: Condition 2? Right. I would move to remove 'and linear park' from Condition 2.

Commissioner Evans: Second.

Chair Curtiss: All in favor?

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Commissioner Carey: Michael or Colleen, do we have to deal with the Planning Board's striking, that's just their recommendation, it's still in the conditions from the staff, right?

Commissioner Evans: Which one are we talking about?

Commissioner Carey: Number 6 and number 5.

Colleen Dowdall: We would like to respond in unison, the two of us, we both were grabbing for the ...

Mike Sehestedt: I was grabbing to pass it.

Colleen Dowdall: The recommendation from Planning Board is what's before you, so all that you have to do is when you do your motion is that you say that you want to include those as conditions of approval.

Commissioner Carey: So we can wait until a broader motion to accept conditions rather than deal piece meal with 5 and 6 right now.

Colleen Dowdall: Yes, you can do it either way.

Commissioner Carey: Well, perhaps just for clarity, I'll move that the conditions 5 and 6 proposed by the staff remain in existence.

Commissioner Evans: And I will second that.

Chair Curtiss: All in favor?

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Commissioner Carey: So, we're going to have to go ahead and change the numbering on this, having eliminated Condition 8. I would proposed a new condition number 13 that the subdivision plat shall be revised to designate the area shown as Lots 9, 10, 11 and 12 as a no build, no improvement area. The plat shall be redesigned to meet all County subdivision regulations with up to 15 lots which shall be located in areas not designated as no build, no improvement zones, subject to review and approval by the governing body, prior to final plat approval. I'm proposing that as a new condition which would bring us back to, I believe, a 1,000 foot long cul-de-sac.

Jennie Dixon: Depending on your action on the variances.

Commissioner Carey: Okay. And the reason I'm proposing to do that is because I believe that Travelers Rest is a unique State Park, it's of national significance and that over time, I hope it's possible to not degrade the area around

this historic site and I think that incrementally, we do, kind of, week after week, tend to lose natural environments and so in this particular case, I think it's important to preserve it. I also should state that I'm on the Board of TRPHA and that I won't vote on this matter unless I have to break a tie. I don't stand to personally gain anything from a yes or no vote on any of the matters related to this project.

Commissioner Evans: And I will not second the motion and for the reason, there are rules we expect all developers to follow and we should not expect others to follow our regulations if we won't follow them ourselves. To prevent the development of some of these lots because someone could see the homes is, I believe, outside the intent of our rules and outside the law, and so to kind of make up for denying these lots and their chosen locations, it is being suggested or will be suggested that we give a density bonus for a couple of extra houses and that is also outside of the rules in this area and those two extra houses we might give are just so much hot air because there is no approval by the Lolo Water and Sewer District to give more than 12 houses to these folks, so to offer them something that we can't really give them in return for taking away something that I don't believe we should take away from them, I can't second it.

Chair Curtiss: Okay, I also won't second that motion, but I would second it if it only said to not build on 10 and 11.

Commissioner Carey: And just to respond briefly to Commissioner Evans concerns, I point out that our subdivision regulations require that subdivision shall not result in the destruction, loss or damage of significant natural scenic, cultural or historic features. It also states that the design and development of subdivisions shall substantially preserve or enhance the unique character of an area.

Commissioner Evans: And I think that refers to the land on which the subdivision is being proposed, not something they can see in the distance.

Greg Robertson: I just wanted to clarify one thing. In the negotiations originally for that easement, there were 12 connections that were offered. In responding to Commissioner Evans, there is no additional plant capacity at this time nor will there be for quite some time, so additional homes within the district would not be allowed.

Commissioner Evans: So it appears we have a problem. You won't second his motion unless you take out a couple of houses. I won't second the motion if we take out any of the houses, he isn't going to vote unless he breaks a tie, so it looks like we've got a little problem here.

Commissioner Carey: Well, I'll make another motion.

Commissioner Evans: Okay.

Commissioner Carey: I'll move that the plat, subdivision plat, shall be revised to designate the area shown as Lots 10 and 11 as a no build, no improvement area and will redesign the plat according to County subdivision regs, and so on.

Chair Curtiss: I'll second that motion.

Commissioner Evans: I will not second it.

Chair Curtiss: All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: No.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Commissioner Carey: Okay, where are we here. We also have to amend.

Chair Curtiss: There was one language thing in there, because there really is no such thing as the Lolo Sewer and Water District, it's an RSID, it isn't a sewer district, so we need to change that language.

Commissioner Carey: To amend Condition 11, a detailed utility plan, specifications and hydraulic analysis for construction on any water or wastewater improvements shall be reviewed and approved by the Missoula County Public Works Department on behalf of the Lolo Sewer and Water District, prior to final plat approval.

Commissioner Evans: I will second that motion.

Chair Curtiss: But I believe Greg wants the Lolo Water and Sewer District out.

Greg Robertson: Yeah, it's not a sewer and water district, it's Lolo RSID.

Commissioner Carey: So, it will remain approved by the Missoula County Public Works Department on behalf of the Lolo Sewer District?

Greg Robertson: RSID 901.

Chair Curtiss: RSID 901.

Commissioner Carey: Oh, the RSID, okay.

Chair Curtiss: All in favor?

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Commissioner Carey: Okay.

Chair Curtiss: Jennie?

Jennie Dixon: Is that your amendment to Condition 11, but including the underlined language presented to you or deleting that.

Chair Curtiss: Greg led me to believe it didn't need the underlined language. Is that right Greg? Do you want to see what it says.

Greg Robertson: I would prefer that it be left in for now, even though the developer is redesigning it, I don't have any, this has to do with the lift station and they're going with individual grinder pumps, I prefer that the language be left in.

Commissioner Evans: Greg, the reason I would prefer to take it out is not putting it in gives you the option of determining what's necessary. You have that so I don't see any need to put in the need for individually maintained lift stations. That makes no sense to me. If that's what you determine is necessary in your review, then that's what you determine, but I don't want to include that in here.

Chair Curtiss: So I believe the one last thing that we have to do is ...

Commissioner Evans: Still leaving Greg the opportunity to make those decisions himself.

Commissioner Carey: Unless, I guess, if the Public Works Director believes that it is an improvement in the wording, then I would go with that. I'm not an engineer so.

Chair Curtiss: Well, we've just removed Lots 10 and 11, so the language is already changed.

Greg Robertson: Yeah. It's my opinion that if something is not addressed, the way I preferred it, Commissioner Evans, that it be addressed as a finding of fact that the developer initially had proposed a lift station that the district was to maintain. We did not want that, to have the burden of maintenance by the district. The staff report, when it was issued, was absent any discussion of that requirement and that's why it came about. I have since learned that the developer has redesigned in response to my concern and was evidenced today, so I don't have any problem, you can eliminate it if you feel.

Chair Curtiss: So can we add it to the finding of fact, or does it need to be done. It's on the record that it was there, I guess.

Commissioner Carey: Okay, so we won't include the Public Works Directors language in that condition.

Colleen Dowdall: Can I have a clarification. Bill, you make the motion to eliminate the two lots, then you just said etc., etc., so were you including all the language that said the plat shall be redesigned to meet ...

Commissioner Carey: Yes.

Colleen Dowdall: Okay, with up to 15 lots ...

Commissioner Carey: Yes.

Colleen Dowdall: Which shall be located in areas not designated as no build, no improvement zones.

Commissioner Carey: Yes, thank you, I suppose I should have read it through again.

Colleen Dowdall: Well, so that means that it would all have to be within the area where the first 10 are and not over in this area.

Commissioner Carey: Right, thank you.

Chair Curtiss: Jennie?

Jennie Dixon: Based on the revisions that you've made to the conditions, you would be recommending approval of the cul-de-sac length variance, just wanted to point that out, and unless you modify Condition 9, you would still be in a position of recommending denial of the hillside design standards variance. And you do need to take action on your variances before the final subdivision and conditions.

Chair Curtiss: So, number 9 we need to modify now?

Jennie Dixon: If you, if you, again, without you having taken action on the variances, I'm not sure how the Board will vote, but if your intention is to allow construction on slopes over 25%, then you would delete Condition 9.

Commissioner Evans: How about I make a motion that we approve the building of housing on 25% slopes if there is an engineering signature and plan, however it was done previously, that's what we used to require.

Chair Curtiss: I think Jennie said that language is still in there, if we eliminate this, that language still remains.

Jennie Dixon: It's in the regulations.

Commissioner Evans: That's my motion.

Chair Curtiss: You want to eliminate number 9.

Commissioner Evans: Yes.

Colleen Dowdall: So would that mean we would take the no build zone areas off of the plat?

Jennie Dixon: It would mean the no build zones proposed by the applicant would remain, which are shown in pink. It does mean that the areas shown in red on this map would not have to be designated as no build. That's what this condition was doing, specifying these additional areas in red as no build.

Commissioner Carey: Yeah, I don't want that.

Chair Curtiss: So if we did that, though, they would still, in order to be able to build in the red, would have to have an engineer's report and Greg would have to approve it.

Commissioner Evans: Uh huh, that's my motion. Did you get that wonderful motion.

Chair Curtiss: Nobody seconded it yet.

Commissioner Carey: Alright, I'll second it.

Colleen Dowdall: Okay, I just have one more question because ...

Commissioner Evans: Let's vote on it first.

Colleen Dowdall: ... well, one of the things we talked about was this area, the gully, would have perhaps some buildable areas and right now it's designated all no build and is that what we're wanting the result to be, or ...

Commissioner Evans: For the riparian area?

Jennie Dixon: They've designated as no build because they didn't provide slope category information, they simply indicated it was all over 25%, however, in discussions they have said there may be pockets less than 25%. If at a later time they want to do a slope analysis and determine that some land is less than 25% and could be buildable, they could come in and do a plat adjustment to remove the no build from portions of the property. Thus far, the applicant has not been interested in pursuing that and has kept their proposal for the no build zones as shown in pink.

Colleen Dowdall: And my concern is that they voted on the new number 14, you said that you've eliminated building in areas designated as no build, no improvement areas and that's that area I think right now.

Chair Curtiss: Would they still have that opportunity to come in and ask for an adjustment later if that says that.

Jennie Dixon: Yes.

Colleen Dowdall: Well, yeah, they would have to come in, back to you guys.

Chair Curtiss: Since we don't know what the slope is, it's probably better to leave it.

Mike Sehestedt: Right now, the way all of the actions you've taken work out, you said, dump 10 and 11, you can put 15 in from the 9-12 line back, nothing in anything that's designated no build and part of the problem is right now everything essentially to the south and east of the road, except Lot 12, is designated no build and I think that you need to put in some sort of caveat that says when we're completely reworking this, sites east of that road may be approvable. I don't know what they're going to want to do or what works on the land.

Chair Curtiss: Jennie?

Greg Robertson: We would be open to just having the same language with any building in any of the sites with 25% slope or more, including the designated no build areas, because those were designated specifically because they contained sites of 25% or more, be approved by Greg prior to final plat approval.

Chair Curtiss: Jennie?

Jennie Dixon: However, because we did not receive slope category information or proposal for development in this area, we did not analyze it for any impacts, natural resource impacts or anything like that, so, I would be very concerned at this point to remove any part of that from no build without further analysis.

Chair Curtiss: But they could do that later.

Jennie Dixon: Later, which is part of the requirement in the last condition that if, I mean, if we're eliminating development ability on Lots 10 and 11, they're going to have to reconfigure their plat and bring it back before you. At

that time they could present amendments as far as taking away some no build area that you could review and approve at that time.

Commissioner Carey: So we ought to keep Condition number 9 then.

Jennie Dixon: Well, if you keep Condition number 9, they cannot build on the areas shown in red.

Commissioner Evans: And I don't want to do that, we've already taken away some of their houses.

Colleen Dowdall: So I think if we keep 14 as it is, we're okay.

Chair Curtiss: Okay, so the motion on the floor is to remove number 9. All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye.

Commissioner Evans: We already did that.

Commissioner Carey: No, we just ...

Commissioner Evans: Oh, alright, second that, it can lose it.

The motion carried on a vote of 3-0.

Chair Curtiss: Okay, so now we've renumbered.

Dan Cahalan: May I ask for some clarification then on what's come together with either 13 or 14. I have had two different prospective buyers come talk to me about would Lots 11 or 12 be available for purchase so they could take them outside of building, so they could preserve them. I believe what's just happened is we're not going to build on them and they don't exist anymore, so I would not be able to sell them to a buyer who wanted to leave it as is. Is that correct?

Chair Curtiss: So you're asking if Lots 10 and 11 would have to disappear or whether you could sell them privately. Colleen?

Colleen Dowdall: I think what the motion was, was that that area shown be designated as no build. Our subdivision regulations don't allow us to create lots that aren't capable of being developed unless we designate them as parkland or something like that. I think what we all contemplated is that they would go away with your motion, Jean, if that's what you're saying, you want them to go away, then ...

Chair Curtiss: Could they however, redesign Lot 9 or 12 to include the land in 10 and 11 and still be designated as no build on that area.

Colleen Dowdall: You know, I'm going to suggest something that Mike just suggested before he left and I was thinking maybe we didn't have to do this because 14 covered it, but the result of all of this is we are basically designing a subdivision right now and I'm really uncomfortable with that and I know Jennie and Liz are really uncomfortable with it and if I were the developer, I'd be the most uncomfortable with it. We need to maybe stop now and come back in a week or two or whatever you're comfortable with and I don't know where we are on the deadline for 60 days, but ...

Dan Cahalan: We have two weeks.

Colleen Dowdall: ... two more weeks.

Dan Cahalan: I believe so.

Jennie Dixon: Deadline is Tuesday, April 16th, however a week is not, given the workload that we're currently doing, we will not be able to finish this within a week, so we would need to take at least two weeks to come back to you.

Commissioner Evans: And they could have as long as they want if they ask for it.

Commissioner Carey: I think that's a very good idea, counselor. I would move to do that.

Jennie Dixon: Thank you.

Colleen Dowdall: We all acknowledge it was a good idea because we know where it came from.

Commissioner Carey: So, we'll deal with this in two weeks.

Jennie Dixon: But we do have a general direction given your recent, I mean, I figure this is the extent of probably your modifications to conditions. This will give the developer an idea of how to redesign.

Commissioner Carey: Right.

Steve Lennis: What I would like to see is, see to all the conditions and all the variances and that would give us direction as to what we need to come back with.

Jennie Dixon: Well, I think they've spoken to all the conditions and by their actions or motions on the conditions, that would result in approval of both variances.

Commissioner Carey: And frankly, I'm not clear on all the nuances of what we do, so that's one of the reasons I want to step back and take a look at it.

Chair Curtiss: Well, actually, I think that we would be looking at the alternative motion for number one right?

Jennie Dixon: No, because you, well ...

Chair Curtiss: We're denying the 1,250 in there.

Jennie Dixon: You could, you could but the 1,000 feet for the cul-de-sac is right here, you've allowed development to this point.

Chair Curtiss: Right, but they wouldn't need a road to it.

Jennie Dixon: Yeah, it's possible, I mean, it's possible that you may end of denying the variance or you could approve it if they, for some reason, wanted to bring it further.

Chair Curtiss: So, if that's okay with the developer realizing we'd be going past our 60 days? Bill made the motion.

Colleen Dowdall: It would be going beyond the 60 days by one day. Is that right?

Chair Curtiss: Yes.

Jennie Dixon: It depends on when all of us can get together and work this out.

Commissioner Evans: And it's standard procedure that if the developer wants longer all he has to do is say so, or if we want longer, all we have to do is ask for it and all he has to do is say yes.

Colleen Dowdall: Out loud in the microphone.

Dan Cahalan: Seems like an appropriate time to say yes.

Chair Curtiss: Thank you. All in favor of postponing this until a date to be set by planning office and developer.

Mike Sehestedt: Let's set it for a date certain.

Chair Curtiss: The 17th, April 17th.

Mike Sehestedt: April 17th. Hopefully between now and April 17th, planning staff, the developer can meet and they'll have something for you guys and the public to look at that hearing.

Jennie Dixon: May I just add that what we'd like to do is meet with the developer and take a look at how they might redesign to meet these conditions. I would like to ask that we not be required to rewrite a staff report or rewrite conditions that we bring back to you the same conditions and the same motions as you have taken action on them today, but be able to show you a picture that would implement these actions.

Mike Sehestedt: Right.

Commissioner Carey: That's fine.

Commissioner Evans: Whatever you bring back, please cross out everything we've crossed out today. I mean I don't want the same piece of paper that doesn't show what we've done.

Jennie Dixon: So you wouldn't even like it in redline, underline/strikeout, just take it out so you can see a clean set.

Commissioner Evans: Yeah.

Jennie Dixon: We'd be happy to do that.

Commissioner Evans: Something so I can read it and see what's left.

Chair Curtiss: So, all in favor of postponing say 'Aye.'

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Dan Cahalan: Thank you for your extensive amounts of time.

Chair Curtiss: Steve, did you want your picture back here.



Steve Lennis: No. You can leave it with Jennie.

Chair Curtiss: We'll take a two minute break because we have to get the Clerk and Recorder first.

**Certification of Protests and Decision: Resolutions of Intent to Create Mullan Road Corridor Sewer Project RSIDs**

The following people joined the meeting at this time: County Clerk and Recorder/Treasurer Vickie Zeier, Chief Administrative Officer Ann Mary Dussault, City-County Environmental Health Department Director Jim Carlson and Dan Harmon from HDR Engineering joined the meeting.

Vickie Zeier read the certification of protests.

*I, Vickie M. Zeier, Missoula County Clerk and Recorder for the County of Missoula, Missoula, Montana, hereby certify that I received 374 letters pertaining to the proposed RSID 8474 Option 3 – Mullan Road Corridor Sewer Project, RSID 8475 Option 4 East – East Mullan Road Sewer Project and RSID 8476 Option 4 West – West Mullan Road Sewer Project by 5:00 p.m. on Monday, April 1, 2002.*

**CERTIFICATION AS TO PROPOSED RSID 8474 – OPTION 3**

*I hereby certify that 270 protests representing 45.8% which represents \$2,574,321.56 of the total estimated cost of \$5,616,682.50 was received by the April 1, 2002 deadline.*

**CERTIFICATION AS TO PROPOSED RSID 8475 – OPTION 4 EAST**

*I hereby certify that 21 protests representing 74.6% which represents \$1,563,688.76 of the total estimated cost of \$2,095,000.00 was received by the April 1, 2002 deadline.*

**CERTIFICATION AS TO PROPOSED RSID 8476 – OPTION 4 WEST**

*I hereby certify that 66 protests representing 7.2% which represents \$142,944.20 of the total estimated cost of \$1,982,000.00 was received by the April 1, 2002 deadline.*

*Lastly, I would note for the record that we received several letters in favor of Option 3.*

*The Excel spreadsheets were copied onto a floppy disk and the disk is filed in the Treasurer's Office vault.*

*Signed this 3rd day of April, 2002.*

Chair Curtiss: Thank you. When the Board of County Commissioners voted to go forward with the intent to create these three RSIDs, we agreed to consider the number of parcels with existing homes as an additional measure of protest as well as the legal threshold of the dollar value of the protest. We did that because we felt those numbers would give us a better gauge of the popular vote. So, I've asked Ann Mary to give us a report of the number of Equivalent Dwelling Units and their protests, or in favor of, and the dollar value protests, as well as a comparison of the protests by subdistrict compared to the last RSID. Ann Mary?

Ann Mary Dussault: Commissioners, I've prepared a handout and I think everyone in the audience has it also. If you go to the bottom of the first page of the memo it reiterates the value protests that Vickie cited so that in Option 4 E, where there are 37 parcels, 21 of the parcels were protested. The next number then is the percentage of parcels protested, which would be 56.8%. The EDU calculation is not applicable to Option 4 East but the value protested as Vickie has certified, is 74.6%. In Option 4 West, there were 498 parcels of which there 66 parcels that protested for a percentage of 13.3%. Again, in Option 4 West the EDU calculations is not applicable and as Vickie has said, the dollar value protest is 7.2%. In Option 3, the total number of parcels is 1,036. The number of parcels that were protested is 270, for a total parcel protest of 26.1%. That figure includes both developed and undeveloped parcels and you will recall that in Option 3, we then segregated developed from undeveloped parcels and called the developed parcels EDU parcels. In Option 3, 24% of the EDU parcels protested. The total dollar value as Vickie has certified, is 45.8%. On the back of this memo I attempted to gather some data that showed you the difference in the subdistrict protests from the former RSID 8471, which you did not adopt, as compared to Option 3. In Subdistrict 1, which is El Mar, the protests under RSID 8471, the prior protest was 24%, that dropped under Option 3 to 13%. In Haven Heights, it was 79%, that dropped slightly to 69%. In Golden West, in RSID 8471 it was 62%, under Option 3 that dropped to 17%. In Country Crest, it was 48%, that dropped to 17%. In the Frey/Homestead area there was, again, only a slight drop from 78% to 69%. In the Mullan Trail subdistrict, it dropped from 34% to 9% under Option 3. Subdistrict 7 is Katoona Lodges, which is a sole owner. They did protest RSID 8471 but did not protest Option 3. 44 Ranch Estates, subdistrict 8, stayed the same and there was an increase in the protests for the Tipperary Way subdistrict. It was 80% and it grew to 88%. Under RSID 8471, we didn't have a way to distinguish developed and undeveloped properties in subdistrict 10, which is kind of a miscellaneous category. We now know the number of EDUs in subdistrict 10 and of those EDUs, 32% in subdistrict 10 protested.

Chair Curtiss: Thank you. Are there people in the audience who would like to make comments before the Commission makes a decision. Because the hour is getting late, if we could make them short and to the point.

Jim Mocabee: Jim Mocabee, 1540 Topaz Drive. I'll try to be short since it is running real late and not go over things that we've talked about before. So, basically what I want to refer to is new findings that we've come across that I think most of you are aware of and because of the information supplied to residents for this RSID dealing with Federal funding and considering the new findings where it may change some of the Federal funding possibilities, I would very much think that in looking at the percentages that Ann Mary has just gone over by subdistrict, that many of these things could possibly be substantially different if this new information were available, had been available prior to these sheets that had been presented to everyone stating what the Federal funding dollars would have been for some of the

different subdistricts. And so I don't believe that these numbers are really honest and true numbers and if anybody were to look at anything that the Mullan Road Coalition has done, I think that no one could say anything but that Mullan Road Coalition has been fair and honest in dealing with all issues and that with these new findings I believe that we need to reconsider this entire RSID and not proceed even with the apparent ...

Chair Curtiss: I guess I don't understand what new findings you're talking about.

Jim Mocabee: Well, some of the new findings, I believe, deal with some DEQ questions about certain edicts that may or may not have been issued to the El Mar subdistrict is what I'm referring to.

Chair Curtiss: Thank you. Are there others who would like to comment?

Commissioner Carey: I'd like to ask Jim Carlson a question, if I may. Jim, could you clarify the status of the El Mar Estates system and whether or not DEQ has put us in a position of having to do something to remediate their system.

Jim Carlson: Yeah, I received a question similar to that here a couple of days ago and I've looked into some of the background of the communications. I know there's a letter from Fred Shuman of the Water Quality Bureau, actually the Department of Environmental Quality is the state that I've not been able to locate, however, I have been able to locate a few other documents. One of them's dated June 15, 1998, it's from the Environmental Protection Agency, it's a response to a complaint concerning, from a citizen, concerning the El Mar subdivision and it details some issues and then goes on to say corrective action for the site should include and it has a list of items and it goes on to point out that EPA and the State have authority to bring enforcement action against the County. And then, in December of 1999, the Commissioners also received this document, which on the top of it has 'Warning Letter,' and it goes through a description of some problems and talks about this letter from Fred Shuman a bit, in April of 1999 and also lists, states that the County should develop an interim corrective action plan to properly manage wastewater until a new system's built, the plan should address so on and so forth, it gives a list. It says please respond to me by, in writing by January 15, 2000, with a decision as to whether or not you agree with these recommendations, and if you choose to do so, you should submit an interim corrective action plan. Now, having been involved in environmental enforcement issues of our quality enforcement issues over the past 25 years, I can tell you that this is fairly standard procedure between governments, both Federal and State and units of local government, where an individual may get an immediate order and that sort of thing, they recognize that, you know, the Commission has overall responsibility and it's a nice way of letting you know that there's a serious problem and especially when they put 'Warning Letter' on the top of it, that needs to be corrected, they ask for your response and then the County responded to those letters agreeing to them and agreeing to having a schedule implemented in the letter of March 22, 2000, which is signed by all members of the Board of County Commissioners at that time which was Bill Carey, Barbara Evans and Mr. Kennedy, Michael Kennedy. So that's a bit of a summary and then of course we've gone on with complying with those schedule of actions that were required in response to those letters from EPA and the State.

Chair Curtiss: Thank you Jim.

Commissioner Carey: Can I follow up, Jim, just one more thing. My sense all along has been that if we did not do something to either replace the system or bring sewer to the area, that we would have been ordered to do so, we would have been ordered to ...

Jim Carlson: Absolutely, and they make it pretty clear in both of these letters that, as a matter of fact, the State states in their letter that, you know, failure to comply with water quality requirements is subject to penalties of up to \$10,000 per day in accordance with so and so, and civil penalties of \$25,000 per day. So, although they didn't give you an order at the outset, failure to respond in kind to their letter would have resulted in some sort of action.

Commissioner Carey: Thank you.

Chair Curtiss: Thank you Jim.

Greg Robertson: I think what Jim is saying is also consistent with my discussions with DEQ personnel when we started this whole process. We responded back in 2000 by hiring HDR Engineering to do a facilities analysis and plan for improvements to the El Mar system and they have accepted that plan and are assuming that we are proceeding with due diligence at implementing the plan and I think if we stop and not do anything will result in an order to correct.

Chair Curtiss: Thank you Greg.

Commissioner Evans: I'd like to ask Greg a question. Didn't you tell me a few months ago that as long as we were working toward fixing it, we could go at least another year?

Greg Robertson: Yeah, that's correct, and in fact, this project will take a year and they, as long as we are working toward solving the problem, then they will not, but if we stop, they informed me that they will proceed with enforcement.

Jim Mocabee: If I may add to the discussion. In the 1999 letter, December 15, 1999 'Warning Letter,' as is referred to, most of the issues in that letter are management issues where the facility was not managed correctly, where there was overspray, there weren't buffers, there were those types of situations. In the letter that you're all probably have copies of, dated April 1, 2002, I may remind you that it also says in that letter that that letter, dated for 1999, was considered an informal enforcement letter, or informal action and that as of today, as of right now, El Mar Estates is under no order and I'll repeat that, but 'at this time El Mar Estates is not under any order,' and that is quoted right from the letter and so I believe that a lot of the information that has been presented and in fact, numerous times, have been not really forthcoming and missed most residents probably in the El Mar as well as most of the residents in the Mullan Road area were under the belief that El Mar ...

Chair Curtiss: So, who is that letter from and who is it to?

Commissioner Evans: Let's let him finish.

Jim Mocabee: Let me finish.

Chair Curtiss: Who is it from though and who is it to.

Jim Mocabee: The letter's from the Department, the DEQ.

Chair Curtiss: To?

Jim Mocabee: To Barbara Evans as well as to several other copied people.

Chair Curtiss: We haven't seen this letter.

Ann Mary Dussault: I guess that was my question, we've never seen that letter.

Jim Mocabee: We can certainly provide you with copies of it, but it has been our understanding all along that El Mar was considered to have to have something done within a year, that has been presented all along, it has been done numerous times and the fact of the matter is, is that hasn't been true. And your protest period has ended now and this information has just become available.

Chair Curtiss: Well, Jim just read you a letter that said we had one, so. Ann Mary?

Ann Mary Dussault: If I might, I suppose one can interpret, given that this new letter has not been made available to anybody at this table that I know of, except maybe Barbara, it's interesting that it would surface at this moment, but I think for any of, for most of us who have been working on this El Mar issue for the last three or four years, it's abundantly clear that we have been working on alternate solutions to the El Mar problem and simply to classify them as management problems is simply not correct, because to correct the problems under the option that we have talked about, which is simply correcting the El Mar Estates septic problem itself, is an extraordinarily expensive fix and what the Commissioners directed the consultant and staff to do was to look at a set of alternatives and the primary alternative is called the Mullan Road Corridor Sewer, so that's been a part of managing the response to the DEQ warning letter for at least the past two years because one of the first tasks I was directed to do when I took this position was to work with the consultant to examine the alternative which is now known as the Mullan Road Corridor Sewer Project, so I just think for the record, that information is important also.

Chair Curtiss: Thank you.

Jim Mocabee: You know, I, we'll certainly provide you with copies, I'm surprised that, you know, I guess I would think that you would have had this, but nonetheless, it has been portrayed that this was an immediate problem that had to be corrected immediately and has been portrayed to that all along when in fact that hasn't been the case and in fact it is mostly management issues that were dealt with in the warning letter of 1999 if you actually read the letter. One, from my understanding is, is that a resident that had property adjoining the system had overspray on their property which really initiated the warning letter and when you do read the letter, they are primarily management problems. Thank you.

Commissioner Carey: Jim, I'd just like to say that, you know, we've tried to act in a prudent way here, but I don't recall anybody at any meeting from the County or engineering saying that this is an immediate threat. I never, I don't recall that.

Jim Mocabee: We'll get you transcripts if that's what you need.

Commissioner Carey: Okay, sure, ...

Jim Mocabee: That's no problem.

Commissioner Carey: I could have a faulty memory here but I know I've never said it's an immediate threat, I've never thought of it as an immediate threat, other than El Mar having to do something sooner rather than later, so, you know, people get perceptions, but this, in my view, has been to act in a proactive way and once we determined that it was so expensive to take a line just out to El Mar, we had to look, responsibly, had to take a look at how to do something more efficiently and comprehensively and here's where we are with Option 3, but I never had the sense that, gee, if we didn't do anything in a year that the sky would fall.

Jim Mocabee: Well then why was Option 2 not taken serious consideration, if there was no immediate problem, Option 2 should have been a viable option.

Chair Curtiss: It was a viable option and when we got an extra million dollars from the City, it made sense to set it aside and go with Option 3 which gave you a better deal and 776 parcels of land out there did not protest this, so that isn't just El Mar.

Jim Mocabee: The confusion, actually, the confusion from these letters ... going back to the creation of an RSID and the confusion that most of the people have with this process, and I got to tell you, when you look at it and you look at the number of people that actually protested versus how many people actually vote in an election, when you take the full breadth of this, the response has been pretty overwhelming to be honest with you and even though you're looking at numbers that show 25% or whatever the number is over the entire parcels of Option 3, that is probably better than what most general elections would be when you consider the fact of how many people actually vote and I believe when you also look at the 46 almost 48% of protests from the assessment, that that should speak for itself and had this, had other information really been available to people, I think the vote just would have been significantly higher and I really

don't think that you got a true, a true vote count or a true vote protest from the people because of the lack of true information.

Chair Curtiss: You're entitled to your opinion. Are there motions or is there further discussion?

Jim Carlson: I think it's really important to make it clear that there are violations of Federal, State and local water quality and treatment standards dealing with the El Mar system and to a lesser degree with the Golden West system and they are problems that need to be fixed. All three agencies, including mine, have been, I think, patient in watching this process develop, go through decision-making, making appropriate concessions to an ongoing situation that's not in compliance with requirements and there is no doubt that these non-compliance issues need to be addressed and they need to be corrected in an orderly and all do haste fashion to avoid the other alternative that is left to the agencies that have the responsibility for enforcing these requirements.

Chair Curtiss: Thank you Jim.

Vicky Bostick: Good afternoon. Vicky Bostick, 2051 Flynn Lane. Just having received this information it's kind of hard sometimes to process it all quickly so, hopefully I won't state nothing that's not true. However, I guess I am interested to see that Option 4 E, that the protest level was as high as it is, given that that was one of the areas that, you know, they said people want to go forward regardless of what happens, if we don't do the whole process right now we would probably need to go forward with 4 E and 4 West regardless of what else happens. I think it's somewhat indicative of what I've been trying to say all along and I think many of us have been saying all along is that we're not against the sewers and we never have been, but that we would like to see it still slow down. I still haven't heard and I realize time has been short today, to hear how Barbara's trip truly went and what we think that the outcome of that would be, but I still have real concerns that if this project does begin before the Federal funds are set aside that they will not consider it in the same light that they would if it, if we're still sitting here with problems in El Mar or in some of the other areas that are in desperate need and what that outcome will, how it affects the outcome of receiving some Federal dollars.

Commissioner Evans: Vicky, I feel my trip to D.C. was very successful. That's my feeling, I think we had some very effective visits with the staff and the Congressmen and they've promised, as they did before, that they will do their very best to see if they can't help but there is still no guarantee of numbers of dollars. I feel very sure that we'll get some dollars but I can't tell you how much and neither can they. June-ish or July-ish we may have some indication but that would be an indication and nothing guaranteed until September or October, after their fiscal year, so I'm confident we will get some help but I can't tell you how much and I can't guarantee it.

Vicky Bostick: And I guess, I can't speak for the Coalition, I can only speak for many of the people I have spoken to in the past. I realize and I recognize that we would lose one building season if we were to wait until we had a better idea this fall, but, and I realize that the protest hasn't come in quite the same as, you know, what we would have hoped, but I do think that some of the things like the letter to El Mar that went along with this and maybe some of the other areas, I'm not exactly sure who all received it, giving them some of the ideas of how this might affect them, some of the areas that are in trouble, Country Crest and I think the numbers are indicative of the changes there because of some of their problems. I recognize all that but I just really would implore you to wait just a few more months and look to next spring to be ready to go and have those dollars, some idea of what we're looking at so we can truly go into it with a better sense of how it will affect each of the homeowners.

Chair Curtiss: Well, Vicky, I hope you understand that there are no Federal dollars required for the backbone.

Vicky Bostick: That's true.

Chair Curtiss: Okay, I just wanted to make sure you understood that.

Vicky Bostick: Okay.

Chair Curtiss: Is there further comment?

Debbie Braugh: Debbie Braugh, 7020 Mullan Road. We realize, Jean, that that isn't, that we don't have Federal funding are needed for the backbone, however, it's kind of skirting the issues with the subdistrict costs. We still don't know if we have that and I would just like to clarify that for the record. Haven Heights was at \$29,000 for their sewer if they do get the backbone and hooked up. That to me is astronomical as far as a cost for a sewer.

Chair Curtiss: There was a mistake, theirs is actually 16.

Debbie Braugh: Okay, 16. And also I just wanted to comment on Jim Carlson's statement with the water quality. I sit there and I listen to Jim talking that with the El Mar area that we have a water quality and environmental and yet you guys are pushing this to supposedly help correct that problem and yet our own City wastewater treatment plant is still in the engineering phase after two years. What is the rush on this when we can't even get our plant fixed yet? That's all I'd like to say.

Commissioner Carey: I just want to also point out for the record that we're, the Commissioners have put in writing that we won't create subdistricts unless we get a petition from people in an area to ask to be put into a subdistrict or there is a clearly established threat to public health which requires a sewer or if the County or the City has obtained local, State and/or Federal funds to pay at least 55% of the cost of the project. That's in writing and I think those are legitimate reasons to create subdistricts. I also feel that, you know, when it comes down to it, part of it is, is that it works out to somebody who actually lives there who has a dwelling unit, in Option 3 will pay I think around \$10 a month, and correct me if I'm wrong Dan or Ann Mary, it works about to \$10 a month for the backbone. I don't think we're going to get it any cheaper than that folks and I think if we wait another 5, 10, 15 years to put sewer in we're going to tear up a heck of a lot of other infrastructure that's been put in there, or houses and highways and all the rest of it, so I think it's very prudent to act now and that's what I'm prepared to do.

Chair Curtiss: Okay, did you want to make a motion? Is there further comment? This wasn't a hearing, but we'll close the comment period.

Commissioner Carey: I'll move that we accept the certified protests and table Resolution of Intention to Create RSID 8475.

Chair Curtiss: I'll second that motion. All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: Abstain.

The motion carried on a vote of 2 in favor and one abstention.

Commissioner Carey: I move that we accept the certified protests and table Resolution of Intention to Create RSID 8476.

Commissioner Evans: Which one is that one?

Chair Curtiss: That's the west.

Commissioner Evans: I'll abstain.

Chair Curtiss: I'll second that motion. All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: Abstain.

Chair Curtiss: Barbara abstains.

The motion carried on a vote of 2 in favor and one abstention.

Commissioner Carey: I'm going to move to approve RSID 8474 because I believe that it will remediate existing community systems that are failing. I believe it will reduce risk to existing community systems that are threatened. I believe that it will remediate reported failing of individual systems, and I have Country Crest in mind. I believe it will help us achieve our goals, Voluntary Nutrient Reduction Program. I believe it will avoid new individual septic systems or help avoid them and I believe that over time it will reduce existing individual septic systems and I think all of that is in the public interest. So with that, I will move that we accept certified protests and adopt the resolution relating to Rural Special Improvement District #8474, creating the district for the purpose of undertaking certain local improvements and financing the costs thereof and incidental thereto through the issuance of Rural Special Improvement District bonds, secured by the County's Rural Special Improvement District revolving fund and establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

Commissioner Evans: I will not second it.

Chair Curtiss: I will second the motion. All in favor say 'Aye.'

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: Opposed and I would like to say why.

Chair Curtiss: The motion is passed.

Commissioner Evans: I realize that.

Chair Curtiss: I know, I just state it for the record.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Commissioner Evans: 45% of the value folks have said no. 26% of the people have said no. I believe that waiting until we determine what the Federal money will be for this process is the right thing to do. So, you have created it and now I believe what will happen is that the Coalition or individual members will sue for an injunction and it will be stopped anyway. So, I would prefer that we wait until we have the opportunity to add the Federal money into it whereby negating most of the chance of a lawsuit delaying it anyway.

Chair Curtiss: Well, I'd like make a statement too, that the reason I voted in favor is because 76% of the existing homes in the area did not protest and we've had a lot of comment from folks saying please don't not create this sewer, we need it. So, the motion has passed as I stated before and if there's no other business, we are in recess.

There being no further business to come before the Board, the Commissioners were in recess at 5:10 p.m.

Resolution No. 2002-036 – Following the Public Meeting, Chair Curtiss signed Resolution No. 2002-036 regarding proposed RSID #8474 (Mullan Road Corridor Project), accepting the Certified Protest and tabling the Resolution of Intention to Create RSID #8474. Within the Protest Period, 274 protests were filed with the County Clerk and not withdrawn by the owners of property in the District subject to assessment for 46.6% of the total costs of the Improvements, as set forth therein.

**THURSDAY, APRIL 4, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Chair Curtiss attended an all-day seminar on Road Law held at the Holiday Inn; Commissioner Carey was out of the office all afternoon.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending March 31, 2002.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Agreement between the Federal Highway Administration (Forest Highways Program) and the U.S. Forest Service for Petty Creek Road Improvements (Project No. MT PFH 71-1(1)). There are no budget implications. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-020 for Development Park/CIP Department, transferring \$114,510.00 from the CIP Fund to the Development Park Fund, adopting same as a part of the Fiscal Year 2002 Budget. This transfer is to correct the double payment of an Intercap loan by the Development Park in Fiscal Year 2001.

Resolution No. 2002-037 – The Commissioners signed Resolution No. 2002-037, dated April 4, 2002, a Budget Amendment in the amount of \$16,650 for the Health Department, for the Safe Communities Project – “Health Mother, Healthy Babies” contract. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-038 – The Commissioners signed Resolution No. 2002-038, dated April 4, 2002, a Budget Amendment in the amount of \$6,000 for the Health Department, for DPHHS Task Order No. 02-07-3-21-005-0, Oral Health. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Agreements – Acting Chair Bill Carey signed three (3) Construction Agreements, dated March 15, 2002, between the Missoula Development Park and The Montana Power Company (Northwestern Energy) for the installation, operation and maintenance of:

- 1) A gas service line along the north side of Expressway in Phase 4; the cost of the extension is \$15,490.00;
- 2) A gas service line to Lots 5-8, Block 13, Phase 5; the cost of the extension is \$5,611.00; and
- 3) An electric service line to Lots 5-8, Block 13, Phase 5; the cost of the extension is \$14,164.00.

The documents were returned to Barbara Martens in the Projects Office for further handling.

Agreement Modification – Acting Chair Evans signed two (2) Agreement Modifications between Missoula County and the Montana Department of Environmental Quality (“DEQ”), modifying the agreements concerning preparation of a facility plan necessary to apply for a federal grant to construct wastewater treatment works for the following:

- 1) Golden West Area of Missoula (DEQ Contract No. 290039); and
- 2) El Mar Estates Area of Missoula (DEQ Contract No. 290040).

Both agreements are amended a) to extend the deadline for submission to DEQ for approval a final facility plan from April 1, 2002 to June 1, 2003; and b) to extend the deadline for completion of services required by Section 1A from April 1, 2002 to June 1, 2003. The documents were returned to Public Works Director Greg Robertson for further handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between the Missoula County Weed District (“MCWD”) and Geodata Services, Inc. for mapping services. The MCWD is participating in a cooperative effort with the Bureau of Land Management (“BLM”) and the Blackfoot Challenge to establish Weed Management Areas, map weed infestations, and incorporate sound ecological practices, including integrated weed management. The total amount shall not exceed \$3,816.37. The term will be January 1, 2001 through December 31, 2002. The BLM has appropriated funding of \$31,700.00 to the MCWD to accomplish the goals set forth in the Assistance Agreement and Task Orders.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, APRIL 5, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioner Evans attended a meeting of the Judicial Standards Commission held in Room 201 of the Courthouse.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated April 4, 2002, with a grand total of \$8,575.66. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated April 4, 2002, with a grand total of \$5,073.15. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated April 4, 2002, with a grand total of \$6,698.25. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated April 4, 2002, with a grand total of \$13,664.63. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 5, 2002, with a grand total of \$9,788.79. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 5, 2002, with a grand total of \$53,804.37. The Claims List was returned to the Accounting Department.

Letter – The Commissioners signed a letter, dated April 5, 2002, to Betty Thomas, Grant Coordinator, Technology Foundation Grant Programs, Washington, D.C., supporting Missoula County's application for a Technology Foundation Grant from the National Association of Counties and ESRI to enhance the County's ability to comprehend and respond to the changes our growing County is experiencing.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, APRIL 8, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Evans was out of the office all day; Commissioner Carey attended a Traveler's Rest board Meeting in Lolo all afternoon.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending March 31, 2002.

**TUESDAY, APRIL 9, 2002**

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Commissioner Evans was out of the office until noon.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 5, 2002, with a grand total of \$21,604.13. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 8, 2002, with a grand total of \$3,024.23. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 8, 2002, with a grand total of \$19,112.25. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 8, 2002, with a grand total of \$64,943.28. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 8, 2002, with a grand total of \$7,702.21. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 8, 2002, with a grand total of \$1,478.61. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 9, 2002, with a grand total of \$1,861.59. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 9, 2002, with a grand total of \$11,569.00. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 9, 2002, with a grand total of \$512.07. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 9, 2002, with a grand total of \$121,496.21. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending March 31, 2002.



Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 07 - Pay Date: April 5, 2002. Total Missoula County Payroll: \$844,543.65. The Transmittal Sheet was returned to the Auditor's Office.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter – The Commissioners signed a letter to Colleen Baldwin, Missoula Aging Services, supporting the Missoula Senior Service Corps' RSVP Homeland Security PNS Grant, particularly because Missoula's homebound seniors and oldest seniors aged 85 or older are at special risk during times of disaster.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Gregg Potter for grounds maintenance at the Historical Museum at Fort Missoula. The total amount shall not exceed \$7,000.00 (subject to renegotiation after June 4, 2002). The term will be April 15, 2002 through October 15, 2002.

Agreement – The Commissioners signed a Memorandum of Agreement between Missoula County and the Missoula YWCA to cover the participation in the Rural Domestic Violence Program continuation grant for Fiscal Year 2002-2003. The total amount shall not exceed \$115,510.07. The term will be January 1, 2002 through June 30, 2003.

Amendment – The Commissioners signed an Amendment to the Memorandum of Agreement between Missoula County and the Missoula YWCA for the DPHHS Domestic Violence Program (Contract No. 20023DMVL0014), originally made October 1, 2001. This modification increases the value of the contract by \$5,000.00 (for a total of \$60,000.00) received from DPHHS. These funds are left-over Federal money from the shelter grant program. The term will be October 1, 2001 through September 30, 2002.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **WEDNESDAY, APRIL 10, 2002**

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Chair Curtiss and Commissioner Carey traveled to Polson to attend the MACo District 10 and 11 Counties Meeting; Commissioner Evans was out of the office until noon.

Proclamation – The Commissioners signed a Joint Proclamation with the City of Missoula proclaiming April 25 2002 as *Bill Hoffman – Missoula Volunteer Day*, and inviting all citizens to join in recognizing the value of volunteer work in promoting good citizenship and Bill Hoffman's efforts to promote a better Missoula community.

Change Order – The Commissioners signed a Change Order, dated April 10, 2002 for landscape restoration work by Ibey Nursery and Landscape at USF Reddaway (along Expressway). The north side of the sidewalk does not meet ADA requirements; additional fill, topsoil and sod must be placed to create a gentler slope. The additional cost for this project is \$6,479.00. The document was returned to Barbara Martens in the Projects Office for further handling.

Benefits Plan – The Commissioners signed the Missoula County Flexible Benefits Plan (effective July 1, 1992) Termination Form, dated April 10, 2002. The current flex plan must be terminated in order to make way for the new flex plan.

Request for Action – Chair Curtiss signed two (2) letters, both dated April 12, 2002, regarding Missoula County's application for grant funds (approximately \$1,500,000 over a three-year period) to the Center for Substance Abuse Treatment. The first letter, to Roland Mena, Chief of the Addictive and Mental Health Disorders Division of DPHHS, Helena, Montana, informs the State of our intention to submit an application, for the purpose of enhancing substance-abuse treatment services in the community. The second letter, to Westley Clark, Director of the Center for Substance Abuse Treatment, Rockville, Maryland, certifies that we will not use the funds to supplant or replace funding already committed to existing or proposed projects. The letters were returned to Peggy Seel in the Office of Planning and Grants.

#### PUBLIC MEETING – April 10, 2002

The Public Meeting was called to order at 1:40 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown, County Public Works Director Greg Robertson and County Clerk and Recorder/Treasurer Vickie Zeier.

#### Pledge of Allegiance

#### Public Comment

Diane Beck: Good afternoon, my name is Diane Beck. I'm here this afternoon representing the Mullan Road Coalition. We just wanted to go on record today to say that we are still waiting to receive answers to many of the formal questions that we've asked about issues relating to the Mullan Road Sewer Project, the City-County Interlocal Agreement. We would like to get a response in writing as soon as we possibly could. I know one of our folks this morning spoke to Ann Mary and so she's aware of the list of issues. It's also been submitted to you previously by our attorney. This project as you know has many unresolved issues. There's annexation, subdistrict costs, Federal funding, master plan and growth policy and numerous other issues but yet you've insisted on moving forward to accommodate one landowner. You've been unresponsive to many of our existing residents in the area during this process and so, here we are, we have a project but we don't really have a plan. We don't know when or if we'll receive Federal funding and I think there's a huge misconception. I believe that many of the people out there were

under the understanding that we were under a direct court order from the State of Montana to repair the El Mar system and as you're aware of, that is not the case. That's a term that I am sure could be interpreted many ways and as Mr. Carlson has repeatedly said that, on record, that we are under order. Technically, we're not. We just want a fair process for the residents of the area and we expect you to be responsible for answering our questions. Thank you.

Jack Ballas stated that he wished Fern Hart was present as seven years ago, she was assigned to mentor a project that he's involved with. He thanked the County Commissioners for their support during the last seven years. The sewer project in East Missoula is on the go and they being construction on Monday. He wanted to thank the Commissioners for their backing for the project. Fern Hart had asked if he was committed to the project when the funds were made available and he stated that he was. He just wanted to let the Board know he is still committed and the project is underway.

Commissioner Evans stated that Mr. Ballas had done a lot of work to bring the project this far and he deserved a pat on the back.

Bob Maskin, 4585 Tiberius, stated that he wanted to thank the Commissioners and Horace Brown for getting Blue Mountain Road paved. It will help eliminate the dust problem and he just wanted to say thank you for a job well done.

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$350,908.43. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Tucker Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 2, COS 5184, located in the southeast one-quarter of Section 15, Township 14 North, Range 20 West.

Wallace A. Tucker 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 31.86 acres in size located northwest of Butler Creek. Mr. Tucker proposes to create one approximately 8 acre parcel for transfer to his son, Steven P. Tucker, for residential purposes and claimant will keep the approximately 24 acre remainder where he presently resides.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 5184	2001	Family Transfer	Wallace Tucker	Diane Lake (Daughter)

According to the records kept by the Missoula County Surveyor, the applicant has previously used exemptions to the Subdivision and Platting Act as listed above.

Wallace A. Tucker was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Tucker really did intend to transfer this property to his son?

Wallace Tucker stated that was correct. Last year he transferred property to his daughter, this year it's to his son.

Commissioner Evans moved that the Board of County Commissioners approve the request by Wallace A. Tucker to create a 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 opened the public hearing. There being no comments, the public hearing was closed.

Chair Curtiss stated Mr. Tucker would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing: 66 Quarter Circle Ranch Subdivision – Lot 6 (4 lot minor subdivision) – Near Frenchtown**

Chair Curtiss announced that this hearing had been rescheduled for May 8, 2002.

Chair Curtiss announced that the order of the Agenda would be changed. The hearing before the Planning and Zoning Commission would be heard next, followed by the Lolo Regional Plan.

**Hearing: Planning and Zoning Commission – Commercial Properties – Citizen Initiated Zoning District #43 – Blue Mountain Road and Highway 93**

Mike Sehestedt stated that the first order of business is a decision on whether or not to create a Planning and Zoning District. That matter belongs to the Board of County Commissioners. If the Board chooses to create a Planning and Zoning District, then the development pattern is produced by a County planning commission. The first order of business is to have a hearing in front of the Board of County Commissioners and decide whether or not it's in the public interest to create the district. If that is decided affirmatively, then the Board will decide, with the Planning and Zoning Commission, what the development pattern should be. The engineers for the project are out in the hall and should be advised of the change in the order of the agenda.

Dick Ainsworth, Professional Consultants, Inc., stated he was representing Commercial Properties Inc. who have requested the Citizen's Initiated Zoning District #43. The residents of Zoning District #18 have hired Myra Shults to represent them. A few minutes ago in the hall, Ms. Shults asked if Commercial Properties Inc. was willing to request a 30 day delay on this project. The developer doesn't feel they are all that far apart on the concerns regarding the project and would be willing to delay for 30 days.

Commissioner Evans stated that there were several people in the audience who had come to give testimony about the request. She would hate for them to be denied the chance to speak.

Mike Sehestedt stated that the Board could ask if those present would be willing to continue the hearing for 30 days and testify then. If there are people that want to speak today, they could do so and then continue the hearing.

Chair Curtiss asked if the hearing should be opened.

Mike Sehestedt stated the hearing could be opened and testimony taken from those who wish to speak today. It may help the parties involved craft a more satisfactory settlement. The hearing could be left open without a presentation from either side of the issue and take further testimony 30 days from now.

Dick Ainsworth stated that if there was presentation and hearing today, not a lot will be accomplished.

Mike Sehestedt stated that he was not suggesting that any presentation be made, just to allow those who wished to testify to speak today.

Dick Ainsworth stated that was fine with him.

Chair Curtiss asked if there was anyone in the audience who wished to speak about the project although neither side would be presenting any information today. There were no comments. The hearing will be delayed for 30 days until May 8, 2002. She thanked those present for coming to the meeting and hoped they would be available when the matter was heard.

#### **Continuation of Hearing: Lolo Regional Plan**

Chair Curtiss: Next we have the continuation of the hearing for the Lolo Regional Plan. Laval, are you going to start the presentation. Did you guys work out ... The plan, as you know, has been presented to the Board of County Commissioners, amended by the Planning Board and so there have been a few issues since the public meeting that...

Colleen Dowdall: I think the place that we were at was that the public hearing was still open.

Chair Curtiss: Right, it is.

Colleen Dowdall: And so you could take testimony from anyone who wants to testify before ... and then you could do that in whatever order you want.

Chair Curtiss: So the public hearing is still open. Are there people who would like to make comment on the plan. If so, please come to the mic and identify yourself.

Susan Hadnot: My name is Susan Hadnot, my husband and I own property at 6935 Highway 12, or Lolo Creek Road, and we've written one letter and I'd just like to read it just for comment. Since we had the last meeting in February, the latest draft that came out had a change to it, no development within 300 feet of the Lolo Creek and so I'm opposed to the property along Lolo Creek being subject to a 300 foot setback for any future development. This provision was added to the plan by the Planning Board at the February 12th meeting. There's been no prior discussion or consideration of this building restriction on Lolo Creek property at any of the community meetings or during any of the prior planning process which we have been involved in for several years. We own property on Lolo Creek and a 300 foot setback would seriously impair our ability to build on an appropriate site on our land. All the riparian areas and wildlife habitat are contained within the floodplain and therefore are already protected from this development. Further restriction on my property is not warranted and it would not necessarily provide the desired protection. Not knowing exactly other people's property, but it does appear that there are areas along Lolo Creek that would totally have a setback of people being able to develop because they only own 300 feet along the property. Believe this is unfair to those landowners. Again, this provision was added at the last minute with no community input. Please remove this setback provision as it applies to Lolo Creek. Again, my name is Susan Hadnot and thank you very much.

Chair Curtiss: Thank you Susan. Is there other comment? You guys all just came to see us today? Just come on up to the mic.

Mike Cantor: My name's Mike Cantor, I'm from Lolo. I live in Kenwood Drive and I wanted to make a comment on the 300 foot setback as well. I would like to support the 300 foot setback for the Bitterroot River. I'm very concerned about an increase in water pollution that would occur if we had closer development to the river as well as having a, some sort of wildlife corridor for wildlife and recreationists and how it would impact the area if we did not have the 300 foot setback along the Bitterroot River. It seems to me that some sort of setback along Lolo Creek is also appropriate maybe not as extensive of one, but certainly along the Bitterroot River, I'd like to support that. Thank you.

Chair Curtiss: Thank you Mike. Further comment?

Christine Brick: My name is Christine Brick and I'm adjunct faculty in the Geology Department at the University. I'm also a staff scientist part-time at the Clark Fork Coalition, so coming from a geologic background I just wanted to comment on some of the geomorphic rationale for why a 300 foot setback, or at least some setback, from the floodplain is a good idea. First of all, designation of a 100 year floodplain is imprecise, in other words, floodplains are

not constant. They change over time and we also, you know, we determine where the supposed 100 year floodplain is by looking at past observations, you know, that's all we have, we can't look into the future, obviously. And so this doesn't take into possible other future changes within the watershed. In particular, as a watershed becomes more developed, as you get, you know, more concrete, more houses, you get quicker runoff, you get usually, typically higher flood peaks and more often, you know, you see peak discharge more often. That really changes the geomorphic shape of the floodplain and so areas that may not be in the floodplain now may become part of the floodplain in the future. An example is you may have a high bank on one side of the river and the floodplain extending, you know, across the river on the other side, so most of the flood water would go on the other side. However, if you're on the outside of a meander bend, that bank could be eroded like a hot knife through butter during a flood and we've seen that in areas of Missoula where houses perched too close to that high bank, although they're technically not in the floodplain, have been threatened and in some cases destroyed by flooding. Actually, I have a personal experience with that because my brother is in that same situation over in Walla Walla. He was, he thought, out of the floodplain, had a house on the river, the river flooded, the river went where nobody expected it to go because there were debris jams in the river which diverted water into unexpected places. He ended up with water running through his living room and half the house collapsed into the river. So he lost, you know, it was a tragedy for him, he lost his property. I'd hate to see that happen to other people. You know, the other problem, of course, is that when you get development too close to the floodplain, people end up, if they don't want to lose their property, end up having to harden the banks, in other words, to put rip rap along the channel to try to save their property which is a, you know, natural thing to want to do. The problem is that as you add, you know, more impervious surface along the bank, you increase the flow velocity downstream and therefore you increase the potential magnitude of the flood downstream, so it ends up being a problem that sort of propagates downstream. So you can't change Mother Nature but you can change human nature. I think that the Commissioners should very carefully weigh short-term gain by individuals and, you know, obviously there's some hardship involved, but, you know, flood damage is a long-term cost to society. The USGS determined that up until the floods of 1993 on the Mississippi River, floods generally cost, you know, cost the U.S. taxpayers \$4 billion dollars a year. You know, my brother was bailed out by Federal relief money. I mean, I love my brother dearly, but, you know, to paraphrase the car talk guys on the radio, don't be like my brother, you know, he built or he bought this house in a stupid place and I think that, you know, we know better now, we should, you know, we need to balance these sort of short term considerations against long term societal costs.

Chair Curtiss: Thank you. Other comments?

Moe Gary: My name is Moe Gary and I live at 11385 Allamont. I live about 320 feet from the river is where my home is and it's at the northern end of Orchard Park 3, so I'm talking about the 300 foot setback also. I was out there this morning and basically had to avoid quite a bit of goose poop along the river, there's quite a few Canadian geese there. The bald eagles have just left and the osprey are back and of course you know how many deer I see and I am just hoping that the bear doesn't get all my plums this year and I don't get just a pile of plum pit scat. And I don't consider it a hardship at all walking down and watching that river and I'm, let me refer to my notes cuz I'm very nervous and I need my glasses. My husband and I have a project right now, Don Bedunah I know has spoken in front of you and we've tried to put a native garden next to the river there, so we're trying to take up the grass and we were pretty successful our first year. He's a grassland ecologist and I'm a flower gardener and I have a greenhouse full of trays of little wildflower transplants that I got the seeds down at Brown Bear. Looking at all the maps, I've been following this process from the beginning, it really is like that one little stretch is the only place in there where it isn't protected for the wildlife corridor and sure see that river as a vital piece of our community and I do want to applaud the Lolo Plan and I've, like I said, there's been very few meetings I missed and I love its vision of Lolo for community and protecting our natural resources and I see the Bitterroot River here as a main natural resource there. Last summer I walked down there one day and it was black, and I'm like, oh my God, what happened to the river, and after thinking about it and spending some time down there, I realized it was the soot from the fires and I thought, oh boy, what a graphic example of how anything that's nearby the river ends up in the river. You know, it not only impacts us there, it impacts the community of Lolo and the community of Missoula and everybody downstream, so, being conscientious and just so that you know, I do put my money and my time where my mouth is. I've been, I always contribute, have been active with Five Valleys and with the Montana Natural History Center and I've been real active in Missoula open space, I firmly believe in the concept of open space as being a strong need for the emotional health of a community and it is one of the last little stretches down there that aren't developed, so from that aspect, it's, feels important to our community. I just love seeing in my vision of Lolo as a community and Todd Schule at one of the meetings spoke of when that piece was designated as open space in the 1978 plan, that he called the drafters that put it in visionaries. You know, there wasn't really any planned for but that incorporated in the future that it is a visionary place for our community. The school land borders pretty much right on it and I assume at some point Lolo will need a high school or something else being done there, so having this piece there for our community seems important. I've also heard at the meetings different reference made to a takings issue and I, you know, I have empathy there and boy, if I could buy that and give that to the community, I certainly would and yet I look at more of the bigger picture as sort of the health of the river itself and I'm not anti development at all. I know, on Nick Kaufman ... is my time up?

Commissioner Evans: No, I want to ask you a question. How would you feel, and this is just me, I haven't ask them if they'd be willing to do that, nor do I know if the owners of the property would be willing to sell it, but would the people of Lolo be willing to vote on an issue as to whether to buy that piece of land?

Moe Gary: You know, I actually haven't proposed it. I know that the Community Council has always been behind preserving that as parks and open space and I also know that there's sewers and other things coming up so I can't speak for the community, but I can speak for my involvement in trying to help make that purchase possible.

Commissioner Evans: Thank you.

Moe Gary: Oh, I was going to talk about the, one of the things, one of the meetings that we were negotiating with WGM and Nick Kaufman had asked us why we would be opposing this development down there, Orchard Park 3 I'm referring to, and he said because it would increase our property value and I thought to myself, you know, is money the only, you know, value that seems to motivate people and I thought to myself, why do I live in Montana and it certainly is not about money, you know, I'm a dental hygienist and I took a significant pay cut to live and work in this community, but, there's more to it for me than money. So, I am done and my retrospect on it is this is, this river and

this corridor is important, not only for all the scientific reasons you've heard, but also for the, for what I believe the life and the health of our community. Thank you.

Chair Curtiss: Thank you. Is there further comment?

Kathy Jones: My name is Kathy Jones, I live within the Lolo planning area, I have no prepared notes but I agree with comments of the last two citizens made. I'd like to refer to a newspaper article by Sterling Miller who testified at the last hearing. I was at the last hearing and I didn't realize because people when they introduce themselves did not say who they, what they did and I would like to remind the Board that, I mean the Commissioners, I'm sorry, those who testified at the last hearing were extremely knowledgeable and professional when they supported the riparian setback. There was Sterling Miller, a wildlife biologist for the National Wildlife Federation; Don Bedunah, Professor of Range Land Ecology at the University of Montana, Karen Knutsen, Communications Director of the Clark Fork Coalition and Vickie Watson, a Professor of Environmental Studies at the University of Montana. They all supported the setback and a couple of them live right along the river in that area and in fact, live 300 feet from the river. I'm here to support the setback, I don't know, I don't have any scientific knowledge, I'm just a citizen and a resident, but I'm also, I've also all my life lived in areas where I was surrounded by wildlife, since I was a child, and I guess I was a bird watcher because my grandmother was and my mother was, and I was surrounded by trees and birds all the time, so I do a lot of birdwatching along the river. And I will tell you that the birds I used to enjoy are diminishing in species and I had to remove my bluebird boxes which have raised almost a hundred bluebirds, because of the development that's happening where I personally live and that's a shame. I would hope that because you folks have such great influence and have a chance, and this is your only chance, to protect this river, I hope you look at the bigger picture. I realize there are people that want to build a house there and maybe they think the only value to that property is being able to put a house on the river, but I'm one of those kinds of folks that would prefer or even search out a parcel that protects that river because, and I agree with talking about human nature and the fact that much of the land in the Bitterroot Valley is unzoned. I've seen nothing that addresses noise or light pollution which I think is even more critical to the protection of someone's property value than how far it's setback from a river that needs protection for wildlife and for beauty and for the values that we all appreciate, so I support the setback. Thank you.

Chair Curtiss: Thank you Kathy. Is there further comment?

Dale Wisby: My name is Dale Wisby. I own property on the river in Lolo, in the floodplain. The dike that runs upstream from the sewage treatment plant begins at our property so we're just below, on the floodplain, just below that plateau at the end of Allamont. I'm here to support the 300 foot setback. I've been involved, over the last 15 years, with different phases of the planning of the setback on Adair's place. I own property on the lakes and I've watched the river backfill the lakes and almost come in the back door, and I think that one of the main reasons that we should have this setback is to, we have to allow for the high water, a place to dissipate, we're involved in, with other property owners, we're in the process right now of putting the setback dike in so that when we do have high water we can spread the water out horizontally rather than stack it up vertically. Just doesn't have much to do with the high property that's next to our place, but I feel that it all ties in as a corridor for the river and I'm here just to support that 300 foot setback.

Chair Curtiss: Thank you Dale. Is there further comment?

Dan Bourdage: Hi, my name is Dan Bourdage, I reside at 6450 Mormon Creek Road. I attended the public hearing which was March 27th, and at that point I realized that some wording in an insertion involving property adjacent to where I live could have an effect on general commercial property at the upper level bench and so I'd like to read a portion of the letter that I addressed to the Board and it goes like this: While attending tonight's meeting I focused on Laval's presentation of revisions particularly as it applied to Page 7-F-2, number 1-E, land use rational, Page 5 of the February 5, 2002 Planning Board meeting. A careful reading of the insertion of additional buffering and less intense development should be considered closer to Lolo Creek, especially between the mid level bench and the floodplain could be construed to extend buffering and less intense development to the upper level bench that had already been designated general commercial prior to the February 5th, 2002 Planning Board meeting. Use of the word 'especially' infers that buffering and less intense development is not all inclusive to the newly designated general commercial property. This was not the intent. The upper level bench is about 15 feet above the mid level bench with an abrupt drop at their juncture. Additionally, the upper level bench is located approximately 500 feet from Lolo Creek. I spoke with Laval regarding this matter following the Planning Board meeting. She immediately picked up on the word 'especially' before I brought it to her attention and recognized the problem it created. Laval related that the intent of the insertion was to buffer and restrict development to the newly designated general commercial property between mid level bench and floodplain, not the upper level general commercial. She made notes to request deletion of the word 'especially' from the insertion at the next meeting with the Planning Board. It was at that point that I wrote that I would like to formally request that the word 'especially' be deleted from that insertion so that the true intent of the revision could not be misconstrued or misapplied at a later date.

Chair Curtiss: Thank you, and we did get your letter. We'll talk about that in a bit. Is there further comment? Go ahead Sterling.

Sterling Miller: My name is Sterling Miller. I live at 5375 Cherry Lane. I own two parcels of 13 acres that are adjacent to the Bitterroot River, next to Mr. Schule and separated only by Mr. Schule's property from the Orchard Park subdivision. One of the things, it's sort of on a high plateau, my pieces of property, overlooking the Bitterroot River and one of the things that I was particularly thrilled about when we bought that piece of property is I found a plaque on the piece of property attached to an old fence post which said it was the site of Travelers Rest and so I was both thrilled because I'm a Lewis and Clark fan and a little bit concerned because I thought that that was really, if that piece of land had, was Travelers Rest, then there was going to be an awful lot of public interest in that property that would probably preclude my ability to enjoy it myself. However, I talked to people and found out that the modern archeologists decided that Travelers Rest was somewhere else and that was a relief to me, and so, but it's not very far, but basically the principal is that these kinds of high terraces overlooking the river that Lewis and Clark used when they rested before going over Lolo Pass, are public resources at some level that supercede the ability of private land owners to enjoy them. At some level there's both a right of private land owners to enjoy these pieces of property but

that right has to recognize the ability and interest of the general public in properties, particularly properties adjacent to the river and I'm very willing, on the properties that I own, to have a 300 foot setback for development just as Ms. Gary said because I believe that those kinds of setbacks will preserve the values that are associated with the river that are so important to all the residents of Missoula County and to the, and to other people who visit Montana that ultimately, those riparian areas are some of the most important credentials for communities like Lolo. I've been involved in this process of the Lolo Plan throughout the whole process and I've been impressed with the unanimity of, I wouldn't say unanimous, but the large level of support from the citizens within the planning area for adequate protection of the Bitterroot River. There's also, throughout this whole process, there has been unanimous support from scientists, including hydrologists and riparian experts and wildlife biologists, that it's very important to have setbacks along major watercourses in order to protect the public interest in how riparian areas are managed. So that's been unanimous among the scientists and agencies who have commented. There's also been support for these kinds of protections from the Planning Board, both three years ago when there was a subdivision proposed on one of these parcels next to the river near my land and from the Board of County Commissioners at that time, who rejected that proposal based on the fact that it would be contrary to the existing Comprehensive Plan for how areas along the river should be used. In that particular site, it was declared parkland and open space. And, also the Planning Board and the Commissioners have all previously expressed strong support for protecting the river as a special resource with large public values. However, it's been extremely difficult in this process of revising the Comprehensive Plan to maintain those protections. I'm not sure exactly why that is, but it seems like every time we make, even though there's been all this support, that it's been very difficult to get that codified into the various drafts of the plan. And so, I would just suggest that the factors that the Commissioners need to consider in order to insure that the river gets adequate protection are fourfold. One is what areas are going to be classified as riparian areas needing protection. In the last draft I saw it was defined as the Bitterroot River and Lolo Creek. So that's one factor that needs to be considered and I think that those are both very important waterways that deserve special consideration. The other thing that needs to be considered is some optimum setback distance and the figure that has been proposed as a reasonable setback distance for subdevelopment is 300 feet. And at some level that's an absolute standard and there was quite a bit of testimony in the various meetings that it should be set firmly at 300 feet because it might not be necessary under all circumstances and I certainly agree with some flexibility on that basis but there needs to be, and this is the third point, some minimum setback distance and so in the current draft of the plan what is said is that it can be reduced from 300 to 100 feet if there are a certain criteria to be met. And so that's the fourth component, is what are the criteria for reducing from the optimal setback to a minimal setback or some area in-between. So those four factors have to be considered, I think, when making these kinds of decisions and I hope that the Commissioners will find a way to incorporate all of those things into the Comprehensive Plan. Finally, I'd just like to say, to repeat what an earlier speaker said relative to the takings argument, because we've been hearing that throughout. I, of course, have property and I'm perfectly willing to have, if that's appears to be the case to have some of the value of my property taken in order to assure that the public values of that property are maintained. However, I think that there are various ways you can protect that and it's not a takings if you zone something at, or not zone, but if you classify it into a land use category of low density development so one of the ways you can certainly approach protecting resource values is having a low density development designated for areas adjacent to the riparian. Unfortunately, in the current draft of the plan subject only to the setback provisions it's set at a very high density, six units per acre, that can be done even on these terraces above the river. That's extremely high density. Another suggestion to a way the Commissioners might approach this is to designate the areas that have important riparian value at a lower density which would be, in this case, rural residential, which is one unit per five acres, that is comparable to the density which exists in the properties around there now and would be compatible with the existing development and would also preserve resource values, so if you would reduce the density along the river to rural residential along with the setback and that setback in that case could be less, I think you would take a big step toward protecting the riparian areas. Thank you very much.

Chair Curtiss: Thank you Sterling. Heidi?

Heidi Weaver: I'm Heidi Weaver. I just want to make a correction. One of the earlier speakers quoted the Lolo Community Council as supporting the setback. I just wanted to make sure the minutes are corrected, that that is not accurate. The Lolo Community Council does not, or has not stated.

Moe Gary: Can I amend. I was referring to, sorry ...

Chair Curtiss: Say your name again, Moe, please.

Moe Gary: My name is Moe Gary and Heidi is correct. At the time when we were discussing it, the Lolo Community Council, back when Orchard Park 3 was before the County Commissioners, and I do know that now. Barbara Evans was the only one here at that time so I don't think it's come before the Lolo Community Council at all. Has it Heidi?

Heidi Weaver: No.

Moe Gary: Okay, so it just hasn't been an issue there yet.

Chair Curtiss: Thank you Moe. Further comments?

Bill Scullion: Thank you. I'm Bill Scullion, I own a piece of ground that borders Highway 93 and Lolo Creek, about 20 acres, and I think what we're talking about here more than anything is choice. The people that own property and are willing to setback and allow the setbacks, and I'm only speaking to Lolo, you know, the Bitterroot River is their choice. Don't take that choice away from me. You'll affect 10 acres of my ground in a 20 acre parcel if you do the 300 foot setback. Now I don't know if I'm going to make that a park or a housing development, but it's my choice and should be my choice and I think through the Board's and the State's and the things that we have in place now, my son-in-law and daughter are building a house out on Eightmile and we're about 400 feet from Eightmile Creek and we are in our ninth month with the State of Montana trying to assure that there's not a problem with the setback of the house and the water issues with the creek, so believe me I know that there's some pretty good things in place to protect that. You know, I think it's a matter of choice and I should have that choice when the time comes. I think there is a flood area along the creek there and, you know, we're on the second plateau up, we don't know if it will perc, don't know if I'll ever check it to be perc, but it should be my choice to do that. Thank you.



Commissioner Evans: Mr. Scullion, may I tell you something. We have been discussing this issue and we have kind of concluded that in order to have, and you folks jump in if I say something you don't agree with, kind of come to the conclusion that in order to make sure that we don't have hard and fast situations that don't always apply that anyone who would like to do a development within 300 feet of the river and we haven't said waterways as such, but within 300 feet of the river, would have to have, should undergo an environmental analysis to determine whether or not it makes sense and if it doesn't make sense then you would be able to show that, so that's what we're talking about. We haven't adopted it yet but we're at least looking for a way to find flexibility and still protect the waters.

Bill Scullion: I understand what you're saying and I'm not for the environment or against it, you know, I've always practiced protection of it, all my life. But I know that with our Eightmile project up there, and we're talking about a family home, we're \$12,000 and nine months into this process so there is obviously some very strong protection there for exactly what you're talking about. Now if you add an environmental protection on there, you start to get to a point where development of ground, if you want to develop, is astronomically unfeasible because of the costs that you've borne on it. This was supposed to be, in the eyes of Ravalli County, one of their quick subdivisions which shouldn't have taken us more than 45 days and that's where we're at today, so.

Commissioner Evans: I just wanted you to know that we're trying to come to some conclusion.

Bill Scullion: Well, I appreciate that. I'm a little bit amazed that we thought that we had everything pretty well settled and then I missed a meeting because of travel and then I find out at the last minute that here we are back on another issue again and, you know, we've tried to keep up with it but I'd hate to think that there are people out there like myself that aren't aware of these issues and they can come up like this and be added in without, I guess, a little better notice, so. Thank you.

Chair Curtiss: Thank you. Further comment?

Dale Wisby: I'm Dale Wisby again. I just want to clarify that I was in favor of the 300 foot setback on the Bitterroot River but not necessarily on Lolo Creek. I think you have to take into consideration the size of both waterways. I'm sure Lolo Creek can get by with a smaller setback.

Commissioner Evans: Thank you.

Chair Curtiss: Is there further comment?

Myra Shults: Good afternoon, I'm Myra Shults, I live at 7650 Moe Road and I would like to support the Planning Board recommendation on Page 3 of the December 4 packet that we got at the last meeting on March 27th. In particular, I'm sorry, I'm on the wrong page, Page 3. Item number four to make the map change to show the area of significant flood risk and like to reiterate what Van Dye and I said on March 27th about designating the area within that area of significant flood risk at a higher minimum density. Also, I'd like to confirm that the Board received my letter that I hand delivered on the 8th and just hearing the word 'taking' today make we want to say again that there is a misconception about what a plan is. You know, I think Colleen can verify this, but I think probably in the '20s or '30s, they said zoning wasn't a taking. This isn't zoning, this is a plan, so therefore if we can use language in the plan that indicates that it's a recommendation rather than a requirement, it will make it easier for everybody. Thank you.

Chair Curtiss: Thank you Myra, and we did get your letter. Other comment?

Todd Schule: I'm Todd Schule, 5355 Terry Lane. All these issues that are being brought up again, and it's been over and over and over and over, we hear about the riparian, we hear about the wildlife corridor, they're all serious. Laval and her staff have looked at all that plus much, much more. They've worked for the Planning Board. They came up with a recommendation. It's 300 feet. The flag goes up anytime you're in a floodplain, it's going to go up anytime you're looking within that 300 feet, it's going to get looked at even harder. They're going to have to prove if they want to take it down to less than that, to the 100 mark. That was the recommendation that came here and Barb had some concerns about that distance so we're all talking about this again. I'd like to hear, since the last meeting, what Laval and Barb have worked up, so let's give her a chance and then we'll see what, this is just old beaten ground we've been over.

Chair Curtiss: And we will do that Todd, after the public is done.

Todd Schule: Okay, thank you.

Commissioner Evans: But I'd like to say something to you Todd, that's one of the things that we get criticized for in government is that there isn't enough public process. We also get criticized because it's endless public process. It's kind of hard to hit a middle ground here, which is what we're trying to do.

Todd Schule: I understand that, and when you, at the very tail end of that meeting you made the comment that you weren't sure if you were comfortable with that distance ...

Commissioner Evans: And I'm not.

Todd Schule: So I'm asking, what have you come up with? That's all, I'm not criticizing or anything else. People are here testifying and we don't even know what you're proposing now.

Commissioner Evans: Well, I kind of said it, but I should make it more clear. If there is a proposed development within 300 feet of the river, the property should undergo an environmental analysis. That would tell us, at least this is what I hope it will do, whether or not 300 feet is enough or 300 feet is too much, by looking at the actual land itself.

Todd Schule: Right, and that's what the Planning Board and Laval, they suggested.



Commissioner Evans: Well, that's where I'm at.

Todd Schule: Well, good. Thank you.

Chair Curtiss: Is there further comment?

Jim O'Neill: My name's Jim O'Neill and I've testified once before, but, with your permission, I guess I'd like to just, they say a picture is worth a thousand words and I'd like to just do a quick cross section drawing up on the board to kind of illustrate to you all at least how it affects my property when we talk about elevations. I'd just like to put that in perspective if I could, for just a second.

Chair Curtiss: Sure.

Jim O'Neill: Is it alright if I just talk from right here?

Chair Curtiss: You need a microphone, but we have one for you.

Jim O'Neill: Well, I think that my property typifies that of everything from the Wisby property, the lowland area. When Dale Wisby gets up and talks, do you all know where his property is. Okay. And my neighbors are the Bedunahs and the, you know, the other folks are south or upstream of myself, but we're talking about a, I guess, what I call a high bluff plateau which more or less, the majority of my land is flat and level and then there's a break in the land and it comes down, this is the riverbank and then there's another small plateau here and then a steep bank and then the river water right here. Then this is the channel that the river water falls in. On the other side of the river, if I break it in half, over here, the bank is like this but it's much lower over on this side and this is all that riparian area that you see on the other side. What I own is not riparian area, it's a high dry grass plateau, as a matter of fact, the elevation right here is probably the highest elevation that you'll find anywhere around Lolo, unless you start going up on the hillsides. And to put this in scale, this would be a scale figure would stand about that tall, a six foot person probably would be about that high, okay. When I bought this piece of property I was concerned because of the Sandbourne maps that you find down at the Office of Planning and Grants shows that the flood waters are all the way back here. But that didn't make sense to me because if the flood's here, why isn't it here and why isn't it a mile back into town, because it's all level back in there. By the way, Dale Wisby's property is just north of me and this bluff turns and goes around his and his property is down here in elevation. So, it's, you know, more than, it's around 10 feet of difference I would say right there. So, it's obvious that his land might flood. So I couldn't believe that the flood, the 100 year flood was actually back here because it was on level ground so I had surveying folks come in from WGM and they mapped it out and they showed me that my contour line for the 100 year flood is right here on the bank. So now, the river water's up here during a 100 year flood, that's the elevation. It's only about half way up the bank. So I felt real good about that and I thought, well, it's a reasonable thing to buy this lot because you could put a house here and not expect that it's going to wash away in a 100 year flood. And then, you know, I thought, okay, well no one does know where the 100 year flood is and so, you know, should a person assume two feet more than that, you know, and that puts it up just another little ways, but it's certainly not over the bank. It's not a riparian area here, it's very dry and very, you know, grassy. So, I just wanted the Commissioners to see a picture of what it is that I've been trying to talk about so that you know so that it doesn't feel or look like a lowland area, like I think is being applied by a lot of folks.

Commissioner Carey: Jim, where are you planning to put your house on that.

Jim O'Neill: I plan to put my house from this point right here somewhere in the vicinity of 80 to 100 feet back from that edge because I felt that was like a prudent and sort of common sense thing to do, I think it would be dangerous to put it out here on the edge because, you know, over time you probably will continue to get a little bit of the bank sloughing off and you have to kind of allow for that.

Commissioner Carey: I'm sorry, I didn't follow you in terms of where the house is actually going to end up.

Jim O'Neill: About somewhere between 80 and 100 feet back from the water line.

Commissioner Carey: Oh, okay.

Jim O'Neill: Because that's what it appears to me as an architect to be a reasonable distance.

Commissioner Carey: If somebody's floating the river and your house is 100 feet back, can they see your house from the river?

Jim O'Neill: Yeah, you can see the, with a single story house you could see the roof line, you know, maybe just a slight profile of the roof line, because you're looking up from the river up over the bank edge which masks part of the house. Again, counsel you, 300 feet is a football field back and that's just a whole different piece of property for me.

Chair Curtiss: Thank you Jim.

Commissioner Carey: Thank you.

Chair Curtiss: I thought I saw another person that was interested in speaking.

Unidentified speaker: Hope mine's brief. I want to thank you for seeing me briefly yesterday and Barbara you gave me some reassurance when you talked about the environmental analysis thing. I guess one of the ...

Commissioner Carey: Could you state your name, please.

Kate Crew: Oh, I'm sorry. Kate Crew, 501 Tyler Way in Lolo, MT. You had, I had mentioned that I was worried about these loopholes in the setback for the corridor. This gentleman was talking about, but did that also take into effect the wildlife, does the wildlife flow through that property as well.

Jim O'Neill: I think I've got wildlife that flows from one end of my property to the other, it's just like anywhere in Lolo, I think the wildlife, you know, are everywhere.

Kate Crew: Good point. There's a lot of wildlife in Lolo. We'd like to keep some of it. I had a question when you gave me that assurance that any variation from a setback, you've been telling people to be fair, they have a right to show that and I have to agree with you. Progress is inevitable but I'm sorry, I'm just, got to protect this wildlife corridor, it's in my nature. On those environmental analysis studies, you had said also that this was not about money, this was about the land, is that correct, and what's best.

Commissioner Evans: Well, yes and no. In order to take away someone's right to use their property and I'm going to make a broad example, people who say I want to look at it, I live next door to it and he or she shouldn't be able to develop their property because I like to walk my dog on it or because I want to look at it, they ought to have to compensate the person, we don't have the right, in my mind, to take away someone's right to use their property because someone else wants to use it. So, that's where the money comes in. But, we don't make our decisions down here based on just that, we make them based on the law.

Kate Crew: Great. Well, then the environmental analysis that you're talking about, you all three agree, are you telling me that these would be an impartial analysis, a proposal, say contracted by a non-profit State or Federal agency rather than a private agency of choice hired by a developer and paid for by the developer. Would this really be non-partisan, impartial.

Commissioner Evans: I think all those things come into play. I think they would want to hire a firm to do an analysis but you understand, this is new for us, I'm making it up as I go along. They would want to hire someone to do their analysis but we also send our subdivisions to Fish, Wildlife, we send it to the fire department, we send it to all kinds of agencies to get their comments and I see the attorney would like to comment.

Colleen Dowdall: I would just add that the County usually doesn't spend the money to do, to hire someone we would consider impartial but that we, the developer is entitled to hire someone to say what the impact would be, but that's where staff comes in also to review that report together with all the agencies that we send it to, like Fish, Wildlife and Parks ...

Kate Crew: But you would also, you wouldn't just leave it up to a private agency that might ... it would be more open than that, you would take more than one opinion.

Commissioner Evans: And we almost always have a hearing.

Kate Crew: Great.

Colleen Dowdall: So, again, it's a public process and these three Commissioners aren't going to be here forever.

Commissioner Evans: That's very good to know, that's a joke guys.

Colleen Dowdall: I mean, like 50 years from now, so they can't make representations that the County Commissioners will always consider this or always consider that, but it is a public process.

Kate Crew: Okay. One of the other things that the letter I dropped off with you, is that it just astounds me when, I know that some of these landowners this is their retirement, this is an investment and you know, I don't want to take that away but maybe there's a compromise and maybe they can have, I've never heard one of these developers or one of the attorneys representing anybody ever once talk about anything but how much money we're going to lose. I've never heard one of them say, maybe we can compromise because of the wildlife, because of the river. Not once, in all these meetings for these years. Give me a break, the people that have the two lots next to Bedunah and the other one, maybe you're one of them. Man, I'm going to get myself in trouble here, but, you know, this wildlife corridor and this riparian area was in the 1978 Lolo Plan. When did you buy this, didn't you look into it.

Commissioner Evans: Let's not do that back and forth here.

Kate Crew: I'm sorry. But, it just seems to me that this has been in place a long time, why, didn't people look, didn't they check it out before they invested in it or were they just simply hoping to change the plan.

Commissioner Carey: Kate, I was just going to say that you ought to know that often times developers and their agents do reach compromises to protect riparian areas and so on, so it's by no means the rule that they are unbending. It's the rule that they often try to find and do find some workable compromise along with our skilled staff people.

Kate Crew: Well, it would, I would love to hear some of it because I don't like feeling the way we are out there with pitting neighbors against neighbors, it's just not nice, it's not enjoyable and as far as people not being able to enjoy all of this, if people, if it's developed. I told you yesterday, I'm one of them that won't. Once this area is developed, no matter how they do it, it will cease to exist for me. I will not see the wildlife corridor but I have no other investment in it other than I would just like to see safe passage for the land and for the animals.

Commissioner Evans: Thank you Kate.

Chair Curtiss: And just to remind you Kate, what Myra Shults reminded us a little bit ago, this is a plan, it's not zoning, so even though it may be marked as open space, what does it say, parks and open space, or open and resource,

that doesn't mean that there's no development, that's a designation that says we need to protect it but it doesn't say no development and it's a plan.

Kate Crew: Okay, when does it go to zoning?

Chair Curtiss: Well, it's a guide.

Kate Crew: It's a guide.

Chair Curtiss: So that's what we consider as we look at it but it also, if that hill said open and resource they could have one house on 40 acres without going against the plan.

Commissioner Evans: Another thing I'd suggest you do is we have a website and I believe we put our schedule every week on the website and so you can look at the subdivisions that are coming before us and we have public meetings and you're welcome to come and listen. You might find that there are a lot of people who care about the wildlife.

Kate Crew: Well, I know that, I've been following along quite a bit, but this is sort of by my place, so it means a little bit more. Thank you.

Chair Curtiss: Further comment?

Diane Beck: Diane Beck, 8190 Haven Heights, Missoula, not in the affected area, just concerned about the next plan in line which I understand is the Wye/Mullan Plan. Before I comment specifically, I would like to let the lady that just spoke know that the Canyon River Subdivision of East Missoula, in that development, the developer gave over a mile of trails and is making the improvements. Is that correct? That is my understanding. So, developers and builders do make considerations for wildlife corridors and bike trails and are actually giving public access to a piece of property that's been in private ownership for a lot of years. Floodways, floodplains and waterways are not constant, that was said here earlier and so to imply that a 300 foot setback straight across the board is a reasonable expectation doesn't make any sense in a guiding document. It's been stated several times that this is only a guide so to say that 300 feet straight across the board has to be the number that is used just doesn't make sense to me and I don't want to see this be a precedent that's set because the next plan and the next plan and the next plan that gets this, it may not be applicable and so since this is just a guiding document, to put something like that in it is an unreasonable expectation to a property owner that has owned their property for a lot of years and may choose to develop or to do something with it and to say that he needs to spend, and I'm going to guess, I have no idea, five, ten, twenty thousand dollars on an environmental assessment to prove that his property will not impact the flood area just doesn't make sense to me. I think that you have floodplains, you have floodways, you have a 500 year, you have a 100 year, you currently have a 100 year, or a 100 foot setback, so there are regulations already that are out there that are in place that protect the corridors and protect the waterways and protect the flooding, so, to assume that a 300 foot setback is a reasonable expectation just doesn't make sense to me. Thank you.

Chair Curtiss: Thank you Diane. Is there further comment?

Commissioner Evans: I'd like to leave the hearing open so that when we adopt this plan in a couple weeks or whenever we adopt it, that we will have further time for them to comment on the final language that we have.

Chair Curtiss: Okay, so you wanted to leave the hearing open rather than close it and take written comment.

Commissioner Evans: I'd rather leave it open.

Chair Curtiss: Okay. Since most of you seem to be concerned about the 300 foot setback language, I'll ask, do you want to address that piece of this part first?

Laval Means: It might be, if it's okay with you, I would like to at least hand out a summary of issues that have arose so far, but not go in a chronological order the way that it's numbered, take up what's the most interest, take up what we did this once with Planning Board, just kind of found out what people were here for and tried to take up those issues. Maybe it will be more than just the setback, I know there's some citizens here that have been waiting for some other things too, but, we can jump around and I have a summary list here for everybody and I think I've got, I don't know if I've got enough for everybody in the audience but we can try and use that as a guide. This is something we did with the Planning Board and this list of issues is something that the Commissioners had indicated would be helpful in just trying to work our way through all the issues that they've heard, that you guys have heard, so, let's start with this and then, you're interest in bringing up issue number 3 first, I have a handout for that that has some language that has been discussed by the Commissioners.

Chair Curtiss: Thank you.

Laval Means: The next thing that I'm handing out is this draft language that is based on some discussions with the Board of County Commissioners and it's another step hopefully in a direction that works for everybody, but we'll see. What you'll find, is there's two sheets attached. One is a clean copy the other is a strikeout underline copy and they're both the same thing but one, the clean copy, of course, reads a lot easier.

Chair Curtiss: What I'd like to do is read to you, I know that a lot of you are here because of the one that's numbered number three, which is the setbacks, so this is the language that the Commissioners worked on this week, trying to make some clarifications and compromise a little. But number eight, Page 4B-13, which is the Water Section under Policies and Strategies, we would add a number eight that would read: "Ensure that new development is placed an adequate distance from watercourses to protect the watercourse and its associated natural habitat and to protect development. It is desirable that proposed development be placed at least 300 feet from the Bitterroot River. Proposed development within 300 feet of the average high water mark of the Bitterroot River should undergo an environmental analysis addressing water quality, riparian habitat, wildlife habitat or corridors, social, cultural and

recreational values. Specifically, factors to be addressed may include:" And those have all stayed the same except "H" which used to say, "The need for public and recreation access along the watercourse." and now says, "Social, cultural and recreational values." And then "K" would be, "Other relevant issues." That would be a new one. So that's where we're going from today.

Laval Means: The way that I look at the eight policy language right now is, the first sentence still gives you the general picture. There is some reference like that in the earlier Policies and Strategies for the Water Section. Place development an adequate distance, in general, from watercourses, in general. And then the next statement gets you to more specific desire along the Bitterroot River. There was some discussion that past with the Commissioners last week that where they came up with the language about proposed development within 300 feet undergoing an environmental analysis and all we did to that was add general statements saying these are the addressing these things, the water quality, the riparian habitat. The next portion, where it says "specific," starts to give some people some ideas of what should be considered in preparing this type of an environmental analysis so it's sort of a three phase thing.

Commissioner Evans: May I point out something to Laval. On Page 2, Laval, I think the sentence, "The designation extends along a corridor adjacent to the river that is approximately 300 feet wide." It would tend to make one think the river was 300 feet wide. I just think we need to reword that sentence.

Laval Means: Okay.

Commissioner Evans: Thank you.

Colleen Dowdall: So, this results, then, in the Open and Resource being 300 feet wide so you handled the, so that's how you handled the designation for land use.

Chair Curtiss: Yes.

Colleen Dowdall: Okay.

Commissioner Carey: Given that this is a policy document, a planning document and not a regulatory document, I would like to establish that it is our policy to allow, place a minimum of 300 feet setback from the Bitterroot River and no closer than 100 feet to the river. Again, that policy statement would be subject to the various criteria we've established here.

Laval Means: Can I just reiterate so I know what you're suggesting. Sounds like you're recommending that we would, could add language to the sentence that says it is desirable.

Commissioner Carey: Yes, after river, I would say, and no closer than 100 feet.

Commissioner Evans: May I argue with you a little bit on that. It would seem to me if we say that, then the only time an environmental analysis will have any meaning is between 100, from the end of the 100 to the 300, so if we're going to say, no closer than 100 then you've negated the value of an environmental analysis in that hundred feet.

Commissioner Carey: Not necessarily because the 300 foot setback, if you will, is subject to the review of these criteria as would be the hundred feet minimum.

Commissioner Evans: But a minimum says that, to me, that if there's an environmental analysis, it doesn't matter what it says in the first hundred feet.

Commissioner Carey: No, I think that somebody could make the case that I could build within 50 or 80, because, and then cite all the reasons of why it doesn't conflict with our criteria.

Commissioner Evans: But when you say a minimum of 100 feet, that's a hard and fast 100 feet, that's how I take what you're saying. So maybe your wording needs to be different.

Commissioner Carey: Well, again, I'm looking at this as a guide, as a matter of policy and each situation could have its special characteristics that would allow us to move these setbacks, if you will.

Commissioner Evans: I'm satisfied with the environmental analysis, but I'm not satisfied with an absolute minimum of 100 feet unless you clarify that that really doesn't mean anything if there's an environmental analysis that says 100 feet isn't.

Commissioner Carey: I'm just suggesting that as a policy matter, we ought, I would like to declare in this document that it's our policy not to allow anything within 100 feet of the river, that could change in a given circumstance.

Chair Curtiss: Can I make a suggestion maybe that that should be added to that second new sentence, to say, "Proposed development within 300 feet of the average high water mark should undergo the environmental ..." looking at all those things, and then add, "which may result in development as close as 100 feet," or something that says after the analysis ...

Laval Means: No closer.

Chair Curtiss: Yeah, no closer than 100 feet.

Commissioner Evans: Then you've negated the purpose of the analysis. And Colleen has her hand up.

Colleen Dowdall: I just wanted to comment that the whole document is a policy document and so if you label this as policy it will have no more or less weight than the 300 feet. If you say a minimum of 100 feet, that's what the

interpretation will be, that the recommendation is that there be development, not be development within that 100 feet, so I don't want you to think it has any different weight, it is ...

Commissioner Carey: It's a matter of policy.

Colleen Dowdall: Right, just like the 300 feet would be, the whole document is the policy for development in the Lolo area. Part of what I've had a problem with in setbacks to begin with is that this is a policy document, it's a planning guide and when you set lines you are creating expectations that this is more than a policy guide, more than a plan and that you will have people who believe that that is, and it won't be the people who want to develop the land, but the people who don't want it developed will come in and say this is 300 feet, this is 100 feet, you cannot go beyond that. And finally, just again, the feet issue of whether setting a jurisdictional mark for what we're protecting has any effect at all and after our Friday meeting, Pat O'Herren drew a picture for me that showed how we could totally miss the riparian values with the jurisdictional 300, the riparian could surround the house but the house would be outside the 300 feet and we would not be protecting what it is we were intending to protect to begin with.

Chair Curtiss: But we have riparian regs to do that.

Colleen Dowdall: If it's undergoing subdivision review.

Commissioner Carey: I don't want to debate the point with you Colleen, but in my view at least, the 300 foot setback from what we've heard from the scientific community would be essentially a functional setback, not a jurisdictional one, and that's the way I look at it. It's functional.

Colleen Dowdall: Can we just not call it a setback.

Commissioner Carey: Well, I'm comfortable ...

Colleen Dowdall: Setbacks are zoning language.

Commissioner Carey: I'm comfortable with the language we have here.

Chair Curtiss: We aren't calling it, we don't have setback in our language.

Commissioner Carey: But I'd still prefer to add "and no closer than 100 feet" after that second sentence, after river.

Commissioner Evans: I would argue that when you do that, you negate the entire point of an environmental analysis when you say "no closer to" everyone will look at that as a finite absolute prohibition about anything within 100 feet of the river in which case why should anyone pay the money it's going to take to have an environmental analysis. That won't be cheap.

Commissioner Carey: We've put Commissioner Curtiss on the spot.

Commissioner Evans: We surely have.

Chair Curtiss: I was looking at the language we struck out from before that says "for properties outside the floodplain along other watercourses, the minimum should be 50 feet," so did we take that completely out or is it somewhere else in the language.

Laval Means: It's not in there right now but we do have that first statement that says "ensure that new development is placed an adequate distance from watercourses to protect ..." So, there was still the first general statement and we were really, I guess, with this attempt here, working with the Bitterroot River.

Commissioner Evans: But our riparian regs do say 50 feet.

Colleen Dowdall: No.

Commissioner Evans: No. Thought it did.

Colleen Dowdall: Nope.

Commissioner Evans: Okay, I stand corrected.

Chair Curtiss: I guess I have a question about the process. If we didn't close the public hearing, can we be making decisions or do we need to ...

Commissioner Evans: We shouldn't be.

Chair Curtiss: ... close the public hearing in order to go forward.

Colleen Dowdall: I don't, I think, I don't know. I think you can make decisions on some issues but then, that, the public hearing on that issue would then be done.

Commissioner Carey: Why don't we close the public hearing and reopen it if need be?

Commissioner Evans: I don't want to do that. Changes we make the public ought to have the opportunity to comment on and if you've closed the hearing then they don't have the opportunity to comment. I just, we're not going to adopt this today, at least I'm not ready to adopt it today and I'd like the public to have the opportunity to see clean copies of what we have come up with so far and have the opportunity to talk about it.

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Chair Curtiss: I think that if we take that view, though, we could be here 'til Christmas, because every time we made a change, we'd have to have a public hearing on that one little change. I think our changes should be based on what we've already heard from the public as well as from the experts, so I would support closing the hearing.

Commissioner Carey: I'll make a motion to close the hearing.

Chair Curtiss: Second. All in favor?

Commissioner Carey: Aye ...

Commissioner Evans: Opposed.

Commissioner Carey: ... recognizing that we made need to reopen it.

Commissioner Evans: I oppose.

Chair Curtiss: Oppose.

Commissioner Carey: Well, I'll make a motion then to add "and no closer than 100 feet" after the second sentence, after "river" in the second sentence of the document before us, in Section 8.

Chair Curtiss: Okay. I'll second the motion. All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed.

Commissioner Evans: No. And I want you all to understand that's not because I don't want to protect the river.

Chair Curtiss: Okay.

Commissioner Carey: I support the minimum, or the language here that we have in terms of at least 300 feet from the river because it's plain that none of us are going to be here in a hundred years. In a hundred years though, that, for the river, it's a mere blink of an eye. The way I'm looking at it, in a hundred years or 200 years, will that river be a house lined, rip rap lined channel of water or will it look and feel and function like a river in its natural and healthy state and I think we're stewards now and we have to be good stewards and therefore, I think that at least 300 feet is what we need to do to protect the river, recognizing that it's not an arbitrary figure, but at least it's something to work with in terms of policy. So do we need a motion to support this language now.

Colleen Dowdall: What did you just do?

Chair Curtiss: We amended this paper, so now we need to adopt the whole paper.

Laval Means: Let's take a stab at the one that Barbara brought up too, maybe, which has to do with the land use rationale for the Open and Resource and I could read that to you and then you could be comfortable with it or whatever and we could maybe do something with that one too.

Colleen Dowdall: They should probably though adopt, they can adopt them separately and if they're ready to do a motion on this one, do that.

Laval Means: Just on the policy Number 8 and the second part would be for the land use rationale?

Colleen Dowdall: Right, yeah.

Laval Means: Okay.

Commissioner Carey: So, I'll move to approve the amended language in Section 8, and this is on Page 1 of Possible Changes to the Lolo Regional Plan document dated April 10, 2002.

Commissioner Evans: Would you say it again please?

Commissioner Carey: I'll move to adopt the amended language in Section 8 on the document before us, Page 1 of Possible Changes to the Lolo Regional Plan, it's dated April 10, 2002, just so folks know what we're talking about.

Commissioner Evans: And that's with your ...

Colleen Dowdall: As amended.

Commissioner Carey: Yeah, as amended.

Commissioner Evans: That's with your addition of no closer than 100 feet?

Commissioner Carey: Yes.

Commissioner Evans: I can't support that.

Chair Curtiss: Second. All in favor.

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: No. I'd like it clear on the record please, Adrienne, as to why I said no.

Chair Curtiss: Okay, so let's go then to the possible changes to the Land Use Rationale, which is 7F-4, Number 6B, and Laval has some suggested clarification language.

Laval Means: Based on what Barbara was mentioning, we could reverse some of the language and say the designation extends along a corridor that is approximately 300 feet wide adjacent to the river.

Commissioner Evans: We have to have it modified, the river or the land. It sounds like the river is 300 feet.

Chair Curtiss: No, she just, did you hear how she said it. You want her to repeat it.

Commissioner Evans: That's the way I want it.

Laval Means: Okay.

Chair Curtiss: Good. Okay. Is there other discussion on those possible land use, the land use rationale "A" and "B." Seeing none, I'd entertain a motion for that piece.

Commissioner Carey: Well, I guess I'd like to hear a little more, perhaps from Laval, in terms of why wouldn't we want to do, in Section B, designate it Rural Residential instead of Urban Residential which is at six dwelling units per acre. Could you.

Laval Means: The ...

Commissioner Evans: Is this the Orchard Park piece of land we're talking about.

Laval Means: Well, the, this description takes us from east of Allamont Drive to the Open and Resource designation. In the draft from November 1st, the final draft for the plan showed a portion of land that was a less dense area as you got closer to the river. We've heard a lot of comment from folks in the area that said, you know, this is land that is within the sewer study area, land that is relatively flat and that with the other protection of the Open and Resource adjacent to it, that, and it's land that's next to school land within the community of Lolo, those were some of the considerations by Planning Board. I'd have to say Planning Board was the one that recommended the change to the six dwelling units per acre. And another issue was how do you really create the transition from sixes that are within the community of Lolo to something less to Open and Resource when there's very little distinction on the ground between one parcel and another so it's that relative flatness issue and one parcel looks the same as the other and we already have, had that Open and Resource corridor that we were using as a way to also provide a buffer. I think that Planning Board took all of that into consideration when they recommended the sixes to the Open and Resource line.

Commissioner Carey: Okay. Thank you.

Commissioner Evans: Well, let's talk about the width of that piece of property. Is it wide enough to put six to the acre and still meet this 300 feet or 100 feet.

Laval Means: The maps behind you, you can see those partial maps. The Planning Board recommended changes are Partial Map #10 and it shows a, it reflects what Planning Board had suggested with the 300 foot area of Open and Resource but that it could move slightly, so that broken line and that Open and Resource area indicates what's in approximately that 300 foot area.

Chair Curtiss: So if someone owned a piece of property that has both designations on it, they did an environmental study that proved it would be okay to move the line to 200 feet, they could, their density could be spread onto, into the Open and Resource area a little ways.

Laval Means: I think that's the guide part of this plan. The guide part of this plan is when two land uses are next to each other and especially when they're split within one property. You look at it in a qualitative way and with the Water Policy Number 8, you have that, there's the additional language that's that, that says that some studies should be done to indicate what's the appropriate distance from the river. And, because this isn't zoning, I think that if a good case is made and lots of environmental, the analysis shows that there's some way that it's anything closer than 300, it could be considered but it wouldn't change a line and it wouldn't change kind of a density take off that you would take. I don't know, is there anything else you want to add. What Nancy said, is it would be a question of where on the property the density would end up.

Colleen Dowdall: Do you recall how wide that property is Laval?

Laval Means: It's variable.

Colleen Dowdall: There are parts of it that would be less than 300 feet and I think at its widest.

Laval Means: I recall, actually, Bill Wagner saying something about 250 feet to something else, but I don't remember.

Colleen Dowdall: Six per acre means he could do a high rise.



Commissioner Evans: Refresh my memory, if you don't mind, what the Planning Board's discussion was that brought them to a conclusion that six per acre was appropriate.

Colleen Dowdall: Could I take a stab at that.

Laval Means: With all those things I was just mentioning, the fact that it's within a sewer study area, that they had heard from, that it's next to school land, could eventually be a school right there, I don't know, down the road, it's within the community of Lolo, kind of core area, and then there's the issue of, there was six dwelling units per acre to the west already and how do you transition on this relatively flat land when parcels are fairly similar across a fence line. Anything else Colleen.

Colleen Dowdall: That was the point I was going to make, usually we made our recommendations for density based on a geographic factor. In this case, we made it, if we change this from six per acre, we're making the change based on ownership because the land is essentially the same as the land across the road, not a road, but across the fence line. It is flat grassland. So that was their rationale, there is no difference on either side of the fence except ownership.

Commissioner Evans: And it's six per acre on either side of the fence.

Colleen Dowdall: It was six per acre west of the fence and so they made it six per acre east of the fence also. And what we had recommended was various things, but one per acre, I think was the end result of our last, staff's last recommendation and our rationale for that was transition, that we would transition from six per acre to one per acre to open and resource to the river. This is a very narrow piece of property to accomplish that kind of transition with and also, so in order to do that to make it make sense, that's when we extended the one per acre not just on the Orchard Park property, but down on Todd Schule's property also and then, maybe, I don't know who went further to the north also, but we've taken the one per one off of Todd Schule's property now and have it at six per acre or four per acre, six per acre, so if you keep this, if you take this and take off the six per acre designation on this parcel from a purist standpoint, you will have just designated it based upon ownership. Everything else around it will be six per acre and, but from a practical standpoint, with 100 to 300 feet setback, there's no way six per acre is going on that property, so it's a very tough call because purely, six per acre looks best on the map but it isn't what's going to happen there.

Commissioner Carey: I'll make a motion to support the language before us in both Sections "A" and "B," and that's with regard to land use rationale on Page 7F-4, under Number 6B.

Chair Curtiss: With that first, or second sentence being swapped around to make it more clear.

Commissioner Carey: Yes, as amended, sorry.

Chair Curtiss: Second. Is there discussion? All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: I don't know.

Commissioner Carey: Abstain.

Commissioner Evans: I wasn't prepared to vote on these today. We said the other day that we were going to not do this today and I would like some time to think about this issue and the reason for that is there is no area in Lolo that has caused more consternation with the Lolo people than this one particular piece of land. I really would like to put it on the ballot and allow the people to decide if they want to buy it and then this issue would go away because there'd be no development out of it. I much prefer that than to arbitrarily say six when we know six can't go on there with the regs that we just did. So I guess if you want to take "A" instead of "B," I can vote for "A" but I can't vote for "B."

Commissioner Carey: I'll withdraw my motion then, if that's kosher, and then, is that okay with the second-er?

Chair Curtiss: So you're withdrawing it because ...

Commissioner Carey: Because of Commissioner Evans concerns about doing both "A" and "B" at this time. She needs more time to think about it.

Chair Curtiss: Fine with me.

Commissioner Carey: Okay. Then I'll make a motion to adopt the language in "A" only.

Commissioner Evans: I'll second it.

Chair Curtiss: All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye.

Commissioner Evans: Aye.

Chair Curtiss: So, we'll do "B" at a later time.

Commissioner Evans: I would like to put it off for awhile and contemplate it.

Chair Curtiss: Okay, the other issues that either the Planning Board brought up or things that came up at the last public hearing that we held in Lolo are, #1, to work out the floodplain solution in the Lakes neighborhood, before designating an area for residential development. Laval?

Laval Means: We can go through this in order you wish, as I mentioned, now at this point go through it in a consecutive order of 1 through 21 issues, we've knocked it down considerably since Planning Board, but ...

Commissioner Evans: I thought we weren't going to, we haven't even discussed cell towers and that's on this list.

Chair Curtiss: Well we don't have to do it in this order. Maybe I'll ask then, do the Commissioners have certain ones on the list that they would like to address today while we've had people here talking on some of these issues.

Commissioner Carey: I think Number 4 goes to Myra Shults concerns, doesn't it, so I would ask that we consider that.

Chair Curtiss: Okay.

Commissioner Carey: And then we also have the one about deleting "especially," I think, is that on this list here.

Laval Means: Yes.

Chair Curtiss: Uh huh. Okay, so is that okay with you to go to Number 4 then, I think it's one we've developed, we've talked about before.

Commissioner Evans: If I could have two minutes to read it, if nobody minds.

Commissioner Carey: Four and five actually.

Laval Means: During earlier discussions I had passed out the issue sheets, the individual issue sheets. If you want to refer to that, those individual issue sheets help provide you with a little bit of background in some instances and also page references or, you know, references to where Planning Board had brought up the same issue. So, if you don't have a copy of that with you, I have a few additional copies.

Commissioner Evans: Laval, would you look at number four, the fourth sentence down, and tell me if lease, recommend lease, is that a misprint, should be leased or should it be lease.

Chair Curtiss: Less, right?

Laval Means: Oh, recommend less, I'm sorry.

Commissioner Evans: Thank you. I just like to make sure I know what I'm doing here.

Chair Curtiss: We're going to lease their density out, it's a new concept.

Commissioner Evans: Well, you know, who knows. It could be done. What did the Planning Board do with this, Laval?

Laval Means: They recommended no changes.

Commissioner Evans: They want to leave it one, or five.

Laval Means: As the one dwelling unit per acre.

Commissioner Evans: Okay.

Laval Means: What Planning Board did do was because the earliest draft of the plan dated from November 1st, the final draft, didn't show an area of significant flood risk within that area of land. They did recommend adding that as an overlay on a portion of that land but they didn't recommend making any changes to the land use density.

Commissioner Evans: So they want to leave it at one per acre.

Laval Means: One dwelling unit per acre, yes.

Commissioner Carey: So, since we're not going to wrap this up today, obviously, I would like, with the Commissioners permission, to ask staff to draft language which would address Myra Shults concerns that we could consider at a later date.

Commissioner Evans: I'd like to hear what Myra has to say while she's here, if you don't mind.

Chair Curtiss: I think she already did.

Commissioner Evans: I know we've got a letter but I'd still like to hear her, if you don't mind.

Chair Curtiss: But didn't you hand us something today too, Laval?

Myra Shults: The hearing's been closed.

Commissioner Carey: That's right.

Commissioner Evans: I don't care if it's closed, I want to hear what you have to say.

Commissioner Carey: I'll move to reopen the hearing.

Commissioner Evans: Thank you.

Chair Curtiss: Second.

Myra Shults: My name is Myra Shults. On March 27th, I took a look at the proposed new map which is Partial Map #2 and there was an improvement from Partial Map #2 dated November 1st to Partial Map #2 dated, which was the Planning Board proposal and that improvement to the area which addressed some of our concern about the density in that area, was that an area of significant flood risk had been added. When we saw that, we then said, why don't, you know, I said, why don't you change that to one per five, then Dye said why don't you change it to Open and Resource like the land across Bird Lane is, it's more houses an acre over there, so it's consistent across the road. This property that's designated one dwelling unit per acre consists of a flat portion of the Rossignol ranch and then it goes up into the hills up where I live up on Moe Road, I'm up on the hill, so, we don't have as much concern up on the hill about the water that comes up, we're thinking of a Mullan Trail situation in there, because of what we see in that field and we do have a highway and the railroad that create the Mullan Trail issue because of when the high water comes up, so what Van and I were asking the Commissioners at the last meeting was to designate the area within the area of significant flood risk as open and resource land.

Commissioner Evans: Thank you Myra.

Myra Shults: Any more questions.

Commissioner Evans: In your mind does that mean no development at all?

Myra Shults: Yes. Recommended no development, it could be a park and I think ...

Commissioner Evans: You guys want to buy it from the owner? Turn it into a park?

Myra Shults: Well, I think the landowner is the one that is responsible for the public who buy lots down there and even though this isn't a subdivision application right now, someday the subdivision application will be before you and in order to protect the public health and safety, not only of the people who take water from the Bitterroot River, depend on the Bitterroot River but also those of us who have our wells down at that level that there should be little or no development in an area that has ground water come up when we have high water. So, we'll discuss this at, when the subdivision application comes in, but I'm not saying that for aesthetic reasons we want it open and resource. What I'm saying is that there is a public health and safety reason for not allowing houses to be built in there. You all have been through Mullan Trail and this is a classic Mullan Trail situation. Thank you.

Colleen Dowdall: I was just searching for Van Dye's comments because I don't recall Van's comments being exactly that, so if you are going to consider this today, I would either request time to find those or else not rely upon Myra's representation of what Van said at the prior hearing until I find those or just rely upon her testimony and not what she's representing Van said.

Commissioner Evans: You know, she has mentioned the Mullan Trail and I think it's a very good thing to remember. I don't want to vote on this issue today because I would like to ask the Health Department, the Surveyor's Department, anyone who has aerial photos of that land over a period of time. I would like to do some research to know whether indeed it has flooded. I don't want to take land use away from someone without just reason nor do I want another Mullan Trail.

Colleen Dowdall: Can I ...

Chair Curtiss: Could I have somebody show me the piece that we're talking about.

Laval Means: I moved Number 2 right up to in front of you, the Partial Map #2 shows the proposed plan from final draft November 1st and then the Planning Board proposal where he added this area in here that was designated area of significant flood risk, as well as this area and if at some point I can explain how these are different, that was also part of Mr. Dye's comments, it had to do with consistency, and I'll get to that in a minute. You can also find the proposed map behind you showing, you know, this is the same portion here.

Chair Curtiss: So, Laval, if you could explain the difference, why they were designated.

Laval Means: The issue that we're talking about right now is Number 4 and I tried to summarize it to the best of my ability from what we had heard. Myra had made three suggestions at the public hearing. One was to either eliminate the density or recommend less density with that area or at least when the subdivision application comes in, take into consideration the effects that homes in that field are going to have on the river. The other, Mr. Dye's comments are being reflected in Issue Number 8 where a lot of what it seemed he was talking about had to do with creating consistencies between it, because when you look at the land around, within Bird Lane, it's a designation of open and resource also an area of significant flood risk and down north of it, it's an area of significant flood risk with a density. So the difference between those two and how we've been using the area of significant flood risk needs a little bit of explanation. The land around Bird Lane is, was designated primarily with that open and resource because it is actually within the FEMA mapped 100 year floodplain and what they do with the area of significant flood risk is not necessarily saying that you can't develop there, but you have to look at it very carefully and you look at how some of the issues or what issues could be mitigated. And, the way that this is consistent with the way we use area of significant flood risk throughout the entire plan area, you may see some development density as a base with this area of

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significant flood risk as an overlay, but when you are within the floodplain, it is consistently an open and resource designation.

Nancy Heil: Just wanted to add a little bit more background clarification on the reason that we proposed using this area of significant flood risk was, one of the reasons was directly in response to the Mullan Trail situation and knowing that in areas where we know or suspect that there might be a problem with surfacing high ground water or something that's not reflected on the floodplain maps, to simply give people a heads up and to do it in a visual way on a map to say if you're considering developing here, there's some other things that will very likely need to be considered, and so as Laval pointed out, there are some areas where the underlying land use designation may be open and resource, in some cases it's designated residential but the intention is to show clearly that, you know, when this comes in for review or if there is consideration for this to be developed, that we definitely need to be looking at those issues in a more detailed way than we might otherwise. And I should point out that the areas that are shown as areas of significant flood risk, as we learn more about different properties, there may be others that show up, there may be some that it can be demonstrated that there isn't a problem.

Commissioner Evans: You know, when we approved Mullan Trail, we had, as I remember it or as I've been told, we had no photographs showing water but those photographs existed somewhere and I would like to just do a little more exploring on this issue before we decide what to do.

Colleen Dowdall: As I was going to say when I asked if I could address this, we looked at aerial photos, we looked at floodplain maps, we went out there, we talked to Health Department officials ...

Commissioner Evans: Oh, on this.

Colleen Dowdall: On this, yes. So, I think we did the work you're worried about.

Commissioner Evans: Okay. Then, in the area that's shown up here, are you suggesting less density in that area, no density, what?

Colleen Dowdall: I think what we're suggesting is we have an underlying density designation but that may be applied to the whole parcel but when we get to the level of project review, we know that's an area that's risky, that we need to look at more carefully.

Commissioner Evans: And so maybe there could be clustering, etc. Okay, thank you, that helps a lot.

Chair Curtiss: And sorry I forgot to come back to you.

Colleen Dowdall: That's alright, I just thought I could say what the planners said in a few words or less.

Laval Means: To add to what we looked at in designating that very oddly shaped area of significant flood risk, it was pointed out that it might not be considered a FEMA mapped area because the highway and the railroad function as a berm and we do have two foot contour maps that we can look at now and with the Flood Administrators help, he was able to map an area that might otherwise be considered below a flood elevation and that's what that comes up with, so it is actually a very, it's a mapped scientific indication of an area and that actually answers another issue that came before you from comments.

Chair Curtiss: Thank you.

Commissioner Evans: Thank you for your telling me that, it helps me a lot.

Chair Curtiss: So did we want to take action on this one then.

Commissioner Carey: No, I don't, I don't right now. I'd like to see some language that would support what Myra Shults would like that maybe we could consider next time.

Colleen Dowdall: So, the explanation that this protects it, I think what ...

Chair Curtiss: What Myra wanted was this to be white, right?

Commissioner Evans: She wants no development at all there.

Colleen Dowdall: And what we're saying is that, first of all, we wanted to get away from these narrow strips of land use designation that, so on one parcel of land we have a 20 foot, 30 foot strip of open and resource and then another strip of something else. We wanted to reflect areas where there were issues and that it is likely there would be no houses in the area that she would like to see white, but we can't decide, we aren't doing project level review when we're reviewing, but we did a lot of review of this parcel and came up with designation knowing that we were giving a heads up, this is a problem area.

Commissioner Evans: But there are houses in that area, are there not?

Laval Means: Part of the area of significant flood risk does extend further south into places where there's a couple, there are, it might even pick up on the school or the church that's down just north of Lolo and a couple other structures. In those instances they're existing structures and they're smaller parcels. This is the one case where it's a larger parcel where you could see movement out of, you know, moving density away from areas of concern. We just don't know how all the options that there might be for mitigation until a subdivision is before you and, well anyway.

Chair Curtiss: So the language that you've given to us takes into account looking at aerial photos, the two foot contour maps and it's mostly there to protect people in the future so that they know that there's probably some things like

ground water testing they may want to do and that kind of thing. So it won't look like what Myra asked, but it really gives us the protection we need against Mullan Trail.

Colleen Dowdall: And this is in subdivision review.

Commissioner Evans: And so you want to postpone that and I'm happy to do that.

Colleen Dowdall: So you still want us to draft language then?

Commissioner Carey: Yes, I would like to look at it.

Chair Curtiss: Yes, Nancy?

Nancy Heil: If I could, I just want to clarify. Colleen brought up a really good point that has to do with map scale and I want to use another example. There were areas that we designated open and resource, for instance, further toward the, I think in the north Bitterroot area where there were very large acres of wetlands. We didn't go through and try to identify down to a very small scale every possible place where there might be a significant resource, so, I think, just to clarify a little bit what Colleen said. At some point on the size of the maps that we're working with and the scale of the analysis that we're working with that there is sort of what you might call the smallest mapable unit.

Chair Curtiss: Okay. So, I guess I would like, if you want them to develop some language, I think they probably need more direction as to what you want it to reflect.

Commissioner Carey: Well, instead of, what do we have, one per one, one per five ...

Chair Curtiss: It's one per one right now.

Commissioner Carey: Yeah.

Colleen Dowdall: Myra suggested one per forty.

Myra Shults: Could I say something?

Commissioner Carey: The hearing's still open, yes.

Myra Shults: I don't know that I saw a definition in the plan of area of significant flood risk even though I've been through the plan several times. Is there a definition?

Chair Curtiss: Yes.

Myra Shults: Perhaps if the definition of area of significant flood risk does point out to someone that this is an area that there may be a problem in and that they needs a heads up if they're going do development, we can avoid the problem of my request that you make it white, just go ahead and leave it one dwelling unit per acre but with the understanding that the developer knows that they might not get that density.

Commissioner Evans: And I'm comfortable with that.

Commissioner Carey: I am too.

Myra Shults: And I'm fine with that. I just want to see what the definition of area of significant flood risk is in the plan. What page?

Chair Curtiss: I think staff found it for you. Would you like to read it, is it big? You're going to show it to her.

Myra Shults: Okay.

Commissioner Evans: We could even make her a copy.

Nancy Heil: She has a copy. If you look on Page 7A-4, that's one place in the land use descriptions where it occurs and then there's more description in the Water chapter, which is Chapter 4, and I'm looking for the page there. Also Page 4B-8 has more extensive detail about the kinds of factors that were considered in designating those areas, so both of those pages in concert I think should explain the concept pretty well.

Myra Shults: Okay, why don't you go ahead and table this and I'll look at it and it may be that it's already been addressed and just the designation of area of significant flood risk is enough to satisfy my concern.

Commissioner Evans: I don't think we need to table it, I just think we need to postpone it because I think there's a difference from procedural.

Chair Curtiss: One of the things about it is that it's not a flood storage area is one of the criteria, right? That, those, that designated area is not a flood storage area.

Nancy Heil: Well, it's, the area, it's ...

Chair Curtiss: More like ground water.

Nancy Heil: Well, they apply to, they cover areas that aren't already covered by floodplain.

Colleen Dowdall: But didn't we include floodplain too in our mapped areas of significant flood risk.

Nancy Heil: That's true.

Colleen Dowdall: So it includes floodplain and more.

Nancy Heil: Yeah. Thank you.

Chair Curtiss: And so does the discussion we just had cover everything in Issue 5 also, because that one says to verify that location and is it the same piece of property.

Laval Means: Yes it is and I was pointing that out when I talked about the two foot contours, Brian and I did go back and look at it and are comfortable with it, that it is depicted accurately.

Commissioner Carey: Okay.

Chair Curtiss: So we don't want to do anything with those right now? Are there other things on the list that you want to discuss today.

Commissioner Carey: Number 17, Mr. Bourdage's concern.

Commissioner Evans: We talked about that the other day. I'm perfectly content with taking that out of there.

Chair Curtiss: But he hasn't heard us say it yet.

Commissioner Carey: I'll move to delete "especially" ...

Commissioner Evans: Second.

Commissioner Carey: ... in Issue 17.

Chair Curtiss: Actually, I think in our discussion we thought we'd scratch that whole sentence behind "especially," wasn't it, so that it just says "additional buffering and less intense development should be considered closer to Lolo Creek."

Commissioner Carey: I think you're right.

Commissioner Evans: That's fine.

Commissioner Carey: So, do we need to make a different motion then, to delete "especially" in Section E on Page 7F-2, Number 1E, to delete "especially" between the mid level bench and the floodplain, after Lolo Creek.

Chair Curtiss: In the last sentence.

Commissioner Carey: In the last sentence, yes.

Chair Curtiss: Does your second still stand.

Commissioner Evans: Yes, my second still holds.

Chair Curtiss: All in favor?

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye. Laval?

Laval Means: One of the gentlemen that's been waiting to have some discussion on it is the, has to do with Issue number, it's down in the north Bitterroot valley and it has to do with Issue 16 and he's been coming to many Planning Board meetings and has written a couple of e-mails and if that was one you're ready to bring up, that might, he wouldn't have to come back to another meeting.

Chair Curtiss: Okay. And the Issue 16 is the suggestion to extend the proposed area designated as one dwelling unit per acre to Folsom Road in the north Bitterroot because several parcels already exist at that designation.

Commissioner Evans: Could we have him or you or both of you talk to us about it.

Dave Arndt: My name is Dave Arndt, I live on 6120 Falcon Lane.

Chair Curtiss: So, yeah, go ahead and tell us what your concerns are.

Dave Arndt: My concern is, is that the one per acre comes up to the borderline of my property and then from there on, it states it's one per five. My concern is, is first of all, one per five doesn't suit, simply because there is no five acre pieces left in that property at all in that area at all and there are several one acre pieces already in that area that are developed on that are out of the one acre designation but are in the one per five and consequently, my property is bordered by one acre pieces except to where this border comes to now, so I'm essentially being landlocked, in a way, that states that everybody can be one acre pieces except for me which I feel is a little unfair but that's the way it goes.

Chair Curtiss: And so how big is your piece?

Dave Arndt: My piece is two and a half acres, two and three-quarters acres. My suggestion was to move the line, the one acre boundary line, up to the road which is on my other boundary which would include my property and the road would then be the boundary line which would make more sense, I guess. I don't know if there was other comment that they wanted to move it all the way up to Folsom Road or not, you know, I was talking about Falcon Lane.

Laval Means: Do I have the wrong name. You're on Falcon Lane, not Folsom?

Dave Arndt: Right.

Laval Means: Oh, I apologize, not, the intent was to communicate the Falcon ...

Commissioner Carey: So, instead of Folsom Road, it should be Falcon.

Dave Arndt: Yeah, you're talking about a 200 foot move on a boundary line. You're talking about one property that's going to be affected. The other comment that was made to the plan was they wanted to have an area of change from one acre to the ten acre by creating this five acre piece of, group of sites, but there's no five acre pieces possible, unless somebody decides to move a boundary, you know, so.

Chair Curtiss: Laval?

Laval Means: The land use rationale was stating that the reason we had the one per five was to create a transition and ...

Commissioner Carey: It sounds as though the transition's already been kind of lost if there are other one per ones around.

Dave Arndt: There's 27 total lots, I believe it's ten of those are already one acre pieces and the rest are all two and a half acres, before you get to ...

Commissioner Evans: If you want to make a motion on the one, I will second it.

Commissioner Carey: I'll move to extend the proposed area designated as one dwelling unit per acre to Falcon Road in the north Bitterroot valley.

Commissioner Evans: I'll second it gladly.

Commissioner Carey: Does that accomplish what you ...

Dave Arndt: Thank you very much.

Chair Curtiss: All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye. Since we opened the meeting back up, is there anybody has a different one of the 1-21 that they'd like us to address while you're here. Okay. Are there other ones the Commissioners would like to address, it is almost 4:00.

Commissioner Evans: I'd like to ask Laval on Number 11, if what you're saying here is that we shouldn't allow transfer of development rights unless the parcels are contiguous.

Laval Means: No, what the comments were from this particular person was that in the transfer of development density section we talk about how it could occur in a number of ways and one of them is between non-contiguous parcels. But then over in the open and resource cluster option we talk about how you could, this option would be considered if 75% of contiguous land is reserved and they were just trying to understand how, what the differences are between them and what the similarities are between these two different sections of the plan.

Commissioner Evans: I'm perfectly willing to approve density transfer between non-contiguous parcels, but I'm not comfortable with the next sentence because I'm not clear on exactly what that means and I would just as soon take that sentence out unless there's a real good reason for leaving it.

Laval Means: What we should do is refer to the Planning Board recommended changes that occurred from February 12th and that when Planning Board had some discussion about the, both the open and resource cluster as well as the rural residential cluster. And I had an additional discussion with Mr. Bugbee who had raised these comments to explain how in one instance we talk about non-contiguous and in the other we're encouraging contiguous ownership if you're going to look at this idea of increased density.

Commissioner Evans: Could we make them two separate issues?

Laval Means: They are. He was just trying see if there was some inconsistencies if we said one thing in one and something else in another and we don't think there is.

Commissioner Evans: I'd like to move that we ...



Chair Curtiss: Excuse me.

Commissioner Evans: Go ahead, sorry.

Chair Curtiss: I know that you missed one of our discussions earlier this week, so I think if you could, could one of you draw on the map what this means and why it needs to be, because sometimes what sounds good when you draw it on the paper, isn't that what you said you did for Mr. Bugbee that was helpful to him, to show what it means if they're not contiguous.

Nancy Heil: While Laval's moving toward the board, Mr. Bugbee's concern mostly had to do with understanding how the transfer of development density would work and how the open and resource cluster would work and Planning Board did make some recommended changes to that and I think that Mr. Bugbee's questions mostly had to do with the use of the word "contiguous," and I think that what did come out of that discussion was that there might be a way to clarify some language instead of saying "overall land base" to say "total acreage under consideration," and you'll see that on your issue sheet number 11, that language suggestion there.

Commissioner Evans: I think the problem that's bothering me is the 75%, you know I hate hard and fast numbers.

Chair Curtiss: Well, I think if the pictures will help.

Laval Means: No, no, that is a different issue. I agree.

Nancy Heil: What the rural residential cluster or open and resource cluster as explained in the plan would allow is that if you had open and resource land which generally has an associated density of one dwelling unit per 40 acres that a density increase, and this is what Planning Board ended up with, a density increase to a maximum of one dwelling unit per 20 acres could be considered if the developer preserved 75% of that total acreage in one contiguous parcel, so, we needed to put some parameters on that because we were talking about starting with what would you need to do in order to achieve a density increase. So the parameters had to do with how much density increase could be achieved and as the balance how much land needed to be preserved, so we felt like there needed to be some parameters on that so that it wasn't just wide open.

Commissioner Evans: I think if it were worded a little different, it would have the same effect and I'd feel better about it, which is if 75% of the land that is reserved is contiguous, does that do the same thing?

Nancy Heil: Well, what the intention is, is that 75% of the land is reserved.

Chair Curtiss: So, in other words, you didn't get, because you were going to reserve some of the land you didn't get to put one house in one corner and one in the other, it's more of promoting clustering.

Nancy Heil: The intention is to, especially in this case, the first case that we're talking about now, in open and resource areas is to allow for the possibility for some additional density if that density is clustered in maybe one corner of the property.

Commissioner Evans: It's the 75% that's bothering me.

Nancy Heil: So, your suggested wording was 75% ...

Commissioner Evans: If the land that's reserved is contiguous. I mean they might want to reserve a corner here and a corner there, somewhere else and if you want them to have the benefit, the land they're saving needs to be contiguous so that you have a better piece of open space, is what you're trying to here, isn't it?

Nancy Heil: It is and so I guess my question would be would there then, would you not have a minimum amount of land to be preserved in order to get a density increase.

Commissioner Evans: I don't know how to get where you're wanting to get without a hard and fast number.

Chair Curtiss: How did you word it, Barbara?

Commissioner Evans: If the land that is reserved is contiguous, without a 75%, so it isn't a spot here and a spot there, whatever you're going to reserve has to be a contiguous parcel.

Nancy Heil: And if I'm understanding your suggestion, there wouldn't be a minimum amount of land that would need to be reserved.

Commissioner Carey: With that wording there wouldn't be, yeah, and you'd lose the point of clustering and preserving open and resource space.

Chair Curtiss: We'd end up with one of those pieces of property that wasn't much good for anything called a open and reserve piece in the middle of nowhere.

Commissioner Evans: It's just 75% bothers me, that's a lot of land to take out of someone's use.

Chair Curtiss: But this is open and resource land only, that we're referring to, right?

Nancy Heil: There is another option for rural residential that you'll see in the, a piece of the summary of it further down on Page 11 and again, the landowner is, if you want to think of it in these terms, is compensated for that by there being allowed to be more density than would be supported ordinarily, so that's the intention of the trade off is to

encourage clustering to encourage conservation of land. There's nothing that would require someone to do this if they just wanted to achieve a one dwelling unit per 40 density, but if they wanted to get more density than an open and resource designation would ordinarily support, then what would be supportable would be if they would preserve most of the land, or three-quarters of the land.

Commissioner Evans: I guess how I would feel that it would be fairer is if we, and maybe you have it somewhere else, the number of development rights, density rights that they're getting would be equal to the number of percentage of the land we're taking away. Is that the intent here?

Nancy Heil: Well, I guess I should clarify that these aren't actually density rights because it's not zoning and so we've been calling it transfer of development density.

Commissioner Evans: See the way I look at this, you could give them one density bonus of one house if they give up 75% of the land. That doesn't seem fair to me. I'm making this up as I go along, it's just how I feel about it.

Nancy Heil: Okay, if you think about, as an example, and I have to make up some numbers here, maybe you've already got some. Suppose that you had an 80 acre parcel and on that 80 acre parcel that was designated open and resource, I know this is not going to come out even numbers now, I can tell. If you had open and resource designation on there and you might be allowed then 2 dwelling units on that parcel. And those could be, say you wanted to subdivide, you could have two 40 acre parcels, you could have a one acre parcel and a 79 acre parcel, but basically, we'd be looking at two dwelling units. What this would say is that you could, and I'm trying to remember what Planning Board said, okay, you could go up to one per twenty, which would be four dwelling units, so you would get double your density and you would have to cluster that density on one-quarter of your land which would be 20 acres.

Commissioner Evans: So correct me if I'm wrong, you'd get 100% increase by giving up 75%. See I can live with that, but that wasn't clear in here.

Nancy Heil: Okay.

Commissioner Evans: So I can live with that as long as it's a fair trade.

Chair Curtiss: So, instead of two houses they now got four but we are maintaining an open and resource.

Nancy Heil: The only way to sort through these, even when we were doing it, is to draw all these pictures.

Commissioner Evans: Thank you, that's helpful.

Nancy Heil: And Laval has a lot more pictures.

Laval Means: What I have is all the stuff that I talked to Bruce Bugbee about that you guys may not need to go over, but we were really talking about how does the transfer of density work on contiguous parcels, on non-contiguous parcels, how does the cluster option work with contiguous parcels and why doesn't it really work or get what we might want with non-contiguous parcels. So that's what I was trying to show him and we were talking about and the net result of all of that was there might be a few language changes that we need to make with those, where that overall land based things, because it was implying, maybe you meant all that person's ownership and we didn't intend that, so we recommended some language change for those particular things and then he was kind of comfortable with this explanation.

Chair Curtiss: Barbara had to make a run, so I don't imagine we want to do anything 'til she comes back. Has Colleen been able to come up with some cell tower language. I know that was at the last Planning Board meeting. In Lolo it was suggested that we consider some language and I didn't know whether she had gotten to that yet.

Laval Means: We had it in some draft form, I'd looked at something and made some comments and I think we still wanted to do just a little more work on it, you know, understanding that this was going to take more than the one meeting.

Chair Curtiss: Right, okay. I'm just kind of going down the list here. Could you refresh my memory again on the floodplain solution, the Lakes neighborhood and how we came up with the, which map was that, the little pockets that have been surveyed to show they're higher than floodplain or something.

Commissioner Evans: What are we doing now.

Nancy Heil: Moved back to Issue 1.

Chair Curtiss: Right, you were out of the room so we jumped ahead for a minute, the Pitch and Putt thing. I just asked her to refresh my memory as to how they came up with these now identified areas that might be ...

Laval Means: The questions here that are shown as kind of oddly shaped places as urban residential density comes from a survey that was done back in 1999 when a subdivision was proposed back then called Lolo Greens, I believe, and with that they were able to indicate for the time, you know, what the floodplain elevation would be and where areas above that would be and where areas below it are. Original recommendation was right here that showed the open and resource along this, really only indicating a residential density where existing development was, but yet the 70, the floodplain, the FEMA mapped floodplain does show something greater than that, that it would be out of the floodplain, but we know and we've heard from many folks that there's a flood study going on in that area and concerns over what the results of that would be, but yet this had, if you operate with what you have as existing conditions, you need to think about what, provide some clarity for that landowner. I think that's what the Planning Board was trying to do when they made the recommendation to at least map the area that, for now we know is above the flood elevation, based on the most current surveying that they have and we all have before us and that was that 1999 survey. We realize that

when a subdivision is submitted that you'll, at that opportunity, you'll have the chance to talk about and work with the developers about the idea of clustering possibly and providing the appropriate, some form of flood channel that's been suggested and the balance that is needed between flood storage areas and land development areas.

Commissioner Evans: How did the Planning Board come to those configurations.

Laval Means: What they, they didn't actually see these configurations. What they recommended was to go back to using the 1999 elevations to determine the area that would be above floodplain and what would be below floodplain and the area that was above floodplain would have been that residential density.

Commissioner Evans: Why wouldn't we accept that.

Chair Curtiss: There's been some public comment on it, is why it's on our list.

Commissioner Evans: Okay.

Chair Curtiss: Because of the study that's going on, wasn't that the background that, I forget ...

Laval Means: I had some discussion with Brian before the meeting actually and some things that I could convey that he had said is that, you know, we realize and are aware of neighborhood concerns and appreciate that this issue of flood channeling and the flood study in this area is important, appreciate it being noted on the public record and he's been talking with the developers and the developers' representatives in that area about the ideas of making sure you create the balance that's needed and think of the ideas of channeling, but ultimately, with this, feel that you can address it at the project level.

Nancy Heil: Commissioner, if I could just point out, you received a letter from Mark Behan dated April 8th, is the one that addresses this question.

Chair Curtiss: The one that had pictures.

Commissioner Evans: Yeah, I've got it somewhere, just refresh my memory, I don't want to dig for it.

Chair Curtiss: Okay, do we want to address this one now.

Commissioner Carey: Sounds like the Floodplain Administrator is okay with it.

Laval Means: Yeah, he wasn't recommending any changes.

Commissioner Evans: The concern I have about it, if I can say it, is I've had numerous members of the Planning Board express their distress that why are they bothering if we don't listen to them.

Chair Curtiss: That's what we're saying, is that, in the end, what we, if we made a change it would be to not approve their recommendation, so Bill was saying that he's okay with it as presented by the Planning Board.

Commissioner Evans: Okay, that's fine. You want to accept the Planning Board changes, then I would second that motion.

Chair Curtiss: So I don't know if we need to make a motion to that, because we won't make any changes, it will be part of the Planning Board, so Number 1, though, we would cross out the, okay.

Commissioner Evans: And I'd like to make a motion that we quit for the day.

Chair Curtiss: Did you want to vote on the cluster one, now that they explained it.

Commissioner Evans: Yeah, I'm okay with it as long as I understand it, that it doesn't take more than it gives.

Chair Curtiss: That way we don't have to do it again.

Nancy Heil: There was some amended, just a slight language clarification that had been suggested with that issue that you'll see on Page 11, that would change ...

Commissioner Carey: Total acreage under ...

Nancy Heil: Yeah, right.

Chair Curtiss: And the reason for this language, Barbara, is in case somebody had 900 acres and we were only looking at 100.

Commissioner Evans: Okay, I'm with that okay.

Chair Curtiss: Okay.

Commissioner Carey: So, I'm ...

Chair Curtiss: So, we're on Page 11.

Commissioner Carey: Right, and is this the wording that we have that's already in place.

Laval Means: No, you have to recommend changing the wording.

Commissioner Carey: Okay, I would recommend accepting the amended language on Page 11 of our Individual Issues Worksheets, dealing with Page 7A-4 in the Lolo Comp Plan and it's the second paragraph under Open and Resource Clusters.

Commissioner Evans: You want it to read the way you've got it here.

Commissioner Carey: Yes, the way it's worded on Page 11.

Commissioner Evans: I'll second.

Chair Curtiss: All in favor?

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye.

Commissioner Carey: And doing the same with the Rural Residential Cluster section, also on Page 11.

Chair Curtiss: Okay.

Commissioner Evans: I didn't see that one.

Chair Curtiss: It's just changing that language.

Commissioner Evans: Okay.

Chair Curtiss: Did you second that?

Commissioner Evans: Uh huh, I did.

Chair Curtiss: All in favor?

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye. Okay, so that takes care of ...

Commissioner Carey: Do we want to ask the people that are still here if they'd want us to do anything.

Chair Curtiss: Do we want to leave it open then still ...

Commissioner Carey: It's just a technicality, really.

Chair Curtiss: Right, because we haven't, the public hasn't seen anything about cell towers, so we don't ...

Commissioner Evans: And they haven't seen anything we did today.

Commissioner Carey: Yeah, we'll leave the public hearing open, it's fine with me.

Chair Curtiss: Okay.

Commissioner Carey: But do we want to ask those folks if they want us to deal with anything.

Chair Curtiss: I already gave them that opportunity. So, we think we've gone far enough in the Plan today, we're all starting to get rummy, so we will continue this, I guess we need to set a date.

Commissioner Evans: Are you going to be here next Wednesday?

Chair Curtiss: I'll be here. But there's something else on the agenda next Wednesday.

Laval Means: There are two items on your agenda from the Planning Office anyway and that is the continuation of the Travelers Rest Subdivision and Sorrel Springs, I think it's a 2 lot subdivision in the Frenchtown area, and I don't know, I didn't get a chance to talk to Lowaine, if there's anything else.

Commissioner Carey: Would it help the staff to take more than one week, I mean, could we give you more time.

Laval Means: There's, right now, it appears there's the question of the land north of Lolo and some revisiting the area of significant flood risk and the cell tower that ...

Commissioner Evans: Let's give it at least two weeks then.

Chair Curtiss: I'm looking, I think there's a lot of things that day. Some of these are just annexations of the Fire District, they don't take long. Orchard View Addition.

Commissioner Evans: Where's Orchard View Subdivision? This isn't Orchard Park?

Laval Means: No.

Commissioner Evans: Is it anywhere near Orchard Park.

Laval Means: No.

Nancy Heil: It might be Target Range.

Chair Curtiss: So the 24th would give you enough time. So we will continue the hearing on the Lolo Regional Plan on April 24th at our regular meeting. Is there any other business to come before the Commission? Seeing none, we're in recess. Thank you for your patience.

There being no further business to come before the Board, the Commissioners were in recess at 4:20 p.m.

**THURSDAY, APRIL 11, 2002**

The Board of County Commissioners did not meet in regular session. In the morning, Commissioner Evans gave the Welcome at the AMFM (Association of Montana Floodplain Managers) Conference held at the Holiday Inn; Chair Curtiss attended an "Open Meeting in Government" Conference held at the Grant Creek Inn all forenoon. Chair Curtiss and Commissioner Evans were out of the office all afternoon.

Claims List – Commissioners Carey and Evans signed the Claims List, dated April 11, 2002, with a grand total of \$71,496.77. The Claims List was returned to the Accounting Department.

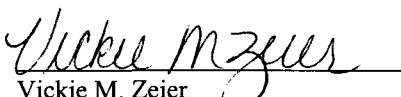
Claims List – Commissioners Carey and Evans signed the Claims List, dated April 11, 2002, with a grand total of \$45,151.94. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated April 11, 2002, with a grand total of \$9,119.36. The Claims List was returned to the Accounting Department.

Reconveyance – The Commissioners signed a Request for Full Reconveyance, dated April 11, 2002, as Beneficiary and legal owner of a promissory note in the original sum of \$44,000.00, secured by a Trust Indenture dated June 11, 2001. Filed for record on June 21, 2001 as Auditor's File No. 200114502, Rene LeVesque is Grantor and First American Title Company of Montana is Trustee. The document was returned to Deputy County Attorney Mike Sehestedt for further handling.

**FRIDAY, APRIL 12, 2002**

The Board of County Commissioners did not meet in regular session. All of the Commissioners were out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, APRIL 15, 2002**

The Board of County Commissioners did not meet in regular session. Commissioner Evans was out of the office all day; Commissioner Carey was out of the office all afternoon; Chair Curtiss was on vacation April 15<sup>th</sup> and 16<sup>th</sup>.

**TUESDAY, APRIL 16, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present

Claims List – Commissioners Carey and Evans signed the Claims List, dated April 15, 2002, with a grand total of \$3,467.94. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated April 15, 2002, with a grand total of \$14,339.87. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated April 15, 2002, with a grand total of \$12,383.64. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated April 15, 2002, with a grand total of \$13,164.41. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated April 15, 2002, with a grand total of \$321.95. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Old Water Wheel Estates, a subdivision located in the S¼ of Section 27, T 13 N, R 20 W, PMM, Missoula County, a total area of 9.80 acres, with the owners of record being Fleta Elizabeth (Betty) Kenna, Trustee of the Betty Kenna Living Trust, and William R. Maclay, Sr. and Josephine Maclay, Co-Trustees of the William R. and M. Josephine

Maclay Living Trust. The Improvements Agreement and Guarantee are for improvements (shared paved approaches from Blue Mountain Road to Lots 1 and 2, and Lots 3 and 4) that shall be completed within two years of filing the plat of Old Water Wheel Estates, in the estimated amount of \$11,600. The Improvements Agreement has been guaranteed by a Letter of Credit from Bitterroot Valley Bank.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter and Forms – Acting Chair Bill Carey signed a letter, dated April 16, 2002 to Max Yuan, Federal Emergency Management Agency Mitigation Directorate (“FEMA”), Washington, D.C. providing the City of Missoula and FEMA with support for the South Missoula Storm Drainage Project. Attached to the letter was a MT-2 Community Official Form on behalf of Missoula County. The documents were returned to the City of Missoula Engineering Department for further handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and the Western Montana Gay and Lesbian Community Center for HIV prevention work via local High School Gay-Straight Alliances. The total amount shall not exceed \$1,000.00. The Health Department has a specific agreement with DPHHS for funding to support these activities; no other County funding sources are to be used. The term will be January 31, 2002 through December 31, 2002. The document was returned to the Health Department for further handling.

Lease Agreement – Previously approved on April 2, 2002, the Commissioners signed a Lease Agreement, dated April 16, 2002 between Missoula County and Bat Around, L.L.C., for the lease of property for the operation of batting cages. The term will be for one year, commencing on the date of this Agreement, and may be renegotiated. The lease amount will be a total of \$1,520.00.

Resolution No. 2002-039 – The Commissioners signed Resolution No. 2002-039, dated April 16, 2002, a Budget Amendment in the amount of \$20,145 for Partnership Health Center, reflecting a grant from CDBG to provide Dental Hygienist services to low income and/or uninsured patients. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Easement – The Commissioners signed on behalf of Missoula County an Access Easement, dated April 16, 2002 to Michael L. Smith and Patricia M. Smith, for access which covers the following: A strip of land within SE¼ of Section 36, T 21 N, R 17 W, PMM, Missoula County, (Swan River – West of Condon). The document was returned to Steve Smith in the Surveyor’s Office for further handling.

Designation – Acting Chair Bill Carey signed a letter to Thomas E. Martin, P.E., Montana Department of Transportation, Helena, Montana, notifying him that County Surveyor Horace Brown is designated as the Environmental Certifying Official responsible for all activities associated with the environmental review process to be completed in conjunction with the Clements Road/North Avenue Path, Missoula, Montana (Project #STEP 8129(29)). The document was returned to County Surveyor Horace Brown.

Extension Request – In a letter Ron Ewart of Eli & Associates, Inc., the Commissioners approved a request for a one-year extension of the final plat approval deadline for Hellgate Pines No. 2, Lot 12, Block 1, in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is April 4, 2003.

Tax Letters – The Commissioners approved four (4) letters, dated April 17, 2002 from Clerk & Recorder/Treasurer Vickie Zeier regarding requests to waive penalty and interest to the following:

- 1) Black Dog Café (Larry Evans), denying his request because the Commissioners do not have any statutory power to waive the penalties and interest because no error was made in the billing process;
- 2) William and Anne Woorich, approving their request to waive penalty and interest for Tax ID #3491008;
- 3) Anthony G. Quadros, approving his request to refund the penalty and interest for Tax ID #882259; and
- 4) Dave Russell, approving his request to waive penalty and interest for Tax ID #1383250;

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **WEDNESDAY, APRIL 17, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated April 16, 2002, with a grand total of \$158,185.32. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 16, 2002, with a grand total of \$130.00. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 16, 2002, with a grand total of \$80.37. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 16, 2002, with a grand total of \$1,638.83. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 16, 2002, with a grand total of \$41,320.71. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 16, 2002, with a grand total of \$500.00. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated April 17, 2002, with a grand total of \$87,922.19. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Racquel M. Williams as Principal for Clerk of District Court Warrants #545 and #901534 (\$250 each), issued February 21, 2002 and March 26, 2002, respectively, on the Missoula County Trust Fund in the amount of \$1,000.00 (payment for child support), now unable to be found.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and John Q. Murray d/b/a Murray Information Services, Inc. for the provision of GPS and fire danger rating education services for a project in the Condon area, aimed at assessing homes and mapping their hazard levels. This project will also involve the Swan Ecosystem Center and the Swan Valley School system. The total amount shall not exceed \$2,000.00. The term will be April 15, 2002 through August 1, 2002.

Resolution No. 2002-040 – The Commissioners signed Resolution No. 2002-040, dated April 17, 2002, a Budget Amendment for the Workers Compensation Fund (\$20,000.00 Insurance Dividend Expenditure). This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-021, dated April 17, 2002, for the Financial Administration Department, transferring the payoff of Youth Court and Public Defender buildings to District Court, in the amount of \$200,000., adopting same as a part of the Fiscal Year 2002 Budget. This action was currently budgeted in the General Fund.

Counter Offer – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a Counter Offer (with amendments) by the Alvarez Family Trust for the purchase of Lots 10 and 11, Block 4, Phase 1B, Missoula Development Park. This Counter Offer amends the original offer to full price (\$277,412) and adds a 60-day limit to the extension of the closing date. The document was returned to Barbara Martens in the Projects Office for further handling.

Agreement – Chair Curtiss signed a Tap Application Agreement between Missoula County and Mountain Water Company for the installation of four 6" taps to Lots 6, 7, 8 and 9, Block 3, Phase 4, Missoula Development Park (along Sandpiper Drive). The total amount shall not exceed \$4,400 (\$1,100 for each water tap). Missoula County will be reimbursed for the tap fees when the lots are developed (per paid contract with Mountain Water to extend the 12" water main to Phase 4.)

Amendment – The Commissioners signed an Amendment, dated April 12, 2002, to the Agreement between Missoula County and the Missoula Irrigation District, regarding pedestrian walkways that parallel Clements Road from South Avenue to Seventh Street and North Avenue from Humble Street to Clements Road. This project will require that tow ditches be slightly realigned from approximately 115 feet in total, and that several irrigation culverts be extended from the roadsides toward the ditches. No compensation amounts were reflected in the Amendment.

Letter – Chair Curtiss signed a letter to Assistant Attorney General Deborah J. Daniels, U.S. Department of Justice, Washington, D.C., certifying that any funds awarded through the Safe Havens: Supervised Visitation and Safe Exchange Grant Program (2002-X1697-MT-CW) will not be used to supplant existing funds for program activities. If funded, this Violence Against Women Office grant will provide Missoula County with a two-year grant (\$120,000) for collaboratively planning a supervised visitation/safe exchange program for victims of domestic violence, sexual assault, stalking, and child abuse. The letter was returned to Kristina Swanson in the Office of Planning and Grants for further handling.

#### PUBLIC MEETING – April 17, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson. Commissioner Barbara Evans arrived at 1:40 p.m.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$350,908.43. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

#### Proclamation: National Public Safety Telecommunications Week

Patty Rector, Commissioners Secretary, read the proclamation into the record.



**WHEREAS**, Public Safety was the first service provided by a government to its citizens. The safety and well-being of its citizens continues to be one of the foremost concerns of Missoula County. Ensuring that safety and well-being requires the ability to receive calls for help and immediately send responders to provide that help; and

**WHEREAS**, 9-1-1 is the first, critical link in the chain in delivering public safety services; and

**WHEREAS**, the safety of those responding to emergencies is also of great concern to Missoula County; and

**WHEREAS**, the telecommunicators who work in 9-1-1 display a superior level of commitment, dedication and professionalism in accomplishing their mission of receiving calls for help from citizens, dispatching emergency response agencies and maintaining a communication link with the responders for safety purposes; and

**WHEREAS**, those same telecommunicators often work extraordinarily long hours and difficult schedules to provide the service to the Public and ensure the safety of responders, but often go unrecognized.

**NOW THEREFORE**, we, the Board of County Commissioners recognize the week of April 14-20, 2002 as

**NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK**

We thank the telecommunicators in 9-1-1 for all their efforts and hours and hard work under very difficult circumstances. The community truly would not be safe without them. We also encourage the community to recognize the importance of the function of 9-1-1 and to thank these dedicated individuals in writing.

Dated this 17th day of April, 2002 and signed by the Board of County Commissioners at the meeting.

Chair Curtiss stated that two 9-1-1 employee were in the audience, Deb Ogden, 9-1-1 Director and Dorothy Frojen, a long time dispatcher and shift supervisor. She thanked them and asked them to stand and be recognized.

**Presentation: Global Justice Action Summit (June 20-24, 2002) – Postponed to April 24, 2002**

Chair Curtiss announced that the presentation for the Global Justice Action Summit has been postponed to April 24, 2002.

**Hearing (Certificate of Survey): Weinmann Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract A and Tract B, COS 981, located in Section 34, Township 12 North, Range 20 West.

Roger A. and Sandra Weinmann have submitted a request to create one parcel from Tract A and one parcel from Tract B using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcels are each approximately 12.66 acres in size located near Lolo, Montana. The Weinmanns propose to create one approximately 2 acre parcel from Tract A for transfer to their daughter, Rochelle Schmauch, for residential purposes and keep the remaining approximately 10.66 acre remainder for residential purposes. They also propose to create an approximately 2 acre parcel from Tract B for transfer to their son, Scott Weinmann, for residential purposes and to keep the remaining approximately 10.66 acre remainder for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 981	1976	Court Order (Cause Number 41842)	Earl Pederson	N/A

According to the records kept by the Missoula County Surveyor, the applicants have not previously used exemptions to the Subdivision and Platting Act. The Weinmanns purchased the property in 1986.

Chair Curtiss opened the public hearing.

Roger Weinmann was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Weinmann really did intend to transfer this property to his children?

Roger Weinmann stated that was correct.

There being no further comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Roger A. and Sandra Weinmann to create two 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Mr. Weinmann would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Consideration: Sorrel Springs Lot 5 (2 lots on 10.58 acres) – north of Frenchtown**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Mr. and Mrs. Hestekind, represented by Nathan Lucke of Professional Consultants, are requesting approval to subdivide a 10 acre parcel into two 5 acre lots. The property is located about 5 mile northwest of Frenchtown in the Sorrel Springs Subdivision on Mustang Lane and Morgan Lane. Sorrel Springs is a residential development that originally contained 62 approximately 10 acre lots on 685 acres. Since 1973, 24 of those lots have been subdivided through the subdivision process and 6 through the COS process.

The property is heavily forested and has upsloping topography with an average slope of 17%. The lots will have individual wells and septic systems. The area is served by the Frenchtown Rural Fire District and the Frenchtown School District.

The applicants request two variances. One variance is to not provide for internal pedestrian connections and the other is to allow for a 10 foot wide driveway on Lot 5A instead of the 12 foot wide standard. OPG recommends approval of both variances.

OPG recommends the approval of the subdivision subject to 5 conditions. Neither oral or written comments were received regarding this project.

The property is unzoned. The 1975 Missoula County Comprehensive Plan designates the property and the surrounding area as Residential – Rural Low Density, with a recommended density of 1 dwelling per 10 acres. This designation is intended to maintain a rural atmosphere and to allow for agricultural and silvicultural practices to continue.

Because the 5 acre lot size still maintains the rural atmosphere of the area and no agricultural operations would be impacted, OPG has concluded that the project is in substantial compliance with the Comprehensive Plan.

This area of Frenchtown is a heavily forested area with gentle to steep topography. There is a small area of the subject property that exceeds 25% grade and it has been labeled as a no-build zone on the plat map.

The property is accessed by taking Interstate 90 to the Frenchtown Frontage Road, then north on Roman Creek Road and then to Sorrel Springs Lane, then east to Morgan Lane. Sorrel Springs Lane, Morgan Lane and Mustang Lane are all private roads that are maintained by the Sorrel Springs Homeowners Association. The roads are gravel and range in width from 22 to 24 feet. In this particular location within the subdivision, the roads are 24 feet wide and therefore meet standards.

The existing driveway for the home on Lot 5A is about 360 feet long and 10 feet wide. Subdivision regulations require driveways to be 12 feet wide. The applicants are asking for a variance to that standard to avoid more cut and fill. The Frenchtown Rural Fire District supports the variance request if fuel mitigation is performed around the existing residence. This has been made a condition of approval for the subdivision.

Public Works also supports the variance if the driveway for Lot 5B meets the width requirement of 12 feet and the grade requirement of 8% or less. The Development Agreement that will be recorded states that the driveway design for Lot 5B shall be subject to review of the Frenchtown Rural Fire District.

The applicant states that the Sorrel Springs Homeowners Association water system provides water amounts and pressures sufficient for fire protection and there is an existing fire hydrant located near the driveway into the existing home on Mustang Lane. The proposed subdivision is located within the Wildland/Residential Interface (WRI). Fire standards addressing driveways, fuel management and roofing materials are found in the development covenant.

Condition 4 requires the applicant meet driveway standards for Lot 5B or provide a residential sprinkler system, based upon the Fire District comments. The developer has proposed to build the driveway to standards so they do not have to install a residential sprinkler system.

There are two items that were discussed at Planning Status on Monday. One is to amend Condition 3 to clarify where the \$100 for fuel management comes from. The money is available through the Fuel Reduction Grant Program and that should be included in Condition 3. The other issue was whether or not it is appropriate to have Public Works review the driveway plans. It is appropriate to have the fire district review the plans, but it is questionable to have Public Works review them as this is a private road and private driveway.

Commissioner Evans asked counsel about putting a statement on the plat about private roads not being reviewed by Public Works.

Colleen Dowdall stated the issue was private driveways. Until it is decided if that should be in the regulations, she would rather that not be included as a condition of approval for this subdivision. It was not necessary. The decision needs to be made if driveway plans will be subject to review by Public Works. This is regarding language on the face of the plat that Public Works does not review the plans. The regulations don't require driveway plans to be reviewed by Public Works.

Commissioner Evans stated the reason for this is that the County has no enforcement authority and people who buy lots who believe driveways were reviewed and approved by Public Works expect a certain level of product. If the County has no way to guarantee the product, that should be made known.

Colleen Dowdall stated that was the reason it is not in the regulations as a requirement. If the plans are reviewed, some liability and responsibility are assumed. The County has no enforcement capability. Since it is not in the regulations, it should not be a condition of approval.

Chair Curtiss asked Horace Brown about driveway permits. Is that different from reviewing driveway plans.

Horace Brown stated that conditions can be imposed on approach permits, but that does not involve the driveway plans, only the approach to it.

Colleen Dowdall stated that in this case, the road is private.

Horace Brown stated he has always been of the opinion that if the road is private, the County should not be doing anything on it.

Greg Robertson stated that he was in agreement with that, Public Works should not review private driveways.

Colleen Dowdall stated that the reference to Public Works should be deleted in Condition 1.

John Kellogg, Professional Consultants, Inc., developer's representative, stated the owner/developer was in agreement with the conditions as proposed. He was available to answer any questions the Board may have.

Chair Curtiss stated that there were no plans at this time to build on the second lot created.

John Kellogg stated that was correct. There is a building site in the center of the lot, but no plans to build currently.

Chair Curtiss asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections and approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow for a 10 foot driveway on Lot 5A; both 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 Carey moved that the Board of County Commissioners approve the Sorrel Springs, Lots 5A and 5B, Summary Subdivision, based on the findings of fact in the staff report and subject to the amended recommended conditions of approval (in Condition 1, delete "and Public Works" and in Condition 3, add "through the Fuel Reduction Grant Program" after "\$100 per lot"). Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Sorrel Springs, Lots 5A and 5B, Summary Subdivision Conditions of Approval:**

**Roads/Access**

1. Driveway plans shall be reviewed and approved by Frenchtown Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and 3-2(10)(E).*
2. The final plat shall label Mustang Lane and Morgan Lane as "60 foot private road and public utility easement."

**Fire**

3. The subdivider shall reduce the fire hazard around the homesites for both lots (fuel mitigation) at a maximum cost of \$100 per lot through the Fuel Reduction Grant Program, which shall be reviewed and approved by the Frenchtown Fire District prior to final plat approval. *Frenchtown Fire District recommendation.*
4. The subdivider shall provide a means for fire suppression for Lot 5B by either providing driveway access that meets Missoula County standards (12 feet wide and a maximum 8% grade) or by providing residential sprinkler systems, plans to be reviewed and approved by the Frenchtown Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(F), 3-7(1) and Frenchtown Fire District recommendation.*
5. The subdivider shall obtain a fire safety permit from the Frenchtown Fire District. *Subdivision Regulations Article 3-1(1)(F).*

**Continuation of Hearing: Travelers Rest Estates (13 lots) – Lolo**

Chair Curtiss: The next is a continuation of the hearing for Travelers Rest Estates (13 lots) in Lolo.

Liz Mullins: Before I begin, does everyone have the memo that I handed out at Planning Status Monday.

Commissioner Evans: No. I hope you have extra copies.

Liz Mullins: For the record, my name is Liz Mullins and I'm an associate planner at the Office of Planning and Grants. On April 3rd, the BCC held the public hearing for Travelers Rest Estates. This is a request from Dan Cahalan represented by DJ & A, requesting approval of a 13 lot residential subdivision located in Lolo on the west side of Highway 93. As a refresher, the site is accessed from Cap De Villa to the proposed Mari Court cul-de-sac. The proposal is to subdivide this 25 acre parcel into 13 lots. Lots 1 through 12 would range in size from 0.42 to 4.23 acres in size and Lot 13 is 12.3 acres in size. The applicant owns and resides in the existing home on Lot 13. The development is concentrated on the northern side of the proposed Mari Court. At the BCC on April 3rd, staff presented 14 conditions of approval and two variance requests. The first variance request is for Mari Court to vary from the maximum cul-de-sac length on 1,000 feet, to 1,250 feet. Staff originally recommended approval for the cul-de-sac length variance based on agency review comment from Public Works and the Fire Department. Staff also provided an alternate recommendation of denial for the cul-de-sac length variance requested by the Commissioners at Planning Status on April 1st. This was based on additional agency review comments from County Historic Preservation Officer Philip Maechling and Lee Bastian from Montana Department of Fish, Wildlife and Parks. The

additional information was received after the staff report was issued. The second variance request was from the requirement that slopes in excess of 25% shall be deemed unsuitable for building sites. Staff recommended denial of this variance request. At the Public Hearing on April 3rd, the Commissioners modified several conditions and asked staff to work with the developer to have the plat revised to meet the conditions. These changes are listed on the memo on the first page as A through F and I'll just go through them. The first change was to leave the 20 foot non-motorized access easement as proposed between Lots 4 and 5 instead of renaming this as a linear park. The second change was not to require the construction of the 2 foot gravel trail from Mari Court to the proposed park. The third change was to require a no-build zone in the area of Lots 10 and 11 from the original condition that designated Lots 9, 10, 11 and 12 as no-build areas. The fourth change was to allow for construction on slopes greater than 25% within the buildable areas and the last condition was to change the review agent from Lolo RSID 901 to the Missoula County Public Works Director.

Commissioner Evans: Did you remember that on D we required an engineering stamp?

Liz Mullins: Yes, I believe that's standard. Oh, excuse me. And one more change was to keep the RSID for the park and the road. Staff met with the subdivider and developer on April 11th for the purpose that the revised plat would be in agreement with the modified conditions from April 3rd. The revised plat identified the southern portion of the property, previous the location of Lots 10 and 11 as no-build areas now part of Lot 13. The revised plat also slightly shifts the location of Mari Court cul-de-sac to the northwest where it abuts Lots 1 through 3. The revised plat is also shown in the memo, I think it's about the third or fourth page in. To our knowledge, no other agencies such as County Parks, County Public Works or Rural Fire has reviewed this revised plat. The 12th lot has been placed along Cap De Villa adjacent to the existing home on Lot 13 and this plat also shows that the park has been eliminated. Missoula County Subdivision Regulations allow for the governing body to waive the park dedication requirement if it finds that the proposed plat provides long-term protection of cultural, historical or natural resources. The developer will be presenting the revised plat and changes made in accordance with the modified conditions. Based on the conditions as preliminary modified by the BCC on April 3rd, the variance to allow for home construction on slopes greater than 25% would be approved and the variance to allow for the cul-de-sac road to exceed 1,000 feet would be denied. Subsequently, the applicant has provided the Commissioners with mitigation measures for approval of the cul-de-sac variance length. These mitigating factors are listed in the memo on the second page on the back side and they are proposed by the applicant and include:

1. Having a member of the TRPHA on the architectural review committee for lots in this area.
2. Adopting covenants concerning color and materials for home construction.
3. Planting a tree buffer to screen the homes and preserving existing trees outside the building areas.
4. Xeriscaping the portions of the property visible from Travelers Rest State Park.
5. Grading/recontouring roads and driveways to blend in with the hillside.
6. Using City Hillside Standards instead of County Hillside Standards.

I just want to note that in reviewing the differences between City and County standards, we could not find any significant differences. The measures were sent to the Historic Preservation Officer Philip Maechling and Lee Bastian at Fish, Wildlife and Parks. The response was that the mitigation measures were not sufficient. And this is the last page of the memo, is the comment letter received from Philip Maechling. And if I could turn my presentation over to Philip Maechling, he could describe his agency comment. Thank you.

Chair Curtiss: Okay, we'll recognize Philip.

Philip Maechling: For the record, Philip Maechling from the Historic Preservation Office. I did speak with Lee Bastian this morning and he and I both support the proposed change to no-build for Lots 10 and 11. It is a compromise. I would remind the Commissioners that Highway 12 is the Lolo Trail, the Nez Perce Trail and the Lewis and Clark Trail, these are nationally designated historic trails. The Travelers Rest site, right now in environmental assessment review for the northerly 10 acres north of what we know as the Deschamps land on the north side of Highway 10 for purchase by Fish, Wildlife and Parks, with another 10 acres for conservation easement designation. These will allow access and public use to the northerly portion of the field without actually intruding into the river bottom, except through appropriate interpretive tools and it is highly likely that this will be a place of visitation and interpretation of all of these features which would include the Native Peoples Trail, the Nez Perce Trail, the Lolo Trail, which is the historic trail across the divide and the Lewis and Clark Expedition route. In looking at the six mitigating proposals they're all pretty good ideas. However, the basic intrusion into the hillside remains and originally my thought was to actually have the existing road regraded out past the thousand foot mark to recontour the hillside back to it's earlier, it's earlier state, right now the road cut is not a stable cut and it's not revegetated in native materials. In terms of the individual requests, having TRPHA on the architectural review committee is a good idea and you've got this in my memo, I don't know if you want me to go through these comments or not or perhaps I could just answer questions, but for the record, we don't have any criteria for architectural review right now and we really have a difficult time enforcing those kinds of things in terms of County staff. Adopting covenants concerning color and materials for home construction. Again, a good idea but we don't have any criteria for materials and color, we simply wouldn't know what to base those decisions on right now. Planting a tree buffer to screen the homes and preserving existing trees outside the building areas, again, another good idea but we have no standard for landscape design and the added intrusion of grading and drainage facilities on this hillside is an encroachment already, this new landscaping could in part buffer the buildings but does not mitigate this intrusion onto the hillside. xeriscaping, which is low impact landscaping with low watering so that it's not noticed as lawn, for example, I believe that's what the proposal was, again is a good idea but it's not, in and of itself, does not mitigate the added intrusion. Grading and recontouring the driveways to blend in with the hillside, I believe that already has to happen. Again, not mitigation for the intrusion on the hillside. And finally, the City hillside standards. I think if it means contouring and contour grading, essentially, on the hillside, that that's also a good idea that would reduce the amount of maintenance necessary for lawn areas and combined with the xeriscaping would have some impact in terms of reducing but not to the point of mitigating with this increased development on what is designated as Lots 11 and 12. The BCC motion is a compromise already, it went half the distance to what we had requested before. I would support that and I would entertain questions.

Chair Curtiss: So, Philip, are you making your comments on these mitigating factors if those two lots weren't made no-build zones?

Philip Maechling: I think these, in general, I think these are good ideas for any kind of hillside development but these as a substitution for developing on Lots 11 and 12 do not mitigate, no.

Chair Curtiss: That what I was trying to clarify. Are there other questions for Philip?

Colleen Dowdall: Philip, could you repeat what the designations are for Highway 12?

Philip Maechling: Highway 12 is the Nez Perce Nee-Mee-Poo Trail.

Colleen Dowdall: And that's declared by?

Philip Maechling: By the National Park Service and the U.S. Forest Service as a national historic trail. The Lewis and Clark is declared by the National Park Service and National Forest Service as a national historic trail. And then the Lolo Trail is what it's known as, the Lolo Trail is a kind of local designation for the same thing.

Colleen Dowdall: Okay. We don't have them in our Comp Plan, I tried to find that information when we were doing it and the Highway Department didn't have that.

Philip Maechling: Oh, well I can give you the full cites, if you want me to.

Colleen Dowdall: Well, we're working on the Lolo Plan and that would be good.

Philip Maechling: Any other questions?

Chair Curtiss: Any other questions? Thank you Philip. Okay, Liz, did you have any more then?

Liz Mullins: No.

Chair Curtiss: Okay. Mr. Cahalan or your designee, do you have any comments to make.

Dan Cahalan: My name is Dan Cahalan. I am the owner of the property that's proposed as Travelers Rest Estates. And I have some remarks prepared here but I would like to comment on some of Philip's remarks here as they're fresh. He stated that both he and Lee Bastian support a no-build area in Lolo. For the record, I would gladly support a no-build area in Lolo, I join them wholeheartedly. The issue isn't, in my mind, whether we support Travelers Rest, whether we support historic preservation, the issue as I see it in a biased view as the landowner, is whether there are resources available at this time to make a no-build zone in Lolo. He also cites that only removing two lots from question instead of four as a compromise. That would be a compromise that was worked out between the Office of Planning and Grants and the County Commissioners. And as I will put forward here in a few minutes, within your subdivision regs it states that consideration of the expressed preference of the subdivider must be included. We must, in working out some mitigation here, the governing body shall issue written findings to justify the mitigation that's required under this section. The governing body shall consider the following in determining appropriate mitigation, whether unmitigated impacts of a proposed development are unacceptable precluding approval of a plat and, as I say, consideration of the subdivider. Those were not considered in what Philip is now calling a compromise. He specifically mentioned that the road is not a stable cut. I'm not an engineer, I don't propose to be an engineer. That road cut as it exists currently has been there for somewhere in the neighborhood of 20 years, not having moved, I'm not sure what his status is or engineering report which states that it is not a stable cut. As per my possible issues of mitigation, he mentioned on two or three of them that they have no criteria for discerning architectural review, specifically, or no criteria to specifically look at xeriscaping or some of the other issues on my list. I would propose to you Commissioners that therein lies the problem today. We have no criteria at this point in time to designate my property as historic significance. We are making up criteria as we go. The only new information I wish to submit today or I wish to point out to the Commissioners as I was trying to prepare my remarks for today and I teach in the business school, so part of what makes me feel a bit silly at this point is that I couldn't have anticipated this or did not prepare for this. I'd like to point out, and I do feel caught totally unaware or off-guard by the current actions here concerning Lolo Travelers Rest. In the Lolo Regional Plan final draft dated November 1, 2001, I've gone all through the language, my guess would be you Commissioners are much more familiar with the language than I am. What I did find interesting was in the Lolo Regional Plan is a Lolo Planning Region map depicting the community of Lolo's existing development and, in fact, it happens to have an OPG insignia up in the corner, but on the map from this 2001 regional plan showing existing development, there is, this is not a sort of highly detailed map but it very specifically shows something that must be my cul-de-sac as a developed part of Lolo. On the day of our public meeting two weeks ago and I will try to keep these as brief as possible, on the day of our public meeting two weeks ago, I was informed that OPG would be changing their recommendation significantly on my proposed subdivision. I was informed that and as the words were again used today, at the request of the Commissioners, they have given additional consideration to Philip Maechling's letter and concerns. Specifically these concerns were that you would be able to see homes within my proposed subdivision from Travelers Rest State Park and based on the significance of these concerns, OPG was reversing their earlier recommendation concerning the length of my cul-de-sac. I specifically asked Jennie Dixon at that time if discussions with Philip between the Planning Board meeting and the subsequent Commissioners meeting had been that persuasive as to cause this reversal and she assured me that they were. In our subsequent presentations that day, as in two weeks ago here in your chambers, OPG proceeded to introduce, OPG including Mr. Maechling's presentation proceeded to introduce altered photographs, computer imagery depicting virtual architectural apocalypse happening in Lolo with structurally obsolescent homes, the one that we all know of in Lolo, superimposed multiple times on hillsides, suggesting that if my proposed subdivision, if my preferred design were approved, this would be what the result would be in Lolo. I for one having lived in Lolo for ten years, thought his presentation entertaining but I think if OPG personnel were lawyers, specifically Mr. Maechling, we would call him slimy, for presenting misleading information in such a melodramatic performance.

Chair Curtiss: Can we just stick to the facts and not be slandering.

Dan Cahalan: Sure, sure, okay, okay. My apologies. Do, without slandering anyone, do, I only wish to make the point that I felt the presentation in the meeting two weeks ago went far beyond what is professional from OPG. Thank you. I brought in a video, photographs and actual neighbors, which clearly stated that you cannot see my property from Travelers Rest State Park. In fact, I believe we can find in the minutes of that meeting that it was acknowledged toward the end of the meeting that you could not see my park from the existing Travelers Rest but you would be able to see it from the north side of Lolo Creek where the park was looking to expand. I've since received a copy of a draft environmental assessment for Travelers Rest Acquisition Phase 2. I've brought this to many of our meetings in-between. This draft document seeks public comment until May 3rd on whether Federal funds should be used to acquire fee to property north of the creek. I'll come back to this draft Environmental Assessment, but for now I wish to focus on OPG's earlier presentation and conditions. The fact finding done by OPG resulted in Condition 14 that we reviewed two weeks ago, creating a no-build zone on Lots 9, 10, 11 and 12 and also called for a redesigned plat with instead of 13 lots, now it was recommended I be allowed 15 lots. We all know the chaos which characterized the end of these discussions two weeks ago, all I wish to say regarding those discussions and votes are that it appeared we ended with an administrative compromise between the Commissioners, resulting in a condition creating a no-build zone on two lots instead of four. In subsequent attempts to mitigate the situation, I've met with, I've twice met with Commissioners and their attorneys and OPG, I do sincerely thank you for your time, and had a separate session just with OPG. In the OPG meeting, I was informed that OPG's findings and recommendations do not take value into consideration. We presented an engineers representation of what a redesigned plat would look like, including my additional costs and neighbors negative reactions. Today, OPG has referred to this as a revised plat. I wish it to be on the record that we have not submitted a revised plat, we submitted a drawing which was an engineer's representation that adhered to the new conditions voted in two weeks ago. In that meeting with OPG, I expressed my dissatisfaction with the new design and was told that, in a very professional sense, and again, I certainly mean no personal attacks here, I was told my preferences were not the issue and that the plat proved that a design acceptable to OPG and the Commissioners was possible. Most importantly from that meeting, I was told that OPG doesn't take sides, they just report the facts as they apply to the regulations. I respectfully submit that OPG's position in this matter has been anything but neutral and fact finding. Their neutral fact finding efforts have resulting in a recommendation based on a broad interpretation of a subdivision regulation protecting a view from an extension of a park which does not currently exist and these recommendations included compensation of two additional lots which were blue sky. That's not, in my opinion, fact finding and that's not considering the expressed preferences of the subdivider, which is the language in your regulations. Let me introduce you to a few of the provisions in the draft environmental assessment for Travelers Rest Acquisition Phase 2. As I say, the document is seeking approval of the use of Federal funds to acquire fee title to additional land to preserve an area that, and I'll quote, "has been identified as having historical and archeological significance," end of quote. They're trying to preserve that from development. On Page 2 of this document, it specifically refers to a map showing the location and boundaries, and again I quote, "of the area that would be affected by the proposed action." I have those maps here with me today, and to expedite things, allow me to say that they present a very limited area confined specifically to the legal boundaries as that which will be affected by the expansion. Nowhere does this document mention potential viewshed issues. It does state on Page 5 that, and again I'll quote, "other portions of the Travelers Rest area have been developed into residential dwellings and trailer courts in the last several years. Preservation of the subsequent properties as part of Travelers Rest State Park would maintain its unique historical significance and natural integrity for future generations." I'm still quoting, "It is possible that Travelers Rest area could be expanded by modest fee acquisitions, easements or trail conservation on a willing seller basis and if sufficient compensation for resources is available," end of quote. Commissioners, if this proposed park expansion is the rationale for creating no-build zones on my property, then this document is a wolf in sheep's clothing. The possible park expansion acknowledges that trailer parks have gone in on this site in recent years yet empowers you to declare my property, three-quarters of a mile away, as containing significant historic features which preclude building. If you're going to take actions today based on this park expansion, I strongly encourage you to follow the language in the document of "modest fee acquisitions" on a willing seller basis. Commissioners, I am a willing seller. I wish it noted for the record that I've not been represented by legal counsel at any of our meetings to this point. I've come to every meeting armed only with my trusty engineer and willing to speak with you directly, myself. I believe, and I am not a professional property developer, I believe that today may be the last time I communicate to you in this fashion. That may come as a bit of a relief to some of you. If we can't agree on a proposal for you to buy the land which should be protected for Travelers Rest, then I feel I have very little choice. These are my children, Ian is 15, Mari is 12, Connor is 10. This proposed subdivision is the result of a 10 year investment on my part which was to fund their college and part of my retirement. We've already discussed costs and diminished values of the proposed changes. You are significantly, and I don't wish to discuss figures today, but I have presented figures which at least put it in some six figure category. You're significantly limiting my ability to provide for my family and as of yesterday morning's meetings, I've heard no specific offerings of anything in return. I have no interest in litigating. I've already expended \$40,000 to \$50,000 getting this project thus far. Interest expenses on this money are accruing daily. My intent was to start construction this building season. Litigation will undoubtedly increase my costs and delay the project. In no way do I present this as a threat, but again, a last attempt at trying to directly communicate to you my position. In closing, I would comment that you're indirectly making my work environment a bit less comfortable also. You see, I'm one of the only professors in the business school who is willing to admit to being a democrat. I take some heat on this from time to time but it's usually quite good natured. The problem is that now these same people are, if you will, laughing up their sleeve thinking I'm getting just what I deserve. They feel that it's in my left-leaning ideals which fund such positions as the Missoula Historic Preservation Officer, who creates a historic viewshed with no sources of funding and now we're going to preserve that land, not because the people have decided specific criteria to distinguish a historic preservation district but simply because in our gut we know it's the right thing to do. The term unfunded mandate has been thrown in my face repeatedly in the last two weeks. Please do not take actions today which prove my peers correct. Thank you.

Chair Curtiss: Thank you Dan. Questions for Dan? Are there others who would like to make comments on this proposal.

Elmer Palmer: Elmer Palmer. I stand in two capacities, the first one to apologize in my position as Chairman of Lolo Community Council. I realize that you folks have the liberty of walking into another office, finding one more person and having a quorum present to do your business. I delivered today the letter from the Community Council that was



written on the 11th, in fact I'm afraid it's dated the 11th, and we finally got a quorum together at about 9:00 o'clock this morning to take care of getting approval to send that letter in.

Commissioner Evans: I don't have a copy of that Elmer.

Elmer Palmer: And I have one copy of it, I'm sorry.

Commissioner Evans: That's okay, we'll just get some.

Elmer Palmer: I stand also as a next door neighbor to this Travelers Rest Estates and my personal druthers would be that this man just leave that ground set forever. We share about 13 head of mule lease that walk back and forth on his side the fence, my side the fence, eat his knapweed, eat my apples and, you know, that would be my real druthers. And after two weeks ago's meeting, I went down and I looked at this situation that we have. I walked down to roughly the Community Center area, the back end of the Community Center area, which is just slightly east of the ground that is being discussed. And I looked up on that hill and it was just flat ugly. You know what I saw, I saw my house, I saw my neighbor John Tucker's house, I saw Wanda and John Kuhle's house, I saw Terry Kerr's house. Way up on the top is Nadine Tieful's house. These houses are already there. There is already a huge disturbance to the viewshed from this proposed portion of the park. The Lolo Land Use Plan, both the one that is now in effect and the one that you are in the process of approving, grants six house per acre in this particular area. That I'm glad that Dan did not look at, he has limited it to 12 houses plus his existing one. He has them on half acre lots which by the way are all smaller than the lots that adjoin them. I have one of the smallest at 0.88 acres, almost nine-tenths of an acre. The hillside is already disturbed. I have to mow that thing and mine does not look near as good as Terry Kerr's with his lush green grass growing off on the side of it. I am very pleased, if I have to lose my mule-ies, I am very pleased to lose them to a development like Dan has put forth. My opinion and also the opinion of the Lolo Community Council as you'll find expressed in there, is that, you know, if we want to do something about this land out on the end, let us go ahead and approve the 1,250 foot cul-de-sac, approved the variance that has been requested for that and then put conditions out on Lots 10 and 11 that the Travelers Rest, Lewis and Clark Historical Preservation, Lewis and Clark Chapter, the folks that are worried about the old lady that exists about 600 feet from the property ...

Commissioner Evans: Which is a rock.

Elmer Palmer: ... which is a rock, yes.

Commissioner Evans: I didn't want the old lady sitting out there all by herself.

Elmer Palmer: Yes, which is a rock that depicts that, or and the Missoula County Historical Preservation Office or Mr. Philip Maechling have first right of refusal on those lots out there. If any of those entities want to come up with the market value of those lots, then they're more than welcome to make the bid and to buy those lots at whatever Mr. Cahalan put out there on those lots. Other than that, that is his land and we feel that he should have the opportunity to develop it. I am sure that from that park down there my house is going to be more ugly than anything that's going to be built down there now. I know that that one that John lives ... Dave lives on up at the top of the house, that big round one with the swimming pool inside and all, I know that has got to be uglier than anything that Dan is going to put in and it sits right out there on the end, it is visible right from Highway 12. I'm sure that anything that Dan puts in out there is not going to be. My recommendation, Commissioners, would be that we don't waste any of our County money in litigation, let's not jump off to something like that. Like I say, I'll lose my mule-ies, I don't want to lose a lot of other things with it. Let's give this gentleman the opportunity to do his development and do it in the way that he has it planned down there. To me, it looks like a real good addition to the neighborhood. Thank you.

Chair Curtiss: Thank you Elmer. Are there others who would like to comment on this subdivision?

Commissioner Carey: I have a question for Greg Robertson, if he'll give it a try. Can you explain to me just a little bit more about how the sewer hookups work down in Lolo. We're told that giving Mr. Cahalan an extra couple of lots wouldn't mean anything because he would be able to use them. Is there some way that they could possibly be used?

Greg Robertson: At this time, probably, the answer is no. Several years ago, the County Commissioners entered into an agreement on behalf of Lolo RSID 901 to purchase an easement which is shown on here for a storage tank and a water main that bisects his property. In exchange for that, 12 connections were granted as payment. Right now, the plant is at capacity. There is no more additional capacity available, no more connections can be allowed or permitted by the State or us until two things happen. One, we get approval of recertification of the plant capacity based on the Phase 1 improvements. That is still up in the air and also those Phase 1 improvements being constructed, so I don't think we could reasonably commit to giving additional connections with the unknowns that are out there right now.

Commissioner Carey: Do you have any sense that there will be a point in time here that new connections will be available.

Greg Robertson: I used to think that, but I'm kind of of the opinion that I'm going to wait for the State to tell me it's okay. I'm not going to guess. There's several things that are flying around about nutrient reduction and a few other items that may bankrupt the capacity of those incremental improvements that we may have handled, but we are in the process of establishing that and until our permit is issued for recertification of the plant as well as the renewal of our discharge permit, we're not going to really know those answers.

Commissioner Carey: Are connection rights transferable. Can people just say, "I've got a couple that ..."

Greg Robertson: I would think that under that agreement, those connections are vested and I think that's a legal questions but my guess is, is they could be transferred.

Commissioner Carey: Thanks Greg. Do you know Colleen?



Colleen Dowdall: My understanding is that there is quite a market for those rights currently. The people are selling them if they have any and I don't, I know when we did the plan, at one point Laval had a sense of how many residential permits were still out there that weren't being used but that had been granted. I was just looking in my draft of the plan to see if I could find that and I haven't found it, but there were not very many, so I don't, Dan may have ...

Dan Cahalan: Specifically, as per the water/sewer permits granted for the improvements that were made that I ended up with 12 new water/sewer permits, at that point in time, there were 47 connections granted to a Dolly Stewart, 10 to William and Ramona Holt, 12 to myself. I have a copy of that document with me. What I was told when I looked into, gee, might it work out so that I only use 10 of these and sell a couple others or something like that, I was told, and it's language in the document, that it's all or nothing, and I don't know the status of either the Stewart or the Holt connections. It's my understanding that some subdivision in Lolo used many of the Dolly Stewart connections, I don't know that, but at that, the, no I couldn't peel off a few and ...

Greg Robertson: That was Orchard Park that used those connections.

Chair Curtiss: Orchard Park did?

Greg Robertson: Yeah.

Colleen Dowdall: There were 43 of them.

Chair Curtiss: So Greg, when you say that the plant is at capacity, does that mean if some of these people use, like Mr. Cahalan has some and I think, didn't, you said somebody above you had two that they still could use, anyway, if there's 40 of them out there, will the plant be overloaded then?

Greg Robertson: The plant right now is to the point of being overloaded, in fact we've had several violations of our discharge limits because of some slug loading that occurring somewhere within the Lolo area. But those connections have been, you know, offered and we're obligated, in my opinion, to comply with the agreement.

Colleen Dowdall: I did find the language in the Lolo Plan if you want me to share in regard to sewer. It states there are 851 available connections to the municipal sewer system. The current RSID 901 customer base consists of 825 residential and commercial connections and committed capacity for 26 undeveloped parcels that have been paying for the potential to hook up. All existing commercial uses inside the RSID 901 District are connected to sewer. So it looks to me as if there are no more sewer, no more commercial sewer and there are 26 out there and you, and Dan owns 12 of those.

Chair Curtiss: Okay, so it would be another 14.

Commissioner Carey: My line of questioning was just to pursue the possibility that perhaps a couple of new connections could be purchased by Mr. Cahalan to be able to add those lots. That's what I was looking at.

Greg Robertson: Well, I can tell you I've had letters of interest since the word's kind of got out that those connections are potentially available with the Phase 1 improvements for roughly about 400 additional connections of people that have expressed interest. So, there's a lot of interest in developing so, what I've been advising everybody is that the ground rules for the distribution of those will be established before they're made available so that everyone understands what those ground rules are.

Chair Curtiss: Thank you Greg. Do you have further questions?

Commissioner Evans: Would you please address for us, Bill, your thoughts of purchasing or paying Mr. Cahalan what you said yesterday, or whatever day it was.

Commissioner Carey: Well, first of all I'm not presuming that we would necessarily owe Mr. Cahalan anything as a result of some sort of legal judgement, that's up in the air and attorneys can argue one way or another. We could win or lose if we stay with our no-build zones or sites on Lots 10 and 11, but in my view, we haven't even really begun to look at a possible way, if we chose to compensate Mr. Cahalan somehow for the loss of value that our action may take. I don't even know if we want to go there, we haven't even begun to look. I do know that the Travelers Rest site, the park, has attracted sums of money, some of them substantial, the Federal government's in to \$500,000 worth. During a tour, I think a couple years or so ago, a person stepped off the bus, was told that some property right next to the proposed park was at risk of being developed and they wrote a check then and there. So, we're talking about resources, I think, that are potentially out there to perhaps help with the cost, the costs that Mr. Cahalan feels he may have to bear if we don't give him the lots as he has presented to us. There's just a lot of ways we could go, we could put a public vote to the County residents to see if they want to set up a fund to purchase endangered pieces of property, if you will, that have historic interest. Perhaps the folks in Lolo might want to have a Lolo Park of some kind, but I just feel like we are just, we haven't even started yet to sort of work something out.

Commissioner Evans: Well, I do have some things to say. First I don't appreciate Philip's photography. I think it was deceptive and misleading. I think superimposing houses that don't exist because it was as terrible as you could make it look is not professional. I think that telling Mr. Cahalan he can't have his subdivision because someone in a future acquisition of land might be able to see his property from there is against the law and I don't care how good the motives are, I believe it's still against the law. This subdivision cannot be seen from the current park and to deny it based on what doesn't exist makes no sense whatever to me. If we are sued, and I would certainly think he has adequate cause to sue us, the taxpayers of Missoula County will pay for this, not us out of our pocket. And I'd also point out that the mitigations that they have proposed, and you correct me gentlemen if I'm wrong, are only if they get the full amount of their subdivision, they are not things to be imposed on top of the houses that are left. So, I think it would be a mistake for us to do this. I think that the mitigations he's offered are worth considering and I just do not think that we should take away someone's personal property rights because someone who doesn't even live here at some point might stand down there and gaze through the trees, or not, depending on which piece of land we're talking

about, and might see a couple more houses on a hillside that's already housing. And he pointed out, not as a threat, but I think we need to keep in mind that he can do a gravel operation up there and there is no law to keep him from doing that and so if he chose to extract gravel from that piece of land, that would be unsightly and it would be far worse than what he's proposing. So, I really ask you not to do this.

Chair Curtiss: I believe you have to have a permit in a residential area anymore, or you have to go through a ...

Colleen Dowdall: Actually, just if it's zoned, and this area isn't zoned, so he wouldn't have that restriction.

Chair Curtiss: And I'd like to just say in defense of Philip, he took the photos, he didn't trick the camera at all and then when he superimposed things on the hill, it didn't infuriate me, it just showed that that would be possible, and I think he's just trying to do his job by protecting a historical view.

Commissioner Evans: I never used the word infuriate.

Chair Curtiss: Oh, I know you didn't, somebody else had.

Commissioner Carey: I'd also like to commend the OPG staff for doing their jobs in a professional and neutral way as they always do. And, you know, just a few thoughts. One is that, you know, in the old days we used to use the river as a sewer, that was an accepted way that people did things out west and probably back east 400 years ago, for all I know. Over time, people's values and understandings of what's important tend to change one way or another, and what I'm saying is, is that right now, we are faced with having to balance a long-term interest, perhaps, with a short-term interest, a private interest with a public interest, and again, it's something we have to do and we have to do it as best as we can, no one means to do any harm financially or in any way to any developer that steps forward. It's a matter of trying to balance the various competing interests. In my view, over time, this current State Park will become more and more important, not only to the people here in Western Montana, but around the country and perhaps around the world for that matter, and I'm talking a long-term period of time. Now a days when we find a polluted lake or stream, the tendency is not to add more pollution to it, the tendency is to want to clean it up and over time I don't think it's completely unthinkable that people may want to step forward and buy up trailer lots and remove trailers and so on. I would hope that over time that that's what happens. So I'm just interested in protecting a historic landmark in as natural condition as we possibly can and a viewshed is an historically important piece of our country's experience, this is a very important one and I think we ought to do what we can to protect it and find some way to, if in fact there is a loss somehow to the developer, to see if we can find some ways of mitigating that loss.

Chair Curtiss: At one of our conversations with you Mr. Cahalan, we, it was mentioned that you might consider doing a phased plan so that those lots on the end wouldn't be developed in the first phase, but maybe at a later phase so that it would give people more time to look at some options that could, you know, purchase them from you. Is that still something that you're willing to consider?

Dan Cahalan: Publicly here, yes and no, in that, when that was proposed and I still would say yes, I'm willing to discuss and the list of possible mitigation issues that I brought up was just that, a list of things to talk about, I was not suggesting that here's a list of everything I'll do, but specifically, when Mr. Sehestedt made this suggestion in one of our meetings, his concern and mine would be also, that possibly something could get worked out there but what speeds this all up significantly is this summer putting in what's proposed to be a \$250,000 to \$300,000 cul-de-sac with the public improvements and so, to hold off on some period of time on these end two, on the end two proposed lots in my design would need to be some period of time that wasn't extensive in that, as you saw at the meeting two weeks ago, when people come to this property, one of the first things they speak of is, could I talk to you about those lots on the end.

Chair Curtiss: Okay, thanks.

Colleen Dowdall: So, before you make a motion or vote, I feel compelled to give you my interpretation of the law, the Subdivision and Planning Act from Montana and our local regulations and to tell you that in order to take these lots out, I believe that you have to make findings that there is no other way to preserve the view, that you have taken into account the expressed wishes of the developer and all of those other things that have been recited and I think we are on shaky ground in many ways. First in protecting a view, I've told you all often that protecting a view has not, is not easy for me to defend because the United States Supreme Court has said it's not easy to defend, that taking of private property to protect a view for the public is not, it's not easy to do and I can't think of a case where the court has supported that. So, in that respect, one, in another respect the fact that this is tied to a future acquisition of property instead of parkland that we currently own makes it difficult to defend because at the point if this would be litigated, we would be talking about a speculative public interest, not a real public interest because the land has not been purchased. These are all technical little bits but when you get to court that's what you litigate, are the little details that you need to have covered in making your decision and they are what fill my mind when I'm looking at development proposals and trying to give you good advice. This is a very difficult decision to defend at this point.

Chair Curtiss: Colleen, could you explain to me the difference then between some of the decisions that we've made to protect the prominent hillside from, you know, skylining and that kind of thing. How does that differ from this?

Colleen Dowdall: We have adopted that into our regulations protecting a particular skyline, we've identified what those are. I think those are difficult to defend also and I was a part of the process that adopted those regulations and I had a hard time with many, of the adoption of many of those regulations. There isn't a lot of support in Montana law for protecting the view. The parts of the hillside regulations that are easy to defend are ones where you're talking about drainage, increased air pollution as a result of driving up roadways that have to be sanded because you cannot use deicer. I can't think of what, those were the two primary hillside regulations that I, reasons for supporting hillside regulations and reducing density on hillsides, but in order to protect a view, I told the Growth Management Group that protecting a view, doing these regulations to protect a view was a very difficult thing to defend. Finally, with regard to Bill's analogy to polluting sewers and such, while our views may change over time about what is worth protecting, what hasn't changed is the provision in the Constitution that said, that was written to address the fact that when

England came to America with their soldiers they took over private homes and farms, ate the food of the farmers, lived in their homes, sometimes destroyed their homes and used that for private use and they did not, or for public use without compensating the private landowner and that is the history of that provision in the Constitution. You cannot identify a public need and make a private landowner pay for it, so if we have a public need, we need to pay for it and if we don't have the funds to do that, that, you have to find the funds if you're going to take private land for public use.

Commissioner Carey: And I wouldn't support a motion that would tie an action to, well, we've already said that Lots 10 and 11 have gone away. I wouldn't support any kind of action doing that based on some sort of speculative purchase of the property, I mean, that's an outside discussion as far as I'm concerned. That's not why we would do that. I'm relying on our own Subdivision Regs, whether or not an aggressive defense of them would prevail in court, I don't know, but Article 3-1(9) and Section 3-1(5), on the face of it at least, give us the right to protect the unique character of an area and to not allow a subdivision to damage a significant natural scenic, cultural or historic feature. So, I mean it's there, whether or not it holds up, I don't know.

Colleen Dowdall: Right, what you have to do is have the facts to support that and that.

Commissioner Carey: And that leads me to my next question. I don't know if we formally dealt with the revised findings of fact that we received from OPG on April 3rd, and if we haven't, we need to.

Colleen Dowdall: And you haven't acted on the subdivision either, we're just at that point where you have not done the variances, first of all.

Commissioner Evans: Jennie has her hand up.

Chair Curtiss: Jennie?

Jennie Dixon: Were you done?

Colleen Dowdall: Yeah. Well, I figured you were going to go into this part about what is left.

Jennie Dixon: Through your action last week on adopting the condition to, at least preliminarily, to create no-build on those two last lots, you may need to take formal action, but our assumption or presumption is that you would adopt these new findings that are in that April 3rd memo, because that's what supports your ability to adopt that condition.

Commissioner Evans: What did we do last week? Was there an absolute decision on two of the four lots being deleted.

Commissioner Carey: Yes.

Jennie Dixon: Yes, and that's in the memo that Liz provided to you at Planning Status yesterday, dated April 16, with a set of 12 conditions, the last one being that Lots 10 and 11 at the end of the cul-de-sac be designated as no-build.

Colleen Dowdall: Bill, can I tell you what I was relying upon when I said that about, Philip's memo to Jennie says the major concern is the impact of the development of the promontory that overlooks the field currently in Environmental Review for purchase that is on the north side of Lolo Creek, directly in the middle of the landscape between the existing State parkland and the development area. The secondary impact area is from the field and terrace area at the current archeological study site and State park on the south side of the creek. So I read that to mean that primarily the impact is on the land that we have not yet purchased.

Commissioner Evans: And I'd like to point out, it's my belief that in the Subdivision Regs that you're quoting Bill, it's referring to the land on which the subdivision is being proposed, not some land that can view it from somewhere else, so I don't think that's an appropriate interpretation of our regulations to say if you can see something from somewhere else that it's an impact on the land of the subdivision, that's not the way the regs are intended.

Commissioner Carey: Well, first we have to deal with the revised findings of fact, if we can.

Jennie Dixon: I would suggest that you, if you want to consider changing any of your conditions from last, well, April 3rd, that you think about that first, that may affect then how you approach the variances. If you feel that the conditions as modified April 3rd are sufficient and will pass, I would go with those, keeping in mind that the plat that would probably, that would result from that would look somewhat similar to what we're calling the revised plat prepared and put in this packet here.

Commissioner Carey: Okay, and I have a question about that. There's no park in that "revised plat" which we know isn't submitted as a revised plat, but, it's a different drawing, so do we need to change the language referring to park RSIDs?

Jennie Dixon: Yes, and I would also make a few other suggested additional conditions, but I don't want to head in that direction if you're not, as a group, you're not inclined to adopt these conditions. I know it's hard to kind of know that, but ...

Commissioner Carey: I'm inclined to adopt, stay with what we've got so far.

Jennie Dixon: Maybe you could make a motion to affirm that the motions that you made, the amended motions or amended conditions that you made two weeks ago are what you would still like to continue with and we can then start marching forward from there.

Colleen Dowdall: I think we're already there in that, so what you need to do is as you make motions for conditions or such, tell us what findings you are basing that on.

Commissioner Carey: Okay. Don't we have a technical problem with A though, in terms of not having language, non-motorized access easement language anywhere, didn't you say we have to find different wording for that.

Jennie Dixon: Actually, if you go with this set of conditions, you don't even need to worry about A, I would take out Conditions 6 and 7.

Commissioner Carey: Oh, okay.

Jennie Dixon: Okay. So, and that has, those have to do with the park which in their revised plat has been eliminated.

Commissioner Carey: Okay. So, I would move to delete Conditions 6 and 7 from ...

Chair Curtiss: From the revised ones, no I guess they're the same.

Commissioner Carey: Well, from the original conditions, I think we're still with the original conditions on that one, okay, from the revised conditions dated April 16, 2002. That's a motion.

Commissioner Evans: It's my understanding that the action that was taken previously takes away two of Mr. Cahalan's lots. I would ask you that we have a motion today that separates the other 10 lots as part of something that I can vote for because I cannot vote for it to take away two of his lots. I would like to vote for his subdivision but I can't do it if the motion includes the taking of his two properties.

Colleen Dowdall: I think the Commissioners have already voted to take away the two lots and you voted no on that, so at this point you have to either vote yes or no on the entire subdivision.

Commissioner Evans: Will you understand Mr. Cahalan if I vote no on your subdivision that it is not intended to vote no on your subdivision.

Dan Cahalan: I will.

Commissioner Evans: Thank you.

Chair Curtiss: I'm just reviewing. A through F is what we did last time.

Jennie Dixon: Right, I think we're still amending conditions on the subdivision.

Chair Curtiss: Right, because the variances change as these change.

Jennie Dixon: So, is there a motion?

Patty Rector: There is a motion to delete Conditions 6 and 7 from the revised conditions, but there's been no second.

Commissioner Evans: I'll second that one, if I can participate in something that I don't support.

Chair Curtiss: Okay. All in favor?

Commissioner Carey: Aye.

Commissioner Evans: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Commissioner Carey: And then we have, I think we move to the, again, to the revised or new findings to support Condition, is it 13 now and not 14?

Jennie Dixon: Are you talking about the last one?

Commissioner Carey: Yes.

Jennie Dixon: Once you've deleted 6 and 7, it would become Condition 10, but why don't you just refer to it as 12 and we'll use this memo.

Commissioner Carey: Okay.

Jennie Dixon: Okay.

Commissioner Carey: That we adopt the new findings in the memo of April 3, 2002, does that cover your request for what we're relying on?

Colleen Dowdall: What I want to have Patty able to do when she's writing the letter to have whatever findings that you folks rely upon in making this decision, since I have given you advice to the contrary, I would be hard pressed to come up the findings, so I want to make sure that you and OPG have done that.

Commissioner Carey: Okay. And those are in that memo dated April 3rd, regarding the new findings supporting Condition 12, whatever number it turns out to be.

Commissioner Evans: Jennie still has her hand up.

Chair Curtiss: Jennie?

Jennie Dixon: I have two additional suggestions. On Condition 8, Utilities, because now the plat will change, I think, I've gone through all the conditions and on this one, I would like you to delete the first sentence because it's referencing lots that, locations and lots that now are going to no longer exist and I would just suggest that we use the second sentence to assure that utility easements are in the correct place, which is, "Plans for utility easements shall be reviewed and approved by Montana Power prior to final plat approval." So delete the first sentence of Condition 8.

Chair Curtiss: Okay, so we probably should do that first.

Commissioner Carey: Okay. I will so move.

Patty Rector: Did you make a motion about the findings or just that you were in support.

Commissioner Carey: I made a motion.

Chair Curtiss: It wasn't seconded. We'll do this first.

Commissioner Carey: We're going to do this first.

Chair Curtiss: So the motion is to scratch the first sentence under Utilities, Condition 8. Second. All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye.

Commissioner Evans: No.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Jennie Dixon: And my last suggestion and I may need Colleen's assistance, is ... this is unusual to be approving a plat that we don't really know what it's going to look like. We have an idea that it could look like this, so I'm wondering if we need a condition that says subdivider shall prepare a plat, I mean, prior to final plat approval, to assure, that's designed to meet these conditions and also is reviewed and approved by agencies.

Colleen Dowdall: You know, I think putting a developer through private, through the public process again because of our process breaking down at some point would be difficult. I think that the Commissioners have the final say and they have to approve or disapprove whatever final plat he comes, brings in, based upon the conditions they've imposed. I would not suggest that we put him through agency review again.

Jennie Dixon: Okay. Could I respond to that. One of my reasons for that is, and it may not be, that may not be the best approach but I want to let you know my concern, see if you have the same concern or if it doesn't need to be addressed, is that because there is no, it's not going to be that picture and we aren't sure it's going to be this picture, I've run this by Greg just here in this meeting, and he had some suggestions for changes already to this design, albeit very slight, but there may be more that once he looked into it further, or other agencies looked into it further, and the memo to you yesterday said that agencies haven't reviewed this. The, Greg would have the ability through Condition 3, that water, I'm sorry, roadway improvements and plans be reviewed by Public Works, so that may cover that and it may actually be taken care of just through other agency's jurisdictions to review and approve plans to assure compliance with their regulations.

Colleen Dowdall: If the motion from the Commissioners is going to be we approve the preliminary plat with the exception that two, the two last lots be taken out, which you've already done, then what is approved is that without the last two lots.

Jennie Dixon: No, because it's, they're still allowed to have 13, so they'd have, they can find two others elsewhere.

Colleen Dowdall: That isn't the motion I just made. The motion I just made, or was putting in the mouths of the Commissioners was, you have to get rid of those last two lots. If they approve a subdivision with 13 lots but not beyond a certain point on the hillside, then I think we need to decide where those lots are going to be.

Jennie Dixon: Well, that's my point, because the last condition allows them to find those lots elsewhere, and, in fact, allows them to find up to 15 lots elsewhere, unless you want to amend that condition.

Commissioner Evans: With no capability whatsoever of building it unless he puts in a septic tank.

Jennie Dixon: Well, he's got 13 lots right now on this proposed plat. Condition, the last condition in your memo states the plat shall be redesigned to meet all County subdivision regulations with up to X number of lots, if you want it to be 11, 12, 13, 14, 15, whatever the number is, I think you might want to state that, but if it's a matter of shifting those lots and not deleting those lots, you're talking about a, you're not talking about this plat with those two lots deleted. You're finding two lots elsewhere.

Colleen Dowdall: So, it depends on what the Commissioners are going to ask for and ...

Jennie Dixon: They voted on it last, two weeks ago.

Colleen Dowdall: Right, to take it, so they voted to add ...

Chair Curtiss: Yes we did.

Colleen Dowdall: ... that was the motion, it wasn't just to, take out those lots.

Jennie Dixon: Correct.

Colleen Dowdall: Then they had already voted on 13 to 15 lots.

Jennie Dixon: Yes.

Colleen Dowdall: Then we should have spent the last two weeks with the Commissioners, coming up with that change.

Jennie Dixon: Yeah, and that's what we were attempting to work with the subdivider on, prepare a plat that meets that and ...

Colleen Dowdall: So that's the plat you would approve then.

Jennie Dixon: This is the plat you would approve except that agencies have not reviewed it.

Colleen Dowdall: That's alright.

Commissioner Evans: How can we approve something that the man has not submitted. He has said he does not support that plat that someone made up, that's nonsense.

Colleen Dowdall: Because you're in the position of approving, disapproving or approving with conditions, so we don't have to even care who wrote, when you, at this point, revise a plat to this extent, the Commissioners have to be in the position of deciding what is going to be approved then. So, if this is what you decide you like, that's what you approve and if you want something else, then we recess again and we come up with something else.

Commissioner Evans: To approve something that the developer doesn't intend to build, doesn't like himself and didn't submit, and I hear what you're saying, but it makes no sense on God's earth to me.

Commissioner Carey: The language that is in the new findings supporting this, the Condition 12 we're calling it, makes reference to allowing for greater densities and, you know, acknowledges we're not dealing with the Urban Growth Area but perhaps we could apply the same rationale to this particular development allowing for greater densities, and in this case it would be up to 15 lots, so if we supported that, if we adopted those new findings, he's got room to move.

Colleen Dowdall: Right, but I think the problem that Jennie is having is you have to approve a preliminary plat and you have two options in front of you right now, you have what he proposed minus the couple of lots you don't want or you have what he proposed or you can look at what he proposed and you can say well, we'd rather move this one here or this one there. You know, I don't like this process any more than you do and this is usually stuff we do at the pre stage, but this is a place where our process has broken down and we need to deal with it, and we used to do this all the time, I'm sorry to say.

Commissioner Carey: I don't think any of us want to design the subdivision right now, I mean we have to find a way to have some latitude.

Jennie Dixon: And that's the reason that we asked to meet with the developers last week, to ask them to prepare a plat that met the conditions, that's what is attached here. When we met with them, they did, both Dan and Steve indicated that this was not what they wanted to be approved, but what I told them is that it's one version, and I believe probably their best version, I mean there's no reason to not bring you their best version, of what would meet these conditions. Your action even just a few minutes ago on deleting Conditions 6 and 7 is on my presumption that this is the plat you're approving because there is no park. This plat shows 13 lots, just in a different location.

Chair Curtiss: Mr. Cahalan?

Dan Cahalan: I don't know your process but it seems to me that what's happened here is, is getting very complicated to some degree to try to spare me going through agency review again. I think what I'm willing to propose is I'll go through agency review again, but that, approve or deny my existing subdivision or my existing proposed subdivision.

Colleen Dowdall: So would that be your, with 13 lots or with 11 lots or 15 lots and drawn how, because that's what agencies review is the placement of the lots, the location of the roads and utilities and grade, so that ...

Chair Curtiss: I think what he's saying though is if we don't like this one, deny it and he'd be glad to go through it again, and maybe not glad, but he'd be willing.

Colleen Dowdall: We don't do deny and we'll go through it again, because that means going back to Planning Board, it means paying another fee in the amount of, over a thousand dollars probably, and I don't think we want to make him do that, but ...

Commissioner Evans: I certainly don't.

Colleen Dowdall: And we don't want to send the same plat through agency review because that getting ...

Chair Curtiss: I have a question for Mr. Cahalan. The mitigating factors that you proposed, the six things, which I guess number 6 is probably not necessary because City and County are probably the same ...

Dan Cahalan: And what should be considered as part of that 6 is Mr. Sehestedt's comment that's higher up in that same document, his suggestion of phasing, or, what's also not on that list, and I'm sorry I don't mean to interrupt Jean, but what's also not on there is any sort of right of first refusal or anything like that.

Chair Curtiss: Right, that's what I was going to ask. So if those, and I don't know where we'd add it, we'd have, somebody that does this all the time would have to say, if these mitigating factors plus either a phasing or first right of refusal for those lots was in this existing subdivision, could you accept that? Could you accept that?

Dan Cahalan: And again, it would come down to the wording because, and in the meantime, I found that the term xeriscaping is in there, if I were held to a strict compliance to xeriscape any lot in the subdivision throughout the entire lot that would probably be a \$25,000 cost per lot, so you bet, all of that's on the table, Commissioners, but to blanket say if I give that all to the County's discretion, then does my subdivision get approved, I wouldn't say I'm comfortable with that.

Chair Curtiss: Okay. Jennie?

Jennie Dixon: Also, I think the discussion about phasing occurred at a meeting where OPG was not present and if you approve this with those lots at the end, even as part of a phased development, you are essentially approving those lots and so we're really back to this plat anyway, so.

Chair Curtiss: Yeah, I knew that. Well, I'm afraid that we've got into the business of designing a subdivision in the middle of a meeting and ...

Jennie Dixon: I could make one more suggestion.

Chair Curtiss: Okay.

Jennie Dixon: On this Condition 12, it says the subdivision plat shall be redesigned to designate the area shown as Lots 10 and 11 as no-build, no-improvement, and all these conditions are always referring back to their original plat. The second sentence is the plat shall be redesigned to meet all County sub regs with up to 13 lots which shall be located in areas not designated as no-build or no-improvement zones, and I know it says subject to review and approval by the governing body prior to final plat approval, which is your standard procedure once you get preliminary plat approval, it'd come back a year or how ever many years later and get final plat approval. I think what we're struggling with right now is if you in fact want to make those no-build which results in a change to the plat, how do you assure that agencies review the design and are comfortable with it. The only agencies that I can think of that need to look at it in depth would be Public Works, Fire, and even Fire is negligible because the cul-de-sac is getting shorter, and so because of that maybe the Condition 3, which allows Greg to review and approve road plans to his specifications, let me just give you an example, this plat that, the revised plat, Greg looked at this and his comment was the cul-de-sac needs to extend slightly or at the very least, Lots 10 and 11 need to move up to coincide with the end of that cul-de-sac because right now the cul-de-sac doesn't touch Lots 10 and 11. That's a road design issue that Greg needs to, you know, address in this design and there may be others.

Commissioner Evans: But that's the design of a subdivision the developer doesn't want to do.

Steve Lennis: Just to address that point and the reason why ...

Chair Curtiss: Steve, could you say your name for the record.

Steve Lennis: Steve Lennis with DJ & A.

Chair Curtiss: Thanks.

Steve Lennis: Just because that roadway that we have depicted there is, goes back to your 1,000 cul-de-sac length, there is no way to extend that and keep the lot configuration that we have shown without a variance to the cul-de-sac length, so I think we're getting back to Barbara's point is and I think I'm speaking, and Dan correct me if I'm wrong, I think both our intent would be make your motion on our existing plat. If you wish to designate Lots 10 and 11 as no-build zones, then do that and you would leave us with an approved plat showing 10 lots and that's our best, that's the plat that we want to see either approved or disapproved and we'll take it from there, we'll make our decision based off of what you do here with that particular plat, whether you approve all 12 lots, whether you approve a 10, an 11 lot subdivision, or a sorry, all 13 lots or 11 lots and that is, that plan was merely to, we were under the impression when we were asked to bring in how we would be able to comply with the takings of Lots 10 and 11 off of our plat and designating those as no-build zones, we came back and said this is the plat that would result, this is not and never was intended to be our plat that we wish to submit. We wish only for you to make your ruling on that particular plat right there.

Chair Curtiss: Thank you Steve.

Colleen Dowdall: And I would just clarify that the Commissioners, however, do have the discretion to make changes to your subdivision and add lots, subtract lots or do whatever they wish if they have the findings of fact and conclusions of law to support that. So if they choose to approve the other plat, that is within their discretion and your choice at that point would be to either file it or not.

Commissioner Carey: It's certainly not my intention to limit the developers to just 10 lots, take it or leave it. I would much prefer them to have the option of doing three more, in this case. So with the understanding that if we adopt the new findings of fact, again, referring back to the April 3rd memo, the developer would not have to go through agency



review, the developer would, it sounds like, have to submit his plans to Public Works, we, can we act on that basis, understanding.

Colleen Dowdall: Right, and I was, before Steve spoke, going to suggest that if OPG has particular concerns that they, you can contact agencies with the plan and see if there is anything that they are concerned about. The difficulty will be you will have already acted on the subdivision, so adding any conditions will be difficult.

Chair Curtiss: Jennie?

Jennie Dixon: Steve's comment about the cul-de-sac, by extending it you would exceed your 1,000 feet. I think that's going to be determined by your motion on the variance to allow for the cul-de-sac to extend beyond the allowed 1,000 feet. If you deny that variance they will be kept to the 1,000 feet and they could shift these lots a few feet north. But I think you need to, I think you need to act either on that plat, well, ...

Commissioner Carey: We have acted on that.

Jennie Dixon: I think you need to act on that plat, but you need, if you act on that plat saying this is not the one we approve, what you're doing is you're approving this one, with the authority and the ability of agencies to review and make modifications as needed to comply with subdivision regulations.

Colleen Dowdall: So if a variance is granted to the cul-de-sac length, it looks like it's a very short variance. Moving the lot line looks like it would make the half acre lot on Number 9 even smaller.

Jennie Dixon: But you can go, I mean, there's no minimum lot size, so that is possible.

Colleen Dowdall: Right, I think it's not regulatory, but probably marketability and with regard to Lot 8, or 11 rather, it probably, I don't know how it would affect your ability to access that, because the slopes get steep.

Chair Curtiss: And could someone remind me how long the cul-de-sac is now, the road that's etched in there, graded in.

Jennie Dixon: 1,250.

Chair Curtiss: It is 1,250.

Commissioner Carey: So, again, I will make a motion to adopt the new findings in support of Condition 12 as we numbered it from the April 3, 2002 memo from the OPG staff, from Liz Mullins.

Chair Curtiss: Second the motion.

Colleen Dowdall: You know, I think, what you want to do is when you adopt the subdivision, state that it's based upon the findings of fact and conclusions of law in the staff report, perhaps as amended by the April 3rd, but I think we still have the variances that you need to act on, that's what's making us most anxious out here, that you don't forget to do those.

Commissioner Carey: Oh, no, it just ...

Chair Curtiss: Okay, so we'll not do that motion.

Commissioner Carey: It's just a matter of order. I'll make a motion that the variance request from Section 3-2(1)(I)(i) of the Missoula County Subdivision Regs to allow the proposed Mari Court cul-de-sac to exceed 1,000 feet in length to a total length of 1,250 feet, be denied, based on the findings of fact in the staff report.

Chair Curtiss: Before I second that motion, how do we allow them to extend it so it reaches the lots.

Jennie Dixon: Two things, or two comments. One is we measure length of cul-de-sac generally to the, we've have in the past measured to the center of the bulb and I don't know where Steve is measuring when he says it exceeded the thousand feet. Also, possibility of shifting those, the lot lines slightly north to touch the cul-de-sac or doing, what's shown here that Greg was not happy to see, I guess, is a driveway easement coming off the end of the cul-de-sac, not happy about that.

Colleen Dowdall: The other option is to move to grant the variance, but not to the extent of 1,250 feet, but to the extent necessary to touch Lots 10 and 11 as depicted on this plat, since we don't know what the distance is ...

Commissioner Carey: That's what was my problem, I don't know the distance.

Colleen Dowdall: Right, so you can ...

Chair Curtiss: Leave it open.

Colleen Dowdall: Leave it open.

Jennie Dixon: To the extent necessary to touch the lots as shown on this.

Chair Curtiss: On the attached plat.

Commissioner Carey: Okay, so I'll withdraw that previous motion, take another run at it here. I'll move that the variance request from Section 3-2(1)(I)(i), is that an "L," Colleen?

Jennie Dixon: It's an "I," it's the way Arial types a capital I.

Commissioner Carey: Capital I, small I, of the Missoula County Subdivision Regulations to allow the proposed Mari Court cul-de-sac to exceed 1,000 feet in length to a total length sufficient to meet Lots 10 and 11 as drawn in the ...

Jennie Dixon: April, 2002, plat attached to the April 16 memo.

Commissioner Carey: Okay, thank you.

Chair Curtiss: Second. All those in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: No.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Steve Lennis: Are we going to have trouble that we have lots 10 and 11 labeled on two separate plats where you established no-build zone based off that plat.

Jennie Dixon: Our reference, I think our reference in this motion is to the April, 2002, plat as attached here, so we know to look at that for the lot numbers.

Commissioner Carey: I'll move that the variance request from Section 3-3(1)(B) and 3-1(2) and 3-15(4) of the Missoula County Subdivision Regulations requiring slopes in excess of 25% to be deemed unsuitable for building sites and shall be shown as such on the plat be approved, based on the findings of fact in the staff report.

Chair Curtiss: Second.

Commissioner Carey: Does that accomplish what we wanted to do to allow it, I think it does.

Jennie Dixon: Yes.

Commissioner Carey: Okay. Okay.

Chair Curtiss: All those in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: No.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Commissioner Carey: I'll move that the Travelers Rest Estates Subdivision be approved based on the findings of fact in the staff report as amended by the April 3rd memo from Associate Planner Liz Mullins dealing with new findings to support Condition 12.

Chair Curtiss: And as conditions in this one, right.

Jennie Dixon: Conditions in the April 16 memo.

Commissioner Carey: Conditions in the April 16th memo.

Jennie Dixon: Would Condition 12 reference 13 lots or 15 lots?

Chair Curtiss: 13.

Commissioner Carey: 13.

Jennie Dixon: 13.

Commissioner Carey: Yeah, since apparently there's no point in giving something that we can't use. Those conditions and subject to, yeah, subject to those recommended conditions.

Chair Curtiss: Second. All those in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: No.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Chair Curtiss: Okay. So the subdivision has been approved as amended and we didn't remember to close the hearing but we'll close the hearing.

Colleen Dowdall: I think it was closed last time.

Chair Curtiss: Oh, was it, okay. Is there other business? Seeing none, we're in recess.

**Travelers Rest Estates Subdivision Conditions of Approval:**

**Roads and Driveways**

1. Driveway plans for Lots 1 through 12 shall be reviewed and approved by the Fire Department and Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2(10).*
2. Grading, drainage, and erosion control plans, including the parkland, shall be reviewed and approved by the Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4, Missoula County Surveyor and County Parks recommendation.*
3. Engineering plans, calculations and specifications for all roadway and stormwater improvements shall be reviewed and approved by the Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4 and Public Works recommendation.*
4. A plan for mitigation of post-development road dust emissions resulting from additional hillside road sanding shall be reviewed and approved by the Air Quality Division of the City-County Health Department prior to final plat approval. *Subdivision Regulations Article 3-1(1)(D) and City-County Health Department recommendation.*
5. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Cap De Villa and Mari Court, 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." *Subdivision Regulations Article 3-2.*

**Utilities**

6. Plans for utility easements shall be reviewed and approved by Montana Power Company prior to final plat approval. *Subdivision Regulations Article 3-6.*
7. Detailed utility plans, specifications and hydraulic analysis for construction on any water or wastewater improvements shall be reviewed and approved by the Missoula County Public Works Director on behalf of the Lolo RSID #901 prior to final plat approval. *Subdivision Regulations Article 3-7 and Public Works Director and Lolo RSID #901 recommendation.*

**Weeds**

8. 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).*

**Wildlife**

9. The covenants shall be amended to include a section that requires compliance with the provisions of the "Living with Wildlife" brochure and this brochure or its contents shall be incorporated into the covenants. This section of the covenants shall not be changed without Montana Department of Fish, Wildlife and Parks review and governing body approval. *Subdivision Regulations 4-1(12) and Department of Fish, Wildlife and Parks recommendation.*

**Historic Resource Protection/No-Build Zone**

10. The subdivision plat shall be revised to designate the area shown as Lots 10 and 11 as a "No-Build/No Improvement Area." The plat shall be redesigned to meet all County Subdivision Regulations with up to thirteen lots which shall be located in areas not designated as "No Build/No Improvement Zones," subject to review and approval by the governing body prior to final plat approval. *Subdivision Regulations Article 3-2, 3-15, OPG, Historic Preservation and FWP recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:30 p.m.

**THURSDAY, APRIL 18, 2002**

The Board of County Commissioners met in regular session; all three members were present.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – Chair Curtiss signed a Traffic Safety Bureau Agreement (#02-03-07-01405), dated March 1, 2002, between Missoula County and the Montana Department of Transportation, accepting a \$10,000 grant for the Sheriff's Department to provide overtime enforcement for occupant protection, impaired driving, and traffic safety enforcement. The document was returned to Don Morman in the Sheriff's Office for further handling.

Memorandum of Understanding – Chair Curtiss signed a Memorandum of Understanding ("MOU") and Cooperation Among Participating Partners regarding an applicant for a VAWO Safe Havens: Supervised Visitation and Safe

Exchange Grant Program grant (a two-year grant in the amount of \$120,000). The County of Missoula is the lead applicant and the MOU is entered into with the YWCA, Department of Child and Family Services, District Court Judges, Municipal Court Judge, Crime Victim Advocates and Montana Legal Services Domestic Violence Unit. The Missoula County Office of Planning and Grants ("OPG") will administer the grant and ensure compliance with the reporting requirements of the Violence Against Women Office ("VAWO"). OPG will contribute staff time to participate on the Advisory Committee for the project and will support the YWCA in ensuring that project goals and outcomes are achieved. The performance of the roles and responsibilities outlined in the MOU are contingent upon the receipt of funds for the supervised visitation and exchange through the VAWO grant application. The anticipated term will be July 1, 2002 through June 30, 2004. The document was returned to Kristina Swanson in the OPG for further handling.

Request for Action – The Commissioners approved a draft Building Evacuation Policy which establishes procedures for the safe evacuation of persons from buildings occupied by Missoula County Departments and Offices. Attachment A to this Policy establishes procedures for the emergency evacuation of persons with disabilities from said areas. A Department Head Meeting will be held in May to discuss the new policy.

Agreement – Chair Curtiss and Commissioner Carey signed (with Commissioner Evans opposing) an Interlocal Agreement, dated April 18, 2002 between the City of Missoula and Missoula County With Respect to the Design, Construction, Operation and Maintenance of the Mullan Road Corridor Sewer Project and Superseding the Earlier Agreement with Regard to the Mullan Road Corridor Sewer Project. Costs, terms and conditions are as set forth therein. The document was returned to Chief Administrative Officer Ann Mary Dussault for forwarding to the City of Missoula for signatures.

Other items included:

- 1) Lisa Moisey, of the County Parks Department, gave an update on the Equestrian Park (at Big Sky Park). The Commissioners will consider amending the Tower Street Park Complex Management and Utilization Plan regarding an access road issue.

The minutes of the Administrative Meeting are on file in the Commissioners Office.


**FRIDAY, APRIL 19, 2002**

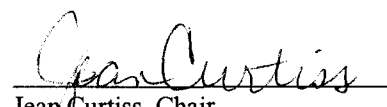
The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 19, 2002, with a grand total of \$50,288.93. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 19, 2002, with a grand total of \$24,977.25. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 08 - Pay Date: April 19, 2002. Total Missoula County Payroll: \$844,682.52. The Transmittal Sheet was returned to the Auditor's Office.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, APRIL 22, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day. In the forenoon, Commissioner Carey attended the Missoula County Aging Services Governing Board Retreat held at the Aging Services Office; in the afternoon, Chair Curtiss gave the Welcome at the Reverse Mortgage Seminar held at the Holiday Inn.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 22, 2002, with a grand total of \$3,247.44. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 22, 2002, with a grand total of \$42,568.20. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 22, 2002, with a grand total of \$6,580.98. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 22, 2002, with a grand total of \$23,398.64. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 22, 2002, with a grand total of \$50,843.29. The Claims List was returned to the Accounting Department.

Request for Action – Chair Curtiss signed a cover letter to Michelle Dodge, c/o The Violence Against Women Office, U.S. Department of Justice, Washington, D.C., submitting an application for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program. Missoula County proposes to administer a Planning Grant through the Office of Planning and Grants ("OPG") and operate the project through the YWCA. The document was returned to Kristina Swanson in the OPG for further handling.

Request for Action – Chair Curtiss signed an Application Authorization letter to the U.S. Department of Justice, Washington, D.C., Violence Against Women Office of Planning and Grants, authorizing Kristina Swanson, Grants Administrator in the Missoula County Office of Planning and Grants (“OPG”) to submit the Safe Havens application. Also agreed to are the Assurances and Certifications, attached to the letter. The document was returned to Kristina Swanson in the OPG for further handling.

**TUESDAY, APRIL 23, 2002**

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Commissioner Carey attended a meeting in Helena in the forenoon.

Plat and Agreements – The Commissioners signed the Plat, Subdivision Improvements Agreement and Guarantee, and Development Agreement for Canyon Creek Village, Phase 1, a subdivision located in the NE¼ of Section 1, T 13 N, R 20 W, PMM, Missoula County, a total area of 6.56 acres, with the owner of record being Wesmont Builders-Developers, Inc.

The Improvements Agreement and Guarantee are for improvements (curb, sidewalk, base gravel, paving, road sub-drain, compaction for utilities, drainage ditch, street lighting, contingency, engineering and testing) that shall be completed within two years of filing the Plat of Canyon Creek Village, Phase 1, in the estimated amount of \$550,490.13. The Improvements Agreement has been guaranteed by a Letter of Credit from First Security Bank. The Development Agreement, dated April 23, 2002, relating to the maintenance of parks, boulevards, common areas and fire hydrants, and the installation and maintenance of intersection street lighting, is intended to meet requirements of the Missoula County Subdivision Regulations.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Western Montana Regional Community Mental Health Center as applicant for Accounting Warrant #403469 issued January 14, 2002 on the Missoula County 2320 Fund in the amount of \$41,250.00 (payment for County participation), which was not received in the mail. No bond of indemnity is required.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant St. Ignatius Public Library as applicant for Accounting Warrant #1420 issued February 14, 2002 on the Missoula County Library Fund in the amount of \$1,923.08 (payment for Tamarack Federation Grant), which was not received in the mail. No bond of indemnity is required.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letters – The Commissioners signed letters, dated April 22, 2002, to Senators Max Baucus and Conrad Burns, and to Representative Dennis Rehberg, urging their support of homeWORD’s proposal for funding through a VA-HUD grant request. HomeWORD is a non-profit housing development organization operating out of Missoula and Billings and is well known to the Missoula County Commission.

Resolution No. 2002-041 – The Commissioners signed Resolution No. 2002-041, dated April 23, 2002, a Budget Amendment in the amount of \$3,000.00 for the Health Department, relating to a grant from United Way for child safety seats. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-042 – The Commissioners signed Resolution No. 2002-042, dated April 23, 2002, a Budget Amendment in the amount of \$61,051.00 for the Health Department, relating to Tobacco Revenue (Task Order No. 02-07-3-31-009-1). This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Amendment – Chair Curtiss signed an Amendment to the Treasure State Endowment Program Contract for Missoula County, Preliminary Engineering Report for Bridge Improvements (Contract No. MT-TSEP-PE-02-174), originally made January 22, 2002. This amendment extend the contract deadline to June 30, 2002 to give the consultant adequate time to complete the preliminary engineering report for all three bridge projects. There are no budget implications. The document was returned to Public Works Director Greg Robertson for further signatures and handling.

Agreement – Chair Curtiss signed an Agreement between Missoula County, Animal Control Program and the College of Technology – Missoula, for earth moving at the animal shelter site. The Animal Control Fund will provide a porta potty and pay for fuel and equipment moving fees. The estimated total amount is \$1,200.00. The last operational day on the project will be May 8, 2002. The document was returned to Jim Carlson in the Health Department for further signatures and handling.

Contract – Chair Curtiss signed contract documents with Intermountain Administrators for the administration of the expanded Missoula County Employees Flexible Benefits Plan (approved by the Commissioners on April 1, 2002). Signed were two (2) Administrative Services Agreements, a Plan Document Checklist, and Plan Document Checklist Instructions and Commentary, per the items set forth therein. The documents were forwarded to Intermountain Administrators for signatures.

Extension Request – In a letter to Dick Ainsworth of Professional Consultants, Inc., the Commissioners approved a request (in accordance with the recommendation of the Office of Planning and Grants) for an extension of the final plat approval deadline and for modifying the phasing plan for Hillcrest Heights Subdivision Phases II and III. The new filing deadline for Phase II is March 27, 2004 and for Phase III, March 27, 2009.

2002-04-24

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, APRIL 24, 2002

The Board of County Commissioners met in regular session; all three members were present. In the morning, Chair Curtiss attended the Governor's Breakfast for Children held at the Holiday Inn.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 23, 2002, with a grand total of \$1,835.91. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 23, 2002, with a grand total of \$30,610.35. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 23, 2002, with a grand total of \$30.00. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated April 23, 2002, with a grand total of \$1,787.63. The Claims List was returned to the Accounting Department.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Amendment – The Commissioners signed an Amendment to the Professional Services Contract between Missoula County and G&G Associates, originally made in December, 2001, as additional work is needed to complete the final draft of the dam safety review of Milltown Dam. The amendments and cost implications are as set forth therein. The document was returned to the Health Department for further signatures and handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Fire Protection Services Inc. for the installation of a fire sprinkler system in the Missoula County Courthouse. The total amount shall not exceed \$74,500.00. The term will be May 15, 2002 through August 1, 2002.

Budget Parameters – The Commissioners voted on items requiring approval regarding the Fiscal Year 2003 Budget. Approved were the following:

- 1) *Revenue*: Inflation Increase: 1.28% (New – Allowed by "Big Bill") (with Commissioner Evans voting no.)
- 2) *Revenue*: Personal Property Tax "Float": (Traditionally added)
  - [Items 1 and 2 constitute a tax increase in order to be added to the revenue base.]
- 3) *Expenses*: Salaries: []
  - a) Elected Officials – 8%
  - b) Sheriff Deputies – 9% (includes 1% longevity) (Salary Commission Recommendations)
  - c) Others – 5% (means 5%)
- 4) *Expenses*: Cash Reserve Targets:
  - a) General Fund – 10% Firm
  - b) Public Safety Fund – 8% Firm
  - c) Health Fund – 5% Firm (8% Goal)
  - d) Other Funds 5% Firm
  - [Items 3 & 4: Assume that revenue available in the General Fund for ongoing expense matches or exceed last year's levels.]
- 5) *Operations*: e) Continue at last year's level except for internal charges increase (phone, postage, etc.)

Other items included:

- 1) An update was given on the Growth Policy by Jeff Schalow, Senior Planner, Office of Planning and Grants.
- 2) Commissioner Carey has agreed to speak at the Historical Museum's 4<sup>th</sup> of July Celebration. He will make brief remarks and introduce actor Bob Brown.

#### PUBLIC MEETING – April 24, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$324,090.81. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Presentation: Global Justice Action Summit (June 20-24, 2002) Postponed from April 17, 2002**

Liz Rantz stated she works for the County as a physician at the Detention Facility but was not present in that capacity today. She was speaking as one of many who are planning the public event in June in Missoula, the Global Justice Action Summit. She has been speaking with several public groups to announce the event and answer any questions. There has been a rumor that these are the people who caused the riots in Seattle and she wanted to dispel that rumor. This is intended to be a peaceful public gathering. There will be a festival at Caras Park, a banquet at the First Methodist Church, several speakers over three days, tours of sustainable farms in the area. Some of the speakers at the Forum may have attended the gathering in Seattle as they have concerns about global justice issues which they feel are not being adequately represented. No public protests are planned with this event. Over 40 organizations in town are sponsoring this event which are mostly mainline organizations.

The Global Justice Action Summit Forum is a series of seminars, panel discussions and action workshops addressing the impact globalization and G8 decisions has on various issues such as human rights, global peace and security, transparency in global decision-making and judicial process, economic and social justice, labor rights, food security and environmental protection. It will examine those documents which declare our rights, while we initiate strategies for gaining their recognition and implementing alternative models of economic development and public policy.

**Hearing: Annexation to Seeley Lake Rural Fire District (Streit's Inez Lakeshore Sites)**

Mike Sehestedt stated the procedure for an area that wishes to annex into an existing rural fire district requires a petition by 50% or more of the property owners in the area to be annexed. Such petitions have been received and verified by the Clerk and Recorder's Office. Notice of the hearings have been given. The purpose of today's hearings is to determine whether or not there is sufficient protest (50% or more) of the property owners in the area to be annexed or in the entire district. If there is not sufficient protest, the Board's action is administrative to grant the annexation.

This first request is for a hearing on annexation into the Seeley Lake Rural Fire District.

A petition has been received by the Clerk and Recorder's Office to annex several parcels of land, located in Missoula County, into the Seeley Lake Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: "Lots 9 through 30 of Streit's Inez Lakeshore Sites located in Sections 31 and 36, Township 18 North, Range 15 West in Missoula County, Montana." (For complete legal descriptions, maps and landowner signatures, see map on file in the Clerk and Recorder's Office).

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the annexation of "Lots 9 through 30 of Streit's Inez Lakeshore Sites located in Sections 31 and 36, Township 18 North, Range 15 West, in Missoula County, Montana," into the Seeley Lake Rural Fire District. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Annexation to Missoula Rural Fire District (Parcel 3B of COS 2647)**

Chair Curtiss read the next request for annexation.

This is a request for a hearing on annexation into the Missoula Rural Fire District.

A petition has been received by the Clerk and Recorder's Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: "Parcel 3B of Certificate of Survey Number 2647, located in Section 12, Township 12 North, Range 19 West, Principal Meridian, Montana, Missoula County, Montana." (For complete legal descriptions, maps and landowner signatures, see map on file in the Clerk and Recorder's Office).

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approved the annexation of "Parcel 3B of Certificate of Survey Number 2647, located in Section 12, Township 12 North, Range 19 West, Principal Meridian, Montana, Missoula County, Montana," into the Missoula Rural Fire District. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Annexation to Missoula Rural Fire District (Tract E of COS 4073)**

Chair Curtiss read the next request for annexation.

This is a request for a hearing on annexation into the Missoula Rural Fire District.



A petition has been received by the Clerk and Recorder's Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: "Tract E of Certificate of Survey Number 4073 located in Section 4, Township 12 North, Range 19 West, Principal Meridian, Montana, Missoula County, Montana." (For complete legal descriptions, maps and landowner signatures, see map on file in the Clerk and Recorder's Office).

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the annexation of "Tract E of Certificate of Survey Number 4073 located in Section 4, Township 12 North, Range 19 West, Principal Meridian, Montana, Missoula County, Montana," into the Missoula Rural Fire District. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: Annexation to Missoula Rural Fire District (Parcel up Highway 12 off Allen Lane)**

Chair Curtiss read the next request for annexation.

This is a request for a hearing on annexation into the Missoula Rural Fire District.

A petition has been received by the Clerk and Recorder's Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of taxpaying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: "The west one-half of Section 32, Township 12 North, Range 20 West, less the southeast one-quarter, northwest one-quarter of Section 32, Township 12 North, Range 20 West, Principal Meridian, Montana, Missoula County, Montana." (For complete legal descriptions, maps and landowner signatures, see map on file in the Clerk and Recorder's Office).

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the annexation of "the west one-half of Section 32, Township 12 North, Range 20 West, less the southeast one-quarter, northwest one-quarter of Section 32, Township 12 North, Range 20 West, Principal Meridian, Montana, Missoula County, Montana," into the Missoula Rural Fire District. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Consideration and Decision: Amendment to Tower Street Park Plan to allow existing road access to Equestrian Park**

Lisa Moisey, Missoula County Park Board staff member, stated a request had been received from the Horseman's Council to amend the 1998 Tower Street Park Complex Management and Utilization Plan. The nature of the request is to allow continued use of the access road along North Avenue across from 35th Avenue. The Tower Street Plan states that the primary access road is to be located one block west, across from 36th Avenue. The intention of the plan is that this road will replace the existing road as the primary access, however, the existing road, the one currently now across from 35th, will remain in place for use as a secondary access during large events. It would only be open and used during those large events. One of the reasons for this request is that the Horseman's Council is presently in violation of regulations of the City-County Health Department. Presently there is a 60 to 70 foot section of the existing road on the portion that runs east/west, that has been constructed since 1994 and is required to be paved, according to the City-County Health Department regulations. The Horseman's Council has asked the Health Department if they could pave 60 to 70 feet of the existing road from its intersection with North Avenue back. That proposal is currently under review by the Health Department and a decision has not yet been made. Shannon Therriault from the Health Department will address that issue. The Park Board held a public hearing on this matter on April 11, 2002 and voted 3-2 to recommend approval of the amendment to allow continued use of the existing access road and not require construction of the road across from 36th Avenue. The Park Board also recommended that the Horseman's Council pave the existing road from its intersection with North Avenue half way back to where the road turns to the west. Prior to the County Park Board meeting, the Big Sky Stewardship Committee also voted on this issue and recommended approval of the amendment. Some additional information was presented today from the County Public Works Department. They have some safety concerns with respect to the site distance of the existing access road on 35th. Greg Robertson, Director of Public Works, will address those concerns.

Chair Curtiss asked for public comments.

Allison Matthews, Missoula Horseman's Council, stated she had prepared a map so people would understand this request. There are about 60 acres that the Horseman's Council is responsible for, designated as Open Space Native Habitat for small mammals and birds. The fox has returned and the eagle is beginning to build its nest again. The Council applied for and got permission to improve the road to the stalls. It was done in ignorance of the 1994 ruling. They are willing to comply with the Air Quality rules. It is better to keep the access where it is to control dust. To put the entrance off 36th will cost quite a bit of money and the Horseman's Council is not a very wealthy organization. They are looking for ways to comply with the rules and not do the same thing twice. Building a new road costs a lot more money than keeping the existing access. There is a high voltage power line over the access from 36th which is an issue. Montana Power would prefer not to have access under that line. They would like to maintain the existing

access for a number of reasons. It separates day use of the park from stall use. There is a parking area for cars. It minimized mixing car traffic with truck traffic. They want to avoid problems with mixing too many people with horses. They want to keep the stalls separate from the general public to allow the horses some privacy. If the road is put in from 36th, all the traffic will go right by the stalls and cause congestion. It is not good for horses and people to have that much confusion. It is scary for the animals. They would like to keep the access where it is to help keep separate the spectators from the horses and their owners. It is the natural flow of the current access. Dust can be an issue and the road is regularly treated for dust. Paving the first portion of the road would keep the dust down even more. The irrigation ditch people have given permission to irrigate all the arenas to help keep the dust to a minimum. Some of the neighbors are unhappy with traffic traveling down South Avenue then up 35th Avenue directly into the park. The size of the trailers is one of the biggest concerns, not so much the speed. There is a tree on the corner which does limit site distance. It has been trimmed recently but could be trimmed a little higher to improve site distance. Even UPS drivers would like it trimmed a little higher. There is a way for the traffic to avoid coming through the neighborhood, using 31st Avenue by Big Sky High School. That could be an alternative for larger shows. Another alternative would be to come down Spurgin to Tower and over to the park, in order to avoid issues at the corner.

Chair Curtiss asked about the use near 36th Avenue.

Allison Matthews stated there was an entrance from 36th Avenue and there is a community 4-H arena. This has been in existence prior to the Equestrian Park being organized. It has its own entrance and parking area.

Commissioner Carey stated that the overhead utility line would be a problem no matter what road was used.

Allison Matthews stated that currently folks drive under the line, but they do not drive parallel to it. Montana Power was very specific as to where the stalls, restrooms and parking should be place.

Commissioner Carey asked if the entrance from 36th would reduce the impact on the natural habitat.

Allison Matthews stated the entrance from 35th has been in existence for at least 40 years. Other parts of the park are being reclaimed.

Commissioner Carey asked about the area to the right of 36th.

Allison Matthews stated it is used as a barrel racing training arena. It is not fenced and uses a different type of surface. It will be watered to keep the dust down.

Commissioner Carey asked how often the Council had large events that would bring people to the stable area.

Allison Matthews stated there were about five or six overnight events per year.

Basha Benbenek, 3325 North Avenue, stated that when they built their home 19 years ago, the road and park already existed. They bought the property and built their home knowing there would be traffic and activities. As far as she and her husband are concerned, it should stay where it is. The work that is done at the park is done by volunteers with donated time and money. It would be an extreme hardship for the Council to move the road.

Alex Clemow, 3140 Patte Canyon Road, stated she was a member of the Equestrian Park. She agreed with what has been said, it would be an extreme hardship to move the road. It has been in use for over 40 years. It is well maintained. To move the entrance would be cost prohibitive. The Council is a volunteer organization and has done well by the neighbors over the years. They have done what they can to get along with everyone. She is agreement with the proposal.

Diane Tidwell, 3747 North Avenue West, stated she has lived there since 1992. When she moved there the Equestrian Park was a field of weeds. The Council has put a lot of effort and energy into building a beautiful park. She walks her dogs there every day. She did not think the money spent on building a new road would be an improvement at all.

Mista Tucker stated she was a member of Pony Club and other equestrian events. The road access makes perfect sense the way it is. Most horse trailers are driving quite slow. Two trailers can pass on the road easily. The day traffic is separated quite well from the horse traffic. The entrance works quite well.

Susan Carlson stated she is a Pony Club mom which means she hauls horses and writes checks. She has been involved with the horse park for the past few years. She was impressed with the volunteer work that's been done the past few years. It is hard to raise money for the club and they need to be careful how that money is spent. It would be a real hardship to move the road. It doesn't make a lot of sense to spend all that money when what they have is working well.

Kelly Karmel, 9000 Dark Horse Road, stated she has been a member of the Horseman's Council for four years. She has lived in a lot of other places and this is a wonderful community resource, it is the nicest and best planned park she has been associated with. Her concerns were both from a financial standpoint as well as a safety standpoint. The current road is well laid out, has a good flow and separates the vehicles from the horses. She would prefer to see the entrance remain at 35th.

Sue Matthewson stated she was Treasurer for the Horseman's Council and a member of the County Park Board. She was involved in the Tower Street Park Plan and helped the Target Range Homeowners and the planning staff send out mailings. She did not understand where the change to 36th Avenue came from, it did not come from the Horseman's Council or other user groups. She is still not sure where the idea came from. It is currently well laid out and allows for a logical flow of traffic and horses. Fields will be developed on the other side of South Avenue with a new ingress and egress from 37th and 38th Avenues. Leaving the entrance where it is will help keep the horses separate from people playing ball and other activities at the newly developed park. If it is required to move the road, she hoped there would be some financial support from the County, as it will be difficult to find the necessary funds. The Council can

raise money for trails and barns and jumps but it would be difficult to raise money to build a new road. They feel the existing road is fine and don't see the need for it to be moved. It is the largest County park and has been developed with a minimum of taxpayer funding.

Bill Dahlgren, 2008 37th Avenue, stated he was on the Citizens Tax Force that helped develop the plan for the Tower Street Park Complex and is also president of the Big Sky Park Stewardship Committee. The unanimous recommendation from the stewardship committee was based on the fact that there is no reclamation proposed for the 35th Avenue access. If the access is moved to 36th, the access from 35th will remain. This is a perfectly good road, why not retain it. They want to maintain as much open space as possible for the benefit of the wildlife. Building another road creates more roadways and the existing road will not be reclaimed. The current access minimizes roads and maximizes habitat. The traffic would be undesirable in any location, the negative would still exist. The plan was written to accommodate changes in the future. It is a guideline and somewhat flexible. He felt this was clearly not a violation of the intent of the plan. Moving the access to Tower would be a particularly bad idea. The stewardship committee voted unanimously to leave the access where it is and he asked the Commissioners to support the recommendations from them and the County Park Board.

Jim Weatherly, 2001 35th Avenue, stated his house was on the corner right across from the entrance. He read a letter he had prepared. *"You're considering a request to permanently move the access to the Equestrian Park on North Avenue from the intersection with 36th Avenue to 35th Avenue. The 36th Avenue intersection is the location required in the Tower Street Park Complex and Utilization Plan adopted in January 1998. The existing access is at 35th Avenue. The plan required the 36th Avenue location to confine motorized use to the southwest corner of the park while preserving the majority of the park for use by horses, walkers, small birds and mammal habitat. The existing 35th access was to be used as overflow access when large events required additional access. The Missoula Horseman's Council are continually improving the park and adding a variety of events for their members. We encourage this expansion and use as long as it is in accordance with the adopted plan. Their use can be compatible with the other users of the area. As a resident adjacent to the existing access at 35th Avenue, we experience heavy traffic during weekend events. This traffic is not typical residential traffic, but rather large pickups, trucks and horse trailers of all sizes. This traffic from a safety and livability standpoint does not belong in a residential area. The noise and dust from these vehicles primarily on weekends can become unbearable. Your decision to use 35th or 36th Avenue should be temporary until alternate locations for access away from residential neighborhoods can be explored. The Park Board has recommended using 35th Avenue with the access road in the park being paved half way to the irrigation ditch, approximately 300 feet. This will help reduce the dirt and dust that tracks onto 35th Avenue. Members of the Horseman's Council have offered to place signs on South Avenue directing traffic to Tower Street and North Avenue when they have large events. This will also help move traffic out of the core residential areas. In addition to the above, Missoula County may need to be involved in the interest of safety and enforcement. At a minimum, the intersection of Central and 35th Avenue should have stop signs on Central Avenue. The Missoula County Health Department has suggested a traffic calming circle at Central and 35th to encourage large vehicles with trailers to use North Avenue and Tower Street and/or 31st Avenue. The management plan requires certain improvements be put in place over a 10 year period. It has been in effect for four years and a number of changes have already been approved. We request the opportunity to look at additional options for access to the park."* He attended the Park Board meeting to learn why this was being changed but nobody got up and spoke to explain the change. He did learn a little bit today. Most of those who spoke at the Park Board were concerned about the problems with large vehicles and dust in the neighborhood. The equestrian people do their best. They are a volunteer organization. They do try to control the dust and water the roads, but it increases the amount of dirt that is tracked off-site to 35th. Paving the first half of the road should alleviate some of that. Another problem is the backup horn on the water truck that is beeping all weekend outside his front door. Another issue is the grass parking area which is going to be graveled and improved. That puts the parking lot in the middle of the complex which he sees as not in good conformance with the park plan. The original plan was to keep motorized vehicles out of the area. This puts them in the center of the area. The big issue is directing this heavy traffic through the residential neighborhood, it doesn't make a difference if it's on 35th, 36th or 37th, they are all residential. Any help that can be given to redirect traffic would be appreciated.

Allison Matthews stated she had received a letter from Larry and Kay Parmenter who asked that it be read. *"We live directly across from the Equestrian Park at 3533 North Avenue West. We knew the park was there when we bought the property, that's why we purchased this property. We love watching the horses and having the open space. We are never bothered by the noise from the horse trailers. This is because our house is set back from the street far enough so there is not a problem with noise. We feel the entrance to the park should stay exactly where it is now and has always been. There is not a better or safer location. Tower Street with all the activities of baseball and school traffic would be an accident waiting to happen if horse trailers were trying to turn into the park. We can see from our house all the traffic on Tower and how fast people drive on that street. Most of the horse trailers come down South Avenue and then just have a couple of blocks to go straight into the park without blocking any traffic to turn. As taxpayers we would be opposed to changing this entrance when there are so many more important projects to be done. We would like to see money that the Park Board would have spent on this project be spent on improvements to the park!!!! The Park Board has done some wonderful things that we all can be very proud of and we all enjoy. Please let them continue to use their money for improvements, not for unnecessary changes. The park is not only a pleasure to see and enjoy but also brings needed dollars to our economy. Thank you for taking the time to listen. - Larry and Kay Parmenter."* She also commented on Mr. Weatherly's question about the parking lot. It will not be graveled, it will be left as is, grass and not dusty.

Chair Curtiss stated that letters had been received from Virginia Sanderson and Jack and Rita Baumgardner who live in the area and are in favor of leaving the road where it is.

Shannon Therriault stated she was an Air Quality Specialist with the City-County Health Department. The Health Department is not opposed to the change in the plan that would keep the entrance at 35th Avenue. From an air quality standpoint, if the road were moved, it would have to be paved. The Park Board has recommended the existing road be paved for approximately 300 feet which would help with the dust. Paving on existing facilities is not required. The Health Department has no need for the road to be moved. She is concerned about the paving violations on this property and other park property. There are a lot of problems on County land. Fund raising for paving is not a sexy,

easy thing. People would rather put their money elsewhere. The other issue is these are non-profit groups and have a lot of people doing different little things. The Health Department would ask that a way can be found to insure that all of the regulations that pertain to property development happen on County land. It is hard to enforce paving and other regulations on private land if the County does not adhere to the rules.

Chair Curtiss asked if a decision had been made on paving the 300 feet.

Shannon Therriault stated that the problem is with the amount of time the Horseman's Council is requesting. Paving the first part of the road instead on a middle portion can be supported, but not the amount of time requested. That needs to be worked out.

Greg Robertson stated he toured the area yesterday and would agree with Jim Weatherly, it does not make any difference from a traffic impact standpoint to have the access at either 35th or 36th. From a site visibility standpoint, the superior intersection would be 36th Avenue. However, 35th Avenue, with a little work and cooperation, could improve site visibility to make it a safer intersection. In his opinion the better location would be 36th Avenue because the visibility is unrestricted in all directions. If something can be worked out with the Horseman's Council, the park management and the property owner to remove some of the obstructions, then he would not oppose leaving the entrance where it is.

David Noslyka stated he was Allison's husband. The horse issues at 36th are of consequence as opposed to the site visibility aspect. The other is there is not a huge amount of traffic, about five large shows in a season and occasional use by others. There have never been any accidents at the intersections because of an event.

Commissioner Carey asked about putting a stop sign at Central and 35th.

Greg Robertson stated that before that would be considered, a traffic study should be conducted. Any time the flow of traffic is affected, an engineering study should be performed before any type of traffic control is installed. That could be done if the Board requested it.

Commissioner Carey asked about the potential of signage to mitigate concerns.

Greg Robertson stated that the signage would be voluntary and there is no enforcement. People in general take the path of least resistance. It would be a partial answer. The best way would be voluntary signage and minimal improvements to site visibility of the intersection.

Commissioner Evans stated this was not an easy issue for her. She reminded folks about the proposed residential complex out there for seniors. The residents were opposed, they wanted the area left as a park. The Commissioners have left it as a park. She would be in support of leaving the entrance where it is. She asked that the Public Works Director find ways to help improve the site visibility at the intersection with 35th Avenue. She also asked that the Horseman's Council work to find ways to address the concerns of the neighbors. She did not want a second road to the park. She was inclined to leave the road where it is and have the Horseman's Council do the paving that is required.

Commissioner Carey stated he was of the same position as Commissioner Evans. The key issue may be that the Horseman's Council work with the neighbors to mitigate their concerns.

Chair Curtiss stated she appreciated the presentation by Allison which showed that a lot of thought has gone into designating different areas for different functions. The flow of the access makes sense and she was also in agreement to amend the plan to not construct a new access at 36th Avenue.

Commissioner Carey moved that the Board of County Commissioners approve the request by the Horseman's Council to amend the 1998 Tower Street Park Complex Management and Utilization Plan to allow continued use of the existing access road and not require the Horseman's Council to construct an access road across from 36th Avenue. Also, the Horseman's Council shall be required to pave the existing access road from its intersection with North Avenue at least half way back to where the road turns to the west.

Commissioner Evans seconded the motion with the addition of formally asking the Horseman's Council to work with the Weatherlys to ease their concerns.

The motion carried on a vote of 3-0.

Mike Sehestedt asked if anyone requested Greg Robertson to conduct a traffic study on the Central/35th intersection.

Commissioner Evans stated that she would ask him to conduct that study.

Chair Curtiss asked if the whole area could be studied.

Greg Robertson stated that specific locations need to be looked at. To solve the problem at 35th and North, some trimming of vegetation could be done to improve site distance. That would go a long way in solving the concerns that he and Mr. Weatherly have.

Commissioner Evans stated that she would ask the Horseman's Council to do whatever they can with signs, etc., to minimize the traffic, especially during large events.

**Consideration: Orchard View Addition (2 lots) – Orchard Avenue and Valley View Drive**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Harold and Patricia Hochhalter, represented by Ron Ewart of Eli & Associates, are requesting approval of a 2 lot subdivision, Orchard View Addition, located in the South Hills area on a 0.49 acre parcel. The subject property is located at the corner of Orchard Avenue and Valley View Drive, east of Lower Miller Creek Road in the South Hills area.

There is an existing home located on proposed Lot 1. The property is contiguous to city limits. Current City policy requires contiguous properties to initiate annexation immediately prior to connecting any buildings to the sanitary sewer system. The City's Contract Sewer Committee has reviewed the proposal and agreed to allow the subdivision to proceed through County review; however, the applicant will be required to petition for annexation prior to connecting to the City's sanitary sewer system.

The subject property is fairly level in the western portion and the eastern portion has a grade between 5-13 percent sloping up from south to north. Hillside standards apply to this property. The property is within the 500 year floodplain, due to sheet flow.

The property is zoned C-RR3 (Residential), with a maximum allowed density of 4 dwelling units per acre and a minimum lot size of 10,000 square feet for each single family dwelling. Upon annexation, the property will likely be zoned with the comparable City zone RLD-4, which also has a maximum residential density of 4 dwelling units per acre.

The County includes right-of-way when calculating allowed residential density. This increases the parcel size from 0.49 to 0.58 acres. Therefore, two dwelling units would be permitted on this property, yet the proposed density requires City sewer. This issue was brought to the Contract Sewer Committee and it was decided that the subdivision could be reviewed by the County and that the 2 lots would be required to annex prior to connection to the sewer system.

The applicable Comprehensive Plans are the 1998 Missoula Urban Comprehensive Plan Update, the 1997 Miller Creek Comprehensive Plan Amendment and the 1987 South Hills Comprehensive Plan Amendment. These plans designate this parcel as Residential with a recommended maximum residential density of six dwelling units per acre.

The existing home on Lot 1 accesses off of Orchard Avenue, a County road and the home on proposed Lot 2 will access off of Valley View Drive, a City street.

There are no sidewalks on Orchard Avenue or Valley View Drive. The existing residence is served by an individual septic system and Mountain Water. Both lots in the proposed subdivision will be served by City sewer upon annexation prior to connecting any buildings to the City's sanitary sewer system.

There are five variances being requested. The first is to allow Valley View Drive and Orchard Avenue to vary from the 28 foot road width to the existing 24 feet. Clint Harris, County Public Works Department, supports this variance request for the County road and Steve King, City Engineer, supports the variance request for the City street.

The second variance request is from the required curbs and gutters on Valley View Drive and Orchard Avenue. Both County and City staff support this variance request from their respective streets.

The third variance request is from boulevard sidewalks on Valley View Drive and Orchard Avenue. Both City and County staff support the variance request. David Claman from the Department of Parks and Recreation supports sidewalk development but recognizes that a comprehensive engineering project would be a more reasonable approach in the area. The Health Department encourages denial of the variance request or an SID should be instigated. There are no adjacent sidewalks in the vicinity. The applicants have included a statement on the plat waiving the right to protest an RSID/SID for future road improvements to Orchard Avenue and Valley View Drive.

The fourth variance is to vary from the required 20 foot drainage easement to a 7.5 foot drainage easement. The drainage easement is for an underground 4 inch PVC pipe. Clint Harris, County Public Works, supports this request. Steve King supports the reduction in width to 7.5 feet for the private drain pipe. The developer states in the application that per a telephone discussion with Steve King, the pipe will be placed in the center of the easement. Staff has recommended a condition of approval that grading, drainage and erosion control plans be reviewed by the City Engineer and approved by the County Public Works Director, prior to final plat approval, including the provision of a minimum 7.5 foot drainage easement to be placed along the eastern property boundary and the installation of drain pipe within the easement. The conditions are unique to this property because an adjacent property owner uphill to this subdivision previously installed a drainage pipe, which resulted in storm water flows onto this property. The proposed easement is intended to accommodate the flow from the adjacent uphill property to a culvert which runs under Valley View Drive.

The last variance request is from the downward adjustment of density in this subdivision in accordance with the hillside regulations. The proposed Lot 1 is fairly level and the proposed Lot 2 has slopes between 5% and 13%. The density reduction required by hillside regulations results in adjustment of density from 2 lots to 1 lot. Recuperation of density back to what would normally be permitted by zoning is possible through density recuperation items, such as connection to sewer, cluster development and/or reduced home footprints. Although this subdivision will be connecting to City sewer, this was not sufficient for the density recuperation to result in upward adjustment to 2 lots. This is because the density factor on the 10%-20% lands is 0. Two "Hillside Property Density Calculation Worksheets" are attached to the staff report. Depending on if the Orchard Avenue right-of-way is included in the area of the subdivision, slopes between 0-10 percent equals 0.29 or 0.38 acres and slopes over 10 percent equals 0.21 acres. According to the calculations, the allowed number of homes on this property is one after adjusting the density downward since a portion of the property is on slopes over 10%. Clint Harris supports the adjustment of density variance request. The conditions are unique to the property because the subdivision is for a 2 lot split on slopes that do not exceed 13 percent. The subdivision is being proposed within an existing neighborhood with similar lot sizes.

Staff recommends approval of all the variance requests and approval of the subdivision subject to three recommended conditions of approval. The conditions address the grading, drainage and erosion plans, petitioning into the Missoula Urban Transportation District and indicating that the property is within the 500 year floodplain. Brian Maiorano, Floodplain Administrator, recommended that although the floodplain regulations do not apply to the property, builders and buyers should be aware of the potential hazards caused by this shallow sheet flooding.

Commissioner Evans asked if the County's South Hills Drainage plan included this area?

Jennie Dixon stated the normal drainage is handled. The sheet flooding is what the condition is referring to.

Greg Robertson stated that most facilities to handle storm water drainage are designed around a 25 year event. The 500 year event is not designed for. It would be more typical to inform residents of a 100 year event. A 500 year event is based on historic data.

Commissioner Evans stated that to her knowledge, a 500 year flood warning had not been included on a plat.

Colleen Dowdall stated that in the last several years, the County has been including these to be cautious. It should be discussed to see if this should be addressed differently in the future.

Brian Maiorano, Floodplain Administrator, stated the storm drainage would not address 500 year flooding. Even the new RSID down 39th won't address a 500 year flood. This area is shown on the FEMA maps as being an area of shallow sheet flooding. Because it is shown on the FEMA maps, it is recommended that all property buyers be told of the potential danger. It is a "buyer beware" issue.

Horace Brown stated that the South Hills Drainage was designed for a 25 year storm.

Ron Ewart, Eli & Associates, developer's representative, thanked Liz for her work on the proposal. Harold and Patricia Hochhalter were also present. They live in the "yellow milk wagon" house. All the neighboring properties are on quarter acre lots. This is a nice building site even though it is considered hillside. They are in agreement with the conditions.

Chair Curtiss asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow Valley View Drive and Orchard Avenue to vary from the required 28 foot width to the existing 24 foot width; approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations requiring curbs and gutters on Valley View Drive and Orchard Avenue; approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations requiring boulevard sidewalks on Valley View Drive and Orchard Avenue; approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations for the drainage easement to vary from the required 20 foot width to a 7.5 foot width; and approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations requiring downward adjustment of density on hillsides, 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 Carey moved that the Board of County Commissioners approve the Orchard View Addition Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval.

Commissioner Evans seconded the motion and stated that in looking at the pictures of the proposal, there is no way anyone could consider this hillside. That was not the intent of the hillside regulations.

The motion carried on a vote of 3-0.

#### **Orchard View Addition Subdivision Conditions of Approval:**

1. Grading, drainage and erosion control plans shall be reviewed by the City Engineer and approved by the County Public Works Director, prior to final plat approval, including the provision of a minimum 7.5 foot drainage easement to be placed along the eastern property boundary and installation of drain pipe within this easement. *Subdivision Regulations Article 3-4, 3-6, OPG and City Engineer recommendation.*
2. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District (MUTD), prior to final plat approval. *Subdivision Regulations Article 3-2 and MUTD recommendation.*
3. A statement shall be placed on the face of the plat indicating that the property is within the 500 year floodplain, subject to review and approval by the Missoula County Floodplain Administrator and County Attorney. *Subdivision Regulations Article 3-1(2).*

#### **Continuation of Hearing: Lolo Regional Plan (From April 10, 2002)**

Chair Curtiss: Next will be a continuation of the hearing for the Lolo Regional Plan. Okay, the public hearing for the Lolo Regional Plan is still open so we'll begin with any comments that the public would like to make on the Lolo Plan, but we'd ask that if you have already previously given us your opinion, please try and make it concise and not repeat yourself. We do have lots of letters and things that we've read and we know you how you feel on things, but if you have a new comment you'd like to bring up, we'd be glad to take it. Go ahead.

Bruce Bugbee: Bruce Bugbee. I have a brief comment on a, on something that I raised at the public meeting in Lolo and discovered that there is a, this is with regard to the, Page 4B-9, the Water Section and this is in regard to area of significant flooding risk. I commented about a reference to an attributive cause of the flooding related to a ditch and there is a video that the staff had viewed and I had a chance to look at that since and after looking at that, my



interpretation of the video, what I saw there was, did not indicate clearly the source. What I observed was consistent with sheet runoff in a winter condition where you have rapid thawing and rainfall and I would request, there is a sentence that was amended, I believe it was at the December 4th Planning Board session. The sentence, this is the end of the third paragraph on Page 4B-9. The sentence reads "Some of the flooding around Rowan Road was caused by an overflowing irrigation ditch located on the hillside above." I ask that that language not be so specific because there is no proven cause. At this time, after looking at the video, I ask just simply removing that sentence. I don't think there is any basis for attributing it to irrigation ditches, certainly not in the winter and or any more than the road design or pastures or roofs creating impervious surfaces or simply the fact that the ground may have been frozen and when it thawed, when the snow thawed and there was warm rain, you get sheet flooding. And this is, happen to be, created flooding down below, so I would ask just simply the removal of that sentence. I think the rest of it, I don't have any problems with, that steps have been taken to address the problem and the project should be reviewed and so on, but, that's my request simply.

Commissioner Evans: Could you tell me again, Page 4B-9, what paragraph you're talking about.

Bruce Bugbee: In the original plan, I think I've got this right, it's Page 4B-9 and it's the third paragraph from the top.

Commissioner Evans: Okay, "There are several areas of Highway 93," is that it?

Bruce Bugbee: Exactly. Then that was amended by the Planning Board on, at their hearing on December 4th, with additional sentences and you'll find that on Page 4 of the notes from the Planning Board hearing dated December 4th.

Commissioner Evans: Just tell me how you want it to read, Bruce, please, there's too many pieces of paper here.

Bruce Bugbee: Okay. The sentence that is in 4B-9 stays as is, which is in the original plan. And from there, the additional would simply be, "Some steps have been taken to address the problem. As projects are proposed in this area, engineering documents should be submitted to show the improvements and address the concerns over flooding." And in that, what I'm suggesting there is removing the sentence the Planning Board had added which began, "Some of the flooding around Rowan Road was caused by an overflowing irrigation ditch." Does that make it clear?

Commissioner Evans: And I'd certainly like to hear what Laval has to say about it.

Laval Means: I'm going to try to refer you to the individual issue sheets because you'll see that paragraph as Planning Board had amended the language or recommended the change is on Issue 9 and it shows that paragraph. It shows that with the idea of adding "may have been" into that sentence and what you're hearing from Bruce now is instead of even stating that, you may want to consider striking it completely.

Chair Curtiss: So that whole sentence.

Bruce Bugbee: Yes please. Thanks Laval, I'd forgotten about that other change. Thank you.

Chair Curtiss: Thank you. Is there other comment?

Elmer Palmer: Elmer Palmer. And I'd like to take a minute and talk about purple. I see we got purple chairs, there were dozens of people here dressed in purple, we have a purple folder up here and what I don't see is a lot of purple on our land use plan. I'd like to address Issue 12 on your, on the 4/10 summary of issues before the Board of County Commissioners. Number 12 states more industrial land is needed. Page 5B-2 of the Lolo Regional Land Plan Final Draft reads that, lists out the major employers located within the Lolo area, and the second one listed is Nutritional Laboratories which employs 67 people. Last night, Channel 8 and Channel 13 both reported that Nutritional Laboratories is moving to Missoula. We've also additionally lost a, I don't know the name of the company, but they moved to Stevensville because of the hassles of trying to find industrial space to work in Lolo. They did electronic drafting and drawings. They were in a building owned by Stan Hendrickson. As you are all aware, Lolo has four years remaining on an agreement with the City of Missoula, a no annex agreement, during which time we have the opportunity to look for, look at the advantages and disadvantages of incorporating as a city, rather than a census designated place. One of the things that was needed, if we should decide to incorporate in Lolo, is going to be a tax base. On the next to the last final draft of the land use plan, the one that was mid-summer of last year, we had quite a bit of purple land left on our map. Laval doesn't like purple apparently, because we have very little purple left, in fact, most of what we have out there now is red and purple.

Commissioner Evans: Could we refer to it as industrial land so that we know what ...

Elmer Palmer: Oh, excuse me.

Chair Curtiss: And let's not say Laval, she took input from the community also.

Elmer Palmer: All of our light industrial land is designated as purple.

Commissioner Evans: Thank you.

Elmer Palmer: In order to have a tax base out there, we're going to have to have some kind of industry. We're going to have to have something that will produce value added and I apologize, Laval and I have been very good friends through all of this and, but, anyway, on behalf of the people of Lolo, not representing the Community Council, but I'm representing those that I have talked with, we would like to see some more purple added in out there. I know that several people have suggested that because the County owns so much industrial property that that was the reason that this was happening, I know that's not the reason.

Commissioner Evans: Most of our land is pretty well sold or getting there.



Elmer Palmer: Is it. Okay, thank you Barbara. But I know that there have been comments to that and I know that that's not it, but we do need to have the County Commissioners look at our purple, look at our industrial, light industrial out there. We need to have some way to raise some money should we decide to incorporate and even if we don't incorporate, that means that there'd be that much more value added business out there for the County to have as tax money. So we do need to look at some of that ground out there and set it aside.

Commissioner Evans: Elmer, do you have some specific recommendations. It always help when you specifically recommend.

Elmer Palmer: Well, I know that Stan Hendrickson has a gravel pit out there that was not designated that way. That's one of the places that I know that Tom Cook spoke with Laval during some of the early, in fact I think at one point Laval was not that gravel pit so designated, the one up Highway 12?

Laval Means: It's on the west side of Sleeman Gulch?

Elmer Palmer: On the west side of Sleeman Gulch, yes.

Laval Means: No, I don't believe it was because it's what's inside floodplain, so with the consistency of floodplain it was designated as Open and Resource.

Elmer Palmer: There are several, possibly some more of the area down along Highway 93 could become industrial. The problem is, as you folks have stated before, this is just a working document to work off of, it's not a zoning document, but the thing that, it is awfully easy to take and move land from industrial to residential. It is almost impossible sometimes to go the other way and we'd like to see some of that ground designated now as industrial and if need be, it can be moved back to residential, but it is hard to go the other way, and, all of us aren't sure where it should be, but we know that there should probably be some more ground along the 93 corridor, up Highway 12 corridor, somewhere that we can put in, it doesn't have to be dirt polluting industries, we'd prefer to have some nice clean ones come in, something that would, something like that electronics drafting outfit that was there, they just could not find a large enough place, they grew and moved to Stevensville. Now their taxes go to Ravalli County and so, that's what we would like to see, something more, some more industrial somewhere along that corridor, one of those corridors. If I get any ideas Barbara, I would be very happy to share them with you, maybe down along ...

Commissioner Evans: Don't you even say it Elmer.

Elmer Palmer: Thank you very much.

Chair Curtiss: Thanks Elmer.

Commissioner Carey: Can I ask a question regarding Elmer's. As a matter of process, maybe Colleen or Laval, I don't know which one of you would want to take this, but given the late date in terms of our work on this plan, would it be, is it feasible that if someone were to identify a potential industrial piece of ground, could they come in here and ask us to amend the plan that we've adopted today, perhaps? It seems to me like we'd need some sort of specific request in order to change the plan.

Colleen Dowdall: A landowner could certainly make that request. That's one of the things we struggle with in terms of what criteria we use for determining whether there is a need for a plan amendment and I think it's safe, I think we've discussed this also, that we tried very hard to find additional places that were appropriate for industrial designations and it was a very difficult thing to do because there are lots of constraints. A lot of the planning area is in the floodplain or close to Lolo Creek or close to the Bitterroot, so, and we just, we're open to suggestions. I know one area that Stan Hendrickson also argued for was just across from his property that is designated industrial on Highway 12 where he has a, he builds log homes and that is adjacent to Lolo Creek and the Health Department had adverse comments about the designation that we did on the other side of the highway because it's not in the sewer district but we maintained that designation but could not find rationale for making the land adjacent to Lolo Creek to be industrial.

Commissioner Carey: But if someone were to come in at a future date and ask us to change the designation, we could certainly consider that.

Colleen Dowdall: You certainly can consider it, yes.

Commissioner Carey: Thanks.

Chair Curtiss: Is there further comment?

Moe Gary: My name's Moe Gary and I know you saw me here last week. My husband and I sent you a letter and I was just checking to see if you'd got it and had any questions at all. It was about changing the density, the housing density closer to the river as part of the process.

Chair Curtiss: Yes, we did get your letter.

Moe Gary: Okay, thank you.

Commissioner Evans: Could I ask Laval and Colleen a question in regards to Elmer's request and Bill's question. Would it be possible to put some comment under the Industrial Land section that indicates that we have the intent to look at requests when they come in to determine their applicability, or something. My concern is that when you have a plan, even though it's subject to change and amendment, many people focus in on them and think that they are gospel, like the 10 commandments and they are not subject to change and I think it might be well to have a comment that says something, other areas will be looked at upon request or something.

Laval Means: What do you think, I mean, the idea of a general statement about looking at it, yeah, something, I think what you might be getting at is something that might help the amendment process move along a little better. We have some general descriptions of the commercial and industrial land use on 7C-1 and the last sentence of the one, two, three, third paragraph states, "Planning for potential light industrial use is important for establishing a diversity of job opportunities as long as those uses can be coordinated with infrastructure and meet Health Department requirements." Maybe we could add to that some type of a statement there. I'm trying to think of what we'd add but that would be the place.

Commissioner Evans: Would that suit you Bill?

Commissioner Carey: Okay, sure.

Laval Means: What do you think Colleen?

Colleen Dowdall: I'm trying to remember how much we left in the chapter about plan amendments.

Laval Means: In Chapter 8, for amendments.

Commissioner Evans: Well, the first paragraph under 7C says, "To realize these goals, the plan supports in fill development of existing commercially designated areas as well as recommends new areas for commercial..." Could we say, "and potential industrial," simply add that to that sentence.

Colleen Dowdall: This is talking about what we've done in this plan and if you go down to the third paragraph on that page, there's a longer paragraph about where industrial has been recommended and what the limitations are and that paragraph would certainly be available when considering an amendment. In the middle of the paragraph, it says, "Highway frontage is available although commercial and residential uses are more common in these areas." And what we were attempting to recognize there is that commercial businesses typically want the frontage so that they can attract customers and industrial uses typically again don't require highway frontage for that purpose, so, and then the thing that has made some of the purple go away also is the fact that some of the commercially designated land from the '78 plan, I mean the industrially designated land has developed in a commercial way, so we changed the map to reflect that. It wasn't a recommendation that it wasn't a good idea, just that is not what has happened.

Laval Means: And it also ended up as a mix in some of the places that were designated industrial in the '78 plan, you see a mix of commercial, some industrial, there's a couple industrial locations already inside that, those industrial areas and some residential. So when it was such a mix we went with the designation for the general commercial, given it's location as well. It's one of those areas that got taken out of that calculation of industrial land use.

Commissioner Evans: I'd just like a statement that says something to the effect that it's perfectly okay to look at things as they come in and that this is not cast in absolute stone and I don't care where we put it or how we put it, but that idea.

Colleen Dowdall: Okay, well maybe as we finish the testimony, I'll see if we can come up with some language.

Chair Curtiss: That would be good. And I think also there's one on 7C-6 where it talks about industrial uses that we have the guidelines there which to me would be what they, if someone was proposing an amendment, they would need to meet those guidelines for industrial use.

Commissioner Evans: Okay, thank you, that's all.

Chair Curtiss: Okay, is there further comment? Wow, seeing none, we'll close the hearing and go on to the ...

Colleen Dowdall: Are you sure. Ask one more time, just to be sure so we don't have to open it again.

Unidentified Speaker: Well, I didn't know if you would reopen the public hearing to ask me what I thought about this or not so I thought I'd better get my two cents worth in now.

Chair Curtiss: Colleen knew you were just sitting there waiting.

Colleen Dowdall: Two lawyers in the audience, at least, and I couldn't believe ...

Unidentified Speaker: That we were being quiet. Yesterday, Laval faxed to me what you probably have and it says possible changes to the Lolo Regional Plan referring to Issues #4 and #8 of the list of issues and I can tell you I'm in total support of it and it removes my request that you change the area of significant flood risk north of Lolo into a different type of density per acre.

Chair Curtiss: And could you please say your name for the record.

Myra Shults: Oh, I'm sorry, Myra Shults.

Chair Curtiss: That you Myra. Is there any other public comment? Okay, seeing none, we will close the hearing. Okay, the Commissioners have had several briefings since the last public hearing and we decided that we would leave Issue #3 'til last. So we will work our way through. Laval's going to give us a brief overview and then we'll work our way through the issue sheets that we have and come back to #3 at the end.

Laval Means: What I want to do initially is make sure that for the Commissioners sake, we all have the information needed in front of us. I'm going to reference some of the handouts and working sheets so that you'll be able to utilize these as we get through some of these last issues. First off, we've passed out the Request for Commission Action and you'll have that in front of you for hopefully eventual reference in making the final motions on the plan. A summary

of issues that was distributed back on April 10. A lot of those went out into the audience as well. I have some of these along the side board there, if anybody's interested. Something that is really a worksheet for the Commissioners are the individual issue worksheets and we'll make a lot of reference to that today that provides some of the background and was distributed on 4/10/02. Back on 4/10/02 we also distributed an individual worksheet that went out into the audience as well for the Water Policy #8 and related land uses. There were a couple amended, you amended a couple portions of that particular worksheet, but still have one outstanding and this relates to Issue #3 that we talked about doing toward the end of the hearing. What I did since the April 10th meeting was update the website so a lot of this information should be on our website and have distributed to you guys, the Commissioners, for your reference, the six amendments that you made at the last hearing. The two individual, there's three and other individual worksheets that have been distributed to you. The first two were back at the first hearing we had which was on March 27th. They are referenced as the staff recommended changes. And then a worksheet for additional information regarding wildlife crossing. And then the final worksheet that you already heard some reference to today, is referring to Issues #4 and #8 combined from our summary of list numbers. So those are the things that we're hopefully going to be working with. Of course, the base documents on all of this are the final draft of the Lolo Plan as well as the Planning Board recommended changes.

Chair Curtiss: Okay. So Issue #1 was work out the floodplain solution in the Lakes neighborhood and we dealt with that last time.

Laval Means: Correct.

Chair Curtiss: Issue #2 was one that came up at the meeting that we held in Lolo which was to establish some guidelines for making cell phone towers more aesthetic. We did begin that process. We have a beginning draft which I forwarded to Michele Landquist who had brought the issue up at that meeting and I have a copy here if Elmer would like one. But, what we've decided is not to, because we want it to be a good policy when we adopt it, we decided to not try to put it into the plan at this time and we will continue to work on that. We can work it into a more County wide plan.

Elmer Palmer: Yes, I was going to ask, are we looking County wide instead of just Lolo.

Chair Curtiss: Right, and we really would like to put it in this plan so that it addresses your issues but felt that it, we'd be rushing it too much. We want input from the telecommunications folks and that kind of thing too. So, Issue #2 will not be addressed in this plan. Issue #3 we've already addressed the first part and we'll deal with the other part after we've finished these first ones. Issues #4 and #8 are the ones that Myra just referred to and this is in regard to the land that is north of Lolo, so, see if I have the right piece of paper for the motion.

Laval Means: Would it be appropriate for me to apply a little bit of background. You did talk about this a little bit at the last hearing and it was suggested that we go back and look at some options, I think where we left off was also taking a stronger look or a better look at what we said in the area of significant flood risk section or the Water Section of the plan and, so they were kind of linked together, the land use rationale and what we say about the area of significant flood risk. The first, Item #4 were the original suggestions by Myra in terms of how to possibly make some land use changes within the area of significant flood risk for that portion north of Lolo and west of Highway 93 and then Item #8 was looking at trying to establish better consistency between area of significant flood risks within that vicinity and we have gone back and recommending a few language changes in the area of significant flood risk section, or the Water Section I should say, and have also placed that here for your consideration, an additional statement inside of the land use rationale for that development area itself, or the one dwelling unit per acre. And then just to conclude what you've heard recently from Myra was that she's seen this language also and other folks have and is fine with it, it seems.

Commissioner Carey: And this is the language contained in the April 24th memo called possible changes to the Lolo Regional Plan referring to Issues #4 and #8.

Laval Means: Correct.

Commissioner Carey: Do we need to read that wording into the record, or citing the memo works.

Laval Means: Okay, yeah, you're right.

Chair Curtiss: Okay, so, do you want a motion to use that for #4 and #8.

Commissioner Evans: Does that include the language that Bruce said earlier today.

Chair Curtiss: This is a different one.

Commissioner Evans: Sounds like the same thing to me.

Chair Curtiss: It's in a different area though.

Commissioner Carey: Alright. I'll make a motion to include in the Lolo Plan language referring to Issues #4 and #8 can be found in the April 24th memo to the Board of County Commissioners.

Commissioner Evans: Second.

Chair Curtiss: All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Chair Curtiss: Okay, Issues #5 and #6. These are in regard to portions of land west of Highway 93, north of Lolo, that are below the floodplain but not mapped that way by FEMA. All of a sudden I'm totally confused here, I wrote use two foot contour map on it.

Laval Means: We did talk about this one at the last, at an earlier hearing and I've got notes that we dealt with it already. We had explained that we went back and verified the mapping of the area of significant flood risk, we had used two foot contours to verify the mapping and found that what we showed on the land use was accurate.

Chair Curtiss: Okay, so we've dealt with those two.

Laval Means: And #6 was a conceptual, slightly different issue, is the comments from a citizen who had concerns about how this could possibly affect their property value. And what I provided for you is some background stating that, you know, what was the intent of this was to communicate for all users of the plan, including those, you know, possible home buyers in an area that there may be some concerns, but it needs to be demonstrated that it is possible it's not, also, so it was a heads up for everybody.

Chair Curtiss: Okay. So, then #7 and #9 were both in regard to the Rowan Road area and so the language would be what Mr. Bugbee talked about earlier which is on our Issue #9 sheet. That addresses #7 too, right?

Laval Means: Well, #7 is a little bit of a different view. That suggestion was to eliminate the reference of an overlay in that area for the area of significant flood risk and then Issue #9 was rather than eliminate it, to better specify really what was the cause of some of the water flowing in that particular area at a particular time. We had originally, or in the Planning Board changes they had originally said that some of the flooding around Rowan Road was caused by an overflow irrigation ditch and then some other statements were added as well. You've heard from Mr. Bugbee a different suggestion which would be to strike that sentence completely.

Commissioner Evans: And I would agree with that.

Commissioner Carey: That's fine with me.

Chair Curtiss: And I also have a reference in my notes that says to add a reference to 4B-9 about development, so I guess that would be under 8, 4B-8, but 4B-9 follows it, so I guess that doesn't make sense.

Laval Means: I know what that's about, hang on, I'm going to that page in the plan too. In order to help clarify for some of Mr. Martinsen's concerns that he raised with Issue #7, I think the suggestion was that you could possibly add a statement at the end of this paragraph on 4B-9, something to the effect of see development policies below, which later on in those development policies say that if a property owner demonstrates that land is not located within a flood hazard area, then development may be appropriate, so it kind of linking those two together was, I think, the idea, by adding that sentence at the end of the paragraph.

Chair Curtiss: Was that the second or fourth paragraph.

Laval Means: The paragraph, the one we keep referring to is the third paragraph that says there are also several areas west of Highway 93. Planning Board added about three sentences to that. Now the link is to the bottom portion of 4B-9 that is titled Development Policies in Flood Hazard Areas.

Chair Curtiss: Okay, so we would need a motion to add that language to the third paragraph.

Commissioner Carey: How about if I make two motions. One is to delete the second sentence in that paragraph.

Commissioner Evans: Second that.

Commissioner Carey: And the other part of the motion is to add "see development policies below."

Commissioner Evans: Second.

Chair Curtiss: All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Chair Curtiss: Okay, next is Issue #10. At our last meeting in Issue #3 we eliminated the term "floodplain" in the language in the Water Policy in reference to the river banks so now there's no reference to the floodplain in the language so we don't, we believe that that's been dealt with and you visited with Mr. Bugbee on that, right?

Laval Means: Before the water section has been revised, yes.

Chair Curtiss: Okay. So that one is done or does it need any more. #11 we already did. #12 there were no recommended changes to the plan. This is the one that Colleen was working on the language for us. Have you figured some magical formula for us.

Colleen Dowdall: Well, I have written some language but I kind of want to run it by Laval before I say it out loud. Maybe Nancy can wander over here too.

Chair Curtiss: Okay.

Colleen Dowdall: You guys can keep going. I'll just have them read it and they can write on it.

Chair Curtiss: Okay.

Colleen Dowdall: I don't want to delay you in any way.

Chair Curtiss: Okay, we'll come back to #12. Issue #13, we were concerned about the base map showing roads or easements and naming roads that don't exist and Planning Board, or planning staff has identified those and have been brought to our attention and they will be corrected.

Commissioner Evans: Do we need a motion for that, or just our acquiescence.

Chair Curtiss: I think that gets covered in our final motion that says we make corrections as needed. Okay, #14 is in regard to the two dwelling units per acre south of Lolo, west of Highway 93 and this one, in our discussions, and I'm not sure if Commissioner Evans was there the day that we discussed this, we felt it was justified by the topographic lines and would recommend no change. Do you remember which one that was Barbara.

Commissioner Evans: I believe this is kind of the meadow area beyond Holts.

Chair Curtiss: No, it's the other way.

Commissioner Evans: The other way?

Laval Means: This is going south of Lolo into, your letter ... should I turn the map the right way. Now we can be all north facing up. The area that we're identifying as that issue is in this particular area in here. This is the creek, Lolo Creek and so north is up and we're south of Lolo Creek, here's Highway 93 and Bitterroot Meadows is right here and this is Kolb ownership that is, say, on the south side of the Bitterroot Meadows and kind of coming around a fairly, not a real steep slope, but coming around a sloped area.

Commissioner Evans: Okay, thank you.

Chair Curtiss: So the line that showed the one dwelling, or two per acre and then going to five per acre was based on the land form, so are you okay with not making any changes to that.

Commissioner Evans: I'm not sure, just a second. I think since I'm not familiar with this one, I'll abstain on this one.

Chair Curtiss: Okay. We're not making any changes, we don't need a motion. #15 is that there is a parcel that's in the floodway, there's already a home on and someone asked that it be designated as residential and the recommendation is not to make any changes there because we're not doing our land use designation based on individual parcels, so that house that exists there is really a non-conforming use and there's probably lots of little dots that aren't exactly matching the land maps. #16 we've already done. #17 we've done.

Commissioner Carey: Does that include deleting the entire last sentence, that's what you're referring to?

Chair Curtiss: That's what I have.

Laval Means: On #17. What you did that I tracked was to delete the last portion of that sentence so you still have, it still reads "additional buffering and less intense development should be considered closer to Lolo Creek."

Chair Curtiss: Right.

Commissioner Evans: That's what I've got as well.

Chair Curtiss: So the next issue is #18, which is the land west of Sleeman Gulch was two per acre in the 1978 plan and is now recommended for one per five acres and the background was the intent for recommending rural residential in this area was to reduce density further from Lolo, therefore concentrating growth closer to the community and the Planning Board recommended no changes to this plan but it was brought up at the public hearing.

Commissioner Evans: And this is the land that I'm, I don't agree with their recommendation, I think it should be one per acre and so I would probably vote no on this issue. To me, it's an area that is logically where residential would want to go and it does, over a period of time, add to the tax base for Lolo and so I'm inclined to say one per one is more appropriate.

Commissioner Carey: And I'm inclined to say that the one per five is more appropriate following the Planning Board's logic.

Commissioner Evans: I knew that.

Chair Curtiss: So is there a motion, one way or the other.

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Commissioner Carey: I'll move to accept the Planning Board's recommendation, one per five.

Chair Curtiss: Okay, I'd second that motion. All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: No.

The motion carried on a vote of 2-1 (Commissioner Evans opposed)

Chair Curtiss: Okay, we are to #19. Okay, this is the one that, Laval, I believe you have some language for us, this was any other issues that the Commissioners may wish to bring up and we had said previously that we wanted to make sure there was a reference on the land use maps to please read the narrative that goes with them, so do you have the exact wording of how you thought it should go?

Laval Means: "Please see the narrative in the land use rationale." Is there any, I really didn't think about the technical cross reference or anything. Colleen, is there anything else you'd add to that in the land use rationale, I mean, do you have to say, of this plan, maybe, or ...

Colleen Dowdall: I think we can probably work on the actual language as long as you're willing to authorize us to do that.

Chair Curtiss: Okay. And the main impetus for this language is just to make sure that people don't only look at the maps and not necessarily read the narrative and therefore not know the full extent of what can happen within those different colors. So, there we go to your purple, see. He got us hooked. So if we could make, a motion would be to put some such language on there that ...

Laval Means: Concept of "please see the narrative in the land use rationale" and that staff may fine tune it to make sure the reference is done appropriately.

Commissioner Evans: So moved.

Commissioner Carey: Second.

Chair Curtiss: All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Chair Curtiss: Okay, so we'll go on to #20, which is staff corrections. And I can't remember, is there more than just this one that's on the issue sheet?

Laval Means: I have a second correction I want to bring to your attention. Let me just get my notes on #19, just a second.

Chair Curtiss: Okay. #20 is in regard to staff corrections that they found and we have one that needed to be made in 4B-10, the water section, that ...

Laval Means: What we found with this paragraph in the water section was that we were referring to ...

Chair Curtiss: We had our directions wrong.

Laval Means: Right, we had our directions wrong. We were referring to floodplain west of lower Lolo Creek and what we should have been saying was north of Lolo Creek. So, the first change would be to strike out "west" and replace it with "north" and then reading on, we realized we missed the word "be," so it reads, "flood hazards need to be comprehensively addressed."

Chair Curtiss: Okay. And you have another one then.

Laval Means: Yeah, the second one has to do with a map correction. We realized in the what we're calling the Orchard Park area, it has, it's something that you might see with the partial map number, I don't remember the map number ... number 10. What we realized is when Planning Board made their changes or made recommendations for change, they did not make a recommendation to change the area of significant flood risk line. It's an overlay to land use density and it isn't, it doesn't automatically go along with changes to the density and when we mapped the change that Planning Board's proposal showed, we inadvertently moved the area of significant flood risk line as well. Now that area of significant flood risk is intended more specifically to deal with flood issue and flood concern and it should still stay in its original location from the final draft, so the map correction would be to keep the area of significant flood risk as it was originally shown in the final draft in that particular area.

Chair Curtiss: Okay. Would someone like to move to make those two staff corrections.

2002-01-11

Commissioner Evans: So moved.

Commissioner Carey: Second.

Chair Curtiss: All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Chair Curtiss: Okay, are we ready to go back to number, is it #12. No, not three yet, #12. We have #21 from our list today, which was handed out to us this morning, technical corrections based on recent Montana State Legislature and the suggestion would be that the issues related to Page ii which is in the preface and Page A8-2 are considered corrections that will be addressed by the motion for additional corrections based on clarifications of references are made to time sensitive information, so we'll actually cover those in our final motion. So, I guess we could look at the wildlife one. Do you have that one Barbara?

Commissioner Evans: Well I have lots of them, I probably do, 4B-13?

Chair Curtiss: Under 4C Natural Resources.

Commissioner Evans: Well, 4B-13 Water Section.

Chair Curtiss: This has to do with wildlife.

Commissioner Evans: What number did you say it is?

Chair Curtiss: 4C.

Laval Means: May I? Are you working on the wildlife crossings.

Chair Curtiss: We're just looking at it, we haven't done much yet.

Commissioner Evans: Where are we at?

Laval Means: Where are the language changes or what does the handout look like?

Commissioner Evans: Which one of these piles of paper is it in?

Chair Curtiss: We can share.

Laval Means: I'm going to give you one, so we can ...

Commissioner Evans: Thank you.

Chair Curtiss: Okay, so this is the recommended changes that the Commissioners had also asked for, the additional information regarding wildlife crossings and so this would be additions to chapter 4C Natural Resources under Biology, Page 4C-4. So there are just a few additional pieces of language and we'll actually deal with them in our final memo, but I guess we could read them ... do we need to read these in to the record.

Commissioner Evans: If we could just give it to Patty.

Laval Means: Right, yeah, I don't think you need to because we can pass it on. The idea is that we found a few places where we could further describe the concept of wildlife crossings and one was in the Biology section of the Natural Resource chapter, that one paragraph could be added. There is a policy that we found or a strategy that could be added under Policy 4 and then in the Transportation section, I think we can do some cross referencing and add a strategy under the Transportation section, so I'm kind of giving you the general look of the change.

Chair Curtiss: Okay.

Commissioner Evans: And I strongly support it.

Chair Curtiss: So do you have one of those Patty? Okay, so are we ready for Issue #12. Okay, we'll go back to #12.

Laval Means: Language that could be added to Page 7C-1 at the end of the third paragraph. Adding a sentence that could read, "Other lands may be considered as suitable for industrial use under this plan if they meet development guidelines and health requirements."

Commissioner Evans: I think that probably meets your need Elmer.

Elmer Palmer: You're referring to after this planning for potential light industrial use, in that statement. Yes it does.



Colleen Dowdall: And so this is different than what you suggested because it wouldn't require an amendment to the plan, it would allow someone to argue that they do comply even though they haven't been designated in that way.

Commissioner Carey: Okay, thank you.

Laval Means: And some of those compliances, I mean, the criteria for helping determine that compliance would come from the development guidelines in the plan and then working with the Health Department.

Commissioner Carey: Okay, I move we adopt that language.

Commissioner Evans: Second.

Chair Curtiss: All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Chair Curtiss: Okay, I think we got through everything but #3.

Laval Means: You still have some staff corrections also. They are listed as a separate motion.

Chair Curtiss: Okay.

Laval Means: Did you talk about Issue #21? You did.

Commissioner Evans: Yeah, we did.

Laval Means: Okay, thank you. These were staff recommended changes that were also handed out on March 27th and there's a series of about five of them.

Chair Curtiss: Community design guidelines, open and resource clusters. Okay. Did we discuss these that day or do we need to discuss them today.

Laval Means: I've gone into them in briefings with you, it's been awhile. If you have any questions on any of them.

Chair Curtiss: I just wondered if the public had seen them. Everybody who has had concerns about them has been contacted, right.

Laval Means: And they've been available since March 27th and they've been on the website and they're also out here. And the first item on that list has to do with some additional language that could be added to the parking guidelines.

Chair Curtiss: Okay, so are the Commissioners in agreement with this language.

Commissioner Carey: Yes.

Colleen Dowdall: It's covered in your general motion also.

Chair Curtiss: Right, so we don't need a motion. Okay, Laval on your checklist, then, have we covered everything that's on, before ...

Laval Means: I think what we've got left is a portion of #3 and if you have any other issues yourself, always leave that open.

Chair Curtiss: Go back to #3. Okay, so the part of #3 that we haven't addressed yet is the possible changes to the land use rationale on Page 7F-4, number 6B, which is the land directly adjacent to the river is designated open and resource. So, Laval would you like to give us a little bit of background again, or whatever you need.

Laval Means: Before the, or at the April 10th hearing, there was a handout that was a worksheet, so to speak, for the water policy and related land uses, if you've got that with you. And then what you did at that last hearing was amend the portion that deals with the water section, 4B-13, and you amended one portion of the land use rationale in this particular area and that was the language related to the open and resource designation adjacent to the river, but you held on particular language dealing with the residential designation coming up to that open and resource area. That is on Page 7F-4, number 6B, large letter B, so that's the portion that's still left outstanding. There's no new recommended language at all, except for the, you know, from what we had from this issue sheet that showed a way of cleaning up the language based on the fact that we really didn't have a moving, flexible setback anymore.

Chair Curtiss: Okay, and I think the other thing that we need to address is the fact that we've now moved the dotted line that shows the flood risk, we've said that the map will change that, but you also came to us and said that there's a new area that maybe should be designated as open and resource.

Laval Means: Well, as a result of the language change on A, the A portion of the land use rationale for this particular area was addressing or dealing with an open and resource designation adjacent to the river and it tied it to the water policy section that gives us the specific measuring point and that's the area, the average high water mark. So, what I'd

say is that our maps are going to change to reflect the land use rationale and in this particular area when you look at the southern portion of the Orchard Park area, the average high water mark would be measured and I confirmed this, I went over this with our Floodplain Administrator, but that the average high water mark would be measured from the side channel and that would reflect in the land use plan, you know, from the Planning Board mapping, it would cause the open and resource to go a little further to the west, in approximately the same area where it was back in, where there was a line back in '78, between six dwelling units per acre and the parks and open space. Now it would be an indicator of where the open and resource is to the east. So that's a reflection of the land use rationale that would have to occur on the map.

Chair Curtiss: Okay, so we already have done the open and resources in that 300 foot space, so all we have to do is number B.

Laval Means: Think about the designation, yeah. Do you have what was a consideration in front of you, the possible language.

Commissioner Carey: This is the April 10th.

Laval Means: Yeah.

Chair Curtiss: So I guess if we agree with that, we would just adopt it as proposed in B.

Laval Means: It would be an amendment from what Planning Board originally had.

Colleen Dowdall: You need to make a motion to change it.

Commissioner Evans: While I consider it better than what we had, I'm still not 100% satisfied with it, but I guess I'll vote for it because it's better than what it was.

Chair Curtiss: Can you repeat that?

Commissioner Evans: I think you know exactly what I said, it isn't as good as it ought to be but it's better than it was.

Chair Curtiss: Is that a motion?

Commissioner Evans: A rather weird one, but, yes.

Commissioner Carey: Second.

Chair Curtiss: All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Chair Curtiss: Okay. So, we are now to the motion on the Request for Commission Action. Right? We covered everything.

Laval Means: I think so.

Chair Curtiss: You guys getting scared!

Commissioner Carey: Okay, I'll move that the Missoula Board of County Commissioners adopt a Resolution of Intent to Adopt the Lolo Regional Plan final draft as amended by Planning Board and as amended by the Board of County Commissioners, including all amendments made by the Board of County Commissioners and in addition, the following: 1. The staff recommended changes dated March 27, 2002, as part of the Lolo Regional Plan. 2. The recommended changes based on additional information regarding wildlife crossings as part of the Lolo Regional Plan. 3. Additional corrections including renumbering for consistency, modifying tables to reflect BCC changes, proof reading, consistent references to agencies and clarifications if references are made to time sensitive information. 4. The land use maps with amendments reflecting amendments to the Final Draft.

Commissioner Evans: Second.

Chair Curtiss: Any discussion? All in favor?

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye.

The motion carried on a vote of 3-0.

Colleen Dowdall: Yahoo!!!

Commissioner Evans: Who buys the champagne?

Elmer Palmer: I will. Where is the photographer today when there is no conflict.

Chair Curtiss: I know. The TV called ahead of time and I invited them to come, but they didn't.

Commissioner Carey: I'd like to thank Laval and Nancy and Colleen for all of their sustained incredible efforts in doing this.

Chair Curtiss: Okay, is there other business to come before the Commission? Seeing none, we're in recess.

There being no further business to come before the Board, the Commissioners were in recess at 4:00 p.m.

**THURSDAY, APRIL 25, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Chair Curtiss participated in the Sentinel Kiwanis Presentation of the Lyle Health Award for Outstanding Volunteer of the Year held at the Florence Building.

Claims List – The Commissioners signed the Claims List, dated April 23, 2002, with a grand total of \$32,452.68. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 25, 2002, with a grand total of \$43,984.71. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 25, 2002, with a grand total of \$1,500.00. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Derek Ellinghouse, Seeley Lake, Montana, as Principal for Seeley Lake District Cemetery Warrant #656, issued March 31, 2002 in the amount of \$919.60 (payment for wages), now unable to be found.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – The Commissioners signed an Agreement, dated April 25, 2002 between the Missoula County Airport Industrial District and Embe Contracting for the installation of five water service lines to Lots 11, 9, 8, 6 and 1, Block 3, Phase 4, Missoula Development Park. The total cost for all five water service lines shall not exceed \$14,800.00. The construction of the water services will be substantially complete within 45 days after the effective date of the agreement.

Agreement – The Commissioners signed an Agreement, dated April 25, 2002 between Missoula County and JTL Group, Inc. for the construction of a walkway and bicycle path, approximately 2.2 miles in length, adjacent to the Frenchtown Frontage Road in Frenchtown, Montana (Federal Aid Project – STPE 32(37); Missoula County Project No. 01-4095). Payment for said project is as set forth therein. The work will be substantially complete within 90 days after the date when the Contract Time commences to run, as set forth therein. The document was returned to Doreen Culver, Bidding Officer, for further handling.

Board Appointment – The Commissioners approved the reappointment of Susan Mathewson to a three-year term as member of the Missoula County Park Board. Ms. Mathewson's term will until May of 2005.

Other items included:

- 1) The Commissioners moved to approve (but did not sign) the agreement with Missoula County, The City of Missoula, and Bob Brugh (Re: Mullan Sewer), contingent upon final review by counsel.
- 2) Chair Curtiss and Commissioner Carey stated that they would attend the New Urbanism Audio Conference to be held on April 30<sup>th</sup>, 2002.

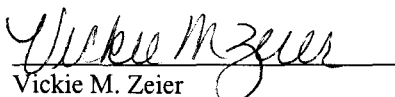
The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, APRIL 26, 2002**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Evans was out of the office all afternoon.

**Election Canvass**

In the morning, Chair Curtiss, Commissioner Evans and County Auditor Susan Reed canvassed the Spring Meadows Mail Ballot Election.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, APRIL 29, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated April 29, 2002, with a grand total of \$5,133.26. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 29, 2002, with a grand total of \$59,904.30. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 29, 2002, with a grand total of \$130,249.36. The Claims List was returned to the Accounting Department.

**TUESDAY, APRIL 30, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Chair Curtiss and Commissioner Carey attended the Smart Growth New Urbanism Audio Conference held in the Mayor's Conference Room; later in the afternoon, the Commissioners toured the Equestrian Park with Jack Baumgartner. In the evening, Chair Curtiss attended the annual meeting of the Historical Museum.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Laura E. Allen, Dallas, Texas, as applicant for Missoula County Public Schools Warrant #107887, issued March 8, 2002 on the Missoula County Payroll Fund in the amount of \$212.88 (payment for wages), which was not received in the mail. No bond of indemnity is required.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-043 – The Commissioners signed Resolution No. 2002-043, dated April 30, 2002, a Budget Amendment for the Partnership Health Center ("PHC"), in the amount of \$49,000, for the Ryan White Title II Contract (awarded directly to PHC by the Department of Public Health and Human Services). This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Agreement – The Commissioners signed an Agreement between Missoula County and Doug Hall, dated April 24, 2002, for the extraction of pit run gravel on property he owns in the Potomac Area. Mr. Hall will be paid \$0.50 per cubic yard for the pit run gravel. The term will be for a period of 12 months from the date of the execution of this agreement.

Agreement – Chair Curtiss signed a Noxious Weed Trust Fund Project Grant Agreement – Horseback Ridge Weed Management Group (Number MDA 2002-084) between the Missoula County Weed District ("Project Sponsor") and the Montana Department of Agriculture. The purpose of this project is to contain, control and stop the spread of noxious weeds, educate and provide help to landowners to control noxious weeds in the project area. The Project Sponsor will control 984 acres of spotted knapweed, Canada thistle, leafy spurge and sulfur cinquefoil with herbicides; and, educate landowners and interested parties on integrated weed management techniques. Care is to be taken to avoid damage to non-target vegetation, water and riparian areas. The total amount shall not exceed \$13,925.00. The term will be from the date set forth in the agreement to September 30, 2003. The document was returned to Alan Knudsen in the Weed Department for further handling.

Agreement – Chair Curtiss signed a Noxious Weed Trust Fund Project Grant Agreement – Frenchtown Weed Management Group (Number MDA 2002-085) between the Missoula County Weed District ("Project Sponsor") and the Montana Department of Agriculture. The purpose of this project is to continue to contain, control and stop the spread of noxious weeds, educate and provide the tools necessary to help landowners control noxious weeds in the project area. The Project Sponsor will control 2701 acres of spotted knapweed, dalmation toadflax, houndstongue, Canada thistle, leafy spurge and sulfur cinquefoil with herbicides. Care is to be taken to avoid damage to non-target vegetation, water and riparian areas. The total amount shall not exceed \$28,986.00. The term will be from the date set forth in the agreement to September 30, 2003. The document was returned to Alan Knudsen in the Weed Department for further handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-013 for the Health Department, in the amount of \$90,178.00, for the purpose of separating Traffic Safety grants (combined for budget ease), and adopting same as a part of the Fiscal Year 2002 Budget.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-014 for the Health Department, in the amount of \$6,830.00, for the purpose of loading the HIV Planning Budget under the correct codes, and adopting same as a part of the Fiscal Year 2002 Budget.

Request for Action – Chair Curtiss signed an Application for Federal Assistance, Assurances, and Certifications, standard forms necessary when applying for Targeted Capacity Expansion money (Federal funds). These funds would be used for Turning Point and the Missoula Indian Center, for the identification and assessment of substance-abusing middle and high school students in the schools. If received, Missoula County will receive \$1,500,000 over a three-year period. The documents were returned to Peggy Seel in the Office of Planning and Grants for further handling.

Resolution No. 2002-044 – The Commissioners signed Resolution No. 2002-044, Correcting Errors in Circle H Tax Bills (due to an error concerning improvements), dated April 30, 2002, and abating the 1997, 1998 and 1999 tax bills for the parcels shown on Exhibit A attached to the Resolution. Missoula's County Treasurer will issue new and

corrected bills showing a tax on each parcel for 1997, 1998 and 1999 based on the corrected value of the parcels reflecting the fact that the subdivision improvements were not in place in 1997, 1998 and 1999.

Audit Review – The Commissioners reviewed and approved the audit review for Missoula County Search & Rescue for the period January 1, 2001 through March 14, 2002, as submitted by Debbie Gross, Audit Tech, Office of the Missoula County Auditor. The Review was forwarded to the Clerk & Recorder's Office for filing.

Audit Review – The Commissioners reviewed and approved the current audit review for Judge Karen Orzech, Justice Court #2, as submitted by Susan Reed, Missoula County Auditor. The Review was forwarded to the Clerk & Recorder's Office for filing.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, MAY 1, 2002**

The Board of County Commissioners met in regular session; all three members were present. At noon, Commissioner Carey participated in the Bike, Walk, Bus Week "Pedal to the Metal" event. Following the Public Meeting, Chair Curtiss attended the Travelers Rest Open House.

Claims List – The Commissioners signed the Claims List, dated April 30, 2002, with a grand total of \$21,212.31. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 30, 2002, with a grand total of \$2,484.56. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 30, 2002, with a grand total of \$28,807.31. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 30, 2002, with a grand total of \$25,558.62. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 30, 2002, with a grand total of \$40,291.68. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated April 30, 2002, with a grand total of \$17,011.38. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Goodan Acres, Lot 3, located in the NW¼ of Section 20, T 15 N, R 21 W, PMM, Missoula County, a total area of 9.65 gross acres, with the owners of record being Russ and Cindy Olson.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending April 30, 2002.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution No. 2002-045 and Letter – The Commissioners signed Resolution No. 2002-045, dated May 1, 2002, authorizing submission of a TSEP (Treasure State Endowment Program) Application for financial assistance to provide sewer service to the Mullan Road Corridor Regional Sewer Project Area – Phase 1 Subdistricts: El Mar Estates, Golden West, Country Crest and Mullan Trail.

The Commissioners also signed a letter to the Grants Administrator at the Office of Planning and Grants, dated May 1, 2002, seeking their assistance and supporting the above-mentioned TSEP grant application for the Mullan Road Corridor Regional Sewer Project.

Resolution No. 2002-046 – The Commissioners signed Resolution No. 2002-046, dated May 1, 2002, a Budget Amendment for the County Attorney's Office in the amount of \$35,260, for the MBCC Drug Grant, which was inadvertently left out of the FY2002 budget (although it had been there in the past). This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-047 – The Commissioners signed Resolution No. 2002-047, Abating Tax Penalty and Interest, dated May 1, 2002, abating the second half of 1999 property tax bills for Irina Lemeza, owner of Lot 14, Block 3 of El Mar Estates.

Resolution No. 2002-048 – The Commissioners signed Resolution No. 2002-048, dated May 1, 2002, a Budget Amendment for the Technology Fund in the amount of \$154,759.00. The upgrade of operating systems from Windows NT to Windows XP was set for early FY 2003. However, the cost of the product increased on August 1, 2002. This amendment provides for the rescheduling of the payment to FY 2002 to take advantage of the discount. Additionally, excess cash reserves in the Technology Fund have been identified that can be used to pay down debt that will save the County approximately \$5,000. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Letter – The Commissioners signed a letter to Fran Viereck, Program Officer, Montana Department of Commerce, Helena, Montana, supporting the grant request from the Seeley Lake Rural Fire District for the Community Planning For Fire Protection in the Seeley Swan valleys.

Change Order – Chair Curtiss signed a Change Order, dated May 1, 2002 for landscape restoration work by Ibey Nursery and Landscape at USF Reddaway (along Kestrel Drive). Repairs will be made to the sprinkler system to provide adequate coverage along the west side of the east sidewalk. When this contract was approved, it was with the understanding that some sprinkler system repair would be necessary; the additional cost for the repair is \$900.00. The document was returned to Barbara Martens in the Projects Office for further handling.

**PUBLIC MEETING – May 1, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

**Pledge of Allegiance**

**Public Comment**

None

BOOK 002 PAGE 0547

**Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$190,303.25. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Bid Award (Public Works): Rubber-Tired Asphalt Paver**

Greg Robertson presented the staff report.

This is a request to award a bid for a Rubber Tired Asphalt Paving Machine.

Missoula County solicited bids for a Rubber Tired Asphalt Paving Machine with the following bid options – Purchase only, 3 year lease/purchase with no trade-in and with trade-in, 5 year lease/purchase with no trade-in and with trade-in. Three bids were received: Modern Machinery, Western States Equipment and Western Plains Machinery Company. After evaluating the bids, the best decision for the County was the purchase only option of the paving machine.

BID RESULTS	Modern Machinery	Western States	Western Plains
Purchase Only	\$175,233.00	\$204,043.00	No Bid
3 year lease/purchase (No trade-in)	\$193,100.70	\$222,586.00	\$194,940.00
3 year lease/purchase (With trade-in)	No Bid	\$215,716.00	\$193,860.00
5 year lease/purchase (No trade-in)	\$207,690.90	\$234,130.00	\$204,900.00
5 year lease/purchase (With trade-in)	No Bid	\$226,960.00	\$203,760.00

It is the recommendation of the Public Works Department to award the bid to Modern Machinery in the amount of \$175,233.00.

Commissioner Evans asked if this machine could be used with millings?

Greg Robertson stated that it can be used to lay reconstituted asphalt or new asphalt.

Commissioner Carey asked what the life expectancy of the machine was?

Greg Robertson stated it was roughly 5,000 to 6,000 hours. The old paver lasted 31 years.

Commissioner Evans asked if there was money in the budget to pay for this piece of equipment?

Greg Robertson stated the money was available in the budget.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for a Rubber Tired Asphalt Paving Machine to Modern Machinery in the amount of \$175,233.00, as the lowest and best bid. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Thompson Family Transfer**

Mike Sehestedt presented the staff report.

This is a consideration of a request to create a family transfer for that parcel described as Tract A-9, COS 1218, located in Sections 10 and 15, Township 11 North, Range 20 West.

Stanley W. and Eileen A. Thompson 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 17 acres in size located near Florence, Montana. The Thompsons propose to create on approximately 8 acre parcel for transfer to their son, William J. Thompson, for residential purposes and keep the remaining approximately nine acre parcel for an existing single family residence.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Tract A-9, COS 1218	1976	Over 20 acres	Schroeder Ranch	
Tract A-9-A, COS 2209	1979	Remainder of Occasional Sale	Vosicky	Thompson

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Stanley Thompson was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Thompson really did intend to transfer this property to his son?

Stanley Thompson stated that was the plan.



Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Stanley W. and Eileen A. Thompson 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Mr. Thompson would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing (Certificate of Survey): Reese Family Transfer**

Mike Sehestedt presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 290 Micro, Page 1862, located in the south one-half, southwest one-quarter, southeast one-quarter of Section 13, Township 13 North, Range 23 West, PMM.

Edna Reese 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 20 acres in size located in Petty Creek. Ms. Reese proposes to create one approximately 5 acre parcel for transfer to her son, Troy Dennis Reese, for residential purposes and keep the remaining approximately 15 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Book 290 Micro, Page 1862	1989	20 acre tract that was exempt from review	Spiracos	Reese

The property was purchased from John and Linda Spiracos in 1989. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Ken Jenkins stated he was representing Mrs. Reese.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mrs. Reese really did intend to transfer this property to her son?

Ken Jenkins stated that Mrs. Reese lives on the property and plans to convey a portion of it to her son.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Edna Reese 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 Evans seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Mrs. Reese would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Consideration: Phelps Addition (3 lot Commercial Subdivision) – West Broadway near Flynn Lane**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Dougherty Five Limited Partnership, represented by Territorial Engineering and Surveying, Inc., is requesting approval of Phelps Addition Subdivision, for a three-year plat approval period. This is a proposal to divide a 20.01 acre parcel into 3 lots. Lots 1 and 2 are 1.5 acres in size and Lot 3 is 7.39 acres. The remainder is 9.62 acres.

The property is west of Flynn Lane on West Broadway. It is a portion of the Dougherty Ranch and is approximately 1.5 miles southeast of the Missoula International Airport.

The property is currently zoned C-A3 (Residential), with a maximum density of one dwelling unit per five acres. The proposal is 1 dwelling unit per five acres, if the remainder is included in the calculation. The 1998 Missoula Urban Comprehensive Plan Update designation is "Residential," which recommends a density of one dwelling unit per ten acres.

The applicant has expressed an interest in pursuing a Citizen Initiated Zoning District for commercial development on the Dougherty Family Land Holdings, approximately 300 acres. The proposed subdivision is within the area intended for this commercial rezoning; however, no rezoning application has been submitted for review at this time.

The subdivision is located within the Airport Influence Area. John Seymour, Missoula County Airport Authority, commented on this subdivision proposal with the understanding that it is a commercial subdivision. Conditions of approval include an avigational easement and that the property is subject to the requirements of the airport influence area.

The property will be accessed by the proposed Mary Jane Boulevard. Mary Jane Boulevard exceeds the local road requirements for a residential street and meets the Collector street requirements, as the owners intend to propose a Citizen Initiated Zoning District for commercial uses. The property is within the Airport Area Street Grid Resolution Plan. The Dougherty Ranch has dedicated an 80 foot easement to facilitate the north-south Collector street for the Airport Area Grid right-of-way connection between West Broadway and Mullan Road. There are conditions of approval which relate to compliance with the Primary Travel Corridor Standards for West Broadway.

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The proposal exceeds the pedestrian walkway requirement for Mary Jane Boulevard. Mary Jane Boulevard will meet the requirement for a Collector street serving a commercial subdivision. Boulevard sidewalks are required on West Broadway. The subdivider has not proposed sidewalks on West Broadway and has requested a variance.

The subdivider originally requested to allow postponement of road/walkway construction. The subdivider has since submitted a request to allow for a 3 year plat approval period and in doing so, no longer needs to request postponement of road construction and paving.

The proposed lots will be served by individual septic systems until sewer is available. The dedicated 80 foot easement is also a utility easement for a possible future sewer main.

According to Fish, Wildlife and Parks and the County Floodplain Administrator, it appears that the natural and historical Grant Creek channel crossed this property and was subsequently relocated to a different location, known as the Field Dougherty Ditch, north of this property and north of West Broadway.

A "spoils pile" separates the creek from the proposed subdivision. West Broadway, just south of the "spoils pile" is also elevated, but is below the elevation of the 100 year floodplain. Because the "spoils pile" is not engineered as a flood control levee, a condition requires a statement on the plat that Missoula County makes no representations regarding the adequacy of the "spoils pile."

There is also a condition of approval that a statement be placed on the plat indicating that the subdivision has not been reviewed for the risk of flooding from high groundwater and that Missoula County makes no representations regarding the likelihood of flooding from surfacing ground water.

The proposed Phelps Addition Subdivision is projected to have 90% impervious surface cover. Another condition of approval is an RSID/SID for a storm water drainage system and the developer's storm drainage management plan requires approval by the Missoula County Public Works Director.

There is one variance request from the requirement that West Broadway construct boulevard sidewalks on one side of the road. Greg Robertson, County Public Works Director, does not support the variance request for boulevard sidewalks on West Broadway. Steve King, City Engineer, also does not support the variance request. He commented that this is an opportunity to establish a pattern for boulevard sidewalks for concurrent installation with development. Staff is recommending denial of this variance request and has recommended a condition of approval that the subdivider install a 6 foot wide sidewalk and a 10 foot wide boulevard on West Broadway.

Staff recommends that the Phelps Addition Subdivision be approved for a period of 3 years. Other conditions include grading, drainage and erosion plans, a petition into MUTD, a revegetation plan, plans for fire hydrant and water flow, clearly visible address signs from the street and an RSID/SID waiver for Mary Jane Boulevard and West Broadway.

Tim Wolfe, Territorial Engineering, developer's representative, stated that Deanna and Larry Phelps were also present. They are in agreement with the recommended conditions of approval. They would be happy to answer any questions.

Chair Curtiss asked for public comments.

Ron Ewart, Eli and Associates, stated that he was in support of this proposal. His company worked on the Pleasant View Homes Subdivision to the south. This fits in with the overall transportation plan to bring Mary Jane Boulevard to West Broadway. John Diddel brought the water line up to this location. This is a piece of the overall picture for the area. He has always felt this area should be commercial instead of residential.

Scott Allred stated he was the Treasurer for the Mullan Trail Homeowners Association. He wanted it on record that the association has spent more than \$150,000 trying to find a way to mitigate the flooding problem in the subdivision. The Mullan Trail Subdivision has subsequently been designated a floodway. There is an ongoing search for a way to address the continued flooding in the subdivision. Because the problem cannot be solved within the subdivision, the only place it can be solved is below or above it. As development comes in above and below the subdivision, it is starting to constrict the possible solutions. He asked that the Commissioners take this into consideration when approving new development. They are working with the Corps of Engineers and local authorities to find a solution.

Commissioner Carey stated that in Brian Maiorano's letter of March 12, 2002, where he outlined the various dangers of flooding, he mentioned that one good place for the relocation of Grant Creek would be to its historic site which happens to be the Phelps property. Has that been addressed with the developers.

Liz Mullins stated that she understood there were several locations where the creek could be relocated. It is known that historically it has gone through this property, but there are several other locations as well.

Colleen Dowdall stated that Brian Maiorano's letter states that running the creek through this property is only one alternative. Marnie McClain from the County Attorney's Office is also working on this problem. Her comments were that relocating the creek at all is the most expensive and least likely alternative.

Commissioner Evans stated that she did not believe there was a way to determine for certain where the creek was in the past and to assume this subdivision should take the brunt of trying to find a fix for the problem was not legally fair. The Corps of Engineers is working on the problem and looking at many alternatives. She did not believe it was legal to deny development in the area until a solution has been found.

Scott Allred stated he was just looking out for his subdivision until a fix can be found. He did not want subdivisions approved all around then find out the best fix might have been to utilize some of that ground.

Commissioner Evans stated that a condition of approval for this subdivision is a waiver of the right to protest an RSID/SID for a storm water drainage system.

Chair Curtiss stated that all storm water from this subdivision must be taken care of and that could possibly be through a storm water drainage system.

Commissioner Evans stated that if there is an RSID/SID for a storm water drainage system proposed for the area, this subdivision is waiving their right to protest inclusion in the RSID/SID.

Colleen Dowdall stated that Commissioner Evans' understanding was correct. An RSID/SID waiver has also been a requirement for other subdivisions in the area. A coordinated drainage system for the entire area is needed because of the soil types, the aquifer, etc., not just the Grant Creek situation.

Tim Wolfe stated that by proceeding with this subdivision, it has facilitated speeding up the process. The State floodplain bureau has had this issue on the back burner and this subdivision request has prompted them to begin investigations.

There were no further comments.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Section 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations requiring all rural subdivision within the Urban Growth Area (UGA) with a lot frontage of 175 feet or greater to construct boulevard sidewalks on one side of West Broadway, based on the findings of fact contained in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Phelps Addition Subdivision for a three year period, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Phelps Addition Subdivision Conditions of Approval:**

##### **Roads and Driveways**

1. Grading, drainage, and erosion control plans shall be reviewed and approved by the County Public Works Department and Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-4.*
2. Engineering plans, calculations and specifications for all roadway and stormwater improvements, in compliance with Missoula County Subdivision Regulations, shall be reviewed and approved by the County Public Works Department and Missoula Rural Fire District, prior to final plat approval. Mary Jane Boulevard shall be shown on the plat as a public access easement. *Subdivision Regulations Article 3-4 and Public Works recommendation.*
3. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District (MUTD), prior to final plat approval. *Subdivision Regulations Article 3-2 and MUTD recommendation.*
4. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Mary Jane Boulevard and West Broadway, 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." *Subdivision Regulations Article 3-2.*

5. Subdivider shall install a 6 foot wide sidewalk and 10 foot wide boulevard on West Broadway, subject to review and approval by County Public Works Department, prior to final plat approval. *Subdivision Regulations Article 3-2(8)(A)(ii) and County Public Works recommendation.*

##### **Primary Travel Corridor**

6. The plat shall be revised to show a 50 foot setback from the edge of the West Broadway right-of-way, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-14.*
7. The subdivider shall prepare a landscaping plan that complies with Section 3-14 of the Missoula County Subdivision Regulations (Primary Travel Corridor Standards), subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-14.*
8. A Development Agreement shall be filed prior to final plat approval requiring compliance with Primary Travel Corridor standards, subject to review and approval by County Attorney and OPG. *Subdivision Regulations Article 3-14.*

##### **Weeds**

9. 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) and Weed District recommendation.*
10. The subdivider shall file a Development Agreement requiring lot owners to maintain their lots in compliance with the Montana Noxious Weed Act and the Missoula County Noxious Weed Management Plan. The Development Agreement shall also require lot owners to revegetate with desirable species any areas of ground disturbance created by construction or maintenance. The Development Agreement shall be reviewed and approved for filing by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B).*

##### **Fire**

11. Plans for fire hydrants and water flow shall be reviewed and approved by the Missoula Rural Fire District, prior to final plat approval. *Subdivision Regulation Article 3-7 and Missoula Rural Fire District recommendation.*

12. The Missoula Rural Fire District shall review and approve plans to ensure that the subdivider install and maintain fire hydrants as required, prior to final plat approval. *Subdivision Regulation Article 3-7 and Missoula Rural Fire District recommendation.*
13. Plans for addressing buildings so that address signs are clearly visible from the street shall be reviewed and approved by the Missoula Rural Fire District, prior to final plat approval. *Subdivision Regulation Article 3-1(1).*

#### **Airport**

14. An avigational easement shall be obtained for the property in compliance with the Airport Influence Area Resolution, prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Airport Authority recommendation.*
15. The following statement shall appear in the covenants and on the face of the plat:

"This property is within the Airport Influence Area and subject to the requirements of the Airport Influence Area Resolution." *Subdivision Regulations Article 3-1(2), 4-1(12) and Airport Authority recommendation.*

#### **Floodplain**

16. The developer shall include a statement on the face of the plat:

"By approval of this subdivision, Missoula County makes no representations regarding the adequacy of the spoils pile between Grant Creek and the Phelps Addition Subdivision or West Broadway as flood control structures in the event that Grant Creek floods. In addition, the subdivision has not been reviewed for the risk of flooding from high groundwater and Missoula County makes no representations regarding the likelihood of flooding from surfacing ground water by its approval of the filing of the plat."

Final language is subject to the review and approval of the County Attorney's Office. *Subdivision Regulations Article 3-1(2), 3-4 and County Attorney recommendation.*

17. The developer shall include on the face of the plat a waiver of the right to protest creation of an RSID/SID for a storm drainage system for the area, based upon benefit. *Subdivision Regulations Article 3-1(2), 3-4 and County Attorney recommendation.*

#### **Hearing: Glacier Estates Subdivision (9 lots) – Mullan Road near Sunset Memorial Gardens**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Dean Crofts, represented by Ron Ewart of Eli & Associates, is requesting approval to subdivide a 9.38 acre parcel into 9 lots. Eight lots would range in size from one-third to one-half acre and be clustered in the northern section. Lot 9 would be 4 acres.

The property is located south of Mullan Road between Frey Lane and Sunset Memorial Gardens. The property is currently a vacant field that has been used for pasture and hay production over the years. It has fairly level topography except for the northeastern section, which has an upsloping hill of about a 10%-15% grade, with an average grade of 12%.

The lots will have individual septic systems and will be serviced by a community water system located on Lot 2. The area is served by the Missoula Rural Fire District.

The applicant requests one variance to the hillside regulations, which would otherwise require a reduction in density of one lot. OPG recommends the approval of the variance and the subdivision, subject to 7 conditions. An additional condition has been recommended based on discussions at Planning Status. The Planning Board voted 6-0 to deny the subdivision.

The property is zoned C-RR1 which allows a density of one dwelling unit per acre. The C-RR1 zone does not have a minimum lot area. Thus, the regulations allow for the clustering of the lots and lot sizes less than one acre in size. If and when sewer reaches this area, the 4 acre lot could be further subdivided for a potential of 16 lots in the future.

The Missoula Urban Area Comprehensive Plan 1998 Update designates the property and the surrounding area as Suburban Residential with a recommended density of two dwellings per acre. Therefore, the project is in substantial compliance with the Comprehensive Plan.

The proposed access is via a 60 foot wide easement off of Mullan Road, a State highway. The new public road would upgrade an existing driveway to a 24 foot wide paved street called Douglas Drive North. A cul-de-sac called Aisha Place off of Douglas Drive North will service Lots 1 through 5 and Lots 6 through 9 will have driveways connecting to Douglas Drive North. There are approximately 250 feet between this proposed development and Mullan Road. The applicant acquired an easement from Sunset Memorial Gardens to connect to Mullan Road.

An approach permit from the Montana Department of Transportation has been obtained for increasing the use of the Mullan Road access point. The permit is for up to 18 residences. This would cover the potential 16 residences of this development and two other existing homes to the north and southwest of the property. The site distance was an issue that came up. There is a hill to the west from Sunset Memorial Gardens. MDT stated that the site distance does meet the 1990 AASHTO standards and that the increased use by 18 homes would not require any additional mitigation such as a left turn lane. For the future potential subdivision, the plat shows a conditional access easement to the southern point of the subdivision. If that gets developed, an easement for connection to the cul-de-sac is encouraged.

The applicant has proposed a 5 foot wide asphalt walkway on both sides of the road and the cul-de-sac. It would continue on the west side of the road extending to Mullan Road. The public road right-of-way is proposed to be 70 feet to accommodate extra wide grassy swales for drainage on both sides of the road.

The subdivision is served by the Missoula Rural Fire District. Station #6 is located about 1 mile west on Mullan Road. The applicant proposes to install an underground water tank of about 10,000 gallons to provide a water source for firefighting. A hydrant will be installed at the corner of Douglas Drive North and Aisha Place. Curt Belts, Missoula Rural Fire District, stated that the proposal is acceptable, providing that the water supply to the tank is plumbed into the community water system.

The applicant proposes to dedicate 0.83 net acres as common area, which will be located at the entrance to the subdivision. This exceeds the area requirements for the proposed subdivision. The Glacier Estates covenants provide for the maintenance of the common area by the Homeowners Association.

Several neighboring landowners testified at the Planning Board hearing. Flooding of the subject property and of their adjacent property was one of the major concerns. They testified that there is frequently standing water on the site during spring thaw, that Frey Lane and basements of houses along Frey Lane flooded during the winter of 1996/1997 and that the water flows off the hillside on the site and settles in the back yards of houses on Frey Lane. They did not believe the wide swales would be adequate to hold the run off due to the heavy clay soils that do not percolate well.

They were also very concerned about having septic systems on one-third to one-half acre lots with the heavy clay soils and no room for a replacement drainfield.

Their other main concern was the access point onto Mullan Road. There are 3 access points in close proximity to one another, Frey Lane, Grassland Drive and a private cul-de-sac that serves 4-5 homes. This project would expand a 4th access point from one house to up to 17 additional homes without a left turn lane. The speed limit is 45 mph, but one homeowner near Mullan Road testified that traffic often goes up to 60 mph. They are concerned that the site distance to the east up the hill is not sufficient for safe pullouts during peak traffic hours.

Several people also voiced their concern about where the school bus would pick up children. It apparently stops right now at Frey Lane and it was unknown how children could safely get over to Frey Lane.

The Planning Board's main reason for denying the proposal was their concerns with drainage of water and allowing septic systems on one-third to one-half acre lots and the potential for failure in the clay soils. Fred Reed stated that the proposal "subjects both the future residents, as well as their neighbors, to an unnecessary risk and is also likely to subject the County to unnecessary risk of lawsuits."

OPG supports the approval of the variance request from the hillside regulations that would result in the reduction of one lot. The hillside standards were adopted to address 3 major objectives: 1) to protect the public from natural hazards such as stormwater run off and slope instability; 2) to preserve or retain natural topographic features such as ridge lines, vistas, trees and open space; and 3) to assure adequate transportation systems to serve the development with minimal cuts and fills.

In this case, these objectives are either not applicable or can be met without a reduction in density as the applicant intends to place the residences on Lots 2 and 3 below the hill top on the side slope. The applicant states that the soils are not unstable or rocky and thus there are no public safety concerns. The Planning Board voted 3-3 on whether or not to approve the variance request and sent it to the Commissioners without a recommendation.

A memo was distributed with an additional condition to address the concerns about drainage on the site and whether or not the proposed drainage facilities will adequately handle the potential water run off from this site. This condition would require a certification by a licensed engineer indicating the proposed drainage system for the subdivision will effectively retain drainage from all stormwater run off and sheet flow caused by snow melt or heavy rains on-site or release it at such a level that will not increase the peak run off normally present before the subdivision. It also provides an indemnification for Missoula County.

Commissioner Evans asked how effective the indemnification is?

Colleen Dowdall stated the County has been requiring it on subdivision where there are concerns about having to engineer to prevent flooding.

Commissioner Evans asked if that would hold up in court?

Colleen Dowdall stated it would be based on a variety of factors, including the errors and omissions insurance, in the event there was negligence or a mistake was made.

Ron Ewart, Eli & Associates, developer's representative, thanked Jackie for her work on this proposal. It has not been an easy one. They feel the OPG staff report is well written and are in agreement with the recommended conditions in the staff report. The features of this proposal would include 5 foot wide boulevard sidewalks on both side of the streets, street trees placed every 50 feet, almost a 4 acre common area that will have underground sprinklers and be landscaped. The covenants are quite restrictive. They do allow manufactured homes and all homes have to have a double car garage, a front porch, a 4:12 pitched roof, paved 20 foot wide driveways to allow for off street parking and a Homeowners Association to oversee the common area and water system. The issues that have been raised pertain to three main areas, including drainage, septic systems and access. He presented a copy of the storm water run off calculations. Jeff Pearson, an engineer in his office, worked on the report. His conclusion is that the storm water capacity through the use of swales, etc., will exceed any additional run off caused by even a 100 year storm. There are many things that can be done to keep additional run off on this property. He looked at a 1997 flood photo and it was apparent there was no standing water on the property. A neighbor next door said she had never seen standing water on the property. That doesn't mean there hasn't been, just that she hasn't seen any. In several of his site visits, he also has not seen any standing water. There are no low areas, no channels, no creeks, no riparian areas, etc. There is a small hillside in the far northwest corner. The average grade is between 2% and 6%. Everything will be done to insure that any increased run off as a result of this subdivision will stay on this property. Ground water has not been identified as a concern. Most of the wells are about 100

feet deep and there is a good, plentiful aquifer. In regard to the septic systems, Jeff went back through and fine tuned the figures. His report read in part: "Soil profile holes have been dug to a depth of 10 feet on each lot and in the proposed common area. Nearly 30 locations across the nine proposed lots and common area were tested for percolation rates. Drainfields have been sized and the drainfield and replacement areas can be located on the subdivision to meet DEQ approval. Some of the drainfields will need to be pressure dosed, some of them can be conventional." A recirculating sand filter drainfield could be used which is smaller but more expensive. The highest perc rate was 80 minutes per inch. The rate can go up to 120. Some were around 20 minutes per inch. There was a variation but not what would be called heavy clays. They did not feel there would be a problem with Health Department approval. An acceptable plan could also be approved by Public Works. In regard to access, there is an approved approach permit from the State for 16 homes on this property, plus the two adjacent homes. Site distance to the west is about 800 feet and to the east is close to one-quarter of a mile. One of the issues raised at the Planning Board meeting was the school bus stop and if it would stop at the entrance to the subdivision. They would like to extend their walkway to Frey Lane as far as possible from Mullan Road so children can catch the bus at Frey Lane. That will need approval from the MDT as Mullan Road in this location is a State highway. The applicants and owners of the property, Dean and Steve Crofts, are present today and would be happy to answer any questions.

Chair Curtiss opened the public hearing.

Poodie McLaughlin, 1629 Douglas Drive, stated that she and her husband have sent a letter to the Commissioners. She urged them to concur with the Planning Board and vote against the Glacier Estates subdivision for the following reasons. Combining the area's clay soil and spring drainage problems with septic systems on one-half acre lots is an experiment with the viability of these systems. In the spring, run off from the hillsides into basements on Frey Lane, as well as standing water, suggest that water and septic drainage are ongoing concerns. The lot sizes and proposed modular housing are inconsistent with any surrounding existing developments. Lot sizes all around this have a one acre minimum. Two houses per acre is a generic County policy that does not fit the neighborhood. Making Douglas Drive a through street to Mullan Road is poor planning that will exacerbate traffic issues. This is not currently proposed but best discussed now. With the addition of Douglas Drive North onto Mullan Road there will be four intersections in close proximity. The Montana Department of Transportation granted Glacier Estates a permit for 18 houses. At the Planning Board hearing it was noted that MDT's review of the intersection included only analysis of site distances. There are transportation design concerns that must be addressed before Douglas Drive North becomes a road. There is only 60 yards between the intersections of Mullan Road and Douglas Drive North, Frey Lane, Grassland Drive and a private road to the east. With four intersections in close proximity, MDT may require a turn lane to manage the increased traffic. Douglas Drive itself would need improvements to handle increased traffic. There is a concern about access to Kelly Island and who might pay for these improvements. Current residents do not want or need these improvements and have not created the need for such improvements. There is no comprehensive zoning plan for this area. Existing healthy neighborhoods do not have to succumb to haphazard building just because it is allowed. All of these concerns relate to the lack of comprehensive zoning. Four intersections within 60 yards of each other might work provided the traffic remains constant, but it will not, it will increase. Are there plans for their neighborhoods which call for more infill? The County needs to develop planning options in order to avoid increased traffic accidents on Mullan Road and declining livability. If it is decided Douglas Drive needs to be a through street, then it is hoped that it will also be decided that the developer who created the situation pays for the improvements. This one proposal raises all these questions in the name of good planning. It should be encouraged to look at the bigger picture to decide how the neighborhood can remain livable in the context of growth. Development is expected but Glacier Estates smacks of short sighted planning.

Bill Davidson, 1853 Frey Lane, stated his house sits well back from Mullan Road. Douglas Drive will be 45 feet away from his house. He is worried about property devaluation because someone else puts a road that close to his house. He is also concerned about manufactured homes on half acre lots surrounded by \$200,000-\$400,000 homes on one acre lots. Nowhere else in the area has allowed manufactured homes. He is concerned about the intersection onto Mullan Road. There is not another spot on Mullan Road that could be as dangerous. Pulling out from Frey Lane onto Mullan Road, especially in the winter, can be dangerous. Even though no cars are coming at first glance, by the time one pulls out over the slick or snowy road, an oncoming car can be right there behind you. People have even passed him using the wrong side of the road as he is pulling out. If another entrance is placed on Mullan for 18 more homes, things will get even worse. The school bus would stop in the middle of Mullan and that would be really scary. Ron mentioned having the kids walk to Frey Lane and that seems to indicate that stopping at Douglas Drive would be a problem. Public safety would not be good. The Highway Patrol pulls people over all the time for speeding on the hill on Mullan near his home. Big dump trucks and logging trucks and motorcycles use the road and most are traveling faster than 45 mph. The third issue is flooding. During the spring run off the water goes behind his house and under his deck. There is also standing water further down Frey Lane, the road has been flooded, as well as people's back yards and basements. If this subdivision is permitted, he felt the flooding would get worse. The real issue of the whole thing was summed up by a member of the Planning Board. He brought up the fact of liability. He is in agreement with that, especially because of what happened at Mullan Trail. His tax dollars were used to pay for that settlement and that's not how he wants his tax money spent. If this is allowed and the flooding gets worse, he doesn't want his tax dollars to pay for a lawsuit. That field is not meant for 18 homes.

Chair Curtiss asked if Mr. Davidson felt the flooding was more from run off or ground water or both?

Bill Davidson stated it was mostly the run off but may be a combination of both. The water in his back yard is from the winter snow melt. He is not against growth, but not the way this subdivision is being planned, this isn't right.

Paul Fredericks stated that he was a geologist and to answer Mrs. Curtiss' question, the run off in the spring occurs when the ground is frozen and the snow melt can't percolate. It is not ground water coming up. He lives at 1839 Frey Lane in Clark Fork Estates which adjoins this property. He has lived there for over 13 years. He is opposed to the Glacier Estates Subdivision as currently proposed. The density is out of character with the surrounding subdivisions. If the roads, common area and Lot 9 are removed, it leaves 8 building sites on less than 3 acres, or 0.37 acres per lot. This is three times the density of lots on Frey Lane and nine times the density of lots on Douglas Drive. Allowing density at this density in the middle of two less dense subdivisions will have a negative impact on property values of the existing homes. The subdivision plans also hint at connecting Douglas Drive to Mullan Road which will increase traffic, noise and dust and create hazards for children, furthering reducing property values. Such a small subdivision should mimic the density of



surrounding subdivisions to preserve the character of the neighborhood and property values. He is also opposed to the proposal based on health issues. During the past year, many residents have been told of the need for sewer because of areas like Country Crest. Some of those residents have had drainfield failures and their lot sizes are larger than those in this proposal. If drainfield failure in Country Crest is part of the reason to pursue sewer connection, then the Board should be opposed to drainfields on such small lots in similar soil and slope conditions. He took exception to Ron's comments that the soil is more silty. Watching other homes being built in the area, the digging exposed mostly heavy clay soils. He is also concerned about drainage in and from the proposal. Lot 9 is right behind his land. In late winter and early spring, Lot 9 frequently has standing water because of snow melt, not just from this area, but also from Sunset Memorial Gardens land and everything else uphill. Road and home building will decrease the amount of available land for percolation of this melt water. He is not opposed development on this property. A well planned development with densities similar to the surrounding properties will not negatively impact property values and still make a profit for the developer. Last year a one acre lot on Frey Lane sold for \$70,000. Glacier Estates could be redesigned to have one road access with 8 one acre lots with a value of \$70,000+ each. That kind of plan would probably not meet with so much resistance. He asked the Board to reject this subdivision as currently proposed.

Rick Kamura, 1715 Homestead Drive, stated one of his key concerns was the dangerous intersection with Mullan Road. He sees traffic coming down Sunset Hill at 50 mph or more. He uses Frey and Homestead both for access to Mullan Road. Without proper improvements on Mullan Road, there is the potential for a very dangerous situation. The school bus stop is concern for the safety of the children. The water run off is another big concern. He has seen the common area on Frey Lane, designed to hold water run off, been almost overflowing on many occasions. He urged the Board to deny this proposal.

Rick Evans stated he was the owner of Sunset Memorial Gardens. He was sorry they granted the easement for this proposal, it should have never been done. At the time, they were told there was only going to be one house per acre. There are many houses in this area that have an acre or more that still have septic problems. There is a great deal of surface water and run off and flooding is common. His shop floods every year. They refused to grant the easement several times. The increased traffic could interfere with cemetery operations. It was represented to them that there would only be one house per acre and would be a dead end cul-de-sac off Mullan Road. The original buyers backed out after the easement had been granted, but the project was still misrepresented to them. He felt the Commissioners should go with the Planning Board's recommendation and deny the subdivision. He too is not opposed to development, but it needs to be done right, one house per acre.

Commissioner Carey asked Mr. Evans why his shop floods every year?

Rick Evans stated it was from the run off. The whole area is solid clay and there is no place for the water to go.

Commissioner Evans noted for the record that she was friends with Rick Evans but they were not related.

Greg Robertson stated he visited the property last week. He has also looked at the storm water run off calculations handed out today. From what he sees, he agrees with the geologist that the soils are not very percable and may be marginal for septic tanks and drainfields. The typical run off is from frozen ground with no ability to percolate. That can be offset through standard stormwater management practices. In looking at stormwater management on this piece of property, the proposal is inadequate. The detention areas need to be larger because there is no place for the water to go once it leaves the property. He would like the developer to design the plan for retention rather than detention. Retention allows no run off to leave the site. Detention captures the water for a short period of time and lets it go at a controlled rate. In this case, there is no place for it to go, so retention is the appropriate design. It is manageable if the ponds and swales are made larger to offset the volume. From his standpoint, the drainage issue can be mitigated if designed to handle a 100 year event. Using sumps in this type of soil is like a bathtub. It just holds the water. Sumps are generally high maintenance in non granular soils. He is not a big fan of them, they are expensive to put in, maintain and replace. He would not support the use of sumps in the proposal, but require above ground retention.

Steven Crofts stated he was one of the owners of the proposed subdivision and an owner of Montana Homes. Many people have said this should be one home per acre like the surrounding subdivisions, but El Mar and other subdivisions, just a couple miles away, are 6 or 7 homes per acre. These will be nice sized lots. In looking at some of the larger lots in the neighborhood, most people don't maintain the property that they have. Some do a wonderful job, but others can't take care of a full acre. They are more than happy to do whatever is necessary to handle the drainage. They can increase the size of the swales or other ideas that can help. Missoula is growing and that will create additional traffic. There is not much that can be done about that. Everyone would like it if there were less traffic, but that is not likely. This development won't have 18 homes until there is sewer in the area. It will only be nine homes at this point. They will do their best to keep this a nice, clean, well set up subdivision and they hoped the Board would approve it.

Chair Curtiss stated that the proposal deals with what kind of foundation will be needed for a modular home, but it doesn't address basements. Would Mr. Crofts be willing to prohibit basements if it helps mitigate the run off situation.

Steven Crofts stated if that basements are restricted, then there will not be basements. If it is something that will flood, then he would say no to basements. If they can be constructed in such a way as to prevent flooding, then he would not have a problem allowing them.

Lou DeMarois stated he owned the corner lot on Homestead and Frey. Most all the homes in the area are on one acre lots. He disagreed with Mr. Crofts, most of those people do take care of their property. They live out there because they want that space. The pride people show in taking care of their properties was one of the main reasons he bought in the area. He also pointed out there were times in the fall and winter when heavy fog was common on Mullan Road. When it is foggy it is hard to see when traffic comes down off the hill. To have another street coming out on Mullan Road at the bottom of the hill is ridiculous. Those are his reasons for opposing the subdivision.

There being no further comments, the public hearing was closed.



Commissioner Carey stated that he could not support the development as proposed. He agreed that this creates a dangerous new intersection and he was particular concerned about the septic situation, especially because of the problems experienced by Country Crest. He did not think it was wise to approve the subdivision as proposed.

Commissioner Evans stated she had some concerns regarding easements and drainage. The land is currently zoned one dwelling per acre and a zoning change is uncertain. She could not support a through connection to Douglas Drive. It was possible to support it for emergency traffic only although that was also doubtful. She told the audience that allowing modular homes could not be addressed by the Board. The Supreme Court has indicated that they cannot do that. The kind of homes allowed cannot be dealt with by the Commissioners. She did feel that modulars can be done well and made to look very nice. She is also concerned about the road, although it is currently used by the cemetery a lot. It is not a new intersection on Mullan Road. She did ask that an alternative be looked for a frontage road to Frey Lane or somewhere else. She could support a nine unit subdivision. By law, the Board has to allow mitigation if a subdivision is denied, which is apparently what is being considered. If the developer would bring back a new proposal for a nine lot subdivision on one acre lots and place the homes in such a way as to allow for further splits if the zoning is changed in the future, she could support that. That would still leave the potential for increasing the size of the development at a more appropriate time. A walkway is needed for children as well as a safe place for them to catch the school bus. A walkway from Douglas Drive North to Frey Lane would be a good idea. She would support Commissioner Carey's motion to deny the subdivision with a clear understanding that if it is redesigned for 9 one-acre lots, the neighbors are more supportive of a new proposal and the drainage issues are addressed, she could support it. She did not want to ever have another situation like Mullan Trail. The drainage must be taken care of on-site. Public Works would have to approve drainage and the roads.

Ron Ewart stated that from a procedure standpoint, could mitigation be proposed and the issue postponed rather than starting over from scratch.

Colleen Dowdall stated that the process doesn't have to start over, it can be delayed. The problem with doing that is similar to Travelers Rest in that it is not known what is being reviewed, the new plat or the old plat. If there is enough time to review the new plat with agency comments and a neighborhood meeting, that would be okay. If they want to come back in a week or two, it would not be enough time.

Ron Ewart stated that he explained to Mr. Crofts the problems that the neighbors had. He is rather sensitive and thought he then might sell it with one acre lots. The property is more valuable with an approved preliminary plat. If they quit now, there is a big question mark as to what can happen. Developers have been conditioned over the years to provide for more density and through streets and that is not wanted in this case. They felt they were doing the right thing. If not, they need more direction on what is wanted. Should the easement from Mr. Stetler be abandoned? From comments by MDT, they thought there would be no problem with access to Mullan Road. They are receiving conflicting information. He did feel there was a solution. He felt the neighbors would be more willing to support the subdivision if they were satisfied with the design, as opposed to a vacant piece of land with a question mark on it.

Commissioner Evans stated that Mr. Ewart was correct, this was a departure from what was usually required. She apologized but there were situations where the requirements were not always wanted. In this case she could not agree to have the connection to Douglas Drive so it becomes the entrance to Kelly Island putting all that traffic through those subdivision. Generally, clustering is what the County wants to see but in this case it goes against what is currently there and the neighbors desires. The drainage is a huge concern. There does not appear to be enough room on these smaller lots for a replacement drainfield location. One acre lots for this area makes more sense and she does not want to see a repeat of Mullan Trail.

Jennie Dixon stated that if the Board is not going to approve the plat in this form, it would be a significant change that would require agency review again of a new plat. The requirement for Planning Board may not be necessary. She did feel strongly that agency review was necessary for a new proposal, especially because of access, different lot configurations, roads and drainage plans.

Commissioner Evans asked if that would require additional fees?

Jennie Dixon stated this was somewhat unusual. The fees are based on the work that got to this point. If they have to start over, the work would be done for free.

Colleen Dowdall stated that if there is a new plat but the process isn't started again, just delayed, then there would be no legal basis to ask for a new fee. The fee would be for a new application for subdivision. Unless it is continued to a date certain, it would have to be re-noticed.

Chair Curtiss asked if this has to go back to Planning Board?

Colleen Dowdall stated the Board has the ability to approve, disapprove or approve with conditions any subdivision. The Board has Planning Board's recommendation, so it would not have to go back before them, unless it is denied today and they are required to bring in a new application.

Commissioner Evans stated that Board is legally required to allow mitigation, which in this case addresses lot size and other matters.

Colleen Dowdall stated that would take it out of the context of OPG review as the applicant is offering mitigation to the Board, which hasn't required agency review, but there has been agency input. The Board does not have to deny the subdivision to start the mitigation offer. The Board can tell the applicant that denial is being considered for certain reasons and could they mitigate those reasons. The Commissioners then decide if the mitigation does deal with the identified impacts, in this case, lot size, density, traffic, drainage, etc. Greg Robertson would be advising the Board so they could determine if the impacts have been mitigated. They would also need to talk to MDT about the intersection question.

Chair Curtiss stated that MDT has already approved the access.

Commissioner Evans stated that an alternative might be even better.

Jennie Dixon stated that since the Board is heading in this direction, she would like to make certain enough time was given to allow for agency review and assessment by OPG to provide analysis to the Commissioners.

Commissioner Evans asked about June 5th.

Jennie Dixon stated that would probably not be enough time. Agencies already feel that the required 15 days is not sufficient.

Colleen Dowdall stated this would not be like normal agency review, but Ron Ewart would have to speak with MDT and solicit a letter of some sort. The same would apply to the drainage.

Jennie Dixon stated that if the Board wanted to hear the matter on June 5th, it would require getting information back from the developer by May 10th. Three weeks to a month would be needed for OPG to review and respond.

Commissioner Carey stated he was uncomfortable with the June 5th date. He didn't want it rushed.

Chair Curtiss stated the neighbors would like to meet with the developer as well.

Commissioner Carey moved that the Board of County Commissioners postpone action on Glacier Estates to June 26, 2002 to allow time for the developer to mitigate the concerns raised.

Chair Curtiss asked if a list of concerns requiring mitigation needed to be part of the motion.

Colleen Dowdall stated that should be included as well as sending a letter to the developer with those concerns.

Commissioner Carey amended his motion that the Board of County Commissioners delay action on Glacier Estates to June 26, 2002 to allow the developer to mitigate for identified impacts such as drainage, access, lot size, density, run off, roads, etc. Commissioner Evans seconded the motion and added determining if basements were appropriate. The motion carried on a vote of 3-0.

Bill Davidson asked what happened, what did the Board just do. The Board did not deny the subdivision and he did not agree with that. If the vote was no, the process needed to start over again.

Chair Curtiss stated that the Board said the subdivision as proposed could not be supported so the developer is being given the opportunity to mitigate the concerns raised. The developer will be allowed to submit a revised plat to address those concerns.

Bill Davidson stated the Planning Board was unanimous in its denial of the subdivision. He would have thought the developer would have made changes between then and now.

Chair Curtiss stated the developer is not allowed to do that.

Commissioner Evans stated that by law the Board has to give them a chance to mitigate those concerns.

Bill Davidson stated that he would have thought that it should be denied first then the mitigation submitted. He wasn't aware the Board could say yes, no or maybe.

Chair Curtiss stated the Board basically said no to the proposal as did Planning Board, but was allowing the developer to submit a different proposal for that same piece of property without going back to square one.

Bill Davidson asked why it shouldn't have to go back to square one.

Colleen Dowdall stated that no vote was taken on the subdivision. Two of the Commissioners expressed how they would probably vote, but State law requires that as a part of the process, mitigation must be allowed. Some of the impacts identified were not in the staff report, but were based on public testimony. The Board felt the conditions recommended did not mitigate the concerns. The law requires the applicant be given this opportunity and that the wishes of the applicant be given due consideration in how to mitigate impacts. If the Commissioners decide these impacts cannot be mitigated, then the subdivision can be denied. Planning Board makes statements and recommendations to the Commissioners, not always based on legal review criteria. The Planning Board does not require mitigation, that is the Commissioners job.

Jennie Dixon stated that Ron Ewart would prepare a new plat and get comments from the necessary agencies and work with the neighborhood to address the issues raised. That would be presented to OPG and they would prepare a limited analysis and set of conditions to address the new plat.

Paul Fredericks asked if Eli & Associates would consult with the neighbors on the new plat.

Colleen Dowdall stated the developer is not required to do that by the regulations, but they would be remiss if they did not do so.

Paul Fredericks stated the neighbors were never asked for their input, they were just told what was being proposed.

Colleen Dowdall stated the purpose of a neighborhood meeting is to present the proposal and then get comments from the residents. Until they get permission from the Commissioners, that may not be what they are going to do. If the neighbors don't make their opinions known, the developer cannot reflect that in their plan.

Paul Fredericks stated they did make their opinions known, but that wasn't reflected in the plan.

There being no further business to come before the Board, the Commissioners were in recess at 3:25 p.m.

**THURSDAY, MAY 2, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Chair Curtiss attended the Missoula Community Prayer Breakfast held at the Christian Life Center. The Commissioners attended the Schramm Bridge Settlement Conference all forenoon.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending April 30, 2002.

ADMINISTRATIVE MEETING

At the administrative meeting held in the afternoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-015 for the Health Department, in the amount of \$28,568.00, for the purpose of separating the two HIV Prevention contracts (combined for budget ease), and adopting same as a part of the Fiscal Year 2002 Budget.

Letter – The Commissioners signed a letter to Mark Simonich, Director of the Montana Department of Commerce, dated May 2, 2002, introducing and supporting the TSEP (Treasure State Endowment Program) Application for financial assistance to provide sewer service to the Mullan Road Corridor Regional Sewer Project Area – Phase 1 Subdistricts: El Mar Estates, Golden West, Country Crest and Mullan Trail.

Resolution No. 2002-049 – The Commissioners signed Resolution No. 2002-049, accepting the final El Mar Estates/New Meadows and Golden West Wastewater Facilities Studies by HDR Engineering, Inc., dated May, 2002.

Request for Action – The Commissioners passed a motion declaring the Spring Meadow Water District organized as per the mail ballot election held on April 23, 2002. The proposition to create the district passed with 66% of the eligible voters voting on the issue: 63 for, and 5 against the issue.

Counter Offer – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a Counter Offer (with amendments) by Brandon-Legg Development Corporation for the purchase of Lot 1, Block 11, Phase 2, Missoula Development Park. This Counter Offer 1) changes the sales price from \$450,000 to \$594,200; 2) deletes the contingency requiring approval of DRC for an on-site sign variance; and 3) adds to the contingency "Acceptance of this site by Wingate Inns" an acceptance deadline of June 14, 2002. The document was returned to Barbara Martens in the Projects Office for further handling.

Extension Request – In accordance with the recommendation of the Office of Planning and Grants, the Commissioners signed three letters to Ron Ewart of Eli & Associates, Inc., approving his three (3) requests for one-year extensions of the final plat approval deadlines for the following:

- 1) Clinton Community Church Summary Subdivision. The new filing deadline is May 9, 2003.
- 2) Rock Creek Airpark Subdivision. The new filing deadline is May 3, 2003.
- 3) Eagle's Point at Salmon Lake Summary Subdivision. The new filing deadline is May 9, 2003.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, MAY 3, 2002**

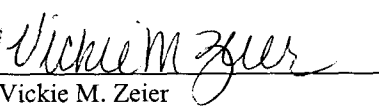
The Board of County Commissioners met in regular session; all three members were present in the forenoon. Chair Curtiss was out of the office all afternoon.

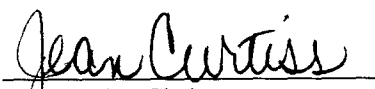
Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 2, 2002, with a grand total of \$121,706.15. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 2, 2002, with a grand total of \$5,089.58. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 2, 2002, with a grand total of \$1,979.53. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 2, 2002, with a grand total of \$15,399.12. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, MAY 6, 2002**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey left for Helena late in the forenoon to attend the MACo Land Use Planning & Development Committee meeting held at the MACo Office.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 6, 2002, with a grand total of \$47.82. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 6, 2002, with a grand total of \$13,760.11. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 6, 2002, with a grand total of \$69,948.20. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 6, 2002, with a grand total of \$5,664.09. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 6, 2002, with a grand total of \$500.00. The Claims List was returned to the Accounting Department.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 09 - Pay Date: May 3, 2002. Total Missoula County Payroll: \$836,602.11. The Transmittal Sheet was returned to the Auditor's Office.

Extension Request – In a letter Ron Ewart of Eli & Associates, Inc., the Commissioners approved a request for a one-year extension of the final plat approval deadline for Mahlum Meadows Subdivision, in accordance with the recommendation of the Office of Planning and Grants. The new filing deadline is May 16, 2003.

Request for Action – As per recommendation by the Office of Planning and Grants, the Commissioners approved a request from Montana Tolliver to create Pappy's Place Summary Subdivision for lease or rent. The subject property is located about 7 miles west of Lolo off of Highway 12 at 15440 Thayer Road.

**TUESDAY, MAY 7, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans attended an all-day Pre-Retirement Seminar held at the Grant Creek Inn.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 6, 2002, with a grand total of \$27,596.60. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Amendment – The Commissioners signed Amendment No. 1, dated May 7, 2002, to the Professional Services Agreement (for RSID #8470 – Expressway Paving – Engineering Agreement) between Missoula County and Professional Consultants, Inc., originally made February 21, 2002. This Amendment amends the Agreement to include the design of the creek crossing structure of Butler Creek. The roadway paving will connect the end of paving on Expressway through the creek crossing to the intersection of DeSmet Road. All other terms and conditions are as set forth in the Amendment No. 1.

Resolution No. 2002-050 – The Commissioners signed Resolution No. 2002-050, dated May 7, 2002, a Budget Amendment for the Health/Capital Improvement Fund in the amount of \$91,007.00, to provide authority for early pay-off of the Health Department's remodel INTERCAP loan. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-051 – The Commissioners signed Resolution No. 2002-051, amending the Tower Street Park Complex and Utilization Plan to allow continued use of the existing access road, across from 35<sup>th</sup> Avenue, to the Equestrian Park. This Resolution was previously approved at the April 24, 2002 Public Meeting.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, MAY 8, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Adult Education – Bookstore, as Principal for Missoula County Public Schools Warrant #65223, issued March 21, 2002 on the Adult Education Fund in the amount of \$4,724.00 (payment for instruction books), now unable to be found.

**CHIEF ADMINISTRATIVE OFFICER MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-022 for the General Fund, in the amounts of \$540,719 and \$105,531, for the purpose of allocating salaries and fringe increases recorded in Financial Administration to the various General Fund departments, and adopting same as a part of the Fiscal Year 2002 Budget.

Other items included:

- 1) A discussion was held with Disaster and Emergency Services Director Jane Ellis regarding the Public Safety Communication Plan.

#### **PUBLIC MEETING – May 8, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown, County Public Works Director Greg Robertson and County Clerk and Recorder/Treasurer Vickie Zeier.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$261,691.20. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Hearing (Certificate of Survey): Starlin Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 7, COS 325, located in the southeast one-quarter of Section 36, Township 14 North, Range 21 West.

Eugene R. and Joyce Starlin 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 10.74 acres in size located on the Clark Fork River near Harper's Bridge. The Starlins propose to create one approximately one-acre parcel for transfer to their daughter, Stacey Jean Glenn, for residential purposes and keep the remaining approximately nine acre parcel for their existing residence.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 325	1974	Parcels greater than 10 acres	N/A	N/A

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Eugene Starlin was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Starlin really did intend to transfer this property to his daughter?

Eugene Starlin stated that was his intention.

Chair Curtiss stated that this did not give approval for a septic system or anything else necessary to build. They would have to go through the proper channels to obtain such approvals.

Eugene Starlin stated he understood that.

Colleen Dowdall stated that this area is zoned for one unit per five acres. Creating a one acre parcel is allowed as there is no minimum lot size. It does mean that the almost 10 acre parcel that remains will only be allowed one density right.

Eugene Starlin stated they had no intention of further subdividing. They only wanted to give their daughter some land on which to place a double wide mobile home.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Eugene R. and Joyce Starlin 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Mr. Starlin would receive a letter of approval for the family transfer which is for the division of land only.

**Hearing (Certificate of Survey): Kopp Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer for that parcel described as Tract A-2, COS 2029, located in the southwest one-quarter of Section 36, Township 13 North, Range 18 West, PMM.

Stanley N. and Randi J. Kopp 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 10 acres in size located near Turah, Montana. The Koppes propose to create one approximately 5 acre parcel for transfer to their daughter and son-in-law, Jennifer and Tony Hage, for residential purposes and keep the remaining approximately 5 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Tract A, COS 1496	1978	Over 20 acres	Delena Kelly	
Tract A-2, COS 2029	1979	Gift to Family Member	Lillian Stensrud	Kathleen Cowley

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act. This property was deeded to the Koppes in March of this year, but appears to have been traded for another piece of land in the Clinton area, owned by Doug Kopp.

Stanley Kopp was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Kopp really did intend to transfer this property to his daughter and son-in-law?

Stanley Kopp stated that was the intention.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Stanley N. and Randi J. Kopp 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 Evans seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Mr. Kopp would receive a letter of approval for the family transfer which is for the division of land only. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing – Planning and Zoning Commission – Commercial Properties – Citizen Initiated Zoning District #43 – Blue Mountain Road and Highway 93 (Postponed from April 10, 2002)**

Chair Curtiss stated that the Board of County Commissioners would recess their meeting at this time. She then called the meeting of the Planning and Zoning Commission to order. Members of the Planning and Zoning Commission present included Commissioner Chair Jean Curtiss, Commissioner Bill Carey, Commissioner Barbara Evans, County Surveyor Horace Brown and County Clerk and Recorder/Treasurer Vickie Zeier.

Liz Mullins, Office of Planning and Grants, presented the staff report.

Commercial Properties, Inc., represented by Professional Consultants, Inc., is proposing to create a Citizen Initiated Zoning District, located near the intersection of Highway 93 South and Blue Mountain Road. Montana State Law requires that sixty percent or more of the freeholders affected must sign such a petition in order for a Citizen Initiated Zoning District to be created. Commercial Properties represents 100% of the freeholders of the 77.22 acre parcel and have petitioned to the County Commissioners to create Citizens Initiated Zoning District #43 (ZD43). The petitioners are seeking to implement a Planning and Zoning District in this portion of Missoula County in order to create residential, commercial and agricultural sub-districts.

The public hearing for ZD43 was originally scheduled for April 10, 2002, and was delayed so the applicant could discuss this proposal with the adjacent property owners in ZD18 as requested by Attorney Myra Shults and agreed upon by Commercial Properties. Since then, OPG has made several refinements in the proposal discussed at Planning Status on Monday.

There are 3 sub-districts being proposed. The residential sub-district consists of approximately 18 acres, the commercial sub-district is approximately 18 acres and the agricultural district is approximately 38 acres. Adjacent land uses include large lot residential to the west, commercial uses to the south and east and agricultural uses to the north.

The subject property is open grassland with gentle rolling slopes. Big Flat Irrigation Ditch is located between the proposed agricultural and residential sub-district and divides the commercial sub-district. There is a riparian area in the northern portion of the proposed agricultural zoning district.

The subject property is currently zoned within two Citizen Initiated Zoning Districts; Zoning District #18 and Zoning District #39. They are both primarily residential zoning districts. OPG received many petitions and letters of opposition in response to this rezoning request. The property owners, mainly in ZD18, have expressed concern for the proposed density, groundwater and the commercial development.

There are 7 recommendations to the applicant's proposal that staff modified for approval of Zoning District #43.

1. Allowing residential development at a maximum density of two dwelling units per acre in the residential sub-district. The applicant originally proposed six dwelling units per acre.
2. Permitting only single family and duplex units in the residential sub-district. The applicant had proposed to allow multi-family.
3. Allowing the density bonus provision of the Missoula County Zoning Resolution to apply in the residential sub-district. This will only be possible when the area is connected to sewer and higher density may be more appropriate.
4. To include Chapter 4, "Special Design Standards," of the Missoula County Zoning Resolution as applicable standards in this Citizen Initiated Zoning District.
5. On Page 2, the recommendation that states that all buildings within the commercial sub-district should have a finished floor above existing grade has been revised to read anything east of the irrigation ditch, rather than the entire commercial sub-district. This boundary has been agreed upon by the Floodplain Administrator and the developer.
6. Application of Primary Travel Corridor Standards for development along Highway 93 South. This ensures minimum design standards for landscaping, setbacks, signs, building design and general appearances along major routes.
7. Application of development design standards for commercial development over 30,000 square feet along Highway 93 South. Staff has met with the applicant several times and has made several modifications on these standards. The modifications were discussed at Planning Status; they included bicycle parking requirements, pedestrian facilities and landscaping. The applicant may have a few more concerns and will propose them in his presentation.

OPG is recommending approval of the petitioner's request for Zoning District #43, based upon these staff recommendations.

Earlier today, OPG staff met with the developer, applicant and ZD18 attorneys to discuss the proposed changes made to the most updated staff report passed out at Planning Status last Monday. The copies have been distributed and the Board should work off this draft because it has color-coded the issues that will need to be addressed by the Commissioners today. The modifications include OPG revisions since the original public hearing date of April 10, 2002, changes agreed upon by the applicant and ZD18, which may need further County Attorney opinion, and additional changes requested by the applicant.

Dick Ainsworth: My name is Dick Ainsworth, I'm with Professional Consultants or PCI. I'm here representing Commercial Properties, the owner of this property. I think Liz described what we're trying to do here fairly well. This is sort of an oddball proposal here in that this property is presently partially in two different existing Citizen Initiated Zoning Districts, which made it a little unusual to try to work with and the proposal that we came to you with for a new zoning district was put together in consultation with the County Attorneys Office and with OPG. I think Liz described basically what we want to do here fairly well. We think that we're trying to fit into the existing uses that are in the area. The commercial is basically part of the frontage on this property is already in Zoning District #18 and already zoned commercial. There is commercial properties on both side of that and we're sort of filling in the gap, if you will. Liz's map is on the left up there and colored blue and we've got a larger scale one there laid over a topographic map which makes it a little easier to see maybe. The residential area, and there's been some discussions with the residents about the original density that we proposed there being too high but I think we've come to an agreement there that everyone can live with and the agricultural zone is intended primarily at this point in time, once we get this zoning in place, the owners of this property have a sale pending of the portion of the property to the east of the ditch to Dr. Rolette Pruyn and Dick Richardson who are veterinarians and want to build a large animal hospital out there. Rolette Pruyn is here if you have any questions about him. We will be back in front of you sometime before too awfully long with a two lot subdivision that would divide that basically at the line that separates commercial and agriculture, so that will be coming back before you. And again, his intent is to build a large animal hospital back sort of out in the middle of that property. So, basically, that's what the owners want to do with this property. The only other use at this point in time that they're anticipating is to move, sometime within the next couple years probably, maybe sooner than that, the Loren's Carpet One carpet store out there. Marianne Burkland and Chris Mostad are the owners of that company and Marianne is a partner in Commercial Properties, Inc. Marianne is also here, as is Chris. But they want to build, move their carpet store out there and other than that there's no anticipated activity out there right at this point in time at any rate. We did after the last meeting when we asked for a delay, we have met, the residents' attorney has met with us, the residents' attorney has met with them, we met with three representatives of that group a couple of weeks ago, spent three or four hours going through a lot of things in here and basically, as we always thought was probably the case, we weren't trying to do anything here that we thought they would really object to if they knew what we were trying to do, and we have come to an agreement on virtually all of the things. You do have this colored up copy there and maybe I will ask Jamie Bowditch, the attorney, for my clients, with Boone, Karlberg, if he would kind of go down through these a little bit and discuss them so that you're familiar with, and most of these ones that are in yellow, the ones that we jointly agreed to, I mentioned to you at Planning Status this past Monday so there's really nothing new there but we want to go through that in the public hearing here and I'll ask Jamie if he'd do that please.

Jamie Bowditch: My name's Jamie Bowditch and I'm an attorney with Boone, Karlberg and I, with the assistance of Myra Shults, prepared a color coded document which I handed out before the hearing started. It's fairly self explanatory but just so it's clear, those items which are marked in pink are the changes OPG made and which were, I believe, correct me if I'm wrong Jennie or Liz, but discussed at the meeting on Monday. And so all those have been approved by OPG. The items which are highlighted in yellow, and I guess before I even address those, I'd like everybody to turn to Page 2 and under the Commercial sub-district, sub-section 8, permitted uses, we have agreed that being Commercial Properties, Inc. and the residents, the freeholders of ZD18, to strike from permitted uses animal hospitals and veterinarian clinics. It is the item which has a yellow highlighted asterisk on it, so, and I'll let Myra confirm this, but that has been agreed to by those freeholders in ZD18.



Chair Curtiss: So you're striking that?

Jamie Bowditch: We are striking that as a permitted use in the Commercial sub-district, that's correct.

Chair Curtiss: So it would not be permitted in the Commercial zone, you'd have to put it back in the Agricultural area.

Jamie Bowditch: That's correct. This morning we did discuss with OPG the changes which are reflected in yellow and which have been agreed upon between Commercial Properties and the freeholders of ZD18. Again, Jennie or Liz, correct me if I'm wrong, but they don't have any objections to the changes as we've agreed upon subject to any comment that the County Attorney may have as to some of the legalities of the items. On Page 2 also at the very top you'll notice one of the items highlighted in yellow which discusses obtaining water for the residential sub-district. There is a blank because Mr. Ainsworth needs to verify the exact map which we'll be referring to for purposes of pulling the elevations. That will be once we have got through a final discussion on this provided in the final copy. And then, really the remaining items which are those which are highlighted in green are changes requested by the applicant and I believe Chris Mostad will be available to discuss those with you. Any questions you may have in presenting his request and rationale as to why. But I'd be happy to address any questions you may have as to interpretation of the document you have in front of you.

Chris Mostad: Chris Mostad and all I want to do is just go over some of these changes that we were looking at on the EC, which are the landscape and basically it's the regulations that are being taken from the City and applied in this County. Some of things that we were looking for, I guess, that aren't on here, is, basically on the long-term biking, if you would, top of Page 4, Long-term facilities, top of Page 4, it's just that if, I don't mind putting some bicycle racks outside for bikes in case they come but the long-term facilities where we're talking about storing bicycles inside and having covered bicycles ports and whatnot, I guess, is something that I'd rather have not on this project, just because it's a little prohibitive, I guess, people can still bring their bicycles into the store and put them in the warehouse and store them. Bike racks, I went over and talked to the bike person who runs the bike zoning and talked to him about the project and asked him about how many bicycle racks he felt that I could get away with out there even though we felt that there probably wouldn't be anybody using a bicycle, he said if there were bicycle racks there and somebody was coming by at least they would feel comfortable about parking there and I said, how many do you think and he says, well if we get three of them, then we'll have enough for six bicycles, if you need them later, then we can put more and I guess I didn't feel that was too prohibitive. That really gets into, I guess, the, in this EC where they actually determine by a percentage as to how many bicycle things you have to have and instead of having that I would rather just go to say that we would put three of the City bicycle racks out there on the project. On Page 6, number 2, I'm on the bottom, on the shrub planting size, we're just trying to get away from going from the 5 gallon, going to the 1 gallon, really a lot of it has to do with just the quality of the plant and it just gives me a little bit more, makes the landscaping part of it a little bit more affordable and I think, not that we're going to buy 1 gallon pots or plants and shrubs, it's just that if we feel that the plant that's in that 1 gallon container is ready to go to a 5 gallon container when we purchase it and go with it that we're, I don't think that it going to hurt the landscaping part of it. Down below if you go to number 3 on Page 6, I'm just asking for, we had talked earlier at one of the meetings about being able to give me some sort of a longer period of time in growing seasons to be able to comply completely with it. Again, just because we're taking some City rules and applying them out into the County, this way at least it makes sure that I do landscape and get it done. Then in here also, if you go to Page 7, under "C," Interior Parking Lot Landscaping under "ii," in talking to some of the residents that are out there and then also we've owned that property for 30 years, the amount of deer that are in the area, I'm really feeling that we may lose a lot of this landscaping that we put in just because of the amount of deer and in talking to the landscaper, they said that the rock actually keeps them, the deer don't like crossing the rock to get at the shrubs, so if we can use a washed gravel in there instead of bark we think that we should be able to retain our landscaping and not have to continually be fighting the deer off. That's basically the changes that I was looking for.

Chair Curtiss opened the public hearing.

Myra Shults: My name is Myra Shults and I represent the freeholders in Zoning District #18 plus other people who live adjacent to the proposed zoning district but outside ZD18. Since this is sort of a backwards way of how I expected the procedure to go, I'm going to reserve my remarks for creation of ZD43 until the Board of County Commissioners opens the meeting for that consideration. With respect to the proposed changes, I didn't have these last night and so if any of my clients who are here have something to say about the proposed changes for the zoning regulations, I would invite them to come up and speak. I guess I object to Page 6 to going from 5 gallons to 1 gallon. That's pretty small for the area out there and I'd like the County Commissioners to retain the proposed two growing seasons after the occupancy permit is issued. That's two years practically after the building is built. My clients had a lot of concern about commercial lining the highway, which I guess is inevitable, all the way to Hamilton, but one of the, I couldn't get any agreement that they would limit the number of buildings or limit the square footage, but I did represent to my clients that with the requirement that 20% of the developed area be landscaped that, and also setbacks because of sewage concerns, that it probably wouldn't be too bad looking, but if they have to wait 5 years after the buildings are built to see the landscaping installed, that is probably going to stick in their craws as they drive by there every day. Thank you.

Chair Curtiss: Thank you, and I'd like to have Colleen explain the process a little bit.

Colleen Dowdall: Okay. I was going to recommend to you, Myra, that you maybe not reserve your comments by explaining how we typically do these in Missoula County. The Planning and Zoning Commission is already in existence so the part where the Commissioners created, appoint a Commission and create a district, the way we have interpreted that, because of having the Commission in existence, is we just convene the Commission. It is in existence already. And then the Commission hears the recommendation or the request from the citizens to create the district and then they make their recommendation to the Board of County Commissioners as to the standards, etc. So, and then, when they adjourn, the County Commissioners typically take the recommendation, depending upon how they have voted, their vote doesn't change significantly from members of the Commission to members of the Board of County Commissioners, so I would think you would want to make your comments to the full Commission rather than just the Board of County Commissioners.

Myra Shults: If you'll look in your packet from OPG on Pages L-11, L-12 and L-13, you will see a petition from the people I represent. Again, for the record, my name is Myra Shults and I represent 80% of the freeholders in Zoning

District #18. It was the original OPG packet that came out a month ago. Prior to the meeting I handed you a diagram of Zoning District #18 and I've outlined in yellow the borders of Zoning District #18 and put Blue Mountain Road in for reference. Right behind that is a diagram of the proposed Zoning District #43. As you can see, Zoning District #18 was made up of aliquot parts and as you can see, Zoning District #43 is made up of property belonging to one owner, Commercial Properties, and there's a hole in the middle of that. That's property belonging to my clients and had they been included in Zoning District #43, we wouldn't be here today because you wouldn't have a petition from 60% of the freeholders. My clients object to the County Commissioners, because you're the ones that create the district, removing property from Zoning District #18 upon petition from one freeholder in Zoning District #18, in order to create Zoning District #43. In my legal opinion, the legal way to adjust boundaries of a petitioned zoning district is upon petition by 60% of the freeholders in that district. If you do it any other way, the paper upon which zoning district is printed has no validity, I mean it's worthless, and I live in a zoning district so I feel strongly about this. However, I was unsuccessful in convincing the County Attorneys Office of my legal position that this was the proper procedure, so facing reality, my clients negotiated, as Mr. Ainsworth said, with representatives of Commercial Properties and have agreed upon some concessions and Mr. Bowditch went through those concessions. I now want to present to, it should be presented to the County Commissioners, but I'm going to present it to, I guess, the Planning and Zoning Commission, and request that it be made a part of the record for this hearing plus a copy and I've made copies, be placed in the record for Zoning District #18 and also Zoning District #43, so 30 years from now someone can figure out what went on today. It's a petition from 70% of the freeholders in Zoning District #18 to adjust the boundaries of Zoning District #18 to exclude the property owned by Commercial Properties as shown in red on the attached map, so we don't have any misunderstanding about what's being done, with a rough legal description and my clients consent to this property being made a part of Zoning District #43 in exchange for the Planning and Zoning Commission adopting zoning regulations which have been approved by my clients. So, if I may approach, I'll hand that to you. Thank you for the opportunity to appear today and thank you for continuing this matter to allow us to try to come to some resolution. I'm available for questions, if you have any.

Colleen Dowdall: Okay, I was assuming Myra's comments were going to be addressed to the issues upon which you're going to vote today, so, she is correct in that this is something that is submitted to the Board of County Commissioners and it is something that will be reviewed and you will act upon at a later date after notice and hearing. So, it is nothing you need to look at or act upon today. That's, I guess, is all I have to say.

Chair Curtiss: So, we would act at a later date to attach it to those others.

Colleen Dowdall: What essentially they're asking for is to amend the boundaries, as I understand, I haven't seen this yet and was not aware that this was going to occur, so, and I want to review it but I'm assuming that it's a petition, just like the petition you received to create District #43, it's a request to take this land out of District #18, which would be very clean and tidy, but it is not anything you can act upon today, because when you get a petition, you have to do notice and hearing. So, it is something that appropriately usually comes to you after it's been presented to the Clerk and Records Office to check the signatures and such and we can go through all of that process, but it is not necessarily relevant to what you're doing today.

Commissioner Evans: The question I have is how can we make Zoning District #43 include part of #18, if we haven't excluded #18 or haven't got the legitimate reason or right to do it because #18 is now petitioning to be in #43.

Colleen Dowdall: My understanding is they're not petitioning to be in #43, they're petitioning to have #43 not be in #18, which is merely an administrative kind of thing. What you are considering is creation of an entirely new zoning district, which the County Attorneys Office has been determined to be within the right of the landowners who have more than 40 acres that are in this zoning district, they can create a new zoning district and that's what they're requesting and that is the place where Myra and our office have disagreed. So, it's the opinion of our office that you can do what you have been requested to do by these applicants.

Jennie Dixon: To follow up on Barbara's question, would that not preclude action on this today, in other words, how can you create ZD43, let's say you do, you create ZD43 today and then you have a request to remove that land from ZD18, which is an action that the Board can take yea or nay, how could you even vote not to once you've created it in ZD43.

Colleen Dowdall: Well, we don't even know if the Commissioners are going to create ZD43 at this point and ...

Jennie Dixon: If you make that assumption, how can you create one but yet perhaps have the option to not take it out of ZD18 later.

Colleen Dowdall: This is something that would have been a very tidy way of doing it but probably wouldn't have been effective because the, I assume the applicants were uncertain about how the other people in ZD18 would react to that and so these statutes are vague and subject to interpretation and we had a request from an applicant to create a zoning district that happened to already be located in parts of other zoning districts and there is no prohibition against us creating this new zoning district and probably it automatically does what Myra is seeking it to do. It is being rezoned as Zoning District #43, or a new district's being created called Zoning District #43 and so, but this would tidy things up and if that's what she's seeking to do, we just need to do that at a later date. We certainly can't do it today because, and, did you talk to Mike about this ahead of time Myra, or ...

Myra Shults: About the petition? No because I have not been able to have any communication about my legal position with the County Attorneys Office on this particular issue. I've written letters and have had no response. I want to tell the Commissioners and the Commission that the reason my clients decided not to take their chances with the County Commissioners and then sue if you created Zoning District #43 because we think we have a very strong position that you change the boundaries of a zoning district the way you create the boundaries of a zoning district. The reason they decided not to sue is because we thought we had a process in place. I think that if you go ahead and create Zoning District #43 without considering the petition of my clients that you then start the 30 days for appeal running and my clients have to decide whether they need to file a statute stopping lawsuit against the Commissioners for creating that district in an illegal manner and then we throw everything in like spot zoning and the whole thing. Mr. Bowditch leaned over to me and he said could we consider our petition as more or less a consent and I haven't had a chance to meet with my clients but I think

as long as the record is clear that the procedure is to have a consent or petition, however you want to characterize it, from at least 60% of the freeholders to change the boundary of a petitioned zoning district, that we can go forward.

Colleen Dowdall: So, when you presented this petition now, you intended that as something you wanted us to act upon prior to or simultaneous with the creation of this District #43, so you did want us to stop now and go through the legal procedure, because we can't just adopt this today, because a petition requires that there be notice and hearing and verification of the signatures and those kinds of things, so you did intend for us to stop now and not do any action on #43?

Myra Shults: If you think that it requires all that, I can tell you as an attorney whose represented counties who have done petitioned zoning districts I was very careful to get all the deeds to have everybody sign in accordance with how the deed reads and whatnot. Now, it is true that, you know, maybe you need a notice and hearing but I can tell you that well over 60% of the freeholders in Zoning District #18 who are the affected people are, if they're not here today, they've signed that petition.

Colleen Dowdall: And I don't doubt that as much as that is just our typical procedure because the freeholders are described as those whose names are on the last tax assessment roll, and that's a statutory definition, so that, we need to cover ourselves too, in terms of following our regular procedure, but I also believe that we have to notice this and I know, Myra, you were in to see Mike if not this Monday, last week, and talked to him then and we've, you and I e-mailed about six times yesterday.

Myra Shults: Right, about the zoning regulations.

Colleen Dowdall: Right, and this was not mentioned at all. Had I had the opportunity to prepare some and even Mike came and sat here and he said I don't need to be here, it's resolved, right? So, I'm going to go call Mike also and see if he can come up here because he is the one whose been dealing with this.

Chair Curtiss: Could I try to make a clarification. What I'm hearing Ms. Shults say is that the main thing that your clients want is for the record to be clear that 60% of the people who live in Zoning District #18 consent to changing the boundaries so that now #43 takes part of #18 away if the conditions that you've worked out are met.

Myra Shults: That's correct.

Chair Curtiss: So mostly you just want the record to show that the people in the, because you believe that they had the right to do that, you want the record to show that they do agree.

Myra Shults: That's correct. And if you want me to change the word petition to consent, I'd be happy to do that.

Jennie Dixon: I think also what you will be doing with this action is making a policy decision for all Citizen Initiated Zoning Districts that if boundaries are altered that you have to get at least 60% of the freeholders within that entire ZD to consent.

Chair Curtiss: I don't think that would be saying that if she changes, if we change this from petition, and Colleen, as you walked out, I asked if to clarify, they mostly want the record, because they have a belief that that was their right, that they want the record to be clear that 60% of the people that live in Zoning District #18 consent to the boundary change, in other words, they don't care if this says petition, they just want the record to show in their zoning district and in #43 that 60% of the people in it agreed if we meet the criteria that they like.

Myra Shults: And I offered to change the word petition to consent. We had no wish or intention to slow down the process, just to have the record clear.

Jennie Dixon: May I ask Myra, if that is the, if the intent is to be more of a policy approach on removing portions of ZDs and putting them in another zoning district with this action.

Myra Shults: I'm not requesting that the County Commissioners adopt that policy, I guess I'm just giving notice to the County Commissioners that if this comes up again, this is my position, contrary to the County Attorneys Office. It's the position of other County Attorneys and Deputy County Attorneys in the State of Montana and perhaps the next time, we'll have to resolve it with a lawsuit.

Mike Sehestedt: Yeah, they've stated their position for the record. They've filed what could be considered a petition or a consent. At this point, their requirements are by their standards met. You guys are free to take action, I guess, as you see fit.

Colleen Dowdall: My concern is that Myra said that if we didn't consent, if we didn't do something with this, she would have to file an action to stop the rezoning and that's my concern.

Mike Sehestedt: I would file it with the other materials received related to this rezoning. They're free in the future to say we took the position that, and we consented, we didn't give up the right to challenge it at some future date and life goes on.

Commissioner Evans: I choose to proceed with the process to accept the consent form from 70% of the public and if our attorneys feel that we need to do an additional addendum to this by notice and re-adopting this consent, petition, whatever you want to call it, then I'd be happy to do that, but I think we should proceed today and consider this a consent form consenting to the process.

Mike Sehestedt: If you will, consider they've asserted their right, they've said we have the right in this particular case, we consent to proceed on this basis, it's signed by sufficient number, go forward. If this happens again, we haven't waived our position which is consent, we certainly haven't given up our position that in fact you can create a new zoning district

that encompasses parts of other zoning districts provided you have a sufficient petition to create that new zoning district and basically, with this in hand, you simply don't need to resolve that question to move forward on today's project.

Commissioner Carey: So, just for clarification, Barbara, you say you're willing to accept this consent from the 60% of the freeholders of Zoning District #18 and then we'll move forward.

Commissioner Evans: Yes.

Commissioner Carey: And we'll just strike petition, where it says petition, and put in consent.

Commissioner Evans: Yes, and use the word consent form.

Colleen Dowdall: I would ...

Commissioner Evans: Are you going to respectfully argue with me?

Colleen Dowdall: No, I'm going to assume that that is what Myra asked for and she has acknowledged that we are changing the document she gave to us to say consent and then we can have that language in the resolution as well.

Mike Sehestedt: We're not changing the language of the document, we're saying we're construing the document captioned as, to be a consent.

Commissioner Evans: She's agreed that she would prefer, she will agree to change it from petition to consent.

Mike Sehestedt: Well, it signed now, we can't go changing it. It's a question of how it's to be construed.

Chair Curtiss: This is a public hearing, so if there are those who would like to comment, please come to the mic and identify yourself.

Mike Zarbolas: I'm Mike Zarbolas, I'm a homeowner in the area. I have two concerns that I was hoping would be addressed here. The first one, ingress and egress of Highway 93. How are they going to get in, how are they going to get out? Are we going to put a new light in? Do we need to have the State Highway Department here? So, I think that needs to be dealt with at some point and I'm not sure if this is the right point or not.

Chair Curtiss: It is and we've been informed but we will make sure we inform you. Did you have another question?

Mike Zarbolas: The other concern that I had was putting a residential area next to a ditch. What kind of procedures are we going to put in there so that the children of the residential area aren't able to access the ditch? Are we going to have, are we going to plan ahead and make sure that we don't have any tragedies? So those are the two things that I thought, that were of interest to me. And then, also, in the commercial area, what's going to happen with the big ditch, are we going to cover it, are we going to have bridges over it, are we going to, I don't know. I don't know if that's a concern or not, but it's something that I was curious about.

Chair Curtiss: We'll have the developer or Jamie address your questions.

Commissioner Evans: Jean, Mike, those are more appropriate in subdivision review, not zoning.

Chair Curtiss: Okay, but I think the ingress and egress might be a concern that we could address today because we do know that part.

Colleen Dowdall: We know what the plan is but the zoning doesn't necessarily approve a particular plan.

Greg Robertson: Typically, access is dealt with during the subdivision process and there will be some issues, especially with the commercial development. Traffic analysis will have to be done, it will have to be reviewed by the State and approved, and because it's controlled access facility, I'm sure they're going to have a lot of say in exactly how access is to be provided to this development. I'm Greg Robertson, Director of Public Works for Missoula County.

Chair Curtiss: Mr. Ainsworth, could I just have you address what you think you will propose for getting in and out of there so that it doesn't cause a bigger problem at the corner.

Dick Ainsworth: Again, as everybody said, this is more appropriately treated with a subdivision or an actual project, but our intent generally is, and we have talked to the Highway Department about access onto and off of Highway 93. What they've told us basically is that we don't have any problem getting off Highway 93 and we may be able to get on and go south, but we're not going to get on and go north, we can't cross. Tentatively, we've talked with them about an approach along somewhere in the vicinity of the ditch, there's an existing ditch road here, we'd probably incorporate that into whatever we did so the ditch company wouldn't need to have another one, but to come in somewhere here with a road that would loop up through here and hit Blue Mountain Road at some to be determined location over here, working with Greg and, I don't know if this is a secondary highway, if the Highway Department's involved in that or not, so, somebody coming to the commercial area here out of Missoula could come and turn in here or somebody going to the animal hospital back here could come in, do their business, if they're headed back to Missoula, they would go over here, come down through the light and go back into Missoula. So, there would be an approach here but there would probably only be one, we're not talking about multiple approaches here should there be more than one business located here. There would be one but they wouldn't be able to come out and cross traffic. And they might not be able to come out at all. They would go over here and come down Blue Mountain Road and exactly where this road would come in here, we haven't done any kind of a detailed study of that yet. I might address the gentleman's other comment about the ditch in the residential area. Right here, that again is something that at the time that this is going to be developed as a residential subdivision, the ditch and what to do with that and whether it should be fenced or what might happen would need to be dealt with, we haven't even thought about that at this point in time.

Chair Curtiss: Thank you. Are there others who would like to make public comment? So, Colleen, is the proper procedure then to close this hearing? Okay, at this time, we'll close the public hearing and have discussion amongst the Commission.

Commissioner Carey asked if this was the time to decide on the applicant's request to change a few of the terms.

Colleen Dowdall stated that the applicant's requests and the requests by interested citizens should be addressed at this time. She did have a problem with one of them from a legal standpoint. Most everything else has been resolved. She had a problem with the one regarding any water for a residential development be obtained at or below elevation 3,134 on "blank" datum. That isn't an appropriate action for zoning. The recommendations for the development of the district include: "Within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter or maintain certain buildings or to carry on certain trades, industries or callings, or within which the height and bulk of future buildings in the area of yards, courts and other open spaces, and the future uses of the land or building shall be limited and future building setback lines shall be established." Water law is a separate area that is not appropriate for restriction by this body for zoning. This may need more research and has not been discussed at previous meetings. Water law is outside any process or jurisdiction of the Board of County Commissioners. She was recommending it be removed from the standards for the zoning district.

Commissioner Evans moved that the Planning and Zoning Commission delete the section referred to under 1-B regarding water for residential development in that it is not under the jurisdiction of the Board of County Commissioners or the Planning and Zoning Commission. County Clerk and Recorder/Treasurer Vickie Zeier seconded the motion. The motion carried on a vote of 5-0.

Commissioner Evans moved that the Planning and Zoning Commission delete "Animal hospitals and veterinarian clinics" as a permitted use in the Commercial Sub-district, based on the request of the residents. Commissioner Carey seconded the motion. The motion carried on a vote of 5-0.

Jennie Dixon stated that using the draft that was presented today, the motion could be to adopt the standards as amended. Things added in would be included in the motion.

Commissioner Evans stated that to clarify, the items highlighted in pink are items that OPG recommends be changed.

Jennie Dixon stated that was correct based on conversations with Chris Mostad. Since then, there have been some additional changes that he requested that OPG has not reviewed or commented on. Those are shown highlighted in green.

Commissioner Evans stated that the items highlighted in pink were acceptable to all parties.

Chair Curtiss stated she had a clarification under the Residential Sub-district. "Nursing and personal care facilities," is shown to be deleted as a permitted use. However, by State law some facilities are allowed in residential areas even though they are not listed as permitted uses so someone could propose such a facility.

Colleen Dowdall stated that was correct. Facilities referred to as Community Care Facilities are permitted the same as a single family residence in a single family district. Those are defined as a variety of different things like group homes and rehab things that don't require skilled nursing care and serve eight or fewer people.

Chair Curtiss stated that "Nursing and personal care facilities" can legally be deleted, but others allowed in a residential home would still be allowed by law.

Colleen Dowdall stated that if it serves eight or fewer people and it meets the definition found in MCA 76-2-402, then it would be permitted. They wanted to make it clear that it's okay to strike "nursing home" but anything serving eight or fewer people would be allowed by law whether or not this is deleted.

Commissioner Evans moved that the Planning and Zoning Commission accept the rest of the changes on Page 2 of the zoning standards, including: remove "Automotive, truck and trailer, mobile home, marine, recreation vehicle and accessories sales and service" as a permitted use in the Commercial Sub-district; remove "Farm equipment sales and service" as a permitted use in the Commercial Sub-district; add "which existed at the time of the creation of the district" to Agricultural Activities in the permitted uses of the Commercial Sub-district; change the maximum building height in "B. Space and Bulk Requirements" to 35 feet; and add "east of the irrigation ditch" in "C. Supplementary Regulations." Commissioner Carey seconded the motion. The motion carried on a vote of 5-0.

Commissioner Evans moved that the Planning and Zoning Commission accept the changes on Page 3 of the zoning standards, including: delete "for uses other than retail" in "C. Bicycle Parking" and add "depending on type and use and expected traffic generation" in "C. Bicycle Parking." Commissioner Carey seconded the motion.

Commissioner Evans stated that before the vote she wanted to clarify how many bike racks would be required.

Jennie Dixon stated that it would be dependent on the number of car parking spaces provided and with further discretion, an analysis of use and traffic generation expected.

The motion carried on a vote of 5-0.

Commissioner Evans moved that the Planning and Zoning Commission accept the changes on Page 4 of the zoning standards, including: delete "Long-Term Facilities" definition under "C. Bicycle Parking." County Surveyor Horace Brown seconded the motion.

Commissioner Carey stated that he agreed, the applicant had a good point on that issue.

Jennie Dixon stated that a variety of uses are permitted in the Commercial Sub-district. While Mr. Mostad has plans for a carpet store, a variety of other activities may happen on the rest of this 18 acres. A carpet store would not generate a lot of bicycle customers, but the long-term bicycle parking is for employees who commute to work on bikes. Mr. Mostad could meet the requirement by providing storage in the warehouse. That may not hold true for other types of retail establishments in providing bike parking for employees. There is discretion for that based on type of use and expected traffic generation.

Commissioner Carey stated this paragraph does no harm to the current applicant so he would vote against the motion.

The motion carried on a vote of 3-2 (Commissioner Carey and Chair Curtiss opposed).

Jennie Dixon stated that by deleting that paragraph, it would necessitate another change to Page 3 under "C. Bicycle Parking." The deleted paragraph was a definition of the long-term bike parking and would make it necessary to delete, in the first sentence, "plus long-term bike parking at a minimum rate of 20% of employees at peak shift."

Commissioner Evans moved that the Planning and Zoning Commission delete, in the first sentence under "C. Bicycle Parking" on Page 3 of the zoning standards, "plus long-term bike parking at a minimum rate of 20% of employees at peak shift."

Jennie Dixon stated that they had deleted a definition.

Vickie Zeier stated that she agreed to Commissioner Evans' motion because she understood that this pertained to not just a bike rack, but a covered shelter.

Chair Curtiss stated that what was deleted on Page 4 was actually the definition for the requirement on Page 3 under Bicycle Parking.

Colleen Dowdall stated bicycle parking will still be required, just not the covered type. If this was not deleted, long-term bike parking would still be required without a definition of how to meet the requirement. It didn't make sense to leave the requirement in without a definition of how to meet it.

Vickie Zeier seconded the motion. The motion carried on a vote 3-2 (Commissioner Carey and Chair Curtiss opposed).

Commissioner Evans moved that the Planning and Zoning Commission delete number 3 on Page 5 under "F. Pedestrian Facilities," referring to differentiation of crosswalks.

As there was no second, the motion died.

Commissioner Evans moved that the Planning and Zoning Commission make the following changes on Page 6: Number 2 shall read, "The minimum height for a tree at planting in the required landscaped area is six (6) feet. The minimum size of shrub at planting is five gallons." and have the second sentence in Number 3 read, "If weather does not permit installation of landscaping prior to issuance of an occupancy permit, the property owner shall install all required landscaping within the next two growing seasons, following the issuance of an occupancy permit." and remove "total" for the first sentence of Number 5a. Commissioner Carey seconded the motion. The motion carried on a vote of 5-0.

Commissioner Evans moved that the Planning and Zoning Commission make the following changes on Page 7: The first sentence of C. Interior Parking Lot Landscaping, Section ii, shall read: "Landscape islands shall be planted with living vegetative ground cover or may be landscaped with bark groundcover or washed rock a minimum of 1.5 inches in size."

Jennie Dixon stated that the rationale for vegetative ground cover was to help break up a paved area with the concession that bark would also be acceptable. By adding gravel, it would add another heat source to a parking lot.

Chair Curtiss stated that the applicant had pointed out that the trees might be eaten by deer and the washed rock could provide a deterrent to that.

Jennie Dixon stated that deer had not proved to be a problem at other similar locations.

Vickie Zeier seconded the motion. The motion carried on a vote of 5-0.

Commissioner Evans moved that the Planning and Zoning Commission accept the changes on Page 8, including: add "with the exception of commercial feeding of livestock, a use that was not in existence at the time of the creation of the district," under Permitted Uses in the Agricultural Sub-district; and change the Maximum building height to 35 feet in the Space and Bulk Requirements. Commissioner Carey seconded the motion. The motion carried on a vote of 5-0.

Commissioner Evans moved that the Planning and Zoning Commission accept the changes on Page 1, including: change the first Permitted Uses to read: "Single family residences. Mobile homes and manufactured homes are not permitted;" delete "Nursing and personal care facilities" as a permitted use; revise the last Permitted Use to read: "Agricultural Activities as defined in MCA 76-2-902, which existed at the time of the creation of the district;" add "with the option for density bonuses as set forth in Section 3.06M of the Missoula County Zoning Resolution 76-113, when this sub-district is served by city sewer" under Space and Bulk Requirements; and change the Maximum building height to 30 feet under Space and Bulk Requirements. Commissioner Carey seconded the motion. The motion carried on a vote of 5-0.

Commissioner Carey moved that the Planning and Zoning Commission accept the changes on Page 5, including: the last sentence in Number 2 shall read: "However, sidewalks, no less than six (6) feet in width, shall be provided along the full length of the building along any façade featuring a customer entrance and along any façade abutting public parking stalls" and the first sentence in Number 3 shall read: "All crosswalks shall be colored or shall include partial or full texturing to provide greater differentiation of the walkway from the driving surface." Vickie Zeier seconded the motion. The motion carried on a vote of 4-1 (Commissioner Evans opposed).



Vickie Zeier moved that the Planning and Zoning Commission approved the Commercial Properties Citizen Initiated Zoning District #43 as amended by today's votes on the draft submitted and highlighted by the applicant dated May 8, 2002, which creates the development pattern requested. Commissioner Evans seconded the motion. The motion carried on a vote of 5-0.

Chair Curtiss recessed the meeting of the Planning and Zoning Commission and reconvened the meeting of the Board of County Commissioners.

Commissioner Evans moved that the Board of County Commissioners accept the recommendations of the Planning and Zoning Commission to create Citizen Initiated Zoning District #43 and acknowledge receipt of the consent of at least 60% of the freeholders of Zoning District #18 to adjust the boundaries to exclude the property owned by Commercial Properties, Inc. and consent to this property being made part of Zoning District #43. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans commended the parties for working together to come to a conclusion that was satisfactory to all of them.

**Hearing: Sixty-Six Quarter Circle Ranch – Lot 6 (4 lot minor subdivision near Frenchtown)**

Jackie Corday, Office of Planning and Grants, presented the staff report.

This is a proposal from George Sherwood, represented by Ron Ewart of Eli and Associates, to subdivide Lot 6 of Sixty-Six Quarter Circle Ranch, a 26.44 acre parcel, into four lots ranging in size from 5.5 acres to 9 acres. Sixty-Six Quarter Circle Ranch was a nine lot subdivision of 178 acres approved in November of 2000. The property is located about 2 miles northwest of the Wye with the Frenchtown Frontage Road.

The property is accessed via Frenchtown Frontage Road to Fred Lane to Sixty-Six Lane, a private road created for the original subdivision. The property has been used for hay production and grazing. It has fairly gently rolling topography except for slopes in the southeast section of Lots 6B and 6C that have been designated as no-build areas. There are no trees or riparian areas on the property. There is a wide, shallow swale on proposed Lots 6A and 6D which has been designated as a no-build zone to allow for site drainage.

The lots will be served by individual wells and septic systems. The area is served by Frenchtown Rural Fire District and the Frenchtown School District.

The applicant has requested two variances. One is to not provide for internal pedestrian connections and the other is to exceed the cul-de-sac standard of 1,000 feet. OPG recommends approval of both variances and of the subdivision, subject to 7 conditions. No comments were received from neighboring property owners on this proposal.

The property is unzoned and outside the Urban Growth Area (UGA) and the Sewer Service Area. The Comprehensive Plan designates the property and the surrounding area as Open and Resource with a recommended density of one dwelling per 40 acres. This designation was originally set for the area by the 1975 Comprehensive Plan because the area was then primarily rural farm land not quite ready for development situated between Missoula and Frenchtown. It is still relative rural today, although there is development occurring in the area. The original 9 lot subdivision was found to be in substantial compliance with the Comprehensive Plan because the overall density was approximately one dwelling per 20 acres. Four of the lots were less than 5 acres and clustered near Fred Lane, leaving five lots in large acreage parcels preserving open space.

Lot 6 is one of the five larger lots. The no-build zones kept the buildings off the hillsides. The original subdivision applicant proposed to pave the road and the covenants required the homeowners to pave driveways to minimize dust. Fred Lane is a gravel road that produces a lot of dust which is a concern for the area. The current proposal will have the paving and no-build zone requirements which preserves the hillsides and the drainage swale, but none of the other factors are present to justify compliance with the Comprehensive Plan. However, there have been recent changes to State law regarding the use of Comprehensive Plan compliance in the review of subdivisions. Therefore, no conditions are recommended based on this proposal's compliance with the Comprehensive Plan.

Sixty-Six Lane, a private road constructed for the original Sixty-Six Quarter Circle Ranch subdivision, will soon be paved to a width of 24 feet as part of the original conditions. It will be maintained by the homeowners as required by covenants. The applicant proposes extending a shared driveway off the cul-de-sac to access Lots 6C and 6D. Based on conversations with Public Works, Frenchtown Rural Fire and the County Attorney, it was determined it would be best to extend the cul-de-sac to the four corners of the lots, which has been made a condition of approval.

A conditional public access easement will be shown from the cul-de-sac bulb to the southern boundary to connect with an existing conditional public access easement to serve as a connection if the lots to the south, Lot 7 or Tract 2 of COS 5105, were subdivided in the future. A variance for the length of the cul-de-sac was approved with the original subdivision. By requiring the cul-de-sac be extended for this proposal, an additional variance is required for the additional approximately 560 feet, which would make the total overall length of the cul-de-sac 1,710. Staff did not feel there was a need for internal pedestrian connections at this time as the subdivision will still be very rural on large acre lots.

Ron Ewart, Eli and Associates, developer's representative, stated the applicant is in agreement with the conditions of approval. To the north of this property there are about 40 large acre tracts created through the COS process. Comparing the two, this will be a much more orderly development. The no-build zone in the south is to keep houses off the ridgeline. The other no-build zone created with this subdivision on the north is to preserve agricultural land and protect the swale. There are very restrictive covenants to encourage continued agricultural use. The homes will be custom, site-built homes and the homeowners will pay to maintain the roadway.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.



Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections; and approve the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations for Sixty-Six Lane to exceed the maximum cul-de-sac length of 1,000 feet; both based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve Sixty-Six Quarter Circle Ranch, Lot 6, Summary Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Sixty-Six Quarter Circle Ranch, Lot 6, Summary Subdivision Conditions of Approval:**

**Roads/Access**

1. Detailed plans for paving, grading, drainage, erosion control and stormwater improvements shall be reviewed and approved by the Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2 and Public Works recommendation.*
2. The Sixty-Six Lane cul-de-sac bulb shall be located at the four adjoining corners of the lots (the northeastern boundaries of Lots 6C and 6D) with the road being constructed 24 feet wide and paved. Final road plans shall be reviewed and approved by Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J), OPG, Public Works and Frenchtown Fire District recommendation.*
3. The 54 foot wide access easement indicated on the preliminary plat as an Emergency Vehicle Easement shall be amended to be labeled as a "Private Access Easement and Utility Easement" and shall extend from the southern edge of the cul-de-sac to the southern boundary line of Lots 6C and 6D. The NOTE on the preliminary plat regarding this easement shall be amended to state the following:

The 54 foot easement is conditional upon the right-of-way being used as a roadway at the time that it is needed to serve future subdivision of Lots 6A-6D, Lot 8 and Tract 2 of COS 5101. No access of any type will be allowed across the easement until the area shown as a private access easement is opened for public access, as required and approved by the Missoula Board of County Commissioners. No structures, permanent improvements or utilities shall be placed within the right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway.

**Fire**

4. Driveway plans shall be reviewed and approved by Frenchtown Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and 3-2(10)(E).*
5. The subdivider shall provide a means for fire suppression for this subdivision either by providing a minimum 350 GPM (gallons per minutes) water supply or residential sprinkler systems. Final plans for the water system shall be reviewed and approved by the Frenchtown Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(F), 3-7(1) and Frenchtown Fire District recommendation.*

**Weeds**

6. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*
7. Prior to final plat approval, the weeds section of the Protective Covenants of Sixty-Six Quarter Circle Ranch shall be amended by adding the following:

"Lot owners shall revegetate any ground disturbance caused by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is completed." *Subdivision Regulations Article 3-1, 3-2(8)(J) and Missoula County Weed District recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

**THURSDAY, MAY 9, 2002**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey was out of the office all afternoon.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 9, 2002, with a grand total of \$2,454.44. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 9, 2002, with a grand total of \$32.00. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 9, 2002, with a grand total of \$22,631.02. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 9, 2002, with a grand total of \$29,076.20. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 9, 2002, with a grand total of \$55,490.08. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 9, 2002, with a grand total of \$13,183.81. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Douglas W. Chase, for the month ending April 30, 2002.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-023 for the District Court, in the amount of \$104,268, for the purpose of allocating Fiscal Year 2002 salary increases to various District Court departments, and adopting same as a part of the Fiscal Year 2002 Budget.

Request for Action – The Commissioners approved and Chair Curtiss signed a L.S. Jensen Change Order, dated May 9, 2002, to add back into the Schedule II contract the items that were taken off of Schedule I due to inclement weather. Both Schedule I and Schedule II contracts cover infrastructure installation within Phase 4 of the Missoula Development Park. This Change Order increases the Contract Price by \$10,071.00. The document was returned to Barbara Martens in the Projects Office for further handling.

Agreement – Chair Curtiss signed a Tap Application Agreement between Missoula County and Mountain Water Company for the installation of a water tap to Lot 11, Block 3, Phase 4, Missoula Development Park (along Sandpiper Drive). The total amount shall not exceed \$1,100 for each water tap. Missoula County will be reimbursed for the tap fees when the lots are developed (per paid contract with Mountain Water to extend the 12" water main to Phase 4.) The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a Counter Offer by Abbott and Jacqueline Norris for the purchase of Lot 15, Block 3, Phase 4, Missoula Development Park, for the purpose of cabinetry and furniture manufacturing. The purchase price is \$147,000. The closing date is scheduled for June 3, 2002. The Counter Offer is contingent on certain items as set forth therein. The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a full price offer by Michael DeNeve for the purchase of Lot 14, Block 3, Phase 4, Missoula Development Park. The purchase price is \$154,608. The closing date is scheduled for June 14, 2002, contingent upon purchaser successfully refinancing his own home for the necessary funds. The document was returned to Barbara Martens in the Projects Office for further handling.

Counter Offer – The Commissioners rejected a Counter Offer submitted by Brandon-Legg Development Corporation on May 6, 2002, and elected to stay with the previous counter offer (with amendments) dated April 30, 2002, relating to the purchase of Lot 1, Block 11, Phase 2, Missoula Development Park. The document was returned to Barbara Martens in the Projects Office for further handling.

Letter – Chair Curtiss signed a letter, dated May 9, 2002 to E. Gardner Brownlee, Florence, Montana, regarding Mr. Brownlee's letter to Chief Lindstrom concerning the Missoula Rural Fire District (dated April 30, 2002). The letter to Mr. Brownlee stated that the Commissioners are awaiting a response from Chief Lindstrom.

Letter – The Commissioners signed a cover letter to DNRC for a grant application, and approved the \$250 filing fee.

Other items included:

- 1) There has been a request to purchase property Missoula County acquired by tax deed, known as Lot 11, Block 3, Carline #1. The Commissioners moved to have Deputy County Attorney Mike Sehestedt follow-up on the appraisal of this property.
- 2) Due to a resignation on the Planning Board, the Commissioners suggested advertising for the opening as soon as possible.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **FRIDAY, MAY 10, 2002**

The Board of County Commissioners met in regular session; all three members were present.

#### Election Canvass

In the forenoon, the Commissioners canvassed the School Election that was held on Tuesday, May 7, 2002.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 10, 2002, with a grand total of \$5,510.55. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Equity Management, Inc. as Principal for Missoula County Warrant #55844, issued April 19, 2002 on the School District #40 (Frenchtown, Montana) Fund in the amount of \$1,751.64 (payment for wage garnishment), now unable to be found.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, MAY 13, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Carey was in Cambridge, Massachusetts attending an Elected Officials Land Use and Transportation Seminar through May 15<sup>th</sup>.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 13, 2002, with a grand total of \$12,709.66. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 13, 2002, with a grand total of \$9,959.24. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 13, 2002, with a grand total of \$57,516.94. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Jean Kuntz as Principal for Accounting Warrant #5091, issued May 2, 2002 on the Missoula County 1000 Fund in the amount of \$35.50 (payment for knife sharpening), which was mutilated.

Resolution No. 2002-052 – The Commissioners signed Resolution No. 2002-052, annexing to the Seeley Lake Rural Fire District the parcel of land described as: "Lots 9 through 30 of Streit's Inez Lakeshore Sites located in Sections 31 and 36, T 18 N, R 15 W, Missoula County, Montana." A public hearing was held on this matter on April 24, 2002. There were no protests.

Resolution No. 2002-053 – The Commissioners signed Resolution No. 2002-053, annexing to the Missoula Rural Fire District the parcel of land described as: "Parcel 3B of Certificate of Survey Number 2647, located in Section 12, T 12 N, R 19 W, PMM, Missoula County, Montana." A public hearing was held on this matter on April 24, 2002. There were no protests.

Resolution No. 2002-054 – The Commissioners signed Resolution No. 2002-054, annexing to the Missoula Rural Fire District the parcel of land described as: "Tract E of Certificate of Survey Number 4073, located in Section 4, T 12 N, R 19 W, PMM, Missoula County, Montana." A public hearing was held on this matter on April 24, 2002. There were no protests.

Resolution No. 2002-055 – The Commissioners signed Resolution No. 2002-055, annexing to the Missoula Rural Fire District the parcel of land described as: "The W½ of Section 32, T 12 N, R 20 W, LESS the SE¼, NW¼ of Section 32, T 12 N, R 20 W, PMM, Missoula County, Montana." A public hearing was held on this matter on April 24, 2002. There were no protests.

**TUESDAY, MAY 14, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 13, 2002, with a grand total of \$55,136.31. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 14, 2002, with a grand total of \$132,703.20. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 14, 2002, with a grand total of \$1,293.55. The Claims List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Amendment – Chair Curtiss signed Amendment No. 3, dated May 14, 2002, to the Professional Services Contract between Missoula County and HDR Engineering, Inc. ("HDR"), originally made April 20, 2002, for engineering services in connection with the project known as "Missoula County Lolo RSID 901 Wastewater Treatment System Priority Improvements". HDR will assist with the construction administration and inspection of the Phase 1 improvement project, in addition to providing technical assistance in developing the assessment. The total amount shall not exceed \$93,014.96. All work will be completed within 300 calendar days from the effective date of the Notice to Proceed. The document was returned to Public Works Director Greg Robertson for further handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Paul S. Donaldson, M.D., for services as a primary care physician (as an independent contractor) at PHC (Partnership Health Center). Compensation shall be \$70.00 per hour. The term will be March 24, 2002 through June 30, 2003.

Request for Action – On behalf of Turning Point/WMHHC, Chair Curtiss signed a Project Progress Report and Conditional Closeout Certification forms for a Montana Department of Commerce HOME Program grant for Missoula County. These are standard forms that must be completed when HOME funds have been received. Missoula County received the \$318,000 grant in February of 2002. The documents were returned to Jennifer Blumberg in the Office of Planning and Grants for further handling.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-024 for the Health Department, in the amount of \$50.00 (needed an object code for account), and adopting same as a part of the Fiscal Year 2002 Budget.

Agreement – Chair Curtiss signed an Assignment Agreement for Reclamation Permit No. 304, Pit 6, dated May 14, 2002, transferring permit responsibility back to the original owner (Rosalie Hartzog of North Carolina), and removing Missoula County from any further liability. The owner has signed accepting future responsibility for reclamation. The document was returned to Public Works Director Greg Robertson for further handling.

Request for Action – The Commissioners approved a request by the Public Works Department to advertise a contract bid for construction of 1.5 miles of walkway on Clements Road and North Avenue. This is a CTEP project supported by Federal aid monies for approximately 86% of the total project costs. The contract will be advertised in the Missoulian for four (4) weeks, and bids are tentatively scheduled for opening on June 10, 2002. The request was returned to Joe Jedrykowski in Public Works.

Other items included:

- 1) The Commissioners moved to notify MACo that Missoula County is interested in bidding to host the MACo Convention in the fall of 2004.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, MAY 15, 2002

The Board of County Commissioners met in regular session; a quorum of members was present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 14, 2002, with a grand total of \$1,794.13. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending April 30, 2002.

### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution No. 2002-056 – The Commissioners signed Resolution No. 2002-056, dated May 15, 2002, a Budget Amendment for the County Commissioners' Office (Financial Administration) in the amount of \$8,000, for the purpose of recording the pass-through of the Lewis & Clark Bicentennial Grant. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Resolution No. 2002-057 – The Commissioners signed Resolution No. 2002-057, dated May 15, 2002, a Budget Amendment for the Partnership Health Center in the amount of \$13,000, for the purpose of increasing a vacant 0.5 FTE senior secretary position to full-time (funded by grants). This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-025 for the Library, in the amount of \$70,000.00, for the purpose of recording a contribution to the Library Capital Reserve in transfers out, and adopting same as a part of the Fiscal Year 2002 Budget.

Agreement – The Commissioners, on behalf of Missoula County, signed two (2) Right-Of-Way Agreements, granting perpetual easement for a public road and all public purposes, to the following:

- 1) To Bernard A. Beeler and Barbara A. Beeler; for a 60-foot wide right-of-way being the easterly 60 feet of Lot A-1 of Beeler Addition to be named Beeler Road; and
- 2) To Lloyd L. Pearson and Martha Pearson; for a 60-foot wide right-of-way being the easterly 60 feet of Lot A-2 of Beeler Addition to be named Beeler Road.

The fiscal impact will be offset by money provided by Montana State and Montana Rail Link.

### PUBLIC MEETING – May 15, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson. Commissioner Bill Carey was attending a conference in Massachusetts.

### Pledge of Allegiance

### Public Comment

None

### Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$594,778.05. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Consideration: Napa Valley Estates (4 lot subdivision) – off Upper Miller Creek Road**

Mary McCrea, Office of Planning and Grants, presented the staff report.

Dan and Linda Vap, represented by Steve Lennis of DJ&A, are requesting approval to subdivide three existing parcels totaling 24.29 acres into 4 lots. Two lots, Lot 3 (13.27 acres) and Lot 4 (8.97 acres) have existing homes, drainfields and wells. Lot 1 (1.25 acres) and Lot 2 (1.0 acres) are clustered in the northern section and are undeveloped.

The property is in the Upper Miller Creek area and is accessed by private roadways to Miller Creek Road, a paved County road.

Lots 3 and 4 are crossed by Miller Creek. There are floodplain and riparian areas along Miller Creek. A portion of Lots 3 and 4, south of Miller Creek, have slopes greater than 25% and have been designated no-build zones. The site contains an ingress/egress easement to the adjacent property south of Lot 3 across Miller Creek. The neighborhood consists of rural single family homes on 2.5 to 15 acre lots.

The lots will have individual wells and septic systems. The area is served by the Missoula Rural Fire District. Presently there is no community water system. Therefore, Missoula Rural Fire District has selected watertenders and large diameter hoses to protect this subdivision.

The property is zoned C-A3 (Residential) which permits single family residential development at a maximum density of one dwelling unit per five acres with no minimum lot size requirement. It is outside the Urban Growth Area (UGA), but within the Air Stagnation Zone and Building Permit jurisdiction boundary.

The Miller Creek Area Comprehensive Plan Amendment of 1997 designates the portion of this property closest to the roads as Residential, with a maximum density of one dwelling unit per five acres. The property adjacent to Miller Creek is designated as Parks and Open Space.

Because the proposal for the subdivision keeps the development away from the riparian resource and excludes development on the steep slopes, OPG has concluded that the project is in substantial compliance with some of the goals of the Comprehensive Plan.

OPG recommends approval of the subdivision subject to 19 conditions. OPG has received both written and oral comments from several neighboring property owners. Their written comments are attached to the staff report. In summary, they oppose approval of the subdivision and express concern for the size of Lots 1 and 2, whether legal access exists over existing easements to the subdivision, increased traffic, dust from unpaved roads, safety of children walking to the bus stop, drainage from the subdivision in a northerly direction to adjacent properties and concerns about overtaxing the aquifer by adding more wells.

The first two variances pertain to the off-site private roadways. Variance #1 is a request to vary from the required 24 foot wide surface width standards. OPG recommends approval of this variance with the applicant providing an 18 foot paved surface width and a 20 foot unobstructed clearance width as recommended by Missoula Rural Fire District.

Variance #2 is a request to vary from paving standards for the off-site private roadways. OPG recommends denial of this variance. The property is in the Air Stagnation Zone and the Health Department is requiring the on-site private roadways be paved. County Public Works is requiring the approach onto Miller Creek Road be realigned to meet AASHTO standards. Also, Subdivision Regulations require private roadways less than 500 feet from paved public roads be paved. The off-site private roadway is 450 feet from Miller Creek Road.

Variance #3 and #4 pertain to the on-site private roadways. Variance #3 is to vary from the required 24 foot wide surface width standards. OPG recommends approval of this variance with the applicant providing an 18 foot paved surface width and a 20 foot unobstructed clearance width as recommended by Missoula Rural Fire District.

Variance #4 is to vary from paving standards for the on-site private roadways. OPG recommends denial of this variance. The property is in the Air Stagnation Zone and the Health Department is requiring the on-site private roadways be paved.

Variance #5 is to vary from the requirement to provide a system of pedestrian and/or bicycle circulation in all subdivisions. OPG recommends approval of this variance due to the rural nature of the area.

Variance #6 is to vary from the requirement that no lot shall have an average depth greater than three times its average width. OPG recommends approval of this variance as the two new lots created, Lots 1 and 2, do not violate this requirement and Lots 3 and 4 already exist.

Variance #7 is to vary from designating portions of the site as a Riparian Resource Area. OPG recommends denial of this variance as Miller Creek flows through Lots 3 and 4. Mack Long, Department of Fish, Wildlife and Parks (FWP), states that a Riparian Resource Management Plan should be provided and that Miller Creek contains several trout species including westslope cutthroat trout, a species of special concern in Montana.

OPG recommends the Riparian Resource Management Plan require landowners to follow land management practices that protect and buffer the Riparian Resource Area, while allowing continuation of current land uses. Mitigation is recommended for future impacts for road and bridge building to access the property south of Lot 3 or for future construction or additions to the existing houses on Lots 3 and 4. Mack Long of FWP concurs and states future land management practices should be spelled out and should include prohibition of activities that would further degrade this stream.

The conditions pertain to roads, driveways, drainage, water, fire, weeds, riparian area and covenants.

1. The on-site private roadway shall be designated a private roadway and public utility easement.
2. Private roadways shall be named and signed.

3. Private roadway and driveway plans shall be approved by Missoula Rural Fire District.
4. Provision for maintenance of the private driveways shall be included in the covenants.
5. Provision for maintenance of the private roadways shall be included in the covenants.
6. Approach onto Miller Creek Road shall be realigned to meet AASHTO guidelines.
7. Paving of private roadway to an 18 foot width.
8. Submittal of grading and drainage plan approved by Public Works.
9. Mitigation of traffic impacts of the subdivision on Miller Creek Transportation system by contributing to the fund for Miller Creek Road Improvements (\$1,800 per new lot).
10. Waiver of the right to protest future RSID/SID for improvements to Miller Creek Road, including pedestrian walkways or bikeways, based on benefit.
11. Proof of the existence of legal access to all lots in the subdivision, to be reviewed and approved by County Attorney's office.
12. Waiver of the right to protest a future RSID/SID for a public or community water system.
13. Contribution of \$100 per new lot or dwelling unit for watertenders and large diameter hose fund.
14. This was deleted as it is included in Condition 18.
15. Delineating the Riparian Resource Area and Riparian Buffer Area.
16. Designates the northern boundary of the Riparian Resource Area at the top of slope of uppermost terrace and southern boundary at the topographic line at the base of the steep slopes south of and parallel to Miller Creek. Designates the Riparian Buffer Area parallel to and from the northern boundary of the Riparian Resource Area a distance of 25 feet.
17. Attach to the covenants copies of booklets on stream permitting and Stream Access Law.
18. Additions to the covenants.
19. Revisions to Section "O" of the covenants.

Chair Curtiss asked for public comment.

Dan Vap stated he was the owner of the 24 acres proposed for development. Presently there are two homes and a third lot. He is asking to add a fourth lot. There has been concern about lot size, but there is a reason for that. There are several 3 to 5 acres lots on Miller Creek Road that are filled with outbuildings and other structures. By limiting the size of the lots, it will provide for a house, garage, lawn and landscaping. He will also be building the houses so he will have control of what is built. By clustering the houses, it opens up about 15 acres on the flat which will be undeveloped. Beierle Lane, which is right next to this proposal, has a cluster of three houses. This keeps the roads and dust control much more reasonable.

Steve Lennis, DJ&A, developer's representative, stated he would address the recommended motions, the conditions of approval, the findings of fact and the variance requests. There is agreement with all the recommended motions except for #2, denial of the off-site paving variance. There is agreement with conditions of approval 1 through 9, 16 through 18 subparts a through f, also condition 19 subparts 1, 3 and 5 through 7. To restate for the record, there is agreement with: Condition 1 (The developer shall designate the roadway from STA 0+00 to STA 3+85 as a private roadway and public utility easement on the final plat.); Condition 2 (The developer shall name and sign the private roadway from the west end of Beierle Lane to STA 3+85. The roadway name shall be subject to the review and approval of the County Surveyor's Office and shall be referenced on the final plat.); Condition 3 (Private roadway and driveway plans for all lots shall be approved by the Missoula Rural Fire District prior to final plat approval.); Condition 4 (A provision for maintenance of the shared private driveways for Lots 3 and 4 shall be included in the covenants to be reviewed and approved by the County Attorney prior to final plat approval.); Condition 5 (A provision for maintenance of the shared private roadway for Lots 1, 2, 3 and 4 shall be included in the covenants to be reviewed and approved by the County Attorney prior to final plat approval.); Condition 6 (The applicant shall realign the approach from the private roadway onto Miller Creek Road to meet AASHTO standards and detailed construction plans for this approach realignment shall be submitted to the Missoula County Office of Public Works for review prior to final plat approval.); Condition 7 (The private roadway extending west from Beierle Lane to STA 3+85 shall be paved to an 18 foot width. Roadway plans shall be reviewed and approved by the Missoula City-County Office of Public Works and Missoula Rural Fire District prior to final plat approval.); Condition 8 (A complete grading and drainage plan shall be submitted by the developer for review and approval by Missoula County Office of Public Works prior to final plat approval.); Condition 9 (The developer shall mitigate the traffic impacts generated by this subdivision on the Miller Creek Transportation System by contributing to the fund for Miller Creek Road Improvements in the amount of \$1,800 per new lot.); Condition 16 (The northern boundary of the Riparian Resource Area along Miller Creek shall extend from the center line of Miller Creek to the top of slope of the uppermost terrace. The southern boundary of the Riparian Resource Area along Miller Creek shall extend from the center line of Miller Creek to the topographic line at the base of the steep slopes south of and parallel to the creek. The Riparian Buffer Area shall extend parallel to and from the northern boundary of the Riparian Resource Area a distance of 25 feet. The delineation of the Riparian Resource Area and the Riparian Buffer Area shall be subject to the review of the Office of Planning and Grants and shall be shown on the plat and the Riparian Management Plan map prior to final plat approval.); Condition 17 (The applicant shall attach to the covenants copies of the booklet on stream permitting from the Missoula Conservation District and the booklet on Stream Access Law from Montana Fish, Wildlife and Parks.); Condition 18 (The following additions shall be made to the proposed development covenants subject to review and approval of OPG and the County Attorney prior to final plat approval: a. Dead-end driveways in excess of 150 feet in length shall be provided with approved provisions for turning around for fire apparatus. A minimum unobstructed width of not less than 20 feet and unobstructed vertical clearance of 13 feet 6 inches for any driveway over 150 feet in length shall be provided. The driveway surface must be an all weather surface capable of supporting the weight of fire apparatus. Driveway plans shall be approved by the Missoula Rural Fire District prior to building permit issuance. b. A minimum unobstructed width of not less than 20 feet and unobstructed vertical clearance of 13 feet 6 inches for the private roadway shall be provided. The roadway surface must be an all weather surface capable of supporting the weight of fire apparatus. c. Lot owners may not withdraw water from Miller Creek unless they have a valid water right. d. Lot owners shall maintain their lot in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners are required to revegetate with beneficial species any ground disturbance caused by construction or maintenance at the first appropriate opportunity after construction or maintenance is completed. e. All new wood burning equipment, including stoves and fireplaces, shall comply with all local and State laws and regulations. The Missoula City-County Air Pollution Control regulations prohibit the installation of wood burning stoves or fireplaces. This subdivision is located in the Air Stagnation Zone which limits wood burning equipment to pellet stoves that meet emission requirements and are approved by the Missoula City-County Health Department prior to installation permit issuance.) There is not

agreement with Condition 18g but there would be if it was rewritten so that approval of the governing body is only needed to amend or eliminate the Riparian Management Plan provisions or other provisions that deal specifically with public health, safety and welfare. The reason for that is the suggested development covenants have some issues that deal with private property concerns such as feeding pets indoors, the type and amount of pets that lot owners could keep on the property and so forth.

Chair Curtiss stated that the applicant would like that section of the Condition to say "sections of riparian or health, safety and welfare."

Steve Lennis stated that was correct. There is not agreement with Condition 10 (The following statement shall appear on the face of the plat: "Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Miller Creek Road, including installation of pedestrian walkways or bikeways, 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.")). They feel that contributing the \$1,800 per new lot and the fact that none of these lots abut Miller Creek Road and they are making improvements to the private roadway, that the right to protest any future RSID/SID for Miller Creek Road should be left up to the lot owners. There is agreement with Condition 11 (The developer shall provide proof of the existence of legal access to all lots in the subdivision, to be reviewed and approved by the County Attorney's Office prior to final plat approval.); Condition 12 (The following statement shall appear on the face of the plat: "Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for a public or community water system, 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."); Condition 13 (The developer shall contribute \$100.00 per new lot or dwelling unit to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of final plat approval.); Condition 14 which has been deleted; Condition 15 (The developer shall delineate the Riparian Resource Area and the Riparian Buffer Area, based on topographic information, on the plat and on a Riparian Resource Management Plan map attached to the covenants.) There is agreement with all the Findings of Fact, except for the following: Criterion 2, Roads, Finding #1 which should be revised to coincide with Condition of Approval #11 already agreed to; and Criterion 2, Off-Site Roads, Finding #8 (Staff has recommended a condition that the developer shall name and sign the private roadway from the west end of Beierle Lane to STA 3+85 on the final plat as approved by the Missoula County Surveyor's Office.) The addressing for that area has been changed once before which created a lot of confusion. Changing the addresses may create a conflict with some of the neighbors, if they are required to change their addresses to comply with this requirement. They also do not agree with Criterion 2, Off-Site Roads, Finding #12 (Staff has recommended a condition that included on the plat is a waiver of the right to protest an RSID/SID for future improvements to Miller Creek Road, based on benefit.) for the reasons previously stated. There is agreement with the actions on all requested variances except for recommended denial of Variance #2. They would like to see that the applicant initiate a petition for the creation of an RSID for roadway improvements to the subdivision access road, with the cost of such improvements to be shared by the nine lots or parcels that use the access road, based on benefit. If the RSID initiative fails, they ask that the governing body waive the requirement for paving the off-site roadway and require that a statement be placed on the final plat that waives the right to protest any future RSID/SID for improvements to the off-site access road, per Section 3-2(14)(C)(ii)(b) of the Subdivision Regulations. He would be available to answer any questions and asked to reserve the right to speak again following any comments from the public.

Chair Curtiss asked for public comments.

Bob Pfister stated he owned the property to the north along Miller Creek Road. Both the small lots are being stuck right against his house which doesn't make him very happy. Mr. Vap has all that acreage and says the lots are being done to preserve open space, but it does away with his open space. On approval of the variance for the sidewalks, it is not Mr. Vap's kids getting run over, it is his children. He would like to see the sidewalks installed.

Chair Curtiss asked if Mr. Pfister would be willing to help pay for sidewalks if they benefit him?

Bob Pfister stated that since he doesn't need them at this time, he doesn't feel he should pay for them, but that would be open to consideration.

Brian Heuer, 9389 Miller Creek Road, stated he works for BFI. His property is directly to the east of the proposal. He has a lot of objections that range from emotional to practical, but he will focus on the practical. He agreed with the one acre lots to prevent excessive outbuildings, except that both one acre lots are right next to his house and Bob Pfister's house. If the lot sizes were increased and the homes set back further, he might not object. The layout of the development kind of irritates the neighbors. There are four main issues. First is water. The developer stated there is plenty of water in his study, but any of the neighbors will say that Miller Creek goes dry in the middle of July every year. He has re-drilled his well in the last seven years as have a lot of his neighbors. There is a lot of ranch and farm land above them which irrigate through wells and from the creek which draws down the water table significantly. The aquifer in the area is very fragile. The area can't stand to have any more wells. The development downstream in Lower Miller Creek will also add to the problem. Water is a huge concern. Miller Creek Road is also an issue. It is already overtaxed. In the morning, traffic is backed up from Wal-Mart past the Wye and half way up Miller Creek hill. This subdivision will add 16 additional trips per day. Other subdivisions have been approved in Lower Miller Creek that will make the problem worse. There needs to be some solutions to the road before any more subdivisions are added. In an emergency, there is no way that residents could get out. The additional 16 trips per day on the roadway that runs in front of his house to get to this subdivision will increase the traffic by 28%. They would like the road paved. There are children, pets and livestock on that road every day. He has lived with the traffic that is there now, but he would be opposed to paying for any paving, curbs or sidewalks because of this subdivision. The fourth issue is easements. The road that runs in front of his property is his road, it runs across his property. In doing some research, easements don't automatically transfer to any new lot owners. Mr. Vap and others have easements across his property to access their property, but there have been several cases where it has been found that additional lots would create additional burden on the property so the easement do not extend automatically to additional lot owners. He does not intend to grant any new easements or extend any of the existing easements nor are his neighbors which may make getting to this property a problem. His final issue is zoning. It is zoned C-A3 which is one dwelling per five acres. He believed the developer was using a loop hole in C-A3 by not having a minimum lot size. In the early 1970s, this area was zoned for 2.5 acres per dwelling. It was changed to 5 acres per dwelling and he believed the intent of that was to create 5 acre parcels with one dwelling on them, not 20 acres with five



houses on one acre. The zone specifically states "this district provides for low density residential development of an open and rural character." Open and rural isn't putting two houses in his front yard. Again, if the houses were pushed back a little farther and the lot sizes were bigger, he probably wouldn't be here today. Most of the houses around the area are on 2.5, 3 or 5 acre lots, which have been put in with consideration of existing dwelling. If this was done in that manner, he would not be speaking today. The zone also states that developments are encouraged to preserve agricultural land and enhance environmental amenities found in rural areas. He did not see how this development is living up to that. While this meets the legal definition of the zone, he did not feel it meets the intent. When the people put the C-A3 zone into effect, their intent was not to have a house on every acre.

Gloria Roark stated she has been a resident of Miller Creek for 17 years. Her previous address was 9381 and the new assigned number is 10079. Her main concern is the aquifer. When the Beierle's built their subdivision above her, her well went dry. She has 15 acres and does not do any irrigating. With the drought and any new building, it will reduce the water supply. A lot of her neighbors had to drill new, deeper wells. She can't afford to drill a new well, she is on a fixed income. She did not think it was practical to have such a small parcel of land and she understood there were to be two-family dwellings. She is active in Miller Creek politics and she knows Linda Vap has been quite outspoken against any development at all. When the Beierle's put in their subdivision, Linda Vap was opposed to it. They are for the rural character. This is destroying the integrity of the neighborhood. It appears this is being used as a business venture. They are business people and have contributed to the community, but this is not a business area. She questioned why these houses are going in, will they be rentals. She has a family transfer exemption and will designate two 5-acre parcels to her children if those chose to build. She has been trying to keep her property in tact, but this will force her to re-evaluate her position. She felt it will depreciate the value of her property. She has worked with the Conservation District to maintain the riparian areas. It has become a respite for wildlife. More people will take away from the wildlife. These new homes will lower property values and impact everybody's life. It will probably increase taxes, noise and dust. Horace Brown has worked with the residents to get blacktopping. This is a major business proposal for the Vaps, not taking into consideration their neighbors. Their children are grown and they don't even live in town. The police, fire and emergency responders are stressed. Last February during a snowstorm, the police turned her back, there was no way out of the area. Ingress and egress are a real problem, there would be no way to evacuate residents in the event of a catastrophe. The Harlan's property will also probably be developed. Are all these houses needed? She asked that the Board decline their request for this subdivision.

Charlie Graham stated that he was hard of hearing and may have missed some of what had been said. His first question was about the depletion of the aquifer over the years as more wells have been drilled. He wanted to know if that has been addressed.

Commissioner Evans stated that in subdivision review, the Commissioners are not allowed to use water as one of the considerations. That is done by the Health Department. The Health Department has the information he wants and that will be taken into account when they look at issuing permits.

Colleen Dowdall stated the Commissioners do not have jurisdiction over water rights. The agency that does have jurisdiction is the Department of Natural Resources. The monitoring well belongs to the Water Quality District, which doesn't deal with water quantity, but the impact of septic systems on the aquifer. The Water Quality District is managed by the City-County Health Department and would have information he could review. The Health Department commented on this proposal and did not raise any issues with regard to water quality. That is done after preliminary plat approval. Before the plat is filed, it is subject to another review process for septic approval. If septic approval is not received, the plat cannot be filed.

Charlie Graham stated water quality was not the issue, water quantity is the issue. In November, 1969, he had a well completed that was drilled 135 feet deep. At that time, there was 25 feet of water in the well and pumped at 20 gallons per minute. Over the years, the static level of the well has been as much as 90 feet. He had been to a Planning Board meeting and was told that no one can drill into an aquifer below a given well and deplete any water from that well. That is false, wells can be depleted by drilling above or below them. It's a matter of pressure on the aquifer. Twice since 1969, his well has gone dry, but not until more and more wells were drilled in the area. The rain and snow are also a factor, but the larger factor is too many wells above and below his. He will have to drill again soon and go down about 190 feet. As one aquifer is drained, what will that do to the next one. The statement was made that a one acre lot was an improvement, but if the area was all one acre lots, there would be no water at all. Miller Creek is a dry area and over 40 years, he has seen the depletion of the forest canopy and about half the springs in the area. Water is the biggest issue. He disagrees with one acre lots, if everyone had one acre lots, it would be an absolute disaster. If this is done for one, it follows that it will be done for all. If one acre lots are going to be approved, then make sure some of the open space is set aside in perpetuity. He also has a question about the \$1,800 contribution per lot. He thought that was a smoke screen. Is that going to be an issue. If someone has 10 acres will they contribute \$18,000.

Commissioner Evans stated the \$1,800 is per new lot, not per acre. If ten new lots were created, then it would be \$18,000.

Charlie Graham stated the notion that one acre lots would improve Miller Creek because larger lots have outbuildings that don't look good and grass that isn't mowed was insulting and snobbery. That's a poor reason to go to one acre lots. State law covers riparian areas very well, setbacks, no timber removal, etc. There is also State law about disturbing a creek bed. This is a smoke screen, fisheries, etc., is nonsense. This area doesn't have running water, it's frozen in the winter and dry in the summer. This seems to be addressing issues that aren't really issues at all. The primary issue is the aquifer and water. He doesn't oppose the development with one acre lots if some open space is set aside in perpetuity. His testimony was based on 40 years of history and studying the aquifer.

Commissioner Evans stated the County has received \$5 million dollars and there will be a meeting tomorrow to discuss a proposed Miller Creek Bridge. The \$1,800 contribution goes into a fund to help fix the roads and come up with match money that would be needed for a bridge. The matching money should come from the those people who will benefit from the bridge.

Charlie Graham stated that this money will come from all new homes put in from now on, but the Maloney subdivision doesn't count.

Commissioner Evans stated the Maloney subdivision is required to contribute, as well as Linda Vista.

Colleen Dowdall stated the County started collecting this money in 1995.

Gloria Roark asked how the bridge would help the folks in her area.

Commissioner Evans stated it would provide a second way out of the valley.

Gloria Roark stated that they would still have to get to the Wye to get out.

Commissioner Evans stated they could go through Linda Vista and to the west to access a bridge in whatever location was chosen.

Chair Curtiss stated other would also use the bridge which could alleviate some traffic in her area. That is a issue for discussion at another time.

Gloria Roark stated that more and more houses are being put in and a bridge won't be any help for quite some time.

Janet Fruechte stated she moved to the neighborhood about two and a half years ago from Salt Lake City. She and her husband are professional. To attract professionals to the area, it needs to offer more open space that the City doesn't have. She asked if the open space that remains on this subdivision could be divided later.

Colleen Dowdall stated that would be in violation of zoning. A subdivision for additional lots on that property would not be approved. The zoning has a density requirement but not a minimum lot size which allows clustering. There will be 4 houses on 24 acres, which is about one dwelling per six acres and the zoning is for one dwelling per five acres. This proposal meets the zoning requirement.

Chair Curtiss stated he would not be able to further subdivide.

Doug Roark, 10079 Miller Creek Road, stated this is a tough deal, the Vaps have been good neighbors. In America, one should be able to do with their property what they wish to as long as it doesn't cause his neighbors problems like money or loss of water. He has already had to dig his well deeper. With the drought and more houses, they will probably have to drill again. Taxes will go up because there will be a need for more services. Renters will cause problems with horses and livestock. City people, cattle and horses don't mix. His wife will be forced to make a different use of her property. It isn't that he doesn't like newcomers, it is the fact that they can change his lifestyle and increase his cost of living. Why do people come here if they want to then change the area to be just like what they came from.

Linda Merchants, 10057 Miller Creek Road, stated her property is adjacent to this proposal. She asked why the homes were being built so close to existing houses on Miller Creek Road. Can't they be moved back a little bit so it won't be so confining. She is mad that this can happen. She is afraid she will have to drill her well deeper. So far there has only been a decrease in water pressure. A neighbor had sand in their well after a new house was built. Her main concern is the aquifer.

Steve Lennis stated there was some confusion as to what was being proposed. Currently he has the ability to build on three parcels, this subdivision is adding one more lot, for a total of four. He is not building duplexes or multi-family housing, they are not allowed by zoning. There will only be two additional single family homes. Mr. Vap could have used the family transfer exemption to the subdivision laws but chose not to do that. If the subdivision is denied that would still be an option. Part of the reason he is doing these two rental homes is to benefit his children. While it is unfortunate others have had to re-drill their wells, the issue could be solved by a community water district. This subdivision will waive the right to protest any future RSID/SID for the creation of such a system. Others in the area who are concerned about their wells are welcome to create such an RSID/SID and he would be happy to engineer such a system. The traffic on Miller Creek Road is a problem, that is known. The County and others have been working on the problem for several years. Adding one additional house does not have that great an impact as opposed to some of the other developments on Miller Creek Road. They are happy to pay the \$1,800 per lot for improvements to the transportation system.

Linda Merchants asked if rental units were allowed in the area.

Colleen Dowdall stated they are allowed to have one single family residence per lot. What is done with those houses is not subject to zoning.

Gloria Roark stated she is concerned about the water. It is expensive to drill a well. The DNC told her that even though her well is registered, if it goes dry, the burden falls to her to prove that someone else's well drilling was the cause of her well going dry. If she has to hire a geologist and get into legal matters, who pays for that. She is happy with her well and septic system and did not want to be forced into a community water system.

There were no further public comments.

Commissioner Evans stated that she wanted to ask Mr. Vap a question but could not force him to do anything. She asked if he would be willing to move the houses back some.

Dan Vap stated that was a possibility.

Commissioner Evans stated the Board has no control over the water, it cannot be a consideration for approval of this subdivision. There are State laws the Commissioners have to follow. They cannot tell a developer their land cannot be used a certain way because the neighbors don't like it. The law also says that if they are inclined to deny a subdivision, the developer must be allowed to mitigate the problems identified.

Colleen Dowdall stated the law says that if a subdivision is going to be conditioned or denied, it has to be based on findings of fact and conclusions of law. Before a condition can be imposed or a subdivision denied, the impacts must be identified and the developer allowed to mitigate the impact. The law also says that for any mitigation offer, the Commissioners shall give due consideration to the wishes of the developer. That is the Montana State law the Board operates under.

Denise Alexander stated that there are setback requirements in the C-A3 zone; structures need to be at least 50 feet away from all property lines.

Commissioner Evans stated it would be nice if all developments pleased everybody but that can't be done. Mr. Graham was correct, they cannot close the door. They do not have the legal right to tell someone they cannot use their land. She has heard the concerns of the neighbors and asked Mr. Vap to consider those concerns, but they do not have the legal right to require him to do that. They also don't have the legal right to address the water issues. She felt there was no legal reason to deny this subdivision, but she hoped Mr. Vap would find a way to make it more acceptable to his neighbors.

Chair Curtiss stated again that the Board cannot make a decision based on the water issues. However, there is another step where the water issue will be addressed by the Health Department. As to the legal access and whether or not the easement will transfer, there is a condition that addresses that issue. The developer has to prove that there is legal access to the lots. Another concern was that this land could be further divided. With the zoning in the area, it cannot be further divided. It is fortunate that the land is zoned as it has some legal weight to prevent further division. This is only adding one additional house as there is already the potential for three houses on the three identified lots.

Commissioner Evans asked counsel about the \$1,800 contribution and the requirement to waive the right to protest an RSID in the future.

Colleen Dowdall stated that same requirement has been made of other subdivisions in the area. The philosophy is that the \$1,800 is specific to making improvements that have been planned for some time and the RSID waiver would be for other improvements in the future.

Chair Curtiss stated the future RSID would also be based on benefit. The fact that this subdivision does not front on Miller Creek Road would be addressed at the time a future RSID would be proposed.

Colleen Dowdall stated the Subdivision Regulations require that off-site roads less than 500 feet from a paved roadway need to be paved. The developers can ask for a variance which they have done, but staff is recommending denial of the request.

Commissioner Evans stated that there have been cases where the developer has been asked to initiate an RSID and if it was not successful, then the requirement be waived, or if it was not successful, then they would be required to pave. However, those were almost always doomed to fail.

Colleen Dowdall stated it would depend on how many waivers were available in a certain area. In this case the road is private so the other landowners would also have to agree to dedicate the road to the County. She noted the findings for denial of the paving variance will have to be changed to reflect the fact that the Health Department would not require paving at this time because this is not a new roadway. That is not one of the reasons for denial and should be deleted from the finding.

Denise Alexander stated the developer had a concern about Condition 18g regarding amending or eliminating sections of the covenants without approval from the governing body. The covenants for this proposal cover all items that the County and other agencies have asked for, which are living with wildlife, driveway fire design and maintenance, private road fire design and maintenance, water rights permit, weed control, wood burning equipment and the Riparian Management Plan. These are all sections that the Board has always required to not be changed without their consent.

Colleen Dowdall stated she had some alternate language that could be used: "Development covenants, required as a condition of approval or by the Subdivision Regulations, may not be amended or eliminated without the approval of the governing body."

Steve Lennis stated there were several pages of covenants that aren't addressed in the conditions that they would still like to be made part of the subdivision.

Colleen Dowdall stated that if the developer had not proposed those other things in their covenants, they would have been required to do so.

Commissioner Evans moved that the Board of County Commissioners

- approve the variance request from Section 3-2(1) of the Missoula County Subdivision Regulations that requires a minimum surface width of 24 feet for the off-site private roadway from Miller Creek Road to the western boundary of the subdivision;
- deny the variance request from Section 3-2(14)(B) of the Missoula County Subdivision Regulations that requires paving standards for the off-site private roadway from Miller Creek Road to the western boundary of the subdivision;
- approve the variance request from Section 3-2(1) of the Missoula County Subdivision Regulations that requires a minimum surface width of 24 feet for the on-site private roadway from STA 0+00 to STA 3+85;
- deny the variance request from Section 3-2(14)(B) of the Missoula County Subdivision Regulations that requires paving standards for the on-site private roadway from STA 0+00 to STA 3+85;
- approve the variance request from Section 3-2(8) of the Missoula County Subdivision Regulations that requires a system of pedestrian and/or bicycle circulation in all subdivisions outside the Urban Growth Area served by private roads;
- approve the variance request from Section 3-3(1)(E) of the Missoula County Subdivision Regulations that requires that no lot shall have an average depth greater than three times its average width; and
- deny the variance request from Section 3-13 Areas of Riparian Resource by excluding the portions of the site surrounding Miller Creek as a riparian resource and Section 5-3(5)(F) Management Plan Elements – Areas of

Riparian Resource of the Missoula County Subdivision Regulations requirement to provide a Riparian Management Plan as part of the Development Covenants for Napa Valley Estates;  
all based on the findings of fact set forth in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve Conditions 1-11 as amended by the May 14, 2002 memo from Mary McCrea, Office of Planning and Grants. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve Condition 12 as listed on the May 14, 2002 memo from Mary McCrea, Office of Planning and Grants. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve Condition 13 as listed on the May 14, 2002 memo from Mary McCrea, Office of Planning and Grants. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans stated for the record that Condition 14 had been deleted.

Commissioner Evans moved that the Board of County Commissioners approve Condition 15 as amended on the May 14, 2002 memo from Mary McCrea, Office of Planning and Grants. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve Condition 16 as amended on the May 14, 2002 memo from Mary McCrea, Office of Planning and Grants. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve Condition 18 as amended and Condition 19 as listed on the May 14, 2002 memo from Mary McCrea, Office of Planning and Grants. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve Condition 17 as listed on the May 14, 2002 memo from Mary McCrea, Office of Planning and Grants. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans stated that the Finding of Fact under Criterion 2: Effects on Local Services, Roads, Finding #1 should be amended to coincide with the wording in Condition 11 as amended and it should be made clear under Finding #8 that the Surveyor's Office is the one to determine the names of the roads.

Commissioner Evans moved that the Board of County Commissioners approve Napa Valley Estates Summary Subdivision, based on the findings of fact as amended and subject to the conditions as amended and approved. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans again strongly suggested to Mr. Vap that the houses be moved farther back in response to concerns from his neighbors.

#### **Napa Valley Estates Summary Subdivision Conditions of Approval:**

##### **Roads, Driveways and Drainage**

1. The developer shall designate the roadway from STA 0+00 to STA 3+85 as a private roadway and public utility easement on the final plat. *Subdivision Regulations 3-2(1)(I) and OPG recommendation.*
2. The developer shall name and sign the private roadway from the west end of Beierle Lane to STA 3+85. The roadway name shall be subject to the review and approval of the County Surveyor's office and shall be referenced on the final plat. *Subdivision Regulations 3-2 (12) and Office of Public Works recommendation.*
3. Private roadway and driveway plans for all lots shall be approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations 3-2(1)(L) and 3-2(10), OPG and Missoula Rural Fire District recommendations.*
4. A provision for maintenance of the shared private driveways for Lots 3 and 4 shall be included in the covenants, to be reviewed and approved by the County Attorney prior to final plat approval. *Subdivision Regulations 3-2(1)(3) and OPG recommendation.*
5. A provision for maintenance of the shared private roadway for Lots 1, 2, 3 and 4 shall be included in the covenants, to be reviewed and approved by the County Attorney's Office prior to final plat approval. *Subdivision Regulations 3-2(1)(3) and OPG recommendation.*
6. The applicant shall realign the approach from the private roadway onto Miller Creek Road to meet AASHTO standards and detailed construction plans for this approach realignment shall be submitted to the Missoula County Office of Public Works for review prior to final plat approval. *Subdivision Regulations 3-2(1) and Missoula County Office of Public Works recommendation.*
7. The private roadway extending west from Beierle Lane to STA 3+85 shall be paved to an 18 foot width. Roadway plans shall be reviewed and approved by the Missoula County Office of Public Works and Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations 3-2(14)(B), Missoula City-County Health Department recommendation and OPG recommendation.*

8. A complete grading and drainage plan shall be submitted by the developer for review and approval by Missoula County Office of Public Works prior to final plat approval. *Subdivision Regulations 3-4(2) and OPG recommendation.*
9. The developer shall mitigate the traffic impacts generated by this subdivision on the Miller Creek transportation system by contributing to the fund for Miller Creek Road improvements in the amount of \$1,800.00 per new lot. *Subdivision Regulations Article 3-1(14) and OPG recommendation.*
10. The following statement shall appear on the face of the plat:

“Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Miller Creek Road, including installation of pedestrian walkways or bikeways, 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.”
11. The developer shall provide proof of the existence of legal access to all lots in the subdivision, to be reviewed and approved by the County Attorney’s office prior to final plat approval. *Subdivision Regulations 3-2(2)(D) and County Attorney’s office recommendation.*

**Water**

12. The following statement shall appear on the face of the plat:

“Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for a public or community water system, 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.” *Subdivision Regulations Article 3-7(2) and OPG recommendation.*

**Fire**

13. The developer shall contribute \$100.00 per new lot or dwelling unit to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of final plat approval. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*

**Riparian Resource Management Plan**

14. The developer shall delineate the Riparian Resource Area and the Riparian Buffer Area, based on topographic information, on the plat and on a Riparian Resource Management Plan map attached to the covenants. *Subdivision Regulations Article 3-13, County Attorney’s office and developer recommendation.*
15. The northern boundary of the Riparian Resource Area along Miller Creek shall extend from the center line of Miller Creek to the top of slope of the uppermost terrace. The southern boundary of the Riparian Resource Area along Miller Creek shall extend from the center line of Miller Creek to the topographic line at the base of the steep slopes south of and parallel to the creek. The Riparian Buffer Area shall extend parallel to and from the northern boundary of the Riparian Resource Area a distance of 25 feet. The delineation of the Riparian Resource Area and the Riparian Buffer Area shall be subject to the review of the Office of Planning and Grants and shall be shown on the plat, and the Riparian Management Plan map, prior to final plat approval. *Subdivision Regulations Article 3-13, Montana Department of Fish, Wildlife and Parks and OPG recommendation.*
16. The applicant shall attach to the covenants copies of the booklet on stream permitting from the Missoula Conservation District and the booklet on Stream Access Law from Montana Fish, Wildlife and Parks. *Subdivision Regulations Article 3-13 and Montana Department of Fish, Wildlife and Parks recommendation*

**Covenants**

17. The following additions shall be made to the proposed development covenants subject to review and approval of OPG and the County Attorney’s Office, prior to final plat approval:
  - a. Dead-end driveways in excess of 150 feet in length shall be provided with approved provisions for turning around for fire apparatus. A minimum unobstructed width of not less than 20 feet and unobstructed vertical clearance of 13 feet 6 inches for any driveway over 150 feet in length shall be provided. The driveway surface must be an all weather surface capable of supporting the weight of fire apparatus. Driveway plans shall be approved by the Missoula Rural Fire District prior to building permit issuance. *Subdivision Regulations Article 3-2(I), Missoula Rural Fire District and OPG recommendation.*
  - b. A minimum unobstructed width of not less than 20 feet and unobstructed vertical clearance of 13 feet 6 inches for the private roadway shall be provided. The roadway surface must be an all weather surface capable of supporting the weight of fire apparatus. *Subdivision Regulations Article 3-2(I), Missoula Rural Fire District and OPG recommendation.*
  - c. Lot owners may not withdraw water from Miller Creek unless they have a valid water right. *Subdivision Regulations Article 3-13 and OPG recommendation.*
  - d. Lot owners shall maintain their lot in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners are required to revegetate with beneficial species any ground disturbance caused by construction or maintenance at the first appropriate opportunity after construction or maintenance is completed. *Subdivision Regulations Article 3-1, Missoula County Weed District and OPG recommendation.*
  - e. All new wood burning equipment, including stoves and fireplaces, shall comply with all local and State laws and regulations. The Missoula City-County Air Pollution Control regulations prohibit the installation of wood burning stoves or fireplaces. This subdivision is located in the Air Stagnation Zone which limits wood burning

equipment to pellet stoves that meet emission requirements and are approved by the Missoula City-County Health Department prior to installation permit issuance. *Subdivision Regulations Article 3-1, Missoula City County Air Pollution Control Board and OPG recommendation.*

- f. These development covenants may not be amended or sections eliminated without the approval of the governing body. *Subdivision Regulations Article 5-3, County Attorney and OPG recommendation.*
18. The following revisions shall be made to Section "O" of the proposed development covenants, subject to review and approval of OPG and the County Attorney, prior to final plat approval (**areas with strikethrough shall be removed and areas underlined shall be added**): *Subdivision Regulations Article 3-13, Montana Department of Fish, Wildlife and Parks and OPG recommendation.*
  - O. Riparian Resource Management Plan. Miller Creek flows through the southerly portion of Lots 1 and 2 3 and 4. The Riparian Resource Area (RRA) and the Riparian Buffer Area (RBA) are delineated on the plat and the Riparian Management Plan map attached to these covenants. strip of land parallel to the centerline of Miller Creek from the centerline of Miller Creek to the top of the creek bank is to be the "Riparian Management Zone" (RMZ).

Within the ~~RMZ~~Riparian Resource Area, the dominant vegetation type includes cottonwood, red-osier dogwood and serviceberry. The soil surface is well stabilized with bunch grass and other riparian-type ground cover.

The existing structures on Lots 3 and 4 are located in close proximity to the RRA and within the RBA. On Lot 3 a fenced area exists crossing Miller Creek to the south. The goal of the Riparian Resource Management Plan is to encourage landowners to follow land management practices that protect and buffer the Riparian Resource Area, while allowing continuation of current land uses. Future impacts for road and bridge building to access the property south of Lot 3 or future construction or additions to the existing houses on Lots 3 and 4 shall be mitigated.

The ~~Riparian Resource a~~Area as defined meets the criteria for designation as an area of riparian resource according to ~~Chapter~~ Section 3-13 of the Missoula County Subdivision Regulations. The intent of ~~these~~ the regulations is listed in Section 3-13 (1) ~~(A-G)~~ will be upheld with this project. To meet these purposes, the following items, as per Section 3-13 (3) ~~(A-E)~~ are addressed.

1. Proposed access to or through the area: Access to all areas of riparian resource within the RRA shall be allowed for pedestrian traffic only. Motorized vehicles are not permitted in the area, except for purposes of grounds maintenance. No vehicles or power equipment (unless part of an approved weed control program) shall be operated in the RRA.

In the event that the property to the south of Lot 3 elects to construct a road and bridge to access said property per terms of Ingress/egress easement (BK. 224 Micro, page 1577), such road shall comply with all local and state laws and regulations including but not limited to Section 3-13 and shall comply with these covenants.

2. Proposed low-impact use of the area: The proposed subdivision will not result in additional impacts to the Riparian Resource Area or the Riparian Buffer Area. No new buildings or new structures of any type are proposed or shall be constructed nor shall any undue alteration of the land take place within the area of riparian resource the RRA and the RBA. Grazing by domestic animals and the watering of animals within the RRA and RBA is discouraged. The dumping of any rubbish, yard waste, or any materials is prohibited within the area of riparian resource the RRA and the RBA. In order to maintain existing riparian habitat, installation of new fences are prohibited in the RRA and discouraged in the RBA. Future plantings of lawns or non-native, ornamental species is prohibited in the RRA and discouraged in the RBA. No stream bank modifications shall take place. Lot owners may not add rip-rap to stream banks. The installation of fish ponds is prohibited in the RRA and the RBA. In order to protect the stream from nutrients, sedimentation, and other harmful substances, fertilizing, filling and dumping is also prohibited in the RRA and discouraged in the RBA. New road building, or any kind of vehicular use is prohibited in the RRA and discouraged in the RBA except that a vehicle may be used to remove materials washed into the RMZ or to remove excess dead/downed trees and brush, if necessary. In the event that the property to the south of Lot 3 elects to construct a road and bridge to access said property per item number 1 above.
3. Restoration of the area with native species: There are no additional impacts with the creation of Lots 1 and 2 at the north end of the property, therefore no restoration is required. The area contains native vegetation although there has been some apparent alteration of the natural bio-system. The Riparian mManagement pPlan is to allow the native vegetation to remain and grow naturally in the RRA. Except for the removal of invasive weeds, the existing vegetation shall remain undisturbed in the RRA. With the exception of safety hazards, existing brush, trees, woody debris and boulders shall remain as they are in the stream and the RRA.
4. Planned mitigation for impacts from all proposed uses: There are no additional impacts with the creation of Lots 1 and 2 at the north end of the property, therefore, no mitigation measures are included in this plan. However, the ingress/egress easement for the property south of Lot 3 leaves open the possibility for future road and bridge construction within the RRA and RBA. If a future road is constructed, then such road shall comply with all local, and state laws and regulations including but not limited to Section 3-13 and impacts to riparian vegetation shall be mitigated. The proposed and existing structures on Lots 3 and 4 use on this property is are located some distance from the area of riparian resource. in close proximity to the RRA and within the RBA The distance involved and the restrictions in place regarding the area of riparian resource serve as mitigation of impacts from all proposed and existing uses If in the

future the existing houses are removed and replaced or incur additions, the new construction shall be prohibited within the RRA and the RBA.

5. Planned buffer to mitigate development adjacent to areas of riparian resources: ~~These is no apparent need to further buffer the existing development from the RMZ. The proposed subdivision will not result in additional impacts to the Riparian Resource Area. The management measures required in the Riparian Resource Area and the Riparian Buffer Area as delineated in the Riparian Management Plan mitigate the impacts of possible future development.~~
6. Wildlife-human conflict mitigation: The area of riparian resource should also be preserved for its habitat value. To mitigate any conflicts between humans and wildlife, property owners should be aware of measures to help prevent such occurrences. These measures include, but are not limited to; those listed ~~within the "Wildlife" in sections A through I of this document and those listed in the brochure "Living With Wildlife" by the Missoula County Office of Planning and Grants.~~
7. Weed Management: That application of chemicals to control noxious weeds shall be ~~strictly prohibited~~ limited to herbicides registered for use in riparian areas and approved by the Missoula County Weed Control Board. Alternative methods such as the planting of hardy native grasses, pulling or digging out weeds, and regular irrigating are helpful. For more information, contact the Missoula County Weed Control Board or Soil Conservation Service.

**Consideration: Ridgeway Lots (2 lot minor subdivision) – off Tipperary Way**

Jackie Corday, Office of Planning and Grants, presented the staff report.

Clark and Sandy Ridgeway, represented by Ron Ewart of Eli and Associates, are requesting approval to subdivide a 3.5 acre parcel into 2 lots. Lot 1 would be in 2.5 acres and is the location of the Ridgeway's residence. Lot 2 would be 1 acre.

The property is located north of Mullan Road on Tipperary Way, which is about 0.25 miles west of Flynn Lane. The property is currently a vacant field that has been used for horse pasture over the years. It has level topography. There are no trees, riparian areas or floodplain issues.

The lots will have individual wells and septic systems. The area is served by the Missoula Rural Fire District. Children will attend Hellgate Elementary School, Hellgate Middle School and Big Sky High School.

The applicant requests variances for curbs and gutters, sidewalks and street width. OPG recommends approval of the variance requests and the subdivision, subject to 8 conditions.

The property is zoned C-RR1 in the County, which allows a density of one dwelling unit per acre. The Missoula Urban Comprehensive Plan 1998 Update designates the property and the surrounding area as Suburban Residential, with a recommended density of 2 dwellings per acre. Thus, the project is in substantial compliance with the Comprehensive Plan.

Access is via Tipperary Way, which is a private road with a 60 foot wide easement connecting to Mullan Road. The road is paved to a width of 20 to 22 feet. There are no curbs, gutters or sidewalks. The road is well-maintained by the 18 homeowners that use the road, although there is no Homeowners Association and no road maintenance agreement. There are wide grassy swales along both sides of the road that provide good drainage because the soils are a gravelly loam, not clay.

OPG supports the variance to curbs and gutters because they are not needed for Tipperary Way due to the good drainage provided by the swales and the lack of need for on street parking. OPG also supports the variance to road width because the current width of 20 to 22 feet adequately serves the needs of the 18 homes in a relatively quiet suburban setting. The same factors support the variance to not install sidewalks. Public Works did not have any objection to the three variances.

The Hellgate Valley Irrigation Ditch runs along the property's northern border. The original condition as stated doesn't comply with State law in that it allows the applicant the choice of filing a development agreement that states the land may continue to be assessed for irrigation water delivery even though the water may not be deliverable. This option is not actually available under MCA 76-3-504(j) in this particular case because the average lot size is over 1 acre. The amended condition, in accordance with MCA 76-3-504(j), states that the subdivider shall either: 1) have the water rights removed for Lot 2 through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat; or 2) provide an easement from the Hellgate Irrigation Ditch through Lot 1 for a ditch or underground pipe for irrigation water to Lot 2, which must be indicated on the final plat.

Other conditions pertain to an avigation easement and the usual fire condition of a \$100 contribution and waiver of the right to protest an RSID/SID for public water.

Ron Ewart, Eli and Associates, developer's representative, thanked Jackie Corday for her work on the project. There is agreement with the recommended conditions of approval, including the amendment to Condition 7. This proposal is for one home on a one acre, flat lot. He questioned the need for Condition 1. When the lot is purchased, the new owner will determine where the house and driveway should be placed, respecting the setbacks. He did not foresee any extra grading or erosion control or stormwater improvements, this property does not experience those problems. Public Works is always reasonable in dealing with plans, but in this case, Condition 1 may not be needed.

Greg Robertson stated he concurred with Ron Ewart's assessment of the situation. He had no objection to deleting Condition 1.



Mike Sehestedt stated for the record this proposal is limited to a two lot split with an existing road on flat ground. It is not a criticism of staff for including the condition, but in this case it can be deleted at the developers request.

Chair Curtiss asked for public comments. There were none.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-3 of the Missoula County Subdivision Regulations that require private roads (Tipperary Way) to be paved to a width of 24 feet; approve the variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations to not provide boulevard sidewalks along Tipperary Way; and approve the variance request from Article 3-2(7) of the Missoula County Subdivision Regulations to not provide curbs and gutters along Tipperary Way, all based on the findings of fact in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Ridgeway Lots Summary Subdivision, based on the amended findings of fact in the staff report and subject to the amended conditions, including deletion of Condition 1 and the amendment to Condition 7 as listed on the May 15, 2002 memo from Jacquelyn Corday, Office of Planning and Grants. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

#### **Ridgeway Lots Summary Subdivision Conditions of Approval:**

1. The applicants shall record a road maintenance agreement among the users of Tipperary Way, subject to review and approval by OPG and the County Attorney, prior to final plat approval. *Subdivision Regulations Article 5-1(5)(K)(xi) and OPG recommendation.*
2. The following statement shall appear on the face of the plat:

“Lots within this subdivision are located within the Missoula County Airport Influence Area and are subject to the provisions of the Missoula County resolutions that created the Influence Area and the terms, conditions and restrictions of an Avigation Easement in favor of the Missoula County Airport Authority. Buyers of this property should carefully review these documents prior to purchasing the property.” *Missoula County Airport Authority recommendation.*
3. An avigation easement shall be granted in favor of the Missoula County Airport Authority for the property, in compliance with the Airport Influence Area Resolution, prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Missoula County Airport Authority recommendation.*
4. The landowners shall show evidence of contribution of \$100.00 per new lot to the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*
5. The following statement shall appear on the final plat:

“Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID at such time a community or municipal water system is available. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of owners of the land.” *Subdivision Regulation Article 3-7(2).*
6. In accordance with MCA 76-3-504(j), the subdivider shall either: 1) have the water rights removed for Lot 2 through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat; or 2) provide an easement from Hellgate Irrigation Ditch through Lot 1 for a ditch or underground pipe for irrigation water to Lot 2, which must be indicated on the final plat. *Missoula City Subdivision Regulations Article 4-1(13), County Attorney's Office and OPG recommendation.*
7. A development covenant for this subdivision shall be filed with the Missoula County Clerk and Recorder's Office prior to final plat approval, subject to review and approval by the Weed District and the County Attorney's Office, and shall include the following items:
  - a. The landowner shall maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan.
  - b. The landowner shall revegetate any ground disturbance caused by construction or maintenance. The vegetation should be with beneficial species appropriate for the site and should occur at the earliest appropriate opportunity after construction or maintenance is completed. *Subdivision Regulations Article 3-1(1) and Missoula County Weed Board recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:25 p.m.

**THURSDAY, MAY 16, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming The Internet Store as applicant for Accounting Warrant #402132 issued December 11, 2001 on the Missoula County Road Fund in the amount of \$11.60 (payment for Centril Internet), which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-058 – The Commissioners signed Resolution No. 2002-058, a Resolution of Intent to Adopt the Lolo Regional Plan Final Draft (passed and adopted April 24, 2002), as amended by the Missoula Consolidated Planning Board and the Board of County Commissioners.

Request for Action – Per the County Park Board's recommendation, the Commissioners approved a request by the Garden City Tennis Association to allow donor signs on 12 tennis courts at Fort Missoula. The Tennis Club will sell the signs to area businesses for advertising at a cost of \$1,000 for five years. The money will be used for resurfacing and repairing the courts.

Request for Action – Per the County Park Board's recommendation, the Commissioners approved a request to award \$18,505.00 in Spring 2002 Matching Fund Grant money (to improve Missoula County parks and community recreation areas) to the following:

- 1) \$3,000 to Frenchtown School District #40;
- 2) \$2,500 to Lakeside/Rossignol Homeowners Association;
- 3) \$3,000 to Hawthorne PTA;
- 4) \$800 to Potomac Elementary School;
- 5) \$2,829 to Bonner PTA;
- 6) \$1,626 to Neighborhood Watch Group – Target Range;
- 7) \$1,750 to Bonner Development Group; and
- 8) \$3,000 to Clinton Community Center.

Audit – The Commissioners reviewed and approved an audit submitted by Missoula County Auditor Susan Reed, of the Sheriff's Department Drug Forfeiture Bank Account (covering the period January 1997 through April 2002). Also reviewed was an inventory of the Sheriff Safe. The audit was forwarded to the Clerk and Recorder for filing.

Other items included:

- 1) The Commissioners granted an appeal from Ellen Leahy of the Health Department to reimburse employee claims for continental breakfasts that were considered part of a conference. Return trip travel expenses were not approved for reimbursement. The Commissioners expressed a desire to meet with the County Auditor to discuss amending the existing policy.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, MAY 17, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office all day. Commissioner Carey attended a Mental Health Board Meeting at Fort Missoula during the day. In the afternoon, Chair Curtiss attended the Bank Street Dedication Ceremony and reception held at the Dorsey & Whitney Law Offices.

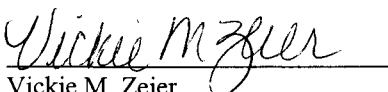
Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 14, 2002, with a grand total of \$316,723.04. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 14, 2002, with a grand total of \$479.81. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 16, 2002, with a grand total of \$36,051.01. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated May 17, 2002, with a grand total of \$17,695.59. The Claims List was returned to the Accounting Department.

Request for Action – Chair Curtiss signed an acceptance of the Byrne Drug Task Force Grant for 2002-2003, in the amount of \$143,975.00. The Missoula County Sheriff's Department has participated with other contingent Counties in a Drug Task Force (now called the West Central Montana Drug Task Force) for over five years, which is funded by a grant from Montana Board of Crime Control. The document was returned to Don Morman in the Sheriff's Department for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**SUNDAY, MAY 19, 2002**

On Sunday afternoon, Commissioner Carey attended the Weed Week Press Conference held at John Toole Park.

**MONDAY, MAY 20, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Chair Curtiss was out of the office May 20<sup>th</sup> and 21<sup>st</sup>.

Replacement Warrant – Acting Chair Bill Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Linda Vista Water as applicant for Accounting Warrant #2702 issued March 15, 2002 on the Missoula County 8835 & 8836 Funds in the amount of \$315.25 (payment for Fire Hydrants), which was not received in the mail. No bond of indemnity is required.

Replacement Warrant – Acting Chair Bill Carey examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Mountain Water as applicant for Accounting Warrant #2709 issued March 15, 2002 on the Missoula County 8097 Fund in the amount of \$961.62 (payment for Fire Hydrants), which was not received in the mail. No bond of indemnity is required.

#### TUESDAY, MAY 21, 2002

The Board of County Commissioners met in regular session; a quorum of members was present.

Claims List – Commissioners Carey and Evans signed the Claims List, dated May 21, 2002, with a grand total of \$15,693.99. The Claims List was returned to the Accounting Department.

Claims List – Commissioners Carey and Evans signed the Claims List, dated May 21, 2002, with a grand total of \$134,274.97. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-059 – The Commissioners signed Resolution No. 2002-059, dated May 21, 2002, a Budget Amendment for the Health Department in the amount of \$18,885, setting forth expenditures for the Chutney Foundation Grant, which was received October 8, 2001. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Agreement – The Commissioners signed an Agreement for Professional Engineering Services, dated May 17, 2002, between Missoula County and DJ&A (Druyvestein, Johnson and Anderson), P.C., for RSID #8472, Spring Hill Road Paving, Frenchtown, Montana. The agreement includes the scope of work in the design and paving of the roadway and the replacement of a stream culvert. The approximated cost of the project including RSID costs is \$109,000 over a 20-year period.

Professional Services Contract – The Commissioners signed two Professional Services Contract between Missoula County and 1) Nitrogreen Professional Lawn Care, Missoula, Montana, and 2) B&N Weed Control, Phillipsburg, Montana, for the application of appropriate herbicide and adjuvant combinations to noxious weeds defined as New Invaders by the Missoula County Noxious Weed Management Plan and Category I and Category II Noxious Weeds. The term of both contracts will be May 14, 2002 through October 31, 2002. The total amount of each contract shall not exceed \$3,500.00. Both contracts were returned to Sharon Reed at the Weed District for further handling.

Request for Action – The Commissioners approved the list of preliminary awards in the Missoula County Fuels Mitigation Program. The total of these awards is \$28,000. The Commissioners had previously dedicated the Fiscal Year 2002 15% money to Fuels Mitigation; these are the initial awards under that program. Additional awards will be recommended once some results are seen from these awards.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### WEDNESDAY, MAY 22, 2002

The Board of County Commissioners met in regular session; all three members were present. Later in the day, Chair Curtiss spoke at the Weed Fair held at the Boone & Crockett Club.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 21, 2002, with a grand total of \$36,070.73. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 21, 2002, with a grand total of \$2,860.53. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Willison Addition, a three-lot minor subdivision of Tract D-1-B-B, COS #3044, located in the SE¼ of Section 34, and the SW¼ of Section 35, T 12 N, R 17 W, PMM, Missoula County, with the owners of record being Vern K. and Alvina F. Willison.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 10 - Pay Date: May 17, 2002. Total Missoula County Payroll: \$836,850.63. The Transmittal Sheet was returned to the Auditor's Office.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Application and Agreement – Chair Curtiss signed 1) a City Open Space Noxious Weed Grant Application, and 2) a Noxious Weed Trust Fund Project Grant Agreement (Missoula Open Space; Number MDA 2002-134) between the Missoula County Weed District and the Montana Department of Agriculture. The purpose of this project is to implement an integrated weed control program using education, herbicides, biological and cultural control methods in

the project area. The term shall be from the date set forth in the agreement to September 20, 2003. The total amount shall not exceed \$15,719.00, contingent upon sufficient available revenue and verification of matching funds from private landowners, City of Missoula, US Forest Service, Fish, Wildlife & Parks, and Missoula County Weed District to equal \$41,139. The documents were returned to Alan Knudsen in the Weed Department for further handling.

Application and Agreement – Chair Curtiss signed 1) a Master Invasive Plant Management Noxious Weed Trust Fund Application, and 2) a Noxious Weed Trust Fund Project Grant Agreement (Master Invasive Plant Management Program, Number MDA 2002-122) between the Missoula County Weed District and the Montana Department of Agriculture. The purpose of this project is to provide an in-depth understanding of noxious/invasive plant management for private landowners and government agencies. The term shall be from the date set forth in the agreement to September 20, 2003. The total amount shall not exceed \$5,527.00, contingent upon sufficient available revenue and verification of matching funds the Missoula County Weed District and Extension and Bureau of Land Management to equal \$6,027. The documents were returned to Marijka Haverhals in the Weed Department for further handling.

Amendment – Chair Curtiss signed Amendment No. 2, dated May 22, 2002, to the Agreement for Engineering Services between Missoula County and HDR Engineering, Inc. (“HDR”), originally made February 7, 2001, for services in connection with the project known as “Missoula County Mullan Road Corridor Sewer – Phases 1, 2 & 3.” This Amendment is related to the final RSID development of Option 3, Option 4 East and Option 4 West. The additional amount generated by this amendment is \$25,108.67. All terms and other conditions are as set forth therein.

Amendment – Chair Curtiss signed Amendment Number One, dated May 22, 2002, to the Contract between Missoula County and the Montana Department of Public Health and Human Services (Contract #02-07-5-21-028-0: WIC), providing for additional money for state-sponsored travel and caseload maintenance. Compensation amounts are as set forth in the Amendment. The document was returned to the Health Department for further signatures and handling.

Plan Documents – Chair Curtiss signed the 1) Plan Document, and 2) Administrative Services Agreement for the Missoula County Employee Flexible Benefits Plan. The Plan Effective Date is July 1, 2002; the Plan Document Effective Date is July 1, 2002. The Group Number is 0005095; the Employer ID Number is 81-6001397, and the Plan Number is 502.

Counter Offer – As per recommendation by the MDA and Offer Review Committee, the Commissioners approved and signed a Counter Offer (with amendments) by Brandon-Legg Development Corporation (“Buyer”) for the purchase of Lot 1, Block 11, Phase 2, Missoula Development Park. The amendments are: 1) The sales price is \$561,000 (4.25 per square foot) to be paid at closing or the Buyer pay \$511,000 at closing with \$50,000 put in a risk free account to be paid to the County within one year of closing. The account shall be an interest-bearing account with the interest paid to the County; and 2) The contingency that the DRC write a letter of support for the sign variance be deleted. The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved balance of pay raises for Senior Contract Administrative for Fiscal Year 2002, in addition to the salary adjustment for Chief Financial Officer Dale Bickell, per the items and table set forth therein.

Certification of Acceptance – Chair Curtiss signed a Missoula County Public Works Department Surveyor’s Office Certification of Acceptance for County Maintenance for ACM. No. 2002-0001, LeMazion Place, Road No. L-000145, T 15 N, R 21 W, Section 29. The limits of acceptance are .213 miles from the intersection with Mullan Road thence southerly 525.29 feet to the intersection with Boyer’s Place thence westerly and northerly 598.95 feet to the center of a 50 foot radius cul de sac; 24 foot of asphalt within a 60 foot right of way; Henry Estates, 2<sup>nd</sup> Addition, Phases I, II and III. The document was returned to the County Surveyor’s Office.

#### **PUBLIC MEETING – May 22, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

#### **Pledge of Allegiance**

#### **Public Comment**

None

#### **Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$559,849.67. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Bid Award: Lolo RSID #8473 (Public Works Department)**

Greg Robertson presented the staff report.

This is a request to award a bid for the Phase I improvements to the Lolo Wastewater Plant RSID #8473.

Missoula County solicited competitive bids from responsible construction firms. Five bids were received.

Bidder	Bid Item #1	Bid Item #2	Subtotal	GRT (2%)	Total Contract Price
PK Contractors	\$80,000.00	\$1,040,358.00	\$1,120,358.00	\$22,407.16	\$1,142,765.16
Quality Construction	\$68,080.00	\$1,044,300.00	\$1,112,380.00	\$22,247.60	\$1,134,627.60
Pew Corporation	\$80,000.00	\$1,062,000.00	\$1,142,000.00	\$22,840.00	\$1,164,840.00
Contractors Northwest	\$50,000.00	\$1,060,000.00	\$1,110,000.00	\$21,200.00	\$1,131,200.00
Williams Brothers	\$70,000.00	\$992,797.00	\$1,062,797.00	\$21,255.94	\$1,084,052.94

<sup>1</sup> The actual amount written in for mobilization on Williams Brothers Construction's bid form was \$700,000. The total amount in numbers and the total amount in words are in agreement and correct. The total amount in words governs making Williams Brothers total accepted bid \$1,084,052.94.

HDR Engineering, Inc. and Public Works evaluated the bids. Based on the evaluations, it is recommended to award the bid to Williams Brothers Construction, LLC of Spokane, Washington, in the amount of \$1,084,052.94. The engineer's estimate was \$1,250,000. It should be noted that the Williams Brothers Construction, LLC, bid contained an error on their mobilization bid item, however, the math error did not affect the overall bid price. No other irregularities were found with their bid.

Commissioner Evans moved that the Board of County Commissioners waive the calculation error and award the bid for Phase I improvements to the Lolo Wastewater Plant RSID #8473 to Williams Brothers Construction, LLC, of Spokane, Washington, in the amount of \$1,084,052.94 as the lowest and best bidder. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Bid Award: Carpeting and Shelving Replacement (Library)**

Bette Ammon, Director of the Missoula Public Library, presented the staff report.

This is a request to approve a bid for minor remodeling, carpet replacement and shelving replacement for the Missoula Public Library. After a year of planning with architects, going through the bid process and developing plans and specifications, the MPL Board of Trustees and administration is ready to proceed on much needed building renovations.

Bids were solicited and opened on Monday, May 21, 2002, with the following results:

Western Interstate Inc.	\$310,000
Price Construction	\$302,413
Sirius Construction	\$343,700
D. Lower Construction	\$320,000

It is the recommendation of the Board of Trustees to approve the bid to Price Construction as the lowest and best bidder. The project has been planned for and budgeted for utilizing the 3.5 mill levy increase plus reserve savings.

Commissioner Evans moved that the Board of County Commissioners award the bid for minor remodeling, carpet replacement and shelving replacement for the Missoula Public Library to Price Construction in the amount of \$302,413 as the lowest and best bidder. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Morin Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract A of COS 3583, located in the north one-half of the northwest one-quarter of the southwest one-quarter of Section 31, Township 14 North, Range 20 West.

Steven W. and Janice L. Morin have submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 5 acres in size located near Harper's Bridge. The Morins propose to create two approximately 1.25 acre parcels for transfer to their daughters, Tract A2 to Alicia Lechleitner and Tract A3 to Beth Morin, for residential purposes and keep the remaining approximately 2.5 acre parcel (Tract A1) for their existing residence.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 3583	1988	Family Transfer	Marie A. and Leo L. Morin	Steven W. Morin

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Janice and Steven Morin were present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if the Morins really did intend to transfer this property to their daughters?

Steven Morin stated this was being done so their daughters and grandchildren could move back to Missoula, so everyone can be closer to home. The housing and land costs in Missoula are beyond his daughters financial means at this time. This is something he can do to help them before he dies. Schools are better in Missoula as well.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Steven W. and Janice L. Morin to create two 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated the Morins would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing (Certificate of Survey): Hunter Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract B, COS 345 LESS COS 484, located in the southwest one-quarter of Section 25, Township 15 North, Range 21 West.

Cherryl F. Hunter 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 10 acres in size located on Spring Hill Road west of Frenchtown, Montana. Ms. Hunter proposes to create one approximately 5 acre parcel for transfer to her father, David D. Howard, for residential purposes and keep the remaining approximately 5 acre parcel for residential purposes as well. Ms. Hunter was deeded the property on April 10, 2002.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Tract B, COS 345, 18.85 acres	June, 1974	Create two parcels of land	Unknown	
Remainder of COS 484 (ten acre remainder)	November, 1974	Occasional Sale	N/A	N/A

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Cherryl Hunter was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Ms. Hunter really did intend to transfer this property to her father?

Cherryl Hunter stated that she was recently divorced. Her father wants to move to the area to be able to help her with the grandchildren.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Cherryl F. Hunter 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 Evans seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Ms. Hunter would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Consideration: Dinsmore Orchard Homes #5, Lots 69A, 69B and 69C (3 lots) – 7th Street, west of Tower Street**

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from Allen Ball and Roger Vaneps, represented by Professional Consultants, Inc., to divide a 4.9 acre parcel into three lots for single family dwellings. The property is located on the south side of South 7th Street West, approximately one block west of Tower Road. The property is located in a single family residential neighborhood within a C-RR1 (Residential) Zoning District. The Missoula Urban Area Comprehensive Plan designates the site as Residential with a recommended density of 2 dwelling units per acre. The property is located within the Urban Growth Area and Building Permit Jurisdiction.

South 7th Street West is a County maintained road with an approximately 32 foot wide paved surface within a 60 foot right-of-way. Proposed access for Lot 69A is from South 7th Street West and proposed access for Lots 69B and 69C is from a shared driveway from South 7th Street West.

Four variances are being requested. The first is to not provide boulevard concrete sidewalks or paved boulevard pedestrian walkways on South 7th Street West and the internal roadway. Staff is recommending approval of this variance request. The second is to not improve the internal road to County standards. Some discussion may be warranted on this variance. The third request is to allow Lot 69A to have a lot depth greater than 3 times its average width. Staff is recommending approval of this variance request. The fourth request is to allow an easement to divide Lot 69C. Staff is recommending approval of this variance request.

Staff is recommending approval of the 3 lot subdivision with 11 conditions. Condition 2 is for an RSID waiver for improvements to South 7th Street West and the internal road, including pedestrian walkways/bikeways, based on benefit. Condition 4 is for a 54 foot conditional access easement on Lot 69C for future road connection. The location is to be reviewed and approved by Public Works. Lot owners in this subdivision will not be responsible for construction of a road if it is attributable to property to the west. No structures, improvements or utilities will be allowed in the easement that would interfere with road construction. Greg Robertson has agreed that a private water line could cross this easement. Condition 5 is for no-build strips on Lots 69B and 69C. Conditions 6 and 7 are for all roadway, driveway and stormwater improvements plans to be reviewed and approved by Public Works and Rural Fire. Condition 10 is for the proposed driveway to be constructed to County road standards including paving, to a point to be determined by Public Works.

John Kellogg, Professional Consultants, Inc., developer's representative, stated that just a few days ago the owner of this property for over eighty years passed away. His intent with this subdivision was to deed an acre to his son Alan and another acre to his granddaughter and her husband (and great grandchild), Alana and Roger. He appreciated the willingness of staff to work through some of the problems. They are requesting a variance that would permit paving of an apron coming off 7th Street 30 feet which would cross the culvert. At that point there is a shared driveway that would extend another 50 feet beyond that point, meeting with the proposed driveway that would extend back to Alan's building site. The variance is from paving the driveway back to Alan's property, from paving the shared driveway at the front of the property beyond the apron and permitting it to be placed within what will become a public easement for access to the subdivision. There are some conditions that staff had in anticipating future development. One is the 54 foot conditional road easement to the west. This would eventually meet up across the adjoining property with the 54 foot conditional easement that was platted with Pilgrim's Parcels. In Condition 4, the conditional access location is left open to the County Public Works Director. He suggested that easement be placed to the rear of Lot 69C to avoid cutting the lot in half with a road easement and will also remove the need for the third variance request, dividing Lot 69C with an easement. He also asked that Condition 5 be deleted relating to no-build strips that divide the parcels into potential future lots if and when sewer is available and the property is rezoned. Current zoning is at a density of one dwelling unit per acre. If sewer comes to the area, it will have to be rezoned before it can be redeveloped into smaller parcels. What that rezoning may go to is unknown. Rather than hamstringing the development at this point, future development has been anticipated adequately with the 54 foot conditional road easement. Re-division of these parcels would be up to future owners. There is agreement with the rest of the conditions for this proposal.

Chair Curtiss asked for public comments.

Alan Ball stated he was the proposed owner of Lot 69C. He met with Greg Robertson last week regarding the conditional easement. Between that easement and the no-build strips it removes almost an acre of ground that he would not be able to use. There would be no room for a garage. He would appreciate any help with that problem.

Commissioner Carey asked where the proposal to connect the existing residence to the proposed new driveway was addressed in the conditions and staff report.

Jennie Dixon stated the request to connect the existing driveway to the new driveway was not addressed in the staff report because it came up later. It is a request that the road be constructed to County road standards. It was not known until after the staff report was issued that Greg wanted that connection. Staff would rely on Condition 7 that driveway plans be reviewed and approved by Public Works for that connection.

There were no further comments.

Commissioner Carey moved that the Board of County Commissioners delete Condition 5 and the third variance request that would have allowed an easement to divide Lot 69C. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations to not provide concrete boulevard sidewalks or paved pedestrian walkways on South 7th Street West and one side of the internal roadway in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations to allow Lot 69A to have an average depth greater than three times its average width be approved, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Jennie Dixon stated that there is an additional variance request from the developer to only pave 30 feet back from the existing roadway. If the Board does approve the variance request it would require some amendments to Condition 10, to require paving back 30 feet from 7th Street and a 24 foot wide gravel surface to Lot 69C.

Colleen Dowdall stated the applicant needs to know that Public Works may ask for only 30 feet of pavement, but the Health Department may require 70 feet.

Jennie Dixon stated that the condition could be worded to state that paving would be required 30 feet back or beyond the first driveway, which would cover Health Department regulations.

Colleen Dowdall stated that Jennie Dixon's language would be more appropriate than to a point to be determined by Public Works. It would satisfy Health Department regulations.

Greg Robertson stated that 30 feet within the right-of-way was his requirement.

Jennie Dixon stated that the first sentence in Condition 10 could read: "The proposed driveway serving Lots 69B and 69C shall be paved to County road standards 30 feet back from the South 7th Street West right-of-way or beyond the first driveway to the first house, whichever is greater." A second sentence could read: "The road shall be graveled to 24 feet wide to serve Lot 69C."

Commissioner Evans asked if the road was ever developed in the conditional 54 foot easement, was any compensation being given to the landowner.

Colleen Dowdall stated it was clear that these people would not have to pay for the paving of that portion of the road because it would be triggered by development of another parcel. It would be paid for by whomever developed the adjoining land.



Commissioner Carey moved that the Board of County Commissioners amend Condition 10 to read: "The proposed driveway serving Lots 69B and 69C shall be paved to County road standards 30 feet back from the 7th Street right-of-way or beyond the first driveway to the first house, whichever is greater. The road shall be graveled to 24 feet wide to serve Lot 69C. Plans for road construction shall be reviewed and approved by County Public Works prior to final plat approval. The proposed private driveway shall be dedicated as a public roadway and a private road maintenance agreement shall be reviewed and approved by the County Attorney's Office and Public Works prior to final plat approval." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated that even though the road was being dedicated a County road it does not mean that the County would accept the road for maintenance.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-3(1)(D)(iii) which stated that each lot shall abut on and have access to a public or private street or road, based on the findings of fact provided by the developer. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Dinsmore Orchard Homes No. 5, Lots 69A, 69B and 69C Summary Subdivision, based on the findings of fact set forth in the staff report and subject to the conditions as amended. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Dinsmore Orchard Homes No. 5, Lots 69A, 69B and 69C, Summary Subdivision Conditions of Approval:**

1. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for public sewer and water systems, based on benefit. The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted herein." *Subdivision Regulations Section 3-7(2), Health Department and OPG recommendation.*

2. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to South 7th Street West and the internal unnamed road, including installation of pedestrian walkways or bikeways, 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 depicted herein." *Subdivision Regulations Article 3-2 and County Surveyor recommendation.*

3. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of final plat approval. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
4. A 54 foot conditional public access and utility easement on Lot 69C shall be shown on the plat at a location approved by County Public Works prior to final plat approval. The following statement shall appear on the face of the plat and refer to the conditional public access and utility easement:

"The owners dedicate a 54 foot right-of-way for purposes of a public roadway over and across Lot 69C of the Dinsmore Orchard Homes No. 5, Lots 69A, 69B and 69C Subdivision as shown on the subdivision plat thereof, conditioned upon said right-of-way being used as roadway at the time that it is needed to serve future subdivision on the parcels to the west of Dinsmore Orchard Homes No. 5, Lots 69A, 69B and 69C Subdivision. The lot owners and future owners of lots in Dismore Orchard Homes No. 5, Lots 69A, 69B and 69C Subdivision will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the west. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway."

If the lot lines for Lot 69B and Lot 69C needs to be adjusted to meet this condition, the revised plat shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E), Public Works and OPG recommendation.*

5. Engineering plans, calculations and specifications for all roadway and stormwater improvements in compliance with Missoula County Subdivision Regulations shall be reviewed and approved by Public Works and Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-4 and Public Works recommendation.*
6. Driveway plans shall be reviewed and approved by Public Works and Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(10) and OPG recommendation.*
7. Grading, drainage and erosion plans shall be reviewed and approved by Public Works prior to final plat approval. *Subdivision Regulations Article 3-4.*
8. A Revegetation Plan for disturbed sites shall be approved by the Missoula County Weed District prior to final plat approval. Provision for implementation of the Plan shall be included in a development agreement, subject to OPG and County Attorney's Office approval and shall be filed with the final plat. *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*
9. The proposed driveway serving Lots 69B and 69C shall be paved to County road standards 30 feet back from the South 7th Street West right-of-way or beyond the first driveway to the first house, whichever is greater. The road shall be graveled to 24 feet wide to serve Lot 69C. Plans for road construction shall be reviewed and approved by

County Public Works prior to final plat approval. The proposed private driveway shall be dedicated as a public roadway and a private road maintenance agreement shall be reviewed and approved by the County Attorney's Office and Public Works prior to final plat approval. *OPG, County Attorney's Office and Public Works recommendation.*

10. A maintenance and use agreement for the shared well and drainfield shall be reviewed and approved by OPG and the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-1(6), 3-7 and OPG recommendation.*

**Hearing: Wells Subdivision (3 lots) – Melody Lane, south of Kona Ranch Road**

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from Arvis and Rachel Wells, represented by Eli & Associates, Inc., to divide a 3.27 acre parcel into three lots for single family dwellings. The property is located on the north side of Melody Lane between Big Flat Road and Urfer Drive. The property is located in a single family residential neighborhood within a C-RR1 (Residential) Zoning District. The Missoula Urban Area Comprehensive Plan designates the site as Rural Residential with a recommended density of 1 dwelling unit per 5 to 10 acres.

Melody Lane is a County maintained road with an approximately 20 foot wide gravel surface within a 60 foot right-of-way. Kona Rapids Drive is a private road with a 20 foot paved surface within a 54 foot private access easement. Proposed access for Lot 1 is from Kona Rapids Drive and proposed access for Lots 2 and 3 is from Melody Lane. The property is located in the 500 year floodplain of the Clark Fork River.

Five variances are being requested. The first is to not provide sidewalks or pedestrian walkways on Melody Lane. Staff is recommending approval of this variance request. The second is to vary from the 24 foot road width requirement for Melody Lane. Staff is recommending denial of this variance request. The third request is to vary from the 24 foot road width requirement for Urfer Drive. Staff is recommending approval of this variance request. The fourth variance is to not pave Melody Lane. Staff is recommending denial of this request. The fifth variance is to not install curb and gutter on Melody Lane. Staff is recommending approval of this request.

Staff is recommending approval of the 3 lot subdivision with 9 conditions. Condition 1 is based on the recommended denial of the second variance request, road width of Melody Lane, and the fourth variance request, paving of Melody Lane. The recommended condition from Public Works and OPG states "the applicant shall initiate an RSID for the paving of the full length of Melody Lane. If the initiative passes, Melody Lane shall be improved as recommended by County Public Works in compliance with Missoula County Subdivision Regulations. If the initiative fails, the applicant shall not be required to pave Melody Lane but shall waive the right to protest an RSID, as is already shown on the plat."

Conditions 7 and 8 are based on recommendations from the Floodplain Administrator. Condition 7 states "the plat shall show the location of any areas within the 500 year floodplain, subject to Floodplain Administrator approval and prior to final plat approval. A licensed surveyor shall certify that the elevations shown on the plat are tied to the same datum as the FEMA floodplain benchmarks." Condition 8 states "a development covenant shall be filed prior to final plat approval, subject to OPG and County Attorney's Office approval, which states the following: 'All new construction shall have a lowest floor elevation of at least 3,181 feet (NGVD 29 datum). Crawl space floors may be at 3,179 feet if they do not contain mechanicals. Conditions of subdivision approval may not protect the homes during situations greater than a 100 year flood.'"

Ron Ewart, Eli & Associates, Inc., developer's representative, thanked Monte Sipe for his work on this proposal. There is agreement with the conditions with one minor revision. There is no problem with initiating an RSID for paving of Melody Lane. In order to do that, the road has to be engineered, topography has to be done, plan and profile, cross sections, bidding, distribution of costs, etc. To do that could require a lot of time, work and cost. He would like some clarification of what was required. He would like to work with OPG, Jesse Sattley and Public Works to determine how many RSID waivers already exist and perhaps send a letter to find out if there is enough interest to move forward with the RSID. He thought that Urfer Drive could also be included in such an initial RSID discussion. The owner, Arvis Wells, lives on Lot 1 and wanted a little extra land for himself. Health Department regulations do allow a lot size smaller than an acre for a well and septic if it can be proved there will not be any problems and as long as the all lots average over an acre. It has not been decided if wells and septic will be shared, testing is still being conducted. The area is fairly flat and is almost 0.5 miles from the river. It is in the 500 year floodplain but not the 100 year floodplain. The minor revision is in Condition 8 where it specifies the lowest floor elevation. The elevation should be 3,081 feet, as the benchmark used next to the property was 3,086 and the floodplain map shows the base flood elevation at 3,081 feet. This error needs to be corrected to read: "All new construction shall have a lowest floor elevation of at least 3,081 feet (NGVD 29 datum). Crawl space floors may be at 3,079 feet if they do not contain mechanicals." This will prevent the homes from being on 100 foot stilts. Covenants are being proposed and this information could be included. No basements will be allowed and positive drainage away from the homes is planned.

Greg Robertson stated that the standard protocol to initiate an RSID is filing a petition with Public Works for formation of the district. There is some initial engineering work that needs to be done but not to the extent that Ron Ewart suggested. The variance request to the Subdivision Regulations is really an either/or situation. The area is fairly well developed in terms of platted lots. This parcel and perhaps one other are the last that have not been platted. Most already have waivers of protest. It looks like there are adequate waivers to create this RSID. The process should be fairly smooth.

Colleen Dowdall asked if the up front engineering costs would be covered by the RSID?

Greg Robertson stated that typically the engineers incur a bit of risk associated with the formation of a district. Before proceeding the engineer would want to verify satisfactory evidence that waivers exist so they could recover their costs. The costs would be recoverable after the district is created as long as they are done appropriately in the cost estimates.

Chair Curtiss opened the public hearing. There being no comments, the hearing was closed.

Commissioner Carey stated that Condition 8 should be amended to correct the lowest floor elevation to 3,081 feet and the crawl space elevation to 3,079 feet.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways for subdivisions outside the Urban Growth Area (UGA) on Melody Lane; approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations for Urfer Drive to vary from the 24 foot road surface width requirement to the existing width for Urfer Drive; and approve the variance request from Article 3-2(7) of the Missoula County Subdivision Regulations for Melody Lane requiring curb and gutter fronting lots with an average street frontage of 175 feet or less, all based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners deny the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations for Melody Lane to vary from the 24 foot road surface width requirement to 18-20 feet for Melody Lane and deny the variance request from Article 3-2(14)(B)(i) of the Missoula County Subdivision Regulations for paving of Melody Lane, both based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Wells Subdivision, based on the findings of fact in the staff report and subject to the conditions, including the change in Condition 8 as pointed out by the developer. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Wells (Summary) Subdivision Conditions of Approval:**

1. The applicant shall initiate an RSID/SID for the paving of the full length of Melody Lane. If the initiative passes, Melody Lane shall be improved as recommended by County Public Works in compliance with Missoula County Subdivision Regulations. If the initiative fails, the applicant shall not be required to pave Melody Lane, but shall waive the right to protest an RSID/SID, as is already shown on the plat.
2. Grading, drainage and erosion control plans shall be subject to review and approval by the Public Works Department, prior to final plat approval. *Subdivision Regulations Article 3-4.*
3. Approach permits shall be secured for any existing driveways that do not currently have an approved approach permit. *Subdivision Regulations Article 302(1)(E).*
4. Engineering plans, calculations and specifications for all roadway and stormwater improvements in compliance with Missoula County Subdivision Regulations shall be reviewed and approved by Public Works and Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations 3-4.*
5. The developer shall contribute \$100.00 per new lot to the Missoula Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of final plat approval. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*
6. The following statement shall appear on the face of the plat:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for a public water system, 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." *Subdivision Regulations Article 3-7(2).*
7. The plat shall show the location of any areas within the 500 year floodplain, subject to Floodplain Administrator approval and prior to final plat approval. A licensed surveyor shall certify that the elevations shown on the plat are tied to the same datum as the FEMA floodplain benchmarks. *Subdivision Regulations Article 3-1(1)(B), 4-1(12) and Floodplain Administrator recommendation.*
8. A development covenant shall be filed prior to final plat approval, subject to OPG and County Attorney's Office approval, which states the following:  
  
"All new construction shall have a lowest floor elevation of at least 3,081 feet (NGVD 29 datum). Crawl space floors may be at 3,079 feet if they do not contain mechanicals. Conditions of subdivision approval may not protect the homes during situations greater than a 100 year flood. *Subdivision Regulations Article 3-1(2).*
9. A maintenance and use agreement for the shared well and drainfield shall be reviewed and approved by OPG and the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-1(6), 3-7 and OPG recommendation.*

#### **Hearing: Appeal of Comprehensive Plan Compliance Determination (Bitterroot Valley Bank in Goodan Keil)**

Dave Loomis, Office of Planning and Grants, presented the staff report.

This is a request that the Missoula Board of County Commissioners uphold the Planning Director's determination that the proposal to construct a bank building is not in substantial compliance with the Comprehensive Plan based on the findings of fact and conclusions of law as set forth in the staff report.

The applicant, Bitterroot Valley Bank, is appealing a determination by the Office of Planning and Grants that their proposed use is not in substantial compliance with the adopted Comprehensive Plan. This property is located north of Interstate 90 and south of Keil Loop, a narrow County maintained road serving the low density Goodan Keil residential area. As of now, Tract 10 has no physical access to the proposed site. The applicant is working with Missoula County to

Dan Cederberg stated the area in front of the building is where the Interstate lies. The building will be just slightly above the grade of the Interstate and will not be much different than if a large house was constructed at that location. Discussion of those things that are not at issue may also be helpful. The road will exist at this location. That process has already been completed as to the location of the buttonhook. All the adjoining property that fronts the new road will be reviewed through the appropriate process and will go through the permitting process for development. Today's discussion relates to this 1.5 acre parcel. The legal status of the Comprehensive Plan is also in question. MCA 76-1-601, one of the statutes enacted by the Legislature in 1999, introduces the Growth Policy language to the planning process. Their evaluation shows that after October 1, 2001, a Growth Policy was supposed to be in place and these types of project should be measured against the Growth Policy. There is not a Growth Policy in place yet in Missoula County. He does understand how difficult that process can be to complete such a policy. However, the legal point is that there is a real question as to whether the Comprehensive Plan is in place after the October 1, 2001 deadline and whether or not there is a valid tool in place to measure this project against. The Comprehensive Plan may not even be the subject of discussion. This will not be a big bank. The footprint will be slightly over 3,000 square feet. It will have two floors and again, will not be as big or bigger than a house. It will also not be a high traffic use bank. It is mainly an administrative center for the other banks where documentation processing will be done. It will not be a loan center or deposit center. There will be a loan officer and a teller, but that will not be its primary focus. It will probably be open from 7 a.m. to 7 p.m. It will not have hours such as a retail business and will not be a 24 hour facility. It fits into the terrain. It will have minimum impact on the area. Another consideration would be if the use is consistent with the uses of property in the area. In the staff report there was almost no discussion of what happens just 1,000 feet from this site. The staff report and recommendations focus on the uses in Goodan Keil, which are residential. Just across the road, less than a block away is what will be one of the principal commercial developments in the County. Just off Airway Boulevard is the County's Development Park. Within four or five blocks is Grizzly Motors car dealership, a high traffic, high impact commercial use. This building will be closer to the majority of the buildings in the Industrial Park than it will be to the houses of Goodan Keil. This use is very consistent

with other uses in the area. If the Comprehensive Plan is used for this determination, or even just good business development, is maximize the efficiency of land use in the County and promotes logical growth. The bank submits that in promoting logical growth in this area, some kind of a buffer zone is needed. It is known the road will go in and that land will be developed there. It is known that on one side is heavy commercial use and on the other is residential use. What could be better for a buffer than a commercial building that has minimum impact and could look like one of the houses. It isn't a 24 hour a day business. This is a logical progression of the transition from the Development Park to the residential area to the north and west. The bank submits this situation is a consistent use with the land use planning in Missoula County. He urged the Commissioners to recognize that and overturn the Planning Director's determination.

Chair Curtiss opened the public hearing.

Pat Cohen, 4655 Goodan Lane, asked if this action was to amend the Comprehensive Plan or was it a zoning request?

Chair Curtiss stated the Office of Planning and Grants has the responsibility to determine administrative compliance with the Comprehensive Plan, which they have done. Their determination was that this request does not comply with the Comprehensive Plan. Bitterroot Valley Bank has appealed that decision to the Board of County Commissioners. The Board's decision today is to determine if the land use does comply with the Comprehensive Plan and whether or not to uphold or overturn the decision of the Office of Planning and Grants. It is not an amendment to the Comprehensive Plan nor is it zoning, as this land is not zoned.

Pat Cohen asked if the land is zoned in the future as residential, would the bank be forced to move out?

Chair Curtiss stated that the bank would probably be grandfathered in, the County does not make buildings move.

Pat Cohen asked if this is then a defacto move to create commercial zoning?

Chair Curtiss stated that it did not create commercial zoning, it says that on this one piece of property the use would be allowed.

Pat Cohen stated that it would have been helpful to have the Growth Policy in place.

Chair Curtiss stated that the Growth Policy is currently being worked on and there will be opportunity for public input soon.

Pat Cohen read a prepared statement: *"The Goodan Keil neighborhood is bounded on the south by the freeway and the County Industrial Park. The western edge of the neighborhood approaches Butler Creek Road. We have 88 four acre lots in our neighborhood on two roads that wind around the foothills of the mountains that house Snowbowl Ski Area. The proposed bank would be on the southeastern corner of this neighborhood, north of the freeway. We have 25 horses in our neighborhood, 16 llamas, some chickens and at least one rooster. Eleven of our neighbors have built barns on their property. Because we have no sidewalks, the two 24 foot wide roads serve many users. These two roads are shared by cars, by neighbors walking, by children riding their bicycles, by cyclists from outside the neighborhood testing their endurance on our hills, by neighbor youths riding ATVs. We do not have sidewalks and pathways to separate the multiple uses. We have chosen to live in a rural setting where we have fewer amenities and services than City dwellers. We generally try to be responsible citizens within that setting. We communicate and cooperate to solve the problems that arise. One of our neighbors has been encouraging us to be active in weed control on our properties for over five years. She helped the County organize a local weed control course that was well attended. Other neighbors recently added playground equipment to our local school. This is a neighborhood worth saving. The County Industrial Park has property available on the south side of the freeway. The freeway offers a very effective buffer between the residential area in Goodan Keil and the commercial properties that are in the industrial park. The roads there have been designed to provide for the heavy amount of traffic that a commercial site requires. That area already has water and sewer available. That is the appropriate location for proposed businesses. A promise was made to those who reside in the Butler Creek area covered by the area's Comprehensive Plan Amendment. The promise was to preserve the rural character of the area. The bank does not fit that plan. Show us that the voices of local residents can be heard over the monied influences. I urge you not to approve this building permit."*

Mary Alice Stoner stated she was a resident of Goodan Keil. She appreciated the opportunity to speak and voice her concerns. She read from a prepared statement: *"Good land use planning is conducted to provide a desirable lifestyle while accommodating the economic growth and environmental quality of the area. The area north of the Interstate is included, as you know, in the Butler Creek Comprehensive Plan. To us, this means residential development in neighborhoods where kids can ride their bicycles without heavy traffic, where vandalism and other kinds are low and where it's safe for kids to walk to school in the morning in the rain, like I observed today. One of the outstanding features Missoula offers its residents is neighborhood atmosphere. Go nearly anywhere in Missoula and you see neighborhoods in a traditional sense. Whether it's on the flat where the older homes are and look much like the areas that many of us were raised in or our parents were, or in the South Hills, the Rattlesnake, El Mar Estates, in every real estate price range, we have a neighborhood atmosphere and that's part of what people greatly value about Missoula. The County Planning Board rightfully so recommended against this project being allowed in this location because it's not compatible with the plan and existing residential development in the area. We have concerns about the traffic increase. We have concerns about when that freeway entrance is open, the increased traffic load in our area. I know there's plan to reduce the ability of that new subdivision on the western end of us from coming and turning around and going back up the road, partly because again of the neighborhood atmosphere that we're trying to maintain. Other banks further from town do just fine being a little farther away from the airport. They seem to be able to survive very well and it's really unlikely to me that a bank that has a local service facility where people can come in and get accounts and stuff, is not going to promote that because that's part of what their business is. So I think the attempt to discount the impact of the traffic and of the local use of that bank is probably an under estimate of what would really occur. Just across the Interstate we have the Industrial Park. There's a wide range of businesses there from a plant nursery to interstate trucking companies to the car dealership. Trees and landscaping plus generally subdued colors of the building lend themselves to somewhat of a rural community atmosphere in an industrial park. It's well designed, the sidewalks are curving and attractively flowing under the newly planted trees. The industrial park is tastefully designed and it's being implemented in a way that fits the*

*character of Missoula for the area that it's supposed to serve. That's an appropriate place for this proposed use, not in our residential subdivision, and it's closer to the airport. There's plenty of space there, banks could be very well incorporated into that entire industrial park and that's part of why an industrial park exists, is to provide locations for these kinds of things to be provided. In my professional life I've worked in rural areas throughout my career with Federal agencies and my experience ranges everywhere from wilderness to rural community assistance to oil and gas lease development. I've worked on geothermal projects and I'm presently working on a rural community assistance project. I've also been the project manager for agencies Rural Community Assistance national awards for ten years and I've seen examples year after year after year of communities that have implemented quality plans to provide for sustained economic growth while retaining the character of the community. I understand the need for balance between the economic development to provide sustainable communities and environmental qualities to support the amenities and lifestyle that's so attractive about this part of the country. Land use planning is conducted to help provide this balance in a reasonable and orderly fashion. Land use plans should be reasonable static to provide stability and growth while accommodating unforeseen changes or correcting omissions. This proposal is not an omission or unforeseen thing. It was specifically proposed to enter commercial operation inside our residential area. It's somewhat like cancer, eventually if not repelled, this cancer will creep into the fiber of our neighborhood and completely change its character. We can see examples of that across Missoula. The box stores on Brooks and South Reserve are scattered among smaller commercial enterprises. It's retained a small town atmosphere of a variety of retail opportunities that's characteristic of the rest of Missoula. North Reserve from Mullan Road to Broadway is the opposite. It could be in any town in the country. In this area, the character of Missoula has completely disappeared. We want you to uphold the land use plan designation for our neighborhood. This plan represents a way to maintain the necessary balance to keep Missoula as a sustainable community. County officials do have a concern to enhance the economic viability of the community. You can do that without incrementally destroying our neighborhoods. There are more appropriate alternatives available for this project. I hope you'll do the responsible thing for our community and our neighborhood by assuring all residents that our land use plans are viable means to regulate the type and amount of growth. Please take your Planning Board's recommendation and deny this project in our neighborhood. Thank you."*

Dave Kottner stated he was an attorney representing Brent and Jeanette Mickelson. The Mickelsons own about 110 acres immediately surrounding this property and they asked that he speak to the Board with regard to their support of this proposal. They feel the Bitterroot Valley Bank's request is consistent and in substantial compliance with the Comprehensive Plan. Mr. Cederberg did a good job of summarizing the reasons why it's in compliance. As he has heard the concerns from neighbors and the Planning staff, it is principally focused on the Comprehensive Plan that was approved in 1992. The amendment in 1996 did not pertain to this area. It had to do with the Dodd Ranch on the northern part of the Butler Creek planning area. Chronology is important. The vision does need to be looked at but in the context of time. The initial plan, a guide, not a set of rules, was approved in 1992. Brent Mickelson has provided documents that the environmental impact for the interchange was done in 1992. At that time there was no Airport Interchange, there was no connector and no thought about those roads in this area. This is more for a vision of the area, not something cast in stone. This isn't zoning, it isn't a request for a variance, it's a request for a building permit to see if it's compatible with the vision for this area. In that perspective, Bitterroot Valley Bank complies with the Comprehensive Plan. Mr. Cederberg touched on the location and use and it is very consistent with existing uses. It is close to the Interstate and the Development Park. It is as close to commercial property as can be found in the County. Because of a Comprehensive Plan that was drafted and approved before the interchange was envisioned, there is an argument that this was designed to be residential. Step back and look at this area from driving on the Interstate, is it more compatible for residential development or a use like this bank. The answer will be the bank's use, low traffic and specific for their needs. It is exactly what is desired in this area. When the interchange was approved, the Development Park planned, the buttonhook approved, there was vision by the County that commercial development would trickle north of the Interstate. It is a nice entryway into Missoula from the Airport. That is what the bank is asking to do, approve a low density, low traffic financial institution. It is not a residence, but it is compatible with the surrounding use. To the west is Goodan Keil and he appreciates their concerns. But in looking at the banks on Reserve Street and what they have brought to the community, it is fair to say they are as aesthetically pleasing as anything could be. The hours are limited and the landscaping is better than most. He did not feel this would detrimentally impact Goodan Keil. To the north and east is his client's property. From his client's perspective, this is what should be on that property. It's not invasive or on a hilltop. It will blend in with area. The vision of the Development Park and this property is compatible. He stressed that the Commissioners look at the plan that was passed in 1992 when none of this area had any improvements. In 1992 it is true that this area was Open and Resource, there were no buildings but there was also no interchange and no access. To say that in 2002 this same designation holds true is not likely. This plan is a guideline and to ignore reality in 2002 would be irresponsible in terms of organized growth. Mr. Cederberg pointed out properly that this is a nice buffer area. If this was a proposal for a 24 hour convenience store/casino, that would cause some problems. This is a low impact use and is consistent of what is being required in the Development Park. It will look nice and not offend the neighbors. It will be a nice way to introduce people to Missoula. He and the Mickelsons hope the Board has the vision to be progressive. This is not inconsistent with adjacent use. The Mickelsons endorse Bitterroot Valley Bank's request.

Jeff Hollenback, 6405 Goodan Lane, stated he has lived in the area for 15 years. He likes it so much he is building a new house on Goodan Lane. They bought the property from Brent Mickelson; it overlooks the new interchange. This fits into the area. It will be nice looking with daytime hours and not a lot of traffic. He did not see the negative impact of additional traffic into the neighborhood. A big reason he supports the proposal is that he hopes it will bring an access to the interchange. Having lived there for 15 years, Goodan Lane and Butler Creek Road is not the best intersection. Traffic is increasing. He would like to have another way out of the area. He stated for the record that he was in favor of the proposal.

Mark Blair, 4700 Goodan Lane, stated he was one of the original purchasers of a 20 acre parcel purchased in 1978. He has since acquired other properties, has built homes and subsequently sold them. He is on his third personal residence there. He has two children at DeSmet School. The intersection of Goodan Lane and Butler Creek Road has always been a concern. The County Road Department has always done a tremendous job of keeping the road plowed and sanded, but it is still a dangerous intersection. He would very much like to see another access to the area. With all the improvements and development that have occurred in the past 25 years in the area, it has really come a long way. He did not think this bank would harm the area. He felt some light commercial use of the area north of the Interstate would be proper use of the land. At almost any other Interstate interchange there is commercial on both sides of an exit.



Janie Holm, 5125 Keil Loop, stated that just what Missoula needs is another bank. There is one being built by the Airport. The traffic is on Reserve, the Wye, by the Airport and there are banks in those locations. Another bank is not needed in-between those locations. If it is needed, then why isn't it in the Development Park where commercial is planned. The people have moved to Goodan Keil to be rural and leave the convenience in the City. They don't want it in the area. The majority of people out there still want it that way. They don't want a bank down below them. She would rather see the elk than a bank. There is no need, it is not a demand or a necessity. She did not see that this is proper use for that land. She felt that because there is a problem bringing water to this land, it is being sold cheap. If one business is allowed, pretty soon another one will come, and another one. Keep the business on the other side of the Interstate. From Reserve to the Wye is residential on the north side of the Interstate, keep it that way. She has been here for years. She has had to accept the 275 house development and the Animal Shelter. Do they have to roll over for everything. Can't they have their area stay rural. The whole other side of the Interstate is available for commercial development. She did not feel that a bank was needed. It will bring more business to that side of the Interstate. Leave them to their rural development, they were there first. Why can't the bank be where there is other commercial development. People say that Goodan Lane and Butler Creek Road is hazardous and that there is only one way out. The same thing is true of the Rattlesnake and Grant Creek, there are more people in those areas so it's a bigger concern. There aren't that many in the Goodan Keil area. Once out of the area, there are many choices of roads to use. There are only 88 homes, she did not feel another access was needed. The majority of the residents didn't want the interchange. They didn't want more housing either, but that didn't make any difference. Leave this rural and don't allow this proposal. There are plenty of other areas for them to build that have access to the Airport and they won't have to be on her side which is rural residential. They live there because they want to. Leave the convenience in town or in the commercial area.

There being no further comments, the public hearing was closed.

Colleen Dowdall stated the bank had requested, for purposes of a building permit, a determination by the Office of Planning and Grants, whether this use complies with the Comprehensive Plan. OPG made an administrative decision, which is authorized by the County Commissioners, that this did not comply with the Comprehensive Plan. The owner/developer may appeal that decision to the Board of County Commissioners. In 1983 and 1985, the Commissioners adopted Resolutions to help the planning office make decisions regarding compliance with the Comprehensive Plan. At this time it is the jurisdiction and authority of the Board of County Commissioners to make a determination of whether this use is compliant with the Comprehensive Plan.

Commissioner Evans asked counsel to explain the current situation of with the Comprehensive Plan versus the statutes versus a Growth Policy.

Colleen Dowdall stated that Mr. Cederberg referred to this in his presentation. In 1999, the Legislature required that jurisdictions of Planning Boards adopt a Growth Policy to replace the Comprehensive Plan and that it occur before October 2001. There is some difference of opinion regarding the interpretation of that legislation, the Missoula County Attorney's Office has viewed that as mandatory legislation is they wish to use the Comprehensive Plan for purposes of zoning and subdivision review. In this particular case, review for compliance with the Comprehensive Plan is required by statute and case law. Currently the statute has been amended to state that there must be compliance with the Growth Policy. The definition of a Growth Policy is one that meets the requirements outlined in the statutes and currently Missoula County does not have a Growth Policy that complies with the statute.

Commissioner Evans asked what that did to the Comprehensive Plan that the County has that isn't a Growth Policy that the law requires.

Colleen Dowdall stated that is the question and it is currently before the Attorney General. It has been the opinion of the County Attorney's Office that the current Comprehensive Plan has no effect and that it needs to be amended for the purposes for which the statute allows use of the plan. It has not been previously addressed in this context, there has not been an appeal of a Comprehensive Plan compliance determination since the new law took effect.

Commissioner Evans stated that the local County Attorney's Office thinks the Comprehensive Plan is not in effect because the County does not have a Growth Policy.

Colleen Dowdall stated that is what the request for an Attorney General's opinion says. The County Attorney's Office states what they believe and are asking for verification of that belief. They believe the County's Comprehensive Plan is not legal.

Commissioner Evans stated the Board is supposed to obey the law. These people are here to see if their proposal complies with the Comprehensive Plan and the County Attorney's Office has told the Board the Comprehensive Plan doesn't count right now, because the County doesn't have a Growth Policy that meets the law. This puts her in an dilemma.

Pat Cohen asked what basis of law is being used.

Chair Curtiss stated that is what they are trying to determine. The County is in the process of completing a Growth Policy. The policy, if adopted as it is currently being proposed, will incorporate all the current plans that have been adopted. The Growth Policy will go to the public input phase in the next month or two. Her feeling was that in reality, the Growth Policy will look at the same things the Comprehensive Plan and amendments currently look at. The Growth Policy will address the same things the Comprehensive Plan did as to whether or not this proposal meets certain criteria.

Pat Cohen stated that the last document or plan that had public input was the Comprehensive Plan.

Chair Curtiss stated that was correct and there was also the Butler Creek Area Plan Amendment.

Pat Cohen stated that was updated in 1996 to address the Goodan Keil neighborhood. She felt that the last document that had public input should be considered the baseline for this project, or perhaps all building permits should be stopped until the Growth Policy is adopted.



Chair Curtiss stated the Attorney General has ruled that that is not possible.

Colleen Dowdall stated that the 1996 Butler Creek Plan amendment pertained only to the Dodd Ranch. The plan that covers this area was adopted in 1992. The amendments were made to how development could occur on the Dodd Ranch only. No other changes were made to the original plan adopted in 1992.

Chair Curtiss stated that the public hearing had been closed but would allow one more question.

Mary Alice Stoner stated that if the law was enacted in 1999 and due by 2001, why doesn't Missoula County have it yet, why isn't in place.

Chair Curtiss stated that Missoula County had some cutbacks in the planning office and was concurrently working on other area plans. The Growth Policy work is in process and should be done soon.

Mary Alice Stoner stated that because it is not complete, there is no plan against which to judge this proposal. Does that means it gets to skate through free with no impact to an existing plan.

Chair Curtiss stated that is why this is being discussed and the Comprehensive Plan is being used as a background. She noted the public hearing had been closed but asked if there were any questions from the Board.

Commissioner Evans stated that the parcels of the Goodan Keil area were all created through the Certificate of Survey process and did not go through any subdivision review. There were comments that there are no sidewalks and the roads are narrow, etc. These were all things that would have been required if it had gone through subdivision review, sidewalks, width of roads, grading, drainage, etc. None of that was reviewed by the County. People bought land that was split through the Certificate of Survey process which was allowed by law at the time. That law no longer allows quite the same latitude it did before. Mary Alice Stoner also mentioned that this went through the Planning Board. She clarified that this did not go before the Planning Board, it was a determination made by planning staff.

Chair Curtiss stated that in the staff report, Finding of Fact #11 states that only those lands "appropriate for urban development ... for which public services including wastewater treatment..." She asked if wastewater service was available to this property?

Alan Bradley, President of Bitterroot Valley Bank, stated that there would only be 10 people working at this facility. With 1.5 acres there was plenty of room for a septic system.

Chair Curtiss stated that she believed that Mr. Mickelson had extended public sewer to that property.

Alan Bradley stated that was true but it hasn't been connected. The bank will agree that they will hook up to public sewer whenever it is available.

Dave Loomis stated that Steve King, City Engineer, has mentioned that there is preliminary approval but they cannot get a sewer permit until a comprehensive development plan for the area has been reviewed. The Sewer Service Committee has only given preliminary approval, but they could not get a sewer permit today.

Alan Bradley asked if that meant they couldn't get a septic permit.

Chair Curtiss stated that is not what she meant. She was looking at some of the criteria, one of which was whether or not wastewater treatment is available.

Commissioner Carey stated that it was unfortunate local government often doesn't have the resources necessary to do what is needed in a timely manner. Had there been more planners, they would have had a Growth Policy by now. The planners were committed to other projects and could not get to the Growth Policy to complete it in a timely manner. He did not believe that the legislative intent was to say that if there is no Growth Policy in place by a certain date, anything goes. They did not think like that. There has to be reliance on something day to day to decide what kinds of land uses will be made in the County. He envied the City and their efforts to save some of the surrounding hillsides. Generations to come will be thankful to those responsible. He would like to see the County have the money to buy up some of this land to preserve open space, but they don't. He felt that it was clear that presently that area was rural residential in nature. To introduce a commercial endeavor, in his view, would consign the area to a fundamentally different reality over time. More commercial development will occur. The Interstate serves as a boundary. There is commercial on one side and rural residential on the other side. He will support the Planning Director's recommendation that this appeal be denied. He felt planning had done an excellent job in making their determination and would vote to sustain those findings.

Chair Curtiss stated she had mixed feelings on the proposal. In most areas at an exit from the Interstate, there is some sort of commercial development on both side. The Goodan Keil Homeowners Association has changed their minds several times as to whether or not they support a new road coming into the area from the interchange. She believed the road was needed as a second access and for emergencies which might block the exit at Butler Creek under the Interstate. She felt the bank wouldn't be intrusive to the neighborhood. It will not generate too much traffic. There are other branch banks in neighborhoods. She asked for clarification on the question of the building permit application. Does the bank have to go through some other process to create this lot?

Colleen Dowdall stated Commissioner Curtiss' question was if the parcel exists or do they have to go through subdivision review to create the parcel.

Dan Cederberg stated the parcel does not exist right now but will be created through a boundary line adjustment. It is a 1.5 acre parcel. Any additional use of the rest of the property will have to be reviewed.

Chair Curtiss stated this was a more appropriate use to have at the exit from the Interstate than a house. The other houses are further away and she would be in favor of the building permit.

Commissioner Evans moved that the Board of County Commissioners overturn the Planning Director's determination that the proposal to construct a bank building is not in substantial compliance with the Comprehensive Plan. Chair Curtiss seconded the motion. The motion carried on a vote of 2-1 (Commissioner Carey opposed).

There being no further business to come before the Board, the Commissioners were in recess at 3:40 p.m.

#### THURSDAY, MAY 23, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 23, 2002, with a grand total of \$35.00. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 23, 2002, with a grand total of \$120,542.42. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 23, 2002, with a grand total of \$7,145.12. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 23, 2002, with a grand total of \$8,710.16. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 23, 2002, with a grand total of \$11,933.85. The Claims List was returned to the Accounting Department.

Replacement Warrant – Chair Curtiss examined, approved, and ordered filed an Application for Issuance Replacement Warrant naming Gambles, Hot Springs, Montana, as applicant for Accounting Warrant #4666 issued April 23, 2002 on the Missoula County 2274 Fund in the amount of \$193.48, which was not received in the mail. No bond of indemnity is required.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-060 – The Commissioners signed Resolution No. 2002-060, dated May 1, 2002, a Budget Amendment for the County Surveyor's Office in the amount of \$12,000, for the CORS Project (Continuously Operating Reference Station), a GPS receiver/transmitter used for surveying and mapping. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Agreement – The Commissioners, on behalf of Missoula County, signed two (2) Right-Of-Way Agreements with 1) Delvin P. and Ann Olson, Alberton, Montana; and 2) David Tumlinson, Alberton, Montana. Granted is a temporary by-pass easement along an existing road (private landowner's property) during the construction activity on Bible Lane Bridge. All proposed activities have been budgeted for.

Transaction Confirmation – Chair Curtiss signed a Transaction Confirmation, dated May 23, 2002, for the Missoula County Courthouse natural gas supply contract with Energy West Resources, Inc. The document was returned to Energy West Resources in Great Falls, Montana, for signature.

Agreement – Chair Curtiss signed the annual U.S. Forest Service Cooperative Agreement between the Missoula County Sheriff's Department and the United States Department of Agriculture, Lolo National Forest, under the provisions of Cooperative Law Enforcement Agreement #01-LE-11011600-016. This agreement provides for an operating plan and financial reimbursement plan for holiday weekends in areas set forth therein. The term shall be May 15, 2002 through December 31, 2002. Reimbursement for all types of enforcement activities shall be at the following rates unless specifically stated otherwise: Per diem rate is \$32.00/day and meals at \$18.00 per day. Wages at the prevailing wage rate of \$27.28/hour includes fringe benefits. Total reimbursement for the category of Patrol Activities shall not exceed \$24,500.00. Reimbursement for the purchase of a remote surveillance camera shall be \$1,500.00.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-031 for the Sheriff's Department, in the amount of \$3,278, for the purpose of correcting a merit increase for a Deputy paid through Disaster and Emergency Services, and adopting same as a part of the Fiscal Year 2002 Budget.

Easement – On behalf of the Missoula County Park Board, the Commissioners signed a Grant of Easement, dated May 23, 2002, to Norman Truax and his successors in interest a 20-foot wide driveway easement across Claremont Park to access his personal residence located on Lot 1, Block 17 of Westview #2 in Lolo, Montana.

Board Appointment – The Commissioners signed a letter dated May 24, 2002, reappointing Allan Chaffin of Seeley Lake, Montana to a three-year term as a member of the Seeley-Swan Cemetery District Board. Mr. Chaffin's term will run through April 30, 2005.

Resolution and Closing Documents – Chair Curtiss signed Resolution No. 2002-061, dated May 23, 2002, authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), approving the form and terms of the Loan Agreement, and authorizing the execution and delivery of documents related thereto. Chair Curtiss signed all related INTERCAP closing documents, which are for the purchase of copiers, vehicles, and patrol car accessories.

Invoice – Chair Curtiss signed a State of Montana Vendor Invoice, in the amount of \$90,970.00, to the Department of Environmental Quality, Motor Vehicle Recycling & Disposal, Helena, Montana, for the purpose of receiving funds for the Junk Vehicle Program. The document was returned to Jim Carlson in the Health Department.

Request for Action – The Commissioners signed a Counter Offer (with amendments), dated May 7, 2002, by Abbott and Jacqueline Norris for the purchase of Lot 15, Block 3, Phase 4, Missoula Development Park, for the purpose of cabinetry and furniture manufacturing. The purchase price is \$147,356. The closing date is scheduled for June 3, 2002. Amendments and contingency conditions are as set forth therein. The document was returned to Barbara Martens in the Projects Office for further handling.

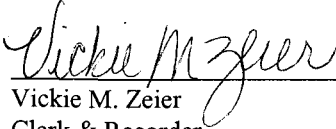
Other items included:

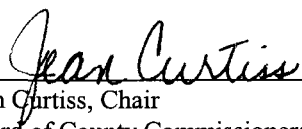
- 1) The Commissioners approved a request from County Attorney Fred Van Valkenburg for \$35.00 for service costs so that he can arrange service on a mother in Florida.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, MAY 24, 2002**

The Board of County Commissioners met in regular session; all three members were present.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, MAY 27, 2002**

THE COURTHOUSE WAS CLOSED FOR THE MEMORIAL DAY OBSERVED HOLIDAY.

**TUESDAY, MAY 28, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated May 23, 2002, with a grand total of \$29,078.88. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 28, 2002, with a grand total of \$78,156.25. The Claims List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Task Orders – The Commissioners signed two (2) Task Orders: 1) No. 02-07-4-51-034-0 (Partnership Health Center) and 2) No. 02-07-4-51-106-0 (STD/HIV), to the Missoula County Master Contract between the Montana Department of Public Health and Human Services (“DPHHS”) and Partnership Health Center (“PHC”), that covers the period July 1, 1998, through June 30, 2005. These Task Orders are for the Ryan White Title II funding, for the delivery of comprehensive outpatient health and support services to meet the needs of HIV-infected individuals and their families. PHC was asked by DPHHS to take over this contract from Missoula Aids Council. The terms and consideration are as set for therein. (This breakeven program is included in PHC’s current operating budget). The documents were returned to Finance Director Janet Schafer at PHC for further signatures and handling.

Agreement – Chair Curtiss signed a Health Care for the Homeless Sub-Recipient Agreement between the Missoula City-County Health Department and the Yellowstone City-County Health Department for the provision of health care and related services to homeless persons residing in Missoula County, Sub-Recipient’s service area. The total amount shall not exceed \$212,500.00. The term will be April 1, 2002 through March 31, 2003. The document was returned to Finance Director Janet Schafer at PHC for further handling.

Agreement – The Commissioners signed a Construction Agreement, dated May 29, 2002 between Missoula County Airport Industrial District and Missoula Electric Cooperative for the installation and maintenance of an electric line within Phase 4, Missoula Development Park. The total amount shall not exceed \$36,145.00. The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved the estimated Contract with Mountain Water Company to extend the water main along Harlequin Court, Phase 5, Missoula Development Park. The estimated cost to extend the water main is \$39,000.00. The document was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved and signed a Construction Agreement, dated May 10, 2002 between the Missoula Development Park and [The Montana Power Company] Northwestern Energy for the installation of a gas main parallel to Sandpiper Drive in Phase 4, Missoula Development Park. The total amount shall not exceed \$17,415.00. The document was returned to Barbara Martens in the Projects Office for further handling.

Resolution No. 2002-062 – The Commissioners signed Resolution No. 2002-062, dated May 28, 2002, a Budget Amendment for Special Projects – Missoula Development Park in the amount of \$92,560, for the installation of a water line extension, gas line extension, and electric line extension with additional revenue received for sale of fixed assets. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-032 for the CIP, to transfer restricted cash (\$283,326.05) from CIP to E. Reserve Sewer Trust so that the BMS new software interest allocation will work correctly, and adopting same as a part of the Fiscal Year 2002 Budget.

Other items included:

- 1) In order to allow more flexibility, the Commissioners voted to amend the County Meal Reimbursement Policy. Department Heads may now approve exceptions and allow for breakfast reimbursement. For training expenses from the General Fund Pool, the Personnel Office will now approve exceptions.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, MAY 29, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated May 29, 2002, with a grand total of \$23,198.38. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 29, 2002, with a grand total of \$50,547.90. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 29, 2002, with a grand total of \$19,138.57. The Claims List was returned to the Accounting Department.

### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Proclamation – The Commissioners signed a Proclamation proclaiming June 6, 2002 to be UM Retirees' Day, inviting all citizens to join in recognizing the University Retirees and the contributions made by these individuals to the lives of all students and the well being of society.

Agreement – Chair Curtiss signed an Agreement between the Missoula County Public Schools and the Missoula City County Health Department for the provision of a neighborhood nurse in the Franklin Elementary School neighborhood. The total amount shall not exceed \$46,803.00. The term will be October 1, 2001 through September 30, 2002. The document was returned to the Health Department for further signatures and handling.

Amendment – Chair Curtiss signed an Amendment to Task Order No. 99-07-5-31-261-0 to Missoula County Master Contract between the Montana Department of Public Health and Human Services ("Department") and Missoula County that covers the period July 1, 1998 through June 30, 2005 (Missoula County and Fetal, Infant, Child Mortality Review ("FICMR")). Amended are various contract dates, as set forth therein; also added is language stating that the Department agrees to assume FICMR statewide coordinator duties on November 12, 2001. The document was returned to the Health Department for further signatures and handling.

Other items included:

- 1) The Commissioners directed staff to negotiate with the Montana Department of Transportation to resolve a dispute with Missoula County, as stated in their letter dated May 17, 2002, regarding an Airport Interchange Accounts Receivable issue.

### PUBLIC MEETING – May 29, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Commissioner Bill Carey and Deputy County Attorney Colleen Dowdall.

### Pledge of Allegiance

### Public Comment

None

### Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$329,347.96. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

### Hearing (Certificate of Survey): Lange Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 221 Deeds, Page 598, located in the northeast one-quarter of Section 12, Township 13 North, Range 21 West, Missoula County, Montana.

Duane R. Lange 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 130 acres in size located near Big Flat Road. Mr.

Lange proposes to create one approximately 2 acre parcel for transfer to his daughter, Nancy Kay Lange, for residential purposes and keep the remaining approximately 128 acre parcel in anticipation of gifts to his other two daughters.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Book 221, Page 598	1961	Prior to Subdivision Review	Countryman	Lange
Book 240, Page 555	1965	Prior to Subdivision Review	Holland	Lange
COS 3342	1986	Boundary Relocation	Duane R. Lange	N/A
COS 3468	1987	Occasional Sale	Duane R. Lange	N/A

Mr. Lange purchased Tract A of COS 3468 in May, 1992, however he has owned this property for a long time. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed above.

Nancy Kay Lange was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to evade subdivision review. She asked if Mr. Lange really did intend to transfer this property to her?

Nancy Kay Lange stated that she was going to use this for a building site.

Chair Curtiss stated that it looked like it was on fairly steep ground.

Nancy Kay Lange stated that there was a level area suitable to build on the property.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Duane R. Lange 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated the Mr. Lange would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing (Certificate of Survey): Westberg Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as COS 3735, Lot 7A, located in Section 22, Township 13 North, Range 16 West.

Daniel N. Westberg 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 23 acres in size located near Potomac, Montana. Mr. Westberg proposes to create one approximately 10+ acre parcel for transfer to his father, Russell L. Westberg, for residential purposes and keep the remaining approximately 10+ acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 3229	1970's	Over 20 Acres	Wills	
COS 3735	1989	Boundary Relocation	Wills/Westberg	

Mr. Westberg purchased the property in October, 1988. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Daniel Westberg was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to evade subdivision review. She asked if Mr. Westberg really did intend to transfer this property to his father?

Daniel Westberg stated his father has moved to Missoula and they would like to provide a place for him to live. As his father is elderly, he wants to be able to take care of him.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Daniel N. Westberg 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 Evans seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated Mr. Westberg would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

There being no further business to come before the Board, the Commissioners were in recess at 1:38 p.m.

**THURSDAY, MAY 30, 2002**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey was out of the office all afternoon due to illness.

Claims List – The Commissioners signed the Claims List, dated May 29, 2002, with a grand total of \$53,632.47. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated May 29, 2002, with a grand total of \$5,491.17. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming 4 Seasons Swimwear, Palm Desert, California, as Principal for Missoula County Public Schools Warrant #27-59810, issued December 19, 2001 on the Missoula County Student Activity Fund in the amount of \$211.45 (payment for swimwear), now unable to be found.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Release – The Commissioners, as Directors of the Missoula County Airport Industrial District, signed a Release of Easement, dated May 30, 2002, releasing and disclaiming any interest in the crosshatched easement (two utility easements) affecting Lots 10 & 11, Block 4, Phase 1B, Missoula Development Park. The document was returned to Barbara Martens in the Projects Office for further handling.

Board Appointments – The Commissioners approved and signed letters, dated May 30, 2002, reflecting the following appointments to the Missoula County Park Board:

- 1) Appointment of Carol Fischer to a three-year term. Ms. Fischer's term will run through May of 2005;
- 2) Reappointment of Dan Morgan to a one-year term as the "1<sup>st</sup> Alternate" member. Mr. Morgan's term will run until May of 2003; and
- 3) Reappointment of Dorothy N. Smith to a one-year term as the "2<sup>nd</sup> Alternate" member. Ms. Smith's term will run until May of 2003.

Other items included:

- 1) The Commissioners passed a motion nominating Chair Jean Curtiss as the voting delegate for Missoula County at the upcoming NACo Convention.
- 2) A discussion was held on the Right-of-Way Agreement (December 1996) between the State of Montana and the Airport Authority. The Commissioners directed the staff to further research this issue.
- 3) A discussion was held on the proposed change in the Missoula County Park Board Bylaws to expand the membership. The amendments cannot be approved until the July Park Board meeting; at that time, the Commissioners plan to appoint two more members.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, MAY 31, 2002**

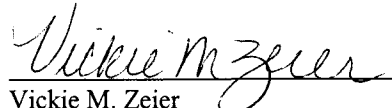
The Board of County Commissioners met in regular session; all three members were present in the forenoon. The Commissioners were out of the office all afternoon.

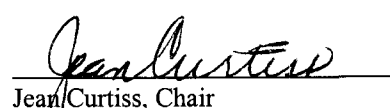
Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 30, 2002, with a grand total of \$22,720.20. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 30, 2002, with a grand total of \$338,332.36. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 31, 2002, with a grand total of \$21,929.95. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated May 31, 2002, with a grand total of \$43,170.37. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, JUNE 3, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated June 3, 2002, with a grand total of \$20,348.13. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 3, 2002, with a grand total of \$3,657.18. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 3, 2002, with a grand total of \$63,685.08. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 3, 2002, with a grand total of \$102,149.23. The Claims List was returned to the Accounting Department.

**TUESDAY, JUNE 4, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated June 3, 2002, with a grand total of \$31,945.23. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 4, 2002, with a grand total of \$119,724.95. The Claims List was returned to the Accounting Department.

Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for K/O Estates, an 11-lot subdivision of a portion of Tract 2, COS 4208, located in the N½ of Section 19, T 12 N, R 19 W, PMM, Missoula County, a total area of 16.12 acres, with the owners/developers of record being McCullough Bros., Inc. The Improvements Agreement and Guarantee are for improvements (construction of Brushpopper Lane and drainage improvements within this subdivision) that shall be completed on or before May 1, 2004 (with the option of extension, but no later than two years from the date of filing of the plat of K/O Estates), in the estimated amount of \$48,798.00. The Improvements Agreement has been guaranteed by a Letter of Credit from Community Bank Missoula.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen A. Orzech, Justice of the Peace, for the month ending May 31, 2002.

**ADMINISTRATIVE MEETING**

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-063 – The Commissioners signed Resolution No. 2002-063, dated June 4, 2002, creating a Citizen Initiated Zoning District in the Blue Mountain area, as set forth therein and shown on the map submitted thereto.

Lease Agreement – The Commissioners signed a Lease Agreement, dated June 4, 2002 between Missoula County and Community Medical Center for a 12-month parking lease for 80 parking spaces in the Fort Missoula Parking Lot. The term will be May 31, 2002 through May 31, 2003. The lease amount will be a total of \$1.00. The document was returned to Lisa Moisey, Parks Coordinator, for further signatures and handling.

Agreement – The Commissioners, on behalf of Missoula County, signed a Right-Of-Way Agreement with Northwest Indian Bible School, Alberton, Montana. Granted to the County is a temporary by-pass easement along an existing road during the construction activity on Bible Lane Bridge. Missoula County shall provide two 16-foot gates to be placed on the property boundary. This agreement shall terminate on the earlier of the completion of the construction work or September 1, 2002.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and Gregg Selby of Roy F. Weston, Inc. for the review and update of progress on the GIS Strategic Plan. Compensation shall be \$145.00 per hour; the total shall not exceed \$3,300.00. The term will be June 1, 2002 through June 7, 2003.

Request for Action – The Commissioners affirmed the preliminary FY 03 budget decision made Friday, May 31, 2002, a copy of which is located in Financial Services.

Tax Abatement Requests – The Commissioners approved the following requests from Clerk & Recorder Vickie Zeier:

- 1) To accept payment without charging penalty and interest for Tax Id. #45702;
- 2) To refund to Victoria Godkin Palermo the taxes paid for the first half (\$351.58) for buildings and improvements for Tax Id. #3404302;
- 3) To refund to Terry Maier the taxes and fees paid for vehicle title #328155;
- 4) To accept payment without charging penalty and interest for Tax Id. #90427640;
- 5) To refund to HomeWORD the penalty and interest paid for 1999 real estate tax bills for Tax Id. #s 66906 and 252703;



- 6) To refund to Carol Baldwin the penalty and interest paid for 2001 mobile home tax for Tax Id. #90424310; and
- 7) To refund to Mary Jane Tanberg the penalty and interest paid for 1999 & 2000 real estate tax for Tax Id. #s 1969309, 1969203, 5840175, and 5840188.

Other items included:

- 1) A discussion was held, and Missoula County will send a formal written proposal regarding the formula that should be used by the Department of Commerce regarding the per diem rate for those incarcerated for FY 03.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

WEDNESDAY, JUNE 5, 2002

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners attended a presentation on the Cost of Building in Missoula held at the City Council Chambers.

PUBLIC MEETING – June 5, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Clerk and Recorder/Treasurer Vickie Zeier.

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$845,924.89. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Tax Deed Title Searches (Clerk and Records Office)

Vickie Zeier presented the report.

This is a request to award a bid for Tax Deed Title Searches. The bids were opened June 3, 2002 at 10:00 a.m., with the following results:

	Per Parcel with Chain of Title Report	Per Parcel without Chain of Title Report	Answer Tax Inquiries	Hourly Rate for Complex
Insured Titles LLC	\$250.00	\$200.00	Yes	\$75.00
Stewart Title of Missoula County, Inc.	\$ 92.50	\$ 92.50	Yes	\$45.00

It is the recommendation of the Clerk and Records Office to award the bid to Stewart Title of Missoula County, Inc., as the lowest and best bid. The bid falls within budgeted expenses for Contracted Services.

Commissioner Carey asked what the budget amount was for this service?

Vickie Zeier stated the Contracted Services budget is \$16,000. This money is not actually kept. The \$92.50 is collected when the delinquency is paid. That is deposited in the Clerk & Records account then paid out to the title company for the search. It is a wash account. In previous years they have paid up to \$100 per search. As property is moving in Missoula County and title companies are busy, she expected to see higher bids this year.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for Tax Deed Title Searches to Stewart Title of Missoula County, Inc., in the amount of \$92.50 (per parcel with chain of title report); \$92.50 (per parcel without chain of title report); will answer tax inquiries and \$45.00 (hourly rate for complex searches), as the lowest and best bid. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Petition to Abandon a Portion of old Deadman Gulch Road (off Highway 93 between Missoula and Lolo)

Horace Brown presented the report.

This is a petition to abandon “the old southerly fork of Deadman Gulch Road from Highway 93 on the east to the intersection with the Deadman Gulch Road (the GLO Road shown on Township 12 North, Range 20 West, P.M.M. Plat dated July 12, 1880) located in Sections 15 and 16, Township 12 North, Range 22 West, P.M.M., Missoula County, Montana.”

The reason for the request is as follows:

- 1. This road is no longer needed.

The following landowners have been notified:

Molitor Development LLC, Katherine E. Lamoreaux, Mark E. and Jeri J. Tschida, Bryan and Norberta Rautio and the State of Montana.

**Hearing: Petition to Alter Deadman Gulch Road and a Portion of Cochise Drive (off Highway 93 between Missoula and Lolo)**

Horace Brown presented the report.

This is a petition to alter "Deadman Gulch Road and a portion of Cochise Drive from the frontage road on the west side (Deed Book 103, Page 91) of Highway 93 approximately 2,855 feet westerly, measured along the centerline, to where the old road and the present traveled way converge, located in Sections 10, 15 and 16, Township 12 North, Range 20 West, P.M.M., Missoula County, Montana."

The reason for the request is as follows:

1. The public would be better served by the new location.

The following landowners have been notified:

Molitor Development, LLC, George Tyler Hangas, Leroy C. and Joanne R. Anderson, Patrick F. and Danielle L. Dauenhauer and the State of Montana.

Horace Brown stated that a letter had been received from the Department of Natural Resources and Conservation citing the statute that abandonment of a County road or right-of-way that is used to access public land is invalid as a matter of law unless another public road or right-of-way provides "substantially the same access." The State of Montana owns State Trust Land which is accessed by Deadman Gulch Road. DNRC does not believe that another public road or right-of-way will provide access to the State Trust Land that is substantially the same as Deadman Gulch Road. Therefore, DNRC objects to the abandonment of Deadman Gulch Road. He did feel that there was substantially the same access and did not believe this would be a problem.

Chair Curtiss asked if the right-of-way to be abandoned would be moved.

Horace Brown stated that the right-of-way to the south would be abandoned. On the north, there is a portion of the Deadman Gulch Road right-of-way that does not match the existing traveled way. That right-of-way would be altered to match the existing traveled way and extend 30 feet on each side of the centerline of the existing road.

Chair Curtiss stated that before a road or right-of-way can be abandoned or altered, one Commissioner and the County Surveyor must do a site inspection. No decision will be made today, but the hearing will proceed to take public testimony on the subject. A date for the site inspection will be set. After the site inspection, a decision will be made at a subsequent public meeting. The date for decision will be set after the hearing. She then opened the public hearings.

Mark Phares, Agency Counsel for the Department of Natural Resources and Conservation, stated that he had written the letter Horace Brown referred to. Pursuant to MCA 7-14-2615, County roads or rights-of-way cannot be abandoned unless another public road or right-of-way provides substantially the same access. DNRCs concern is that if restrictions are imposed on the northern portion of Deadman Gulch Road, the portion that runs with Cochise, and the southern portion of Deadman is abandoned that there will not be substantially the same access to State lands, which is located in Section 16, T12N, R20W. He believed there was agreement that if there is substantially the same access then he had no problem with the abandonment of the southern right-of-way. DNRC just wants to make sure that is the case. Perhaps the roads could be surveyed so it will be known exactly where each road sits. That might be a separate dispute, they have a map that shows the southern portion in a different location from the location presented on the petition. There's a dotted line off the portion that is to be abandoned that cuts at a northwesterly direction up to the northern portion of Deadman and DNRC shows on their maps that that is, in fact, the southern portion of Deadman Gulch. They are concerned that if that is abandoned, there is substantially different access to the State lands, which ties in with the potential future use of the State lands. Currently it is designated for timber management. There is a potential in the future that could be changed to "Other Use" for cabins, homesites, etc., if that is the highest and best use for the benefit of the State School Land Trust. If there is not substantially the same access it could result in a fiscal problem which would tie in with the "substantially the same access" issue.

Horace Brown stated both road positions were surveyed by GPS and were determined to be the GLO Roads from the 1937 photo. He was not sure what road Mr. Phares was referring to.

Mark Phares stated he could submit their map, labeled Exhibit A. It shows that the southern portion of Deadman is shown to cut up across and meets the northern portion of Deadman, just south of the BPA easement, then meets the State gate at Section 16. If he is wrong, then that aspect of his dispute is moot. There is not a problem with the abandonment if there is substantially the same access.

Horace Brown stated that in the past, that probably was the old road, but what this petition is doing is altering the north one to the new road that is already there and built. Mr. Phares is correct in that this portion of the road is south of where the County's is located, but he did not see that he wouldn't have the same access as there is today. The only difference would be the horseshoe curve at the bottom, which may be harder for trucks to negotiate. Other than that, he did not see any difference. The other road is not very good, it would have to be constructed to run logging trucks on it.

Mark Phares stated that he had viewed the site and agreed with Horace Brown's assessment.

Chair Curtiss stated the horseshoe curve they were referring to was down by the highway. There was discussion about it when a subdivision was approved recently.

Horace Brown stated the only restrictions on the road could be speed because there would be logging trucks coming through the subdivision, they would be required to go at a slower speed. Other than that, there wouldn't be any other restrictions. They would have to meet highway loads and that road would carry highway loads.

Chair Curtiss asked if a portion of this road had recently been abandoned.

Horace Brown stated that had not happened but it had been discussed during the subdivision review.

Chair Curtiss asked if the right-of-way to be abandoned went through the Tschida place.

Horace Brown stated that was the right-of-way they are asking be abandoned. It goes to the same point as the one that is to be altered, so there is still similar access. It would be better than the access they have today.

Mark Phares stated that he thought DNRC was fine with that. From earlier discussions, their understanding was that perhaps on the northern portion where Cochise Lane actually cuts down onto the new paved section, that there may be some travel restrictions. They concede that the County can limit, for public safety, even using that road for logging purposes, if it's a public safety issue. Their concern is if that is the case and there are restrictions for public access to the State lands and the abandonment is carried out that they don't have substantially the same access. That is their real point. If it can be established that there is substantially the same access, then DNRC is okay with the abandonment of the southern road.

Horace Brown stated there would be a restriction in the springtime, during what is known as the wet season, and weight is restricted at that time. Other than that, it is a public road and would be used like any public road with no restrictions other than the weight limit and possible a speed restriction on the big logging trucks going through a residential area.

Mark Phares stated he did not see that as an impediment to DNRC's use.

Colleen Dowdall stated it was her understanding that the road that is being abandoned could not be used for logging unless it was built, so this is going from a road that would need to be built to a road that is already built that may have speed restrictions or springtime use, so there is an alternative that exists that is substantially better than the one that is being abandoned. She did not feel the State would have any legal complaint to abandoning this road for their purposes and the rights to use on a County road are the same and the rights of the County to restrict use are the same for both roads.

Mark Phares stated he would agree with that, if there is substantially better use, he would agree with the assessment. He believes there would be self imposed restrictions as to allowing logging on State lands. There would be spring restrictions which would not impede them. They just want to make sure they have substantially similar access.

Commissioner Evans asked how the Board would know if he was satisfied if at this moment he was not sure.

Mark Phares stated he would be more than happy to meet and go out and look at the road to reach an agreement.

Horace Brown stated that could be done at the same time as the site inspection.

Colleen Dowdall stated that without any further word from the State, this meets the statutory requirement of providing substantially the same access.

Mark Phares stated he would make himself available for the site inspection, as well as Cindy Burteck and Bob Rich, who have also been working on this project.

Commissioner Evans stated she wanted to know if his opposition was gone.

Mark Phares stated that it was probably gone because he thought there was substantially the same access, unless something different was seen on the ground, they were in agreement that it could be abandoned.

Chair Curtiss stated there were two petitions before the Board, but they go together. One is necessary for the other.

Horace Brown stated the first petition is to abandon the road south of the one that is to be altered. The reason the other is being altered, although it is probably in the same place as the original, is so the right-of-way can be placed on the road 30 feet on each side of the centerline and there will be no question about it in the future.

C. Leroy Anderson stated that he owned some property on the north side of the new road. They also own some land farther down where the horseshoe bend is. He asked if the new road would be dedicated as a County road.

Horace Brown stated that was correct. It is already in the same area as the original road was. They are altering the right-of-way so it fits the road that is there today.

C. Leroy Anderson asked if the right-of-way would be 60 feet wide.

Horace Brown stated that was correct.

C. Leroy Anderson stated that may pose a problem. They have a well they thought was appropriately located but it would fall within that 60 feet.

Horace Brown stated the County could grant an encroachment permit for the well.

C. Leroy Anderson asked if there were plans to rename Cochise Drive.

Horace Brown stated that was not planned.

C. Leroy Anderson stated a map they had received indicated it would become Deadman Gulch Road.

Chair Curtiss stated Deadman Gulch would go up the canyon and Cochise would come off of it.

C. Leroy Anderson stated that Cochise starts at the highway.

Horace Brown stated it goes up to the top of the hill then Deadman Gulch comes off of Cochise near the horseshoe bend.

Chair Curtiss stated that the map shows Deadman Gulch Road going toward the horseshoe bend also. Should that say Cochise.

Horace Brown stated the road would not be renamed. It has been called Cochise for a long time and Deadman Gulch Road is a new road which will be named and probably described as starting at Cochise and going up the canyon. He did not see any reason to change what has been in existence for several years.

Commissioner Evans stated she was concerned about any impacts to Mr. Anderson's well.

Horace Brown stated the road has been there. If Mr. Anderson's well is already within the right-of-way, then the County needs to give him an encroachment permit. It may be that at one time he was not within the right-of-way because the exact location of the centerline of the road way was not known. Now that it has been exactly located, Mr. Anderson's well is within the right-of-way. The only way to take care of that would be with an encroachment permit.

Commissioner Evans stated that she understood the permit process, but she wanted to make sure the well itself was not impacted.

C. Leroy Anderson stated that his well had not yet been impacted because nothing has been done to the road. If the road is widened and improved, it could impact his well.

Horace Brown stated that the County would not improve the road, but the Forest Service could eventually do that.

C. Leroy Anderson stated that even if it happens in the future, it would probably put the road surface right over the top of his well. When he purchased the property, they were informed that the edge of the property was only five feet from the center of the road that existed and the well is 10 feet over from that, which is considered appropriate. If that has changed, it means their well would probably be under the surface of a new road.

Horace Brown stated the current map was done with GPS based on the old GLO Road and from 1937 maps and aerial photos showing the old road. When this site is inspected, they should look at the location of Mr. Anderson's well to see if there is a problem. The right-of-way might be altered so it doesn't go across the top of his well. That would mean that in the future if the road is improved, it might have a curve in it to get around his well.

C. Leroy Anderson stated that Cochise Drive as it goes down from where this other road would connect to it is currently very narrow, too narrow for cars to pass and certainly too narrow for logging trucks. He has heard about extending or moving the lower part of the road and designating the new right-of-way 30 feet from the centerline.

Horace Brown stated it would follow the road that is there, 30 feet from the centerline of that road.

C. Leroy Anderson stated that would leave the road very close to his and others buildings and homes that have been there for many years. His understanding was that by abandoning one road for the benefit of a developer, he will give up part of his area and his property value will decrease, while others will increase. He felt that was the heart of this situation.

Horace Brown stated that the old road is reasonably close to what it is being altered to today. The road was probably there when Mr. Anderson bought his land, but it wasn't built. The difference today is that the road is being built and used. The 60 feet is an easement, it does not take anyone's land. It is used to build the road and accessories.

C. Leroy Anderson asked if there was any compensation for the additional width that would be required.

Horace Brown stated there would not because the width was already there. The road location that is being altered to is reasonably close to what existed originally.

Chair Curtiss stated these are issues that will be looked at during the site inspection.

C. Leroy Anderson asked if they would be notified when the site inspection would occur so they could be available.

Horace Brown stated that could be arranged.

Robert Zentgraf stated he was a forester for Plum Creek Timber Company. He asked about the bottom portion of Cochise from Highway 93 to the new development. Would asphalt be put on that road or would it be a gravel road.

Horace Brown stated the road is already paved the length that it is going to be paved.

Robert Zentgraf asked if the lift was 4 inches.

Horace Brown stated he did not know, the paving was done by the subdivision.

Robert Zentgraf stated that he heard it was a 2 inch asphalt pour which is similar to what a driveway would have. If that is the case, the State would have a money pit problem with repairs due to the loads that would come from Plum Creek.

Horace Brown stated this was paved by the subdivider that did the Deadman Gulch Homesites. It probably was 2 inches, but if that was a problem, then during a timber sale, it should be factored in to do an overlay. It would depend on the base of the road.

Chair Curtiss stated the subdivider would have the specifications for the road.

Colleen Dowdall asked Mr. Zentgraf if his concern was that the subdivider didn't provide adequate paving to handle Plum Creek logging trucks?

Robert Zentgraf stated that was a possibility, he assumed it was 4 inch.

Colleen Dowdall stated the developer would be required to do an improvement adequate to handle the development traffic, not the logging trucks.

Robert Zentgraf stated that the paving took a road that could handle logging trucks and altered it to something that perhaps could not.

Colleen Dowdall stated that if the developer had been required to pave, Plum Creek's need would not have been taken into account, only the needs of the development.

Robert Zentgraf stated that he hoped that had been checked out because even concrete trucks are heavy.

Cindy Burteck stated she was a forester for DNRC. The road is paved from the highway to the first switchback, then it is gravel from there on up Cochise. At the time the developer was putting down the pavement, DNRC offered to work with them. If the County could verify the road location, DNRC was willing to put down extra pavement at the time the road was paved. It would provide better adhesion. When a layer is added later, it can cause problems with the addition popping up. It was also suggested to Clint Harris that maybe that 450 feet remain unpaved so that problem didn't happen. It was paved from where it comes off Cochise onto Deadman then on into the subdivision. They only put 2 inches which is substantial enough for only passenger vehicles. That is their biggest concern, will there be the same use with this change, without future costs of having to repair the road.

Horace Brown stated the subdivider would only be responsible for meeting the requirements for the subdivision. This is beyond that and if logging is to be done, that needs to be looked at. It may be a cost that needs to be included with the logging, overlaying the road to handle the logging trucks. These are residential roads, not logging roads.

Chair Curtiss stated that DNRC had offered to help improve the road but that was not successful.

Commissioner Carey asked why that did not happen.

Horace Brown stated that the road was paved before an agreement could be reached. It probably did not happen the way it should have.

Mark Phares stated he might clarify the legal issue in terms of the Department's perspective, which Cindy hinted at. Partly the question is, if the paving on the road alters substantially the allowable use of that road, there is an argument that there is not substantially the same use and that the abandonment of the southern road would be disallowed. That is part of their concern, they need to have substantially the same access. If paving it to 2 inches doesn't allow that, then they are worse off than if it weren't paved at all.

Chair Curtiss stated that the County is not allowed by law to require a developer to pave it to logging truck standards.

Mark Phares stated he understood that and that would militate against abandoning the lower road. The County can impose certain restrictions with respect to the access but they have to have substantially the same access, which to him would mean not abandoning the southern portion.

Horace Brown stated the other road doesn't even exist.

Mark Phares stated that the road hasn't been cut in, but it hasn't been abandoned.

Horace Brown stated it would be cheaper to pave that short section than build an entire road. He felt there was a higher grade of road than if the other one not constructed wasn't abandoned.

Mark Phares stated they have had estimates as high as \$8,000 to increase the asphalt to a 4 inch depth and he did not think it would cost that much to cut in a road. As long as there is substantially the same access there is no problem, but he was not sure the cost benefit analysis would bear that out.

Colleen Dowdall stated that she did not feel the legislation had anything to do with road improvements. It has to do with road right-of-way. The right-of-way exists with the same rights in both locations. The problems with the one that doesn't exist include that it goes through Mr. Tschida's living room. She was sure that would be expensive to fix.

Mark Phares stated that as the road currently stands it goes to the south of that property.

Colleen Dowdall stated the right-of-way which is being abandoning goes through the Tschida's living room. DNRC's access is substantially better in terms of right-of-way. All the statutes have to do with are right-of-way. To suggest to a developer that they not have to pave in the air stagnation zone where paving is required by the Health Department is not something the County could do during subdivision review. She reviews all subdivision reports and did not recall any comments from DNRC about wanting to participate in the paving of this road. She did not know if those comments were part of the subdivision process. It is the Public Works Department and subdivision regulations that determine what level

of paving is required for what purpose, but to come in now and say this will cost more money for logging trucks because the subdivider was not required to pave to meet DNRC's requirements is difficult to hear.

Mark Phares stated that was not his argument. It is true that the County doesn't have the authority to require pavement to allow for logging. His argument is if that's the case and the pavement to 2 inches substantially alters the access to the public tract, then that militates against abandoning the southern right-of-way. That is the point he is making and that may not be the case.

Colleen Dowdall stated that she would argue it isn't the case because this is talking about right-of-way and there is right-of-way that is clear of encumbrances and the right to use the right-of-way with logging trucks and what repairs have to be made as a result of that will have to be dealt with. But the right-of-way remains and it is substantially the same, if not better, by the fact that it is actually an improved roadway. If the legislature thought that their requirement that a right-of-way not be abandoned, unless there was substantially the same roadway, was being used in this way, they would be shocked.

Horace Brown stated the speed for the logging trucks will help in maintaining the road, it will be around 10 or 15 mph. Even on 2 inches of asphalt, if the trucks go at a slow speed, the road will not be torn up. If they were allowed to go 40 or 50 mph, then it would tear up the road.

Commissioner Evans stated that she heard that if more asphalt was added to the road, it would pop off because it wasn't laid at the same time.

Cindy Burteck stated it was like covering a pot hole, it usually pops up. Usually when a road is resurfaced, it is ripped first then a second layer is applied. She had been talking to Clint Harris and Chuck Wright as soon as she knew this road would be paved. DNRC was offering to pitch in for the extra pavement. DNRC did have input, not in writing, but she visited the site on several occasions. They needed to know exactly where the road was so they could be sure they were applying the money in the correct location. The exact location was not provided.

Commissioner Evans asked if Cindy Burteck had any conversations with Greg Robertson, the Public Works Director, who oversee Clint Harris and/or the developer to see if the top of this road can be scratched and 2 more inches of asphalt applied so everyone is happy.

Horace Brown stated the County does overlays all the time and if done correctly, it does not pop off.

Commissioner Evans stated that the concern seems to be that the road isn't heavy enough for logging trucks. If they want it to be heavy enough, the County cannot ask the developer to do that. It seems there were too many people involved in the discussions. If DNRC wants to do that, they can, working with Horace Brown and Greg Robertson.

Joanne R. Anderson stated she was C. Leroy Anderson's wife. She had been under the assumption, through discussions with DNRC, this is not just an asphalt depth issue, but that the way the road is constructed, there is a lot of fill at the corner where it becomes Deadman off of Cochise. There is some problem as to whether this is actually substantial enough to support a logging truck through the right hand turn to Cochise. Some kind of a drainage area may also be involved. This may be more of an issue than just the depth of the asphalt.

Chair Curtiss asked counsel if one hearing for both these issues was allowed.

Colleen Dowdall stated that both public hearings could be opened and testimony accepted. Another call for comments should be done so everyone understands that this hearing pertains to both petitions.

Chair Curtiss stated that the hearings for both petitions were opened simultaneously. She asked if there were any further comments on either petition.

Commissioner Evans stated that before the site inspection was done, she would like to see if some of these issues could be resolved. She would like to know if DNRC can work with the County and the developer to add more asphalt. She would like to know if the Anderson's well will be impacted.

Horace Brown stated the answer to the question on the Anderson's well could be done during the inspection. Before the road is altered, it will be surveyed so there will be no questions in the future.

Commissioner Evans asked if Horace Brown could work with Cindy Burteck and Bob Rich on the asphalt question.

Horace Brown stated he did not have any problem with that.

Colleen Dowdall stated that she had pulled the Deadman Gulch Homesite Subdivision file. It was required that the road be built to County subdivision standards. It does note that there could be logging but there are no improvements proposed for Deadman Gulch Road as a result of the logging. In that case, it is quoting Cindy Burteck through Clint Harris. Mr. Harris' letter also notes that logging will occur and that DNRC had offered help with improvements to Cochise Drive, but there is nothing specific about what those improvements are. The findings note that DNRC is willing to cooperate. That is the extent of what the Commissioners heard during their review of the subdivision.

Commissioner Carey stated that he shared Commissioner Evans concerns and wondered who can respond to Mrs. Anderson's concerns about the level of fill.

Horace Brown stated that Greg Robertson should look at that and do some testing to determine whether or not that hill is set up for that type of traffic.

Commissioner Carey stated that Greg Robertson is the Director of Public Works and would make sure he was notified to respond to Mrs. Anderson's concerns. He was concerned about this process. A way needs to be found so this does not happen again, one agency working with another agency. Better communication is needed. It may be that the County did

degrade the road for purposes of logging. It was okay as an unpaved road but with just 2 inches of asphalt it was not as good for logging. He wanted to find a way to avoid this situation again.

Colleen Dowdall stated that in reading the Health Department's comments, for Plum Creek or DNRC to use this road for logging, they would have been required to pave it because it is identified as a driveway. If there was any change to make it commercial use, the Health Department would have required paving.

Commissioner Carey stated that what he heard today was that one governmental agency has offered to help pay for it but it didn't work out somehow. He wanted to know how to improve communications.

C. Leroy Anderson stated that he has been in discussions with DNRC about coming directly onto Cochise Drive over his access road, which is capable of carrying log trucks. They had discussed receiving a fee for granting this permission and as a temporary situation, not a permanent one. This would allow the log trucks to go directly onto Cochise Drive using a standard gravel road. He did not know the outcome of the suggestion yet, but they did expect a fee and for it to be for a period of 5 years. That may not be satisfactory to DNRC but they should look carefully at the corner where there is a lot of fill. He did not think there was adequate room to turn and heavy weight on the outside edge of the road could cause problems.

Joanne R. Anderson stated that a time limit had been placed on the proposed easement through their property, but it was made clear that they could receive an extension if they needed one for logging purposes. At all times they were also free to use the road for maintenance to take care of the forest. For the record, the fee would be \$1,000 per year.

There being no further comments, both public hearings were closed.

Chair Curtiss stated that a time would be set for one Commissioner and the Surveyor to do a site inspection. Time was also needed for Greg Robertson to look at the fill problem. The decision on the two petitions would be postponed to June 26, 2002.

Commissioner Carey stated that those folks who would like to be present at the site inspection would be notified of the date and time of the inspection.

There being no further business to come before the Board, the Commissioners were in recess at 2:25 p.m.

#### THURSDAY, JUNE 6, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated June 6, 2002, with a grand total of \$3,559.02. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 6, 2002, with a grand total of \$15,587.80. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 6, 2002, with a grand total of \$10,642.19. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 6, 2002, with a grand total of \$2,610.40. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Clerk of the District Court, Kathleen D. Breuer, for the month ending May 31, 2002.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-026 for the Health Department, in the amount of \$100.00 (Lab Services to Contracted Services), as an object code was needed, and adopting same as a part of the Fiscal Year 2002 Budget.

Contract – Chair Curtiss signed a continuation contract with Unisys Corporation for hardware/software, and for the installation of a computer system that runs the Criminal Justice System. The amount of \$196,632 is scheduled in the Tech Fund for FY03. The document was returned to Jim Dolezal in Information Services for further handling.

Other items included:

- 1) The Commissioners passed a motion to appoint Mike McMeekin as Sheriff until the end of the year, to serve out the term of retired Sheriff Doug Chase.

The minutes of the Administrative Meeting are on file in the Commissioners Office.



**FRIDAY, JUNE 7, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Election Canvass

In the morning, Chair Curtiss, Commissioners Carey and County Auditor Susan Reed canvassed the Primary Election, which was held on June 4, 2002.

Swearing-In Ceremony

In the afternoon, Chair Curtiss conducted the swearing-in ceremony for Sheriff Mike McMeekin, the winner in the Primary Election, to serve out the term of retired Sheriff Doug Chase. Sheriff McMeekin will be sworn in again the first of the year to begin his first full term.

Claims List – The Commissioners signed the Claims List, dated June 7, 2002, with a grand total of \$291.06. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 7, 2002, with a grand total of \$5,236.91. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 7, 2002, with a grand total of \$54,835.86. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 7, 2002, with a grand total of \$274,984.36. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 7, 2002, with a grand total of \$9,596.69. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 7, 2002, with a grand total of \$10,469.78. The Claims List was returned to the Accounting Department.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

**MONDAY, JUNE 10, 2002**

The Board of County Commissioners did not meet in regular session. Chair Curtiss was in Helena attending a meeting of the MPIRC (MT Parent Information Resource Center Network) Advisory Board, and Commissioner Evans was out of the office until noon. In the afternoon, Commissioner Carey attended a Travelers Rest Board Meeting in Lolo. In the evening, Chair Curtiss attended the Land Stewardship Program's celebration of "Whittier Court" held at 424 Madison.

**TUESDAY, JUNE 11, 2002**

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office from June 11<sup>th</sup> through the 14<sup>th</sup>.

Claims List – The Commissioners signed the Claims List, dated June 10, 2002, with a grand total of \$4,195.87. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 11, 2002, with a grand total of \$23,710.70. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 11, 2002, with a grand total of \$18,820.08. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 11, 2002, with a grand total of \$35,991.98. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for the Report of the Sheriff, Michael McMeekin, for the month ending May 31, 2002.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Agreement – Chair Curtiss signed an Agreement between Missoula County and Williams Brothers Construction, LLC, for Phase I improvements to the Lolo Wastewater Treatment Plant (bid was awarded on May 22, 2002). The total amount shall not exceed \$1,084,052.94. All work will be substantially completed within 270 consecutive calendar days after the date when the contract times commence to run. The document was returned to Public Works Director Greg Robertson for further handling.

Agreement – The Commissioners signed an Agreement between the Montana Department of Transportation ("MDT") and the Missoula Office of Planning and Grants ("MOPG") for the 2002 Missoula TDM (Transportation Demand

Management Program – Missoula in Motion). The MDT and MOPG recognize the need to improve air quality and reduce traffic congestion in the Missoula Metropolitan area; the purpose of the program is to fund transportation projects or programs that will contribute to attainment of national ambient air quality standards. This work plan initiates the fourth year of Phase II of Missoula's TDM Program, and covers the time period from June 22, 2002 through June 30, 2003. The budget schedule is set forth therein.

Request for Action – Chair Curtiss signed two (2) letters, dated June 20, 2002 to the HOME Program Manager, Montana Department of Commerce, Helena, Montana, pertaining to a grant application submitted by Missoula County on behalf of the Human Resource Council, for 2002 HOME funds for a County-wide first-time homebuyer assistance project. Required as part of the grant application, the letters ask for Confirmation of Match Eligibility and Certification of Consistency with the State of Montana Consolidated Plan. The letters were returned to Jenifer Blumberg in the Office of Planning and Grants for further handling.

Request for Action – The Commissioners approved and Chair Curtiss signed a letter, dated June 5, 2002 to Jeff Moore, Broker, granting certain extension requests by Abbott and Jacqueline Norris for Lot 15, Block 3, Phase 4, Missoula Development Park. Extended is the Title Contingency date to June 25, 2002, and the Property Investigation date to July 5, 2002. The letter was returned to Barbara Martens in the Projects Office for further handling.

Request for Action – The Commissioners approved and signed a letter, dated June 11, 2002 to Dale Dahlgren, Legion Baseball Liaison, granting an extension of the sublease by American Legion Post #27 of the Cregg-Lindborg Field to Mountain Baseball LLC d.b.a. for the 2002 playing season (subject to the terms and conditions stated in the Memorandum of Agreement dated April 23, 2002). The letter was returned to Lisa Moisey, County Parks Coordinator, for further handling.

Resolution No. 2002-064 – The Commissioners signed Resolution No. 2002-064, adopting the Lolo Regional Plan Final Draft. The Resolution of Intent was passed and adopted April 24, 2002.

Letter – The Commissioners signed a letter, dated June 12, 2002, to Ron Ewart of Eli & Associates, Inc. approving his request to amend the phasing plan for Phases III and IV of Pleasant View Homes No. 2, regarding the sewer line installation. The final plat approval deadlines will remain the same (February 28, 2005 for Phase III, and February 28, 2006 for Phase IV).

Board Appointment – The Commissioners signed a letter dated June 12, 2002, appointing Dan R. Bucks to fill an unexpired term as a member of the Missoula Planning Board. Mr. Bucks' term will run through December 31, 2003.

Request for Action – Chair Curtiss signed Certifications for the HUD Continuum of Care grant application to provide homeless assessment/case management services at the Salvation Army. If funded, this grant will provide Missoula County with a three-year grant totaling \$184,737. The documents were returned to Kristina Swanson in the Office of Planning and Grants for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

### WEDNESDAY, JUNE 12, 2002

The Board of County Commissioners met in regular session; a quorum of members was present.

#### CHIEF ADMINISTRATIVE MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-033 for the financial Administration Department, in the amount of \$25,000.00, for the purpose of transferring termination reserve to Sheriff's Office for Undersheriff termination, and adopting same as a part of the Fiscal Year 2002 Budget.

Letter – The Commissioners signed a letter, dated June 12, 2002, to Loran Frazier, District Administrator, Montana Department of Transportation, regarding the Mullan Road and Pulp Mill Road Speed Zone Study, stating their opposition to any upward adjustment in the posted speed for both road segments.

Other items included:

- 1) The Commissioners authorized Deputy County Attorney Mike Sehestedt to accept service in the Mullan Corridor lawsuit.

#### PUBLIC MEETING – June 12, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson. Commissioner Barbara Evans was on vacation.

#### Pledge of Allegiance

#### Public Comment

None

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**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$466,336.83. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Bid Award: RSID #8470 – Expressway Paving (Public Works)**

Greg Robertson presented the report.

This is a request to award a bid for RSID #8470 – Expressway Road Construction and Paving – from its terminus at Butler Creek Road to DeSmet Road. Public Works solicited bids from responsible contractors. On June 11, 2002, three Construction Bids were received and opened with the following results:

AAA Construction	\$223,900.00
Johnson Brothers Construction	\$320,399.00
JTL Group, Inc.	\$225,246.00

The engineer for the project has examined the bids and concurs with the recommendation for award. The engineer’s estimate for the project was \$237,000.00. There was one discrepancy noted in AAA’s bid in the seeding and fertilizing category; it was substantially lower than the other two bidders. AAA Construction was contacted and they have assured the County that they can meet the specifications for the price outlined.

Staff recommends award of the construction bid to AAA Construction in the amount of \$223,900 as the best and most responsive low bidder, contingent on the sale of bonds.

Commissioner Carey moved that the Board of County Commissioners award the bid for RSID #8470 – Expressway Construction and Paving – to AAA Construction in the amount of \$223,900.00 as the best and most responsive low bidder, contingent on the sale of bonds. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

**Hearing: Leibenguth Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as COS 3935; an aliquot 20 acre parcel located in the north one-half of the northwest one-quarter of the southwest one-quarter of Section 23, Township 11 North, Range 20 West.

Scott Leibenguth has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Florence, Montana. Mr. Leibenguth proposes to create one approximately 5 acre parcel for transfer to his wife, Susan Lynn Leibenguth; one approximately 5 acre parcel for transfer to his daughter, Brittney Lynn Leibenguth (age 11) and keep the remaining approximately 10 acre parcel. The proposed use of each parcel is single family residential.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 3935 filed by Gordon Sorenson	1991	Over 20 acres in size	John Felton	

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

This property was in the ownership of Mr. Leibenguth and his wife. His wife transferred her ownership to him so the property is in his name alone, because it is not possible to create a family transfer for the benefit of one of the owners of the property.

Scott Leibenguth was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to evade subdivision review. She asked if Mr. Leibenguth really did intend to transfer this property to his wife and daughter?

Scott Leibenguth stated that was correct. This was being done for estate planning purposes.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Scott Leibenguth to create two 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. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Chair Curtiss stated the Mr. Leibenguth would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing: Drew Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 161 Micro, Page 2351, located in Section 33, Township 16 North, Range 14 West.

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Kerry Drew has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 200 acres in size located near Seeley Lake, Montana. It is the remainder parcel of the Drew Addition Subdivision filed in 1995. Mr. Drew proposes to create one approximately 12-1/2 acre parcel for transfer to his daughter, Danielle J. Drew; one approximately 15 acre parcel for transfer to his daughter, Sarah Lynn Drew (age 16), for single family residential purposes and keep the remaining approximately 170 acre parcel.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
Book 161, Page 2351 – 320 acres	1981	Deed of Distribution	Estate of Sam Drew	Kerry Drew
COS 2850 (1 tract)	1983	Over 20 Acres in Size	Kerry Drew	
COS 3512	1987	Occasional Sale	Kerry Drew	
COS 4076	1992	Over 20 Acres in Size	Kerry Drew	
COS 4499	1995	Agricultural Exemption	Kerry Drew	
Drew Addition	1995	Minor Subdivision	Kerry Drew	
Remainder of Drew Addition	1995	Over 160 Acres	Kerry Drew	

According to the records kept by the Missoula County Surveyor, the applicant has previously used exemptions to the Subdivision and Platting Act as shown above. All exemptions were used in Section 33, Township 16 North, Range 14 West.

Kerry Drew was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to evade subdivision review. She asked if Mr. Drew really did intend to transfer this property to his daughters?

Kerry Drew stated that was correct.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Kerry Drew to create two 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. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Chair Curtiss stated the Mr. Drew would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing: County HOME Application on behalf of the Human Resource Council (First-time Homebuyer Program)**

**Hearing: Missoula Housing Authority HOME Application (SRO Project)**

Jenifer Blumberg, Office of Planning and Grants, presented the staff report.

This is a request to hold a Public Hearing to receive comments on the HOME Program and the County’s grant application on behalf of the District XI Human Resource Council (HRC) for a first-time homebuyer assistance program. Part of the HOME Program requirements are that a Public Meeting is held within two months of the grant application deadline of July 1, 2002. The County will apply for \$500,000 on behalf of HRC.

In addition, the Missoula Housing Authority will also be submitting a HOME application for a Single Room Occupancy (SRO) Project and would like to hold its Public Hearing at the same time.

The purposes and goals of the HOME Program are to expand the supply of decent, safe, sanitary and affordable housing for very low income and low income Montanans; to mobilize and strengthen the abilities of units of local governments and community housing development organizations to implement strategies for achieving an adequate supply of decent, safe, sanitary and affordable housing; and to provide participating entities on a coordinated basis with various forms of Federal housing assistance.

A brief presentation will be made by Jim Morton from the Human Resource Council on the first-time homebuyers assistance program. Peter Hance from the Missoula Housing Authority will speak about the SRO project.

Jim Morton, Director of the Human Resource Council, stated that an application is being submitted to the Department of Commerce HOME Program for \$500,000. The funds will be used for a first-time homebuyer program in Missoula County. This opportunity has been provided for people inside the City of Missoula for the last two years. This will be the first time in several years that the County has sponsored a program. The Montana Board of Housing will provide low interest financing at 5.95%. Rural Development will provide loan guarantee and loan money to qualified households at 1%. Those two entities can be blended which buys down the payment, which is a critical feature. Housing costs continue to increase and there is more demand for fewer homes available. It is hoped that most of these houses will be in the County but there is a chance that some could be in the City. The intent is to see most of the money used outside the City.

Peter Hance, Director of the Missoula Housing Authority, stated that he is really representing the At Risk Housing Coalition (ARHC) which was created about 11 years ago to look at how to solve the problems of those whose housing is at risk. One of the highest priorities identified was the need for a Single Room Occupancy (SRO) facility. Throughout history, there have been lots of SROs, they used to be called Boarding Houses. Most of those have been eliminated through zoning in recent years. Although the supply has been taken away, the demand still exists. The Poverello Board has said that they have people who have been living there well over six months up to two years. The SRO is not a shelter or temporary housing. It is a permanent housing for individuals who have been without housing for a long time. Since

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about 1991, the At Risk Housing Coalition has been trying to put together this kind of housing. The Housing Authority was in the position of knowing of a piece of property that was available and had the cash flow capability to help finance the application process. An offer has been made on the Uptown Motel, just across Woody Street from the County Courthouse. It has 15 units and one unit used by the owner/manager. It currently has no long term occupancy and will not remove anyone from long term housing only to be replaced with a different program. This will add permanent housing to the supply. This was particularly beneficial because of its location, close to the bus station, close to other facilities and in a supportive neighborhood. The neighbors are in agreement with the proposal. The motel is currently a clean, well run facility and it will benefit more permanent housing in the neighborhood. The units have been very well maintained. There are other informal SROs in town, some of the old motel along Broadway and elsewhere, but they don't have the support services needed. This will provide not only housing, but support with ongoing maintenance. The rooms are fairly large and will include full bath and adequate kitchen facilities, they will be independent living facilities, permanent housing. The building façade will be remodeled to fit the architectural style of the neighborhood. This will be the first SRO in the State of Montana and they want to really make it shine. Four grants will be needed to make this work. The HOME grant will help with the acquisition. Funding will also be needed from the Federal Reserve Bank of Seattle (AHP Funding), Team of Care funding through HUD and hopefully a Community Development Block Grant. There will be remaining debt on the building that will be paid by Section 8 payments, so private funding will also be involved. The Housing Authority will purchase the property and bring the project through as far as they can into development. Once the facility has enough momentum, a new non-profit corporation will be created to own and run this facility. Members of the At Risk Housing Coalition will sit on that corporation's board as it was really their drive that brought this idea to fruition. They hope there will be 13 to 15 units. The purchase price of the hotel is \$550,000. All costs combined will be approximately \$1.2 million. The annex of this motel is a separate facility and will be retained by the owner and operated as a motel.

Chair Curtiss opened the public hearings.

Ed Higgins stated he was the managing attorney for the Missoula Office of Montana Legal Services Association. They provide free civil legal assistance to the low income community. They are in the support of both the SRO project and the first-time homebuyer assistance program. Both these programs will help to meet a real need in Missoula County.

Captain Henry Graciani, Salvation Army, stated that the Salvation Army was very much in support of this project. There is a tremendous need for an SRO facility in the community and will be an asset and improvement. This is truly a project of ARHC, various non-profit groups in the community coming together with a vision of how to improve the Missoula community.

Jude Munson, Summit Independent Living Center, stated that the Center offers its support to both projects. She would like to ask that in the process, accessibility be taken into consideration and the Center be consulted if there are any questions regarding accessibility.

Brendan Moles, Program Manager for Housing Loans at HRC, stated that he worked with those applying for homebuyer assistance funds. They are currently working on their second program for the City of Missoula. The first program assisted 27 households with approximately \$500,000 in less than 10 months. It was planned to be an 18 month grant which shows the demand is quite high. The current funding, just over \$400,000, has over 50% committed in four months. A lot of inquiries are received about purchasing homes outside the City limits. He read some support letters from people who had been able to purchase homes within the City of Missoula:

*"I'm writing today to voice my support for Missoula County's application to the Montana Department of Commerce for a HOME grant for homebuyer assistance funds. I'm a recently widowed mother who, before homebuyers assistance, rented a three bedroom apartment with two roommates and shared a bedroom with my young daughter. With Missoula's high cost of living, I didn't see any other options. I had some money for a small down payment, but not enough to make payments affordable. Then I found Brendan Moles' program. With his assistance, my daughter and I now share a two bedroom house instead of one room and I believe it would have been impossible without homebuyers assistance. So in turn I would like to fully support Missoula County's application for homebuyer assistance funds especially wishing they are able to assist other families in making homeownership a reality." -Stacy Hoage*

*"We are grateful for the opportunity we were granted through the Human Resource Council to buy our home. We had looked many directions to find financing and were not finding sufficient funds until we talked with Brendan at the Human Resource Council. Thank you to the program. We have been able to buy our home which we feel is a great investment not only for us, but for the program. We support this program and hope it continues to help others in this community." -Daniel and Christina Bergquest*

*"I am writing to express my unconditional support for the Human Resource Council's homebuyer assistance program as well as my support for its continued funding. I am a 46 year old single woman who was recently fortunate enough to purchase a house in Missoula. I would not, under any circumstances, have been able to do this without the assistance and funding I received from HRC's program. I truly hope HRC will receive the funds necessary to continue helping people who would not otherwise be able to buy homes in Missoula's increasingly difficult housing market." -Marion Paliea*

Sharon O'Hare, Missoula Housing Authority, stated she was speaking on behalf of the home ownership loan program. Her job is to keep track of trends in terms of both home ownership and what happens to the very lowest income population. The SRO is in response to a need to assist people at that very low income. There is also a continuum of care that exists for housing. HRC's program will assist those who are a little further along but still need some help in terms of being able to achieve home ownership. There is a growing gap between the cost of housing and income. The home ownership loan program offered by HRC will help bridge that gap.

Laurie Jorgenson, Client Services Coordinator at the Poverello Center, stated there is a need for an SRO in Missoula. The Poverello serves 100+ singles a night. As singles, it is increasingly difficult to find support in the community. This project is ideal for this population. The vicinity to social services and transportation is ideal.

Kay Grissom Keiley, HomeWORD, stated that they support both projects, specifically in reference to the home ownership program. HomeWORD administers Missoula's home ownership center and homebuyer education programs and classes. These classes will be mandatory for those receiving assistance. The price of homes has jumped considerably over the past 10 years and more specifically the past couple of years. The down payment assistance will help fill the gap between what lower income families can afford and the market price. This gap continues to get bigger and bigger. HomeWORD fully supports this project.

Patty Kent, Director of Housing and Development for the Western Montana Mental Health Center, expressed support for both projects. One of her first meetings as Director about 9 years ago was on the joint City-County first time homebuyer program. That need has continued for all of these years and will continue to grow. As has been mentioned, the gap also continues to grow. She also urged the Commissioners to continue to support housing that is affordable that comes in from the private sector. Density cannot afford to be down-zoned. She asked that the Board support projects that come in for 8, 10 or 12 units per acre that are ideal candidates for bridging the gap between affordability and wages. She is also in support of the SRO project. The WMMHC has wanted to do such a project for a long time but the opportunity has never come forward. This is a wonderful opportunity to provide housing not available before in Missoula. The people that will benefit are those, who for whatever reason, cannot handle the structure of an apartment building. The SRO provides a small space with everything needed and a certain degree of independence. This will be a good start to provide for that segment of the population.

Paul Peterson, Summit Independent Living Center, stated he was also a member of the Coalition of Montanans Concerned with Disabilities. He expressed his support for both project. The term "affordable" is mentioned quite often and he hoped the term "accessible" would also be considered. One of the most difficult problems for people with disabilities is finding a place to live because they are the most unemployed populations in the country. The assistance levels they live on are also quite low. Anything that bridges those gaps is most welcome. A \$220,000 condo is completely out of reach for someone just leaving nursing home care. Affordable and accessible housing is needed and these projects are a way to make that happen. He was in support of both of them.

By a unanimous show of hands, all those present in the audience were in support of both the HOME applications. There being no further comments, the public hearings were closed.

Commissioner Carey moved that the Board of County Commissioners sign the Resolution to Authorize Submission of Application and Agreement to Certifications for Application for Montana Department of Commerce Home Investment Partnerships Program (HOME) on Behalf of the District XI Human Resource Council. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey stated that he applauded the efforts of all the housing experts present. He also believed the Board of County Commissioners would be interested in finding other ways to use County resources to help build affordable housing. All the ways a governing body can help build affordable housing have not been exhausted. He would be interested in looking at different and new ways to approach this problem in Missoula County. The need continues to grow. There are more ways to be explored to partner up to help solve this growing problem.

Commissioner Carey moved that the Board of County Commissioners approve signing a Letter of Support for the Missoula Housing Authority's application for a Single Room Occupancy (SRO) project. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

There being no further business to come before the Board, the Commissioners were in recess at 2:10 p.m.

Resolution No. 2002-065 – Following the Public Meeting, Chair Curtiss signed Resolution No. 2002-65, authorizing the submission of a Uniform Housing Application, and Agreement to Certifications for Application for Montana Department of Commerce HOME (Home Investment Partnerships Program) on behalf of the District XI Human Resource Council. These funds are for a homebuyer assistance loan program serving very low- and low-income households.

#### THURSDAY, JUNE 13, 2002

The Board of County Commissioners met in regular session; a quorum of members was present.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Resolution No. 2002-066 – Chair Curtiss signed Resolution No. 2002-066, relating to the \$225,000 RSID (Rural Special Improvement District) No. 8470 Bonds, authorizing the issuance and calling for the public sale thereof. The sale of the bonds has been set for Wednesday, July 3, 2002, at 1:30 p.m., and will be awarded based on the lowest net interest cost.

Agreement – Chair Curtiss signed a Project Specific General Agreement between the State of Montana Department of Transportation and Missoula County for the restoration and preservation of a historical trolley car at the Transportation Museum at Fort Missoula (CTEP Project 8199(51)). The estimated cost of the project is \$197,720; Missoula County will be responsible for \$26,533. The document was returned to County Surveyor Horace Brown for further signatures and handling.

Counter Offer – As per recommendation by the Offer Review Committee, the Commissioners approved and signed a Counter Offer (with amendments) by Grayback Forestry, Inc. for the purchase of Lot 5A, Block 2, Phase 1, Missoula Development Park. The sales price is \$117,700.00. The document was returned to Barbara Martens in the Projects Office for further handling.

Professional Services Agreement – The Commissioners signed a Professional Services Agreement between Missoula Osprey Professional Baseball and the Missoula County Sheriff's Department for professional security services for the period covering the 2002 baseball season. Approximate dates are June 2002 through September 30, 2002. Compensation is as set forth therein.

Compensation Plan – The Commissioners approved and adopted the revised Missoula County Section 457 Deferred Compensation Plan. The primary purpose of this Plan is to attract and retain qualified personnel by permitting them to provide for benefits in the event of their retirement or death. The document was returned to Patty Baumgart in Human Resources for further handling.

Board Appointments – The Commissioners approved and signed letters, dated June 14, 2002, to 1) Jim Valeo and 2) Chuck Keegan, re-appointing each to a three-year term as members of the Missoula Development Authority. Their new terms will run through June 30, 2005.

Agreement – Chair Curtiss signed a Subordination Agreement, dated June 14, 2002, between Missoula County and M. Douglas McCullough, a participant in the Missoula County Affordable Homebuyer Program who is refinancing his home. Mr. McCullough's home is located in the platted subdivision of Butte Addition (Lot 8, and the East 14 feet of Lot 9). This is a standard agreement that must be completed when a homebuyer makes any changes to his/her original financing package. All terms and conditions are as set forth therein. The document was returned to Jenifer Blumberg in the Office of Planning and Grants for further signatures and handling.

Other items included:

- 1) The Commissioners approved the appointment of Steve Johnson to replace Hal Luttschwager as Plan Administrator for the Missoula County Deferred Compensation Plan.
- 2) The Commissioners pre-approved a request to advertise for personnel enhancements for the Missoula Public Library. Positions should be filled by July 1, 2002. CFO Dale Bickell stated the Library's revenue and cash reserves will support these enhancements.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### FRIDAY, JUNE 14, 2002

The Board of County Commissioners did not meet in regular session. Chair Curtiss was out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

#### MONDAY, JUNE 17, 2002

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated June 13, 2002, with a grand total of \$2,672.05. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 13, 2002, with a grand total of \$91,156.42. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 14, 2002, with a grand total of \$252,595.97. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 14, 2002, with a grand total of \$1,262.82. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 14, 2002, with a grand total of \$8,092.82. The Claims List was returned to the Accounting Department.

Monthly Report – Chair Curtiss examined, approved and ordered filed the Monthly Reconciliation Report for Justice Court 1, John E. Odlin, Justice of the Peace, for the month ending May 31, 2002.

Payroll Transmittal – The Commissioners signed the following Payroll Transmittal Sheet: Pay Period: 12 - Pay Date: June 14, 2002. Total Missoula County Payroll: \$897,845.05. The Transmittal Sheet was returned to the Auditor's Office.

#### TUESDAY, JUNE 18, 2002

The Board of County Commissioners met in regular session; all three members were present.

#### Site Inspection

In the afternoon, Chair Curtiss accompanied County Surveyor Horace Brown on-site inspections for the requests to abandon a portion of Old Deadman Gulch Road and to alter Deadman Gulch Road and a portion of Cochise Drive off Highway 93 between Missoula and Lolo.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 17, 2002, with a grand total of \$33,182.80. The Claims List was returned to the Accounting Department.



Plat and Agreement – The Commissioners signed the Plat and Subdivision Improvements Agreement and Guarantee for Mickelson Addition, a minor subdivision located in the NE¼ of Section 30, T 14 N, R 20 W, PMM, Missoula County, a total gross area of 7.93 acres, with the owner of record being Michael C. Mickelson. The Improvements Agreement and Guarantee is for an improvement (paving the on-site road) that shall be completed no later than one year from the date of the final plat approval or by June 18, 2003, in the estimated amount of \$10,000. The Improvements Agreement has been guaranteed by a Letter of Credit from Clark Fork Valley Bank.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-034 for District Court #4, in the amount of \$400.00 for a MontLaw subscription for one year for legal research, and adopting same as a part of the Fiscal Year 2002 Budget.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-034 for District Court #4, in the amount of \$3,500.00 for computer purchases for Judges Henson and McLean, and adopting same as a part of the Fiscal Year 2002 Budget.

Agreement – Chair Curtiss signed a Memorandum of Agreement, dated June 1, 2002, between Missoula County and the Montana Department of Transportation for an access break connecting Gooden-Keil Loop Road with the airway Boulevard/I-90 Interchange. All terms and conditions are as set forth therein. The document was returned to Greg Robertson, Director of Public Works, for further signatures and handling.

Agreement – The Commissioners signed a Project Agreement, dated June 18, 2002, between Missoula County and the U.S. Department of Agriculture, Lolo National Forest, which allows the Forest Service to provide amenities to Ravine Road that Missoula County cannot provide. Said amenities are as set forth therein.

Memorandum of Understanding – The Commissioners signed a Memorandum of Understanding (“MOU”) with the following parties: Bureau of Land Management (Missoula County Field Office), Forest Service (Bitterroot, Lolo and Flathead National Forests), U.S. Fish and Wildlife Service, MT Department of Natural Resources and Conservation, MT Department of Fish, Wildlife and Parks, and Confederated Salish and Kootenai Tribes. The purpose of the MOU is to foster continued good communication and coordinate land use planning that will benefit all lands within the external boundaries of Missoula County, Montana. The MOU is neither a fiscal nor a funds obligation document. The effective date is the date of the last signature by participants, and expires on December 31, 2002. The document was returned to Pat O’Herren for further signatures and handling.

Letter – The Commissioners signed a letter, dated June 17, 2002, to Warden Mike Mahoney, Montana State Prison, stating the basic partnership proposal for FY03, including: 1) The current programming for state inmates will continue, assisted by case managers (chemical dependency, anger management, sex offender treatment program); 2) The current base of 160 state inmates will continue; and 3) The per diem rate for FY03 will be \$49.12.

Shoreline Permit – Pursuant to the recommendation of the Office of Planning and Grants, the Commissioners approved and Chair Curtiss signed an application by Duane Zeiler to construct a 384 square foot fixed dock on Salmon Lake. The property is at 2393 Highway 83 North, described as Lot 1 of Salmon Lake Shore Sites. The document was returned to Brian Maiorano in the Office of Planning and Grants for further handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract between Missoula County and E.L. Automation, Inc., Bonners Ferry, Idaho, for a proposed Electroflow Power Quality Computer System for the Detention Center. The total amount shall not exceed \$19,484.25. The term will begin after the receipt of purchase order by E.L. Automation, and shall conclude November 30, 2002. The document was returned to Moreene Thompson in the Sheriff’s Office for further handling.

Agreements – Chair Curtiss signed seven (7) Memorandums of Agreement, dated May 22, 2002, between Missoula County and the Missoula County Park Board (the “Board”) and the following organizations for assistance with park development. Funds are from the Capital Matching Fund Program (Spring FY02), and must be spent by May 1, 2004. The seven organizations that were awarded grant money are:

- 1) Lakeside Homeowners Association – Up to \$2,500 in matching funds for improvements, split for use between Tyler and O’Connell Parks (as delineated in applicant’s proposal);
- 2) Bonner PTA – Up to \$2,829 in matching funds for improvements as delineated in applicant’s proposal;
- 3) Potomac Elementary School – Up to \$800 in matching funds for improvements as delineated in applicant’s proposal;
- 4) Lakeside/Rosignol Homeowners Association – Up to \$2,500 in matching funds for improvements, split between Tyler and O’Connell Parks (as delineated in applicant’s proposal);
- 5) Bonner Development Group – Up to \$1,750 in matching funds for improvements as delineated in applicant’s proposal;
- 6) Clinton Community Center – Up to \$3,000 in Capital Improvement Funds for improvements as delineated in applicant’s proposal; and
- 7) Schmautz Park – Neighborhood Watch Group/Target Range – Up to \$1,626 in Capital Improvement Funds for improvements as delineated in applicant’s proposal

The documents were returned to Parks Coordinator Lisa Moisey for further handling.

Other items included:

- 1) The Commissioners received an invitation to MACo's Annual Convention, to be held September 22-25, 2002, at the Huntley Lodge in Big Sky, Montana. Chair Curtiss and Commissioner Carey will attend.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, JUNE 19, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 18, 2002, with a grand total of \$27,227.05. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 18, 2002, with a grand total of \$688.15. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 18, 2002, with a grand total of \$168.36. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 18, 2002, with a grand total of \$42,485.48. The Claims List was returned to the Accounting Department.

Plat – The Commissioners, as Owners, signed the Plat for Missoula Development Park, Phase 5, a subdivision located in the N½ of Section 1, T 13 N, R 20 W, PMM, Missoula County, a total area of 13.65 acres, with the owner/developer being the Missoula County Airport Industrial District.

**PUBLIC MEETING – June 19, 2002**

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

**Pledge of Allegiance**

**Public Comment**

None

**Routine Administrative Actions**

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$459,531.92. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Presentation: FEMA Community Rating System**

Chair Curtiss stated that the Federal Emergency Management Agency (FEMA) has presented to Missoula County a plaque which honors the recent upgrade to Class 8 and participation in the Community Rating System. This means that people in Missoula County who purchase flood insurance may receive a 10% discount on rates. This is based on the hard work by Missoula County regarding floodplain management. The plaque reads: "Missoula County successfully participates in the National Flood Insurance Program (NFIP) Community Rating System. The community has undertaken a series of meaningful activities to protect its citizens from losses caused by flooding and has significantly exceeded the requirements for NFIP participation and effective floodplain management."

**Hearing: Timberline Trail Estates (14 Lots) – South of Lolo**

Liz Mullins, Office of Planning and Grants, presented the staff report.

David and Gloria Ray Milot, represented by WGM Group, are requesting approval of Timberline Trail Estates, a 14 lot residential subdivision on 16.24 acres. Staff is recommending approval of the Timberline Trail Estates Subdivision with 17 conditions of approval. Planning Board also recommended approval of the subdivision with the deletion of one condition.

The subject property is located south of Lolo on the west side of Old U.S. Highway 93, south of Rowan Street. The subdivision will access off of a proposed new private road, Lamar Trail. The site contains a house on proposed Lot 11 and a modular home and some outbuildings on proposed Lot 9. All proposed lots are approximately 1 acre except Lot 11, which is 2.94 acres.

The property is unzoned. The 1975 Missoula County Comprehensive Plan land use designation for the site is Open and Resource, which recommends a maximum residential density of one dwelling unit per 40 acres. The Lolo Regional Plan, adopted after this subdivision proposal was submitted for review, designates the eastern half of the property as Community Crossroads and Residential, with a recommended maximum density of one dwelling unit per acre and the western portion as Rural Residential, with a recommended maximum density of one dwelling unit per five acres. Staff concludes that the proposal substantially complies with the plan.

Currently, the property is being used agriculturally for grazing land. The plat indicates 2 private irrigation ditches running north-south through Lots 14 and 12. The subdivider states that these irrigation ditches are already abandoned and will be

graded to match the surrounding slope. A site visit in May revealed no water is currently being carried through these ditches.

The applicant has proposed cash-in-lieu of park dedication. Individual wells and septic systems are proposed to serve each lot.

The property fronts on the west side of Old U.S. Highway 93, a County maintained road paved to 21.8 feet in width within an 80 foot right-of-way. Lots 1 through 14 will access off Lamar Trail, an on-site road to the eastern boundary of Lot 10. It then crosses off this property onto property to the south and serves Lots 9 through 14 as an off-site road. Lamar Trail is proposed as a private road that will be 24 feet wide within a 60 foot wide easement. Staff is recommending that this on-site portion of Lamar Trail be paved.

Staff is also recommending a condition that the subdivider provide evidence of legal access from the owners of the property to the south of this subdivision for access across their properties to Lots 9 through 14.

The street name, Lamar Trail, is already assigned. A recommended condition of approval is that an alternate road name be reviewed and approved by the County Surveyor prior to final plat approval.

Missoula Rural Fire Department recommended that there are turnarounds at the mid-point and terminus of Lamar Trail and that the subdivider install No Parking signs. Planning Board recommended deletion of the No Parking signs condition.

The plat shows a 60 foot wide private access easement, known as Ray Lane, a 12 foot wide paved drive, along the southern boundary of the property on Lots 2, 3, 6, 7 and 10, proposed to be abandoned.

The plat also shows a 60 foot wide private access and public utility easement connection between Lots 2 and 3. This creates a through lot situation for Lot 2, which is prohibited by the Subdivision Regulations. A condition of approval is that this easement is either deleted or moved to the common boundary between Lots 3 and 6.

There are two variances being requested. The first variance request is to not provide internal pedestrian connections, pedestrian connections to school bus stops and to adjoining neighborhoods. Greg Robertson, Missoula County Public Works, and Missoula City-County Health Department do not support the pedestrian walkway variance request and state that a pedestrian walkway is entirely appropriate in this area for safe, non-motorized travel in the area. OPG recommends denial of this variance request and recommends that the subdivider install a pedestrian connection. Planning Board also recommended denial of this variance request and the developer has proposed a gravel pathway on one side of the street.

The other variance request is to allow for reduced road width from 32 feet to approximately 22 feet for Old U.S. Highway 93. Greg Robertson does not object to this variance request with the provision of an RSID/SID for future improvements. Missoula Rural Fire Department did not express any concerns. The Office of Planning and Grants recommends approval of this variance request and recommends an RSID/SID for future improvements to Old U.S. Highway 93. Planning Board recommended approval of this variance request.

Chair Curtiss asked for an explanation of a through lot situation.

Jennie Dixon stated that a through lot is the condition where a lot has streets on opposite sides. In this case it would create a lot that has a road or road easement with road potential on three sides. If the easement is moved to the next lot line boundary, then it create basically a corner lot.

Nick Kaufman, WGM Group, developer's representative, presented some background on the subdivision. About a year ago, a five lot subdivision was presented on the Maclay property called Carlton. In the subdivision packet was a master plan for the remainder of the Maclay ranch, a requirement of subdivision regulations. The master plan was not adopted at the time, but it was included in the packet. It has always been the intention of the Maclay property to work with the adjoining property owner, Gloria Ray Milot. One of the primary roads that serves the village portion of the Maclay property is an extension of the road for this subdivision. It will loop into the Maclay property to serve their development. The proposed connection between Lots 2 and 3 is there because of a proposed connection on the Maclay property. There is no problem with moving it, but the thought was to line up roads and connect neighborhoods. That is hard to do after the fact as the Commissioners are aware. The Board will also remember Mackintosh Manor five acre tracts extends into the Maclay property. The Commissioners approved a boundary relocation so that the lots could better fit the topography and protect elk habitat on the Maclay Ranch. The initial thought was that the roads for this portion of Mackintosh Manor would connect to the roads in the other portion. There is only 40 feet of right-of-way at this time and 60 feet is required to cross the gully. The additional right-of-way could not be obtained from the property owners to the north. A road was proposed that comes down the property line and then connects. Territorial Engineering designed this road for Tom Maclay and for the Milots with input from WGM as they are doing the master planning. The Lolo Regional Plan recently adopted calls for Community Crossroads on part of this property, with a density of one dwelling unit per acre. This subdivision conforms to that recommendation. Another portion of the property is designated Residential with one dwelling unit per acre. This subdivision conforms to that recommendation as well. The last designation calls for one dwelling unit per five acres. This subdivision does not conform to that recommendation. This portion was designed to be sensitive to adjoining land owners and lot sizes. Lot 9 is a single lot and to the north adjoins with three lots. The largest lot to the north is fronted by the largest lot in this subdivision. To the west and north are five lots and they are proposing three lots. They feel there are a few more lots than recommended by the Lolo Regional Plan, a guide, not zoning. The intensity relative to the adjacent lots is acceptable and compatible.

Commissioner Evans stated that at Planning Board, the question was raised as to whether the Public Works Director should be the one to review and approve the pedestrian connections.

Nick Kaufman stated that during agency review, Greg Robertson did not agree with the variance request for the walkways. Mr. Robertson was contacted to discuss options. One would be to put a stripe on the road to delineate a pedestrian walkway. That did not work well due to the hill and the speed limit. Another would be to widen the gravel shoulder. The

other would be to put a gravel path on the other side of the road ditch. The developer's preference was to put a gravel path on the north side of the road ditch so it is separated from the travel way. The Planning Board wanted to specify in the conditions the exact design of the walkway. They would prefer to give the Public Works Director the freedom to work with the owner to design the walkway. The owner has changed what they would like to do a little bit since the Planning Board memorialized it. On the curved portion of the road on the Milot property they would like to have the gravel trail on the north side of the ditch. Where the road is straight on the property line and the Maclay side, they would like to put the walkway on the south side of the road. Mr. Robertson agrees with that proposal. The only remaining item would be the width of the path. Mr. Robertson could make a recommendation on that width now if he cared to do so. This is contained in Condition 12.

Greg Robertson stated the typical minimum standard for a walkway separated from the road is 8 feet wide, for pedestrian, non-motorized travel.

Commissioner Evans stated her concern was that every little detail be demanded during subdivision review, but to leave some of the details up to Greg Robertson to work with developer and owners.

Greg Robertson stated that would be fine with him.

Chair Curtiss stated that was what the condition says.

Nick Kaufman stated that he would rather have five feet, but it looks like it will be eight.

Chair Curtiss opened the public hearing.

Adrienne Arleo asked if children from this subdivision would use Lolo schools?

Chair Curtiss stated it would be the Florence school district, not Lolo. For the record, the Commissioners were not allowed to approve or disapprove a subdivision based on the impact to schools.

There being no further comments, the public hearing was closed.

Chair Curtiss asked why the developer wanted the roads to be private rather than public. If it would need to be public in the future, now would be the time to do that.

Nick Kaufman stated they the Milots and the Maclays would prefer it be a private road. Tim Wolfe has worked with the Road Department to make sure the road meets all subdivision standards. The subdivision standards do give the developer the option of public or private roads and they would like them to remain private.

Chair Curtiss asked about the moving the easement between Lots 2 and 3. How does that affect the master plan for the Maclay property.

Nick Kaufman stated the Board should act on the plan in front of them today, not the master plan. The easement will be moved as noted. If and when the subdivision to the south is platted, adjustments can be made at that time.

Commissioner Carey asked for some discussion on the virtues of having a public or private road.

Greg Robertson stated that he receives phone calls from people on private roads because of a lack of maintenance and wanting the County to do repairs. It is generally an unpleasant conversation to have to tell them they are paying taxes on these roads and decisions made in the past prohibit the County from doing any work or maintenance on private roads. Property owners in the future may demand services as they are paying taxes, yet they will not receive any services. There is the potential to petition the Commissioners in the future to make it a public road, but that has strings attached to it which may cost the property owners. Missoula County is not in the financial condition to maintain all the roads they have. There is the issue of providing minimal service, but if they are private, it becomes a non-issue. However, those phone calls continue to come in all the time.

Horace Brown stated he would rather see the road public than private. One is there is more control over the design and construction of the road. In the past, the County has had to go back in to fix a private road because the subdivider did not do the work necessary to make the road last. This costs the County money. The County has to be careful as to how much control they place on a private road as it may expose the County to liability issues. It is cheaper for the County to not maintain the road, even though the landowners pay taxes for road maintenance. That would be one reason to have the road remain private. There are a lot more advantages to having the road public, especially with dust and maintenance.

Nick Kaufman stated this was really important. The road ultimately will serve other developments due to the Community Crossroads designation and the higher densities will allow the road to be better maintained. The road is also a gateway to other homes in the area which abut a resource area, State and Forest Service land. The master plan also calls for the road to come around and back out on the other side so there are two access points. There are some significant wildlife and open space resources on this property and this becomes an issue of public access to sensitive lands, which the County has no enforcement over. The developer needs to have that control. If the road is public then it creates an enforcement issue and a big issue in terms of impact to keep traffic to a minimum. In this case, there are very good reasons to keep these roads private.

Commissioner Evans asked who would maintain the road?

Nick Kaufman stated the road, even though it is private, has to be built to subdivision standards. The Homeowners Association will maintain the road. There are a number of additional lots proposed in the future so the Homeowners Association will grow as will the viability of their maintenance function.

Commissioner Evans stated that in this case the residents will be well served and the wildlife will be better served by having these roads private.

Nick Kaufman stated that in this case a private road is a better decision.

Commissioner Carey stated that Mr. Kaufman was making the case that the private road will better protect a public resource.

Nick Kaufman stated it would be a private and public resource. The master plan calls for a portion of the property to be in ranching, a private resource. Then there is the wildlife and access to public lands issue. Having the road public would create a big problem.

Commissioner Carey asked about enforcement.

Nick Kaufman stated if the road is private, then people are trespassing and there are civil procedures to enforce that. What could happen is that during the night someone could come up with a spotlight and do what they should not be doing. This area does not need the access by the general public for many reasons. The road will be signed or gated or whatever is necessary to control access to the sensitive areas.

Chair Curtiss asked the no parking signs.

Nick Kaufman stated that any sign adds to sign pollution because it means nothing. If there was a 24 foot wide road in an urban area with parking on both sides, it would create a narrow driving lane. These are one acre tracks with long driveways. No one will be parking on the road. The fire department's requirement is 20 feet and allowing parking on both side could block that. They could install signs but they will not enforce the restriction, nor will the County. There is really no need for the signs.

Colleen Dowdall stated there is a value to the signs for the County, even one at the beginning of the road that refers to no parking because it is a fire access. That value to the County and Rural Fire provides some protection from liability if the road is blocked and emergency vehicles cannot respond. People are put on notice that the reason for no parking is for access by emergency vehicles. In regard to the width of the pedestrian walkways, the regulations state the width is five feet, unless it is on a collector street serving over 200 dwelling units. To impose eight feet, the Board would need to make additional findings to support the need for the wider trail. The width has not been proposed.

Horace Brown stated that AASHTO requirements for a path with both pedestrians and bicycles is 8 feet.

Colleen Dowdall stated an additional problem was with the term trail versus path. There are standards in the subdivision regulations regarding trails. This is being classified as a walkway. Whatever width is approved would delineate what it is called. The language is general to give more flexibility to developments outside the Urban Growth Area.

Nick Kaufman stated the policy is dynamic. He understood other's opinions but would request a five foot wide gravel path. If it has to be eight feet, then so be it. This is like the road width issue, the Fire Department is looking out for itself. The roads west of the City are less than 24 feet wide and allow parking and the Fire Department has been fighting fires since they were created. These streets are 24 feet wide with much less density. These are sort of referred to in the subdivision regulations. No parking signs are being requested to avoid liability. "Private Road - No Parking" signs can be installed if they have to. Another subdivision to be reviewed today is proposing 5 foot wide gravel walkways. He would rather have five foot wide gravel walkways as well. Policy, subdivision regulations and the governing body are responsible for that decision.

Jennie Dixon stated the developer was not proposing sidewalks which was the reason for the variance request. It is recommended to deny the variance request and require pedestrian connections as stated in Condition 12. It was left general as the proposal was not known at the time nor was what Greg Robertson would require. The requirement is for pedestrian walkways, not trails, so it would be appropriate for a 5 foot wide gravel pathway. She suggested wording for Condition 12: "The subdivider shall install a 5 foot wide gravel path along Lamar Trail, subject to review and approval by County Public Works ...."

Commissioner Evans states she would prefer to use "walkway," as is required in the regulations.

Commissioner Carey stated he would prefer to have it eight feet. The reality will be that as this is built out over time, there will be people of all ages riding bikes in addition to pedestrians.

Greg Robertson stated the difference from the other subdivision that will be reviewed is the fact that Montana Department of Transportation constructed an extensive trail network along Highway 93. This subdivision is relatively close and could be connected through improvements to Old Highway 93. It makes sense that the trail be for both pedestrians and bicycles.

Commissioner Evans stated the regulations say five feet. She did not like to divert from the regulations. If all walkways should be eight feet, that should be in the regulations, so a developer should know what to do.

Commissioner Carey asked if it should be referred to as a trail.

Commissioner Evans stated that could be done, but it seems unfair. She did not like making decisions that were not based on the regulations.

Commissioner Carey stated that he was trying to look toward the future when there will be a number of people in the area.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to vary from the required 32 foot road width to the existing 22 foot width

for Old U.S. Highway 93, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Section 3-2(8)(iii) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections, pedestrian connections to school bus stops and to adjoining neighborhoods and that a 5 foot wide gravel walkway be required per subdivision regulations.

The motion was not seconded, therefore the motion died.

Commissioner Carey moved that the Board of County Commissioners deny the variance request from Section 3-2(8)(iii) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections, pedestrian connections to school bus stops and to adjoining neighborhoods and that an 8 foot wide gravel trail be required. Chair Curtiss seconded the motion.

Commissioner Evans had to leave the meeting to take an urgent phone call. She stated that she did support the rest of the subdivision.

The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners reinstate Condition 9 that the subdivider install "No Parking" signs on Lamar Trail for reasons of fire safety. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Timberline Trail Estates Subdivision be approved, based on the findings of fact in the staff report and subject to the conditions in the staff report, as amended. Chair Curtiss seconded the motion.

Jennie Dixon asked if that would include an amendment to Condition 12 to match the requirement of the variance denial.

Commissioner Carey stated that it did include that amendment.

Colleen Dowdall stated that the trail standards are different than pathway standards. The Commissioners would want to classify it as either Class I, Class II or Class III. Their decision most closely fits Class II, a neighborhood connector required to be between 4 and 8 feet wide. The difference between Class II and Class I is that Class I is considered a core trail, 8 to 10 feet wide, with resting and passing space every 400 feet. A Class II is called a neighborhood connector and has to have resting and passing space every 600 feet. There is also a Class III, low impact trail, but it is only required to be 1 to 5 feet wide and no resting and passing spaces.

Commissioner Carey stated the Class II was appropriate.

Jennie Dixon restated Condition 12 for the record: "The subdivider shall install an 8 foot gravel Class II trail along Lamar Trail, subject to review and approval by County Public Works, prior to final plat approval."

Commissioner Evans rejoined the meeting at this time.

Commissioner Carey stated he did think he had the support of the other two Commissioners, but he felt the road should be a County road. Over time, access to the public land will be in greater demand and he would like to have the access now rather than pay for it in the future. Even if the road is gated, people will still go up there anyway, and the Sheriff will have to be called.

Commissioner Evans understood what Commissioner Carey was saying but remembered a similar situation and did not want to put these people in that position. She was not willing to support making the road public.

Colleen Dowdall stated that in discussions with Tom Maclay, there were pressures he faced to do this development while still ranching and the compromises needed as a result of his desire to maintain agriculture use of the land as well. Another factor to be considered is if these roads did access public land and it didn't work out to have them as County roads, all discretion is lost to abandon them as County roads. The County may end up maintaining a road for people who come from all over the State to access State and Federal land which is more of a burden than maintaining a roadway for access by Missoula County residents.

Chair Curtiss asked Mr. Kaufman if there was a road through the Maclay property that did provide access the public land.

Nick Kaufman stated the old Carlton Creek Road was at one time a Forest Service access road and may still be one but that is on the southern portion of the Maclay property.

Horace Brown stated that McClain Creek Road access Forest Service land and he is currently trying to get the gates removed so the public can use the road. It is an old County road that goes all the way to the Forest Service land. It has been gated for a few years. With the new law in effect, the gates need to be removed.

Nick Kaufman stated the road in this subdivision is nothing like McClain Creek Road, which had historic public use and access. This road in this proposal does not now and will not ever front Forest Service or State land. Private property would have to be acquired to get from this road to the Forest service land. He is trying to avoid the conflict of running a cattle ranch and public access interfering with the ranching, migration of elk and trespassing across viable agricultural land. This road does not touch, nor access any public land, nor will it in the future.

Chair Curtiss stated a motion had been moved and seconded to approve the subdivision with an amendment to Condition 12 and the reinstatement of Condition 9. She then called the question.

The motion carried on a vote of 3-0.

#### **Timberline Trail Estates Subdivision Conditions of Approval:**

##### **Roads**

1. Grading, drainage and erosion control plans shall be reviewed and approved by the Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4.*
2. Engineering plans, calculations and specifications for all roadway and stormwater improvements shall be reviewed and approved by the Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4(3)(F), 3-6 and County Public Works recommendation.*
3. Evidence that the Ray Lane private easement was vacated shall be reviewed and approved by OPG and the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-2.*
4. The 60 foot wide private access and public utility easement between Lots 2 and 3 shall either be deleted or moved to the common boundary between Lots 3 and 6 on the face of the plat, subject to review and approval by the Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-3(H).*
5. The on-site portion of Lamar Trail shall be paved to County Road standards, subject to review and approval by the Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2.*
6. Turnarounds shall be incorporated into the road design at the mid-point and terminus of Lamar Trail, subject to review and approval by Missoula Rural Fire District and Missoula County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2(11)(A) and Missoula Rural Fire District recommendation.*
7. The following statement shall appear on the face of the plat:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Old U.S. Highway 93, 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." *Subdivision Regulations Article 3-2.*
8. Street names shall be reviewed and approved by the County Surveyor's Office prior to final plat approval. *Subdivision Regulations 3-4(12).*
9. The subdivider shall install "No Parking" signs on Lamar Trail, subject to review and approval by Missoula County Public Works Department and Missoula Rural Fire District, prior to final plat approval. *Subdivision Regulations 3-2(I)(7)(d) and Missoula Rural Fire District recommendation.*
10. The development agreement shall be revised to state that driveways in excess of 150 feet shall be reviewed and approved by Missoula Rural Fire District prior to final plat approval and reference to review and approval of plans prior to building permit issuance shall be removed. *Subdivision Regulations Article 3-2(10)(E) and County Public Works recommendation.*
11. The subdivider shall provide signed and notarized private roadway and utility easements from the owners of property to the south of this subdivision for Lamar Trail access across their properties to Lots 9 through 14. This easement agreement shall be filed with the County Clerk and Recorder subject to review and approval by OPG and the County Attorney's Office at the time of final plat approval. *Subdivision Regulations 3-2(1)(D) and OPG recommendation.*

##### **Non-Motorized**

12. The subdivider shall install an 8 foot gravel Class II trail along Lamar Trail, subject to review and approval by County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2 and Public Works recommendation.*

##### **Fire**

13. Final plans for water supply for fire protection purposes shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. The development agreement shall be amended to include the following language:

"Water supply for fire protection purposes shall be provided by one of the following mechanisms and approved by the Missoula Rural Fire District prior to final plat approval:

- a. Municipal water system with 1,000 GPM minimum and hydrants spaced no greater than 500 feet apart;
- b. Wells with 350 GPM and a 2,000 gallon minimum storage;
- c. Storage tanks/cisterns with fire hydrants attached; or
- d. Residential sprinkler systems. In the event that residential sprinklers are an acceptable alternative for fire protection, as recommended by the appropriate fire jurisdiction, the development agreement shall be amended to include the requirements of installation, subject to review and approval by Missoula Rural Fire District. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*

##### **Weeds**

14. A Revegetation Plan shall be reviewed and approved by the Missoula County Weed District prior to final plat approval and this plan shall be included as an attachment to the development agreement. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*



15. The development agreement Weed Control, Section b, shall be revised to state: "Property owners shall revegetate any areas disturbed by construction or maintenance, including the vacated Ray Lane easement, with beneficial species as soon as construction or maintenance is completed." *Subdivision Regulations Article 3-2(1)(B) and Weed District recommendation.*

#### **Covenants**

16. The covenants shall be amended in Section 18 by deleting "unless the same is constructed so as to be located underground which does not create any unsightly area or interfere with the surrounding residential development." The covenants shall be reviewed and approved for these changes by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(10), 4-1(12) and Missoula City-County Health Department recommendation.*
17. The covenants shall be amended to include only those provisions specifically applicable to this subdivision. The covenants shall be reviewed and approved for these changes by OPG prior to final plat approval. *Subdivision Regulations Article 5-2(4)(D) and OPG recommendation.*

#### **Hearing: Beyer Meadows (41 Lots) – 3 miles west of Lolo on Highway 12**

Monte Sipe, Office of Planning and Grants, presented the staff report.

This is a request from the Beyer Family Partnership, represented by Professional Consultants, Inc., to divide a portion of a 320 acre parcel into 41 residential lots. The property is located on the north side of U.S. Highway 12, approximately 2.5 miles west of Lolo.

The property is unzoned and the 1978 Lolo Land Use Plan designates the 64 acre parcel proposed for development as Residential, with a recommended maximum density of 2 dwelling units per acre. The 2002 Lolo Regional Plan designates the 64 acre parcel as Residential, with a recommended density of 1 dwelling unit per 5 acres.

The proposed lots range in size from 1 acre to 3.8 acres, to be developed in 3 phases. Phase I would include 16 lots, Phase II, 12 lots and Phase III, 13 lots.

The topography of the site varies from very steep hillsides on the west and north portions of the property, a low lying area with sparse coniferous trees in the southeast corner and the remainder forming a large meadow which is relatively flat and vegetated with grasses.

The applicant is proposing two no-build zones throughout the subdivision, one for hillsides in excess of 25% and the other no-build zone designated to the back one-half of the remaining lots not affected by the hillsides. The applicant has stated that the second no-build zone is proposed in an attempt to cluster development within the lots, provide wildlife corridors and mitigate visual impacts to surrounding property owners and views from U.S. Highway 12, a designated Primary Travel Corridor.

The USGS maps and the applicant's plat show an intermittent stream traversing the property. The intermittent stream begins in higher elevations to the north of the proposed development and travels south through the bottom of a large drainage, then through the meadow. The Floodplain Administrator and Public Works have both expressed concerns with the large drainage basin above the proposed development and potential for flooding or inundation of homes on proposed Lots 1-3 and 35-41.

There are two irrigation ditches that traverse the property. The first, Denton Ditch, is proposed to be abandoned. The second, Denton-Hendrickson-Kuney Ditch, is to be maintained within a 20 foot wide easement as shown on the plat, with a shared boundary between the common area and Lots 13-17. The area between the Denton-Hendrickson-Kuney Ditch and U.S. Highway 12 is proposed as a Common Area. This site is approximately 3.1 acres in size. The required common area according to the Subdivision Regulations is 2.59 acres

Access to the site is proposed by construction of public paved roadways throughout the subdivision and provision for a potential future road link to the east. Pedestrian access is proposed via a 5 foot wide asphalt walkway to one side of the internal road network.

Individual wells and septic systems are being proposed for the lots within the subdivision.

According to the *Inventory of Conservation Resources for Missoula County* and the Missoula Historic Preservation Office, U.S. Highway 12 is designated as the approximate location of the Lolo Trail, the historic route of Lewis and Clark and the Nez Perce.

Three variances are being requested for this proposal. The first is a request to vary from the maximum 3:1 lot depth to width ratio for Lot 25 and Lots 35 through 40. Staff is recommending approval of this variance. The second request is to vary from the 24 foot wide paved road standard. The applicant is proposing 20 foot wide paved roads within the subdivision. Staff is recommending denial of this variance. Public Works and Missoula Rural Fire District do not support this variance request. The third request is to not install curb and gutter within the subdivision for lots with an average street frontage of 175 feet or less. Staff is recommending approval of this variance. Missoula City-County Health Department does not support this variance request.

Planning Board heard this request at a public hearing on June 4, 2002. After consideration of the proposal and hearing public testimony, the Planning Board unanimously voted to recommend approval of the subdivision proposal with 18 conditions as presented by staff.

Four public comment letters were included within the Planning Board staff report. One additional public comment letter and agency comment letters from Fish, Wildlife and Park and Montana Department of Transportation were received after the Planning Board hearing.

The four public comment letters attached to the Planning Board staff report and testimony at the hearing addressed concerns with the proposed development density, traffic impact/safety concerns on Highway 12, wildlife impacts, drainage/flooding and sanitation/groundwater concerns.

The additional public comment letter is from a resident of the area downstream and expresses concerns with the large drainage above the subdivision, potential flooding/debris flows and impacts to downstream homeowners.

Fish, Wildlife and Park's comment letter states that white trail deer, elk, black bear, mountain lion and a variety of smaller birds and mammals occupy the Beyer property. Winter range values for white trail deer and elk are most significant on the slopes immediately above the flat portion of the property proposed for subdivision. They recommended bear-proof containers for the subdivision which is address in Condition 15.

Montana Department of Transportation's comment letter states that the proposal does not meet the systems impact process criteria for traffic volumes (no traffic study warranted), but must obtain an access approach permit, addressed in Condition 5.

Staff is recommending approval of the Beyer Meadows Preliminary Plat with 18 conditions. Condition 1 addresses the time frame for the phasing proposal. Conditions 2 through 9 address roads, drainage and Primary Travel Corridor standards. Conditions 10 and 11 address fire protection. Condition 12 and 13 address weeds. Condition 14 addresses irrigation on the property. Wildlife, solid waste and health regulations are addressed in Condition 15. Covenants are addressed in Condition 16. Condition 17 addresses the future road easement and Condition 18 also addresses the Primary Travel Corridor standards being incorporated into the covenants.

Dick Ainsworth, Professional Consultants, Inc., developer's representative, thanked Monte Sipe and other staff members at OPG for their work on this proposal and Greg Robertson as well. The Beyer family owns the west half of Section 32, about 320 acres. They lived in Allen Acres, a subdivision to the south of this proposal, for a number of years. They bought this property about 20 years ago. They first contacted PCI in the spring of 2000 wanting to do a development. At that time, the Lolo Comprehensive Plan called for the area to be developed at two dwelling units per acre. A meeting was held with Tim Hall and Dave Loomis who were then working on an update to the Lolo Plan. They had a number of different conceptual plans, some with 5 acre tracts and some with smaller tracts. Mr. Hall and Mr. Loomis felt the property was ideal for development but that 5 acre tracts were too large. However, the Lolo Regional Plan just adopted now has the property recommended for one dwelling per five acres. Two years ago, OPG said that didn't make sense and would like to see some clustering. One of the problem with clustering where no sewer is available is the necessity of having a minimum lot size of one acre. It is difficult to cluster one acre tracts. They have attempted to do so with this design by making the back half of many of the lots subject to no-build zones which will force the improvements to be constructed closer to the road. The development is proposed on only about 64 acres of the 320 acres the family owns, and over half of that will be left open, either with no-build zones or common area adjacent to the highway. With the exception of the steeper hillsides that are timbered, the common area contains the only other timber on the property. It serves as a good buffer between the highway and the development, includes a water amenity and should be a real asset. Three phases are proposed over a period of four years. One neighborhood meeting was held and they were also invited to attend a Lolo Community Council meeting. Some fairly significant changes were made to the southerly portion of the development based on comments at those meetings. The intermittent stream is shown in an approximate location because there is no evidence of such a stream. He presented some photos of the drainage and there is no indication of any stream channel. It is an alluvial fan and at some point in history water came down the drainage. The Beyers have owned the property for over 20 years and have never seen water get out of the drainage and run across the property. The storm drainage may be a concern and it is addressed in one of the conditions. Included in the submittal is a preliminary storm drainage plan. All the calculations indicate that all of the drainage from the draw can be handled by the road ditches. One of the conditions is that the design of the drainage ditches and storage facilities be reviewed and approved by the Public Works Department. They have no problem with that and are happy to work with Greg Robertson on the plans. They have no problem with most of the conditions. Condition 5 is a requirement for detailed traffic analysis. As Monte Sipe indicated, MDT said that traffic generated by this development doesn't meet their criteria of the need for a traffic study to be done. That has been discussed with Greg Robertson, who indicated a right turn taper should be constructed. If that were done, and it will be, Mr. Robertson would be willing to waive the traffic study. If that can be confirmed, he would like to have Condition 5 either removed or amended to state that a right turn taper would be provided. Earlier Mr. Kaufman said a 5 foot gravel walkway was being proposed which was incorrect. They are proposing a 5 foot paved walkway separated from the road. Mr. Robertson did not object to that proposal. If it needs to be 8 feet, they would then like it to be gravel, but they feel a 5 foot paved walkway is appropriate. He was available to answer questions.

Chair Curtiss opened the public hearing.

Barry Bartlette, 9781 Lolo Creek Road, stated that many residents are concerned about the density of this subdivision. He is concerned about the design of the subdivision and the calculations for a 100 year flood. In his research after the Bitterroot fires, the soils were coated and during heavy rains, the drainage could no longer handle the runoff as calculated. Some of those draws are over a mile and a half long and he was trying to compare it with this proposal. It has been noted that 10 to 20 times the flows can come out of a drainage after it has been burned. In that case, the design of this subdivision would subject certain lots to mudslides and debris. Recent experience such as Mullan Trail have shown that building homes in a drainage area can create problems. The people in this subdivision need to be protected from that. He also had concerns about the drainage system that was being proposed. Since the intermittent stream does not have a defined channel, it does not fall under the Clean Water Act of 1987. The channel does come across Highway 12 through a six foot channel and drains across properties into Lolo Creek. If there is a large fire event in the draw followed by a large rain event, a substantial amount of water could come across the drainage. The system proposed could be subject to silt and debris and would become ineffective. The water would flow across into other parcels of land, potentially damaging homes on those parcels.

Jeannette Zentgraf stated she lived on Sleeman Gulch, north of Highway 12 and close to this proposal. Even though the project has been in the works for over two years, she found out about it just before the Memorial Day weekend. Had she known about the project she would have made comments, but that really isn't her fault. She read a prepared statement from herself and her husband. *"My husband and I are here to protest exactly what three members of the Planning Board*

protested at the June 4th Planning Board public hearing. There were no reports submitted to justify the planning staff's findings of fact regarding possible Highway 12 traffic problems, possible water and drainage problems within the subdivision and the possible elimination of wildlife habitat. The protests by Fred Reed, Don MacArthur and Charles Gibson, members of the Planning Board, are a matter of record as the public hearing was taped. Please listen to the tapes before approving the subdivision. The findings of fact concerning the Primary Travel Corridor, Highway 12, were reached without a highway traffic count. Sleeman Gulch never had a traffic count, which would have helped the planners when estimating the amount of traffic in and out of the subdivision. We neighbors know that Highway 12 is heavily traveled by fast moving logging trucks, 18 wheelers and recreation vehicles (RVs with boats in the summer and pickups with snowmobiles in the winter). We know that there is no public school bus service on Highway 12 to Lolo Elementary and Middle Schools, though there is a school bus which picks up 2 handicapped kids and a school bus picks up high school kids for Big Sky. Beech Transportation Company is on record, declaring that Highway 12 is extremely dangerous and that little children should not be standing near it or crossing it at any time. Don MacArthur recommended that the common area of the subdivision be moved farther from Highway 12 for the sake of the children who would be playing too close to the highway. Sleeman Gulch is 6,500 feet from the entrance to the proposed subdivision. We have a lot of traffic at 8:00 a.m. and 3:15 p.m. when parents are taking their kids to and from school. 41 homes will generate almost double the traffic. Sleeman's 90 degree angle off Highway 12 necessitates our slowing down with fast moving traffic on our tails. My husband and I find Highway 12 to be very dangerous now. If the 2002 Lolo Regional Plan had been used, only 13 more homes would generate traffic on Highway 12, instead of 41. The proposed entrance to the subdivision is also a 90 degree angle. The planning staff's Executive Summary states that a bus stop exists 0.5 miles from the subdivision, but the bus goes to a one room school house, Woodman School, which could never accommodate a subdivision of kids. Remember neither Sleeman nor the proposed subdivision will have a deceleration lane. The 1978 Lolo Land Use Plan designates 2 units per acre, whereas the 2002 Lolo Regional Plan designates the property as Rural Residential with a recommended maximum density of one dwelling unit per five acres. Certainly the planners took traffic on Highway 12 into consideration in the 2002 Plan. We neighbors are also concerned about 41 new wells and 41 septic systems on 64 acres. An upscale development will have lawns and landscaping requiring water, which will affect the aquifer and the irrigation ditch which runs just south of this development. There is a concern about water in Sleeman Gulch during the summer and most of us don't have manicured lawns and fancy landscaping. Be advised that the Missoula City-County Health Department does not support the variance request to not install curbs and gutters. And grading, drainage and erosion control plans have not yet been reviewed or approved by Public Works. We who live in the vicinity of this subdivision moved to this rural area for its beauty, peace and quiet, as well as the abundance of wildlife. We Montanans, who have chosen this quiet life deserve the consideration the 2002 Lolo Regional Plan would have afforded us. And the Beyer family would have been able to sell 13 sites without hurting the community and the wildlife habitat. They would have made a fortune. The only wildlife habitat report that was submitted prior to the June 4th public hearing was the 1992 Inventory of Conservation Resources, which stated that the property serves as winter range for elk and deer. We know that animal species that do not hibernate need to feed in order to maintain health and strength and thereby avoid disease and predators. The valley where the elk and deer feed is the location for the subdivision. The valley provides them with a place to graze requiring very little energy. Urban sprawl in this area will force them to higher elevations where they will use too much energy hoofing down the snow in order to feed. We in Sleeman have 24 residents on 1,360 acres, so we have 1 house per 56.66 acres and don't interfere with the wildlife, but we don't have a valley grazing area. The May 2001 Montana Fish, Wildlife and Parks supplied some information on the winter range of the subdivision, but no information on the thousands of blue birds. The consultants listed many ways to mitigate destruction of the Riparian areas, but it would be good to know the number of blue birds that need to be protected. A thorough current inventory is needed for this area. My husband and I are surprised that the four pictures at the end of the Executive Summary do not show the high mountains which abut the valley. The mountains are invisible, because they are blurred and fuzzy." She also read a statement from Kathleen Stachowski and Christopher Barns, 10870 Sleeman Gulch Road: "We wish to protest the proposed Beyer Meadows subdivision. This development is inappropriate for a number of reasons. Traffic concerns on U.S. 12 are paramount. Entering and exiting Sleeman Gulch is already a dangerous proposition; adding a 41 unit subdivision into the mix – on a highway with no shoulder and a 70 mph speed limit – makes a travesty of 'planning.' The 2002 Lolo Regional Plan recommendation (one dwelling per five acres) is ignored. The density of the proposed subdivision – one dwelling per roughly 1.5 acres – is inappropriate for rural residential property. It creates a host of additional concerns – particularly those surrounding water issues. We also understand that this valley meadow serves as winter range for elk and deer, not to mention hundreds of other native plants and animals that call the area home. Certainly the loss of winter range and the proximity of hundreds of people will have a dramatic, if not devastating effect on local herds. A subdivision of this magnitude shows irresponsibility in so-called planning and a blind eye to the ever-increasing problems of sprawl in the rural West. We urge the County Commissioners to disapprove this subdivision."

Greg Powers stated he lived across from the Beyer's property. There was no notification of this even though all the State laws were probably followed. Only the property owners right next to the proposal need to be notified by law. The developers make it sound like everyone in the neighborhood was notified and that is not true. There was hardly any notification. He spoke with many of those in the area and there were very few who knew about this. If they had, this room would be full and none of them would want this. It is out of character for this unique valley. This development leapfrogs outside of where it could be contained and grow slowly from Lolo. This County is struggling to maintain some sanity in regards to growth and this is a prime example of not good planning. The character of the land and how it will change should be considered. The specifics include the traffic, there will be an accident there and it will probably be fatal. Another concern is no school bus for Lolo schools. These children will not fit in Woodman School. Water coming out of the draw is another concern. Another point would be the elk, the wildlife habitat and the elk calving season in the spring. Fire is another issue not addressed, this has only one ingress and egress. There are a lot of unanswered questions. He asked if this could be postponed or extended for even 10 days, a lot more folks would attend that meeting and would not be in favor of this development. No one moved up there to have a subdivision next to them. This will change the nature of the area. The Beyer's don't live in this area but those that do are not going to like what happens. If they had more time, even another 10 days, many more people could be present to let the Board know how they feel about the project.

Karen Schmidt, 10450 Lolo Creek Road, stated that she abuts this property and was informed of the meetings. She attended the December meeting. There were about 30 people at that meeting, all of whom were outraged at this proposal. Mr. Ainsworth assured the people that no matter what they did, this development would be pushed down their throats and they should get used to it. He mentioned modifications made on the southern edge but she does not see any changes, however she did not get a copy of anything at the December meeting, they were unavailable to the public. Many of her

neighbors have the same amount of lots abutting them now as they did in December, she did not see any changes. She does not know what changes Mr. Ainsworth is referring to that were made based on their input. Her neighbor Kendra Wisner stated at the December meeting that this proposal made her sick. Ms. Wisner is not here today and that could be because the Beyer's have made some deals with adjoining property owners to sell them lots at a reduced price if they do not protest the subdivision. She was not made such an offer. At the meeting, people were outraged, the only person who was in favor of it was a real estate agent. The agent said that people in Lolo can manage their land themselves, people who own land always make the best decisions for the land. Mr. Holmes pointed out that 41 homes will double the number of houses in a five mile area surrounding this development. Twice as many people on a road 5 miles long is ridiculous. They received information about the Planning Board meeting only a few days before the hearing. Mr. Ainsworth said that everyone would receive information about the meeting. The only people who received information were those that abutted the property, only those in Sleeman and those in Allen Acres, no one else. This issue was the fourth item on the agenda at the Planning Board meeting and it was after 11:00 p.m. before it came up. She works for a living and has a school age child and could not stay to hear the presentation on Beyer Meadows. She was glad she didn't bring her neighbors to the Planning Board hearing. It is abusive to have normal people address an issue that will affect their lives after they have been up for 15 hours, they all work for a living. It is Mr. Ainsworth's job to stay up and debate this with the Planning Board. The notification issue is a severe problem. She felt that people weren't notified because the response would have been so negative. People made their point at the December meeting and believed Mr. Ainsworth that it would not benefit them to continue to try to make any modifications. She hoped the Board would delay any action on this until people can be properly notified.

Chair Curtiss stated that Planning Board members are all volunteers who stay that late ...

Karen Schmidt stated that Mr. Ainsworth is paid by the Beyer family.

Chair Curtiss asked if Ms. Schmidt would let her finish her sentence. The Planning Board members are all volunteers and have other jobs. It is unfortunate the meetings go so late, but it is necessary to hear all the items on the agenda.

Jeanette Zentgraf stated that the idea of clustering had been mentioned and the back portion of many of the lots would not be used. Those back portions are not suitable for building.

Dick Ainsworth stated that he would like to address some of the comments. The ones that bother him the most are the ones by Ms. Schmidt, who made up stories about what he told everyone at the meeting, that this would be mashed down their throats. He has been in the business for 35 years and has never, ever told anybody that. The Board knows him and his reputation well enough to know that he would not do that. He did tell the people at the meeting that the request would go through two public hearings, one before the Planning Board and one before the Board of County Commissioners and that those would be well advertised, which they were. Notices for the first meeting went out to residents far beyond what the legal requirement were, particularly down along Highway 12. They probably did not send notices to people who lived a mile up or down the canyon. They exceeded the legal requirements and posted the property up and down the highway with at least three signs. They were invited to attend the Lolo Community Council meeting and did not have anything to do with the notification procedure for that meeting. They simply attended the meeting and were one of the agenda items. Once a project is submitted, the notification is handled by the Office of Planning and Grants. It was not their intention to purposely not notify people. It is in their best interest to notify everybody they can to deal with any problems up front. There are those that felt they should have received notice that did not, but it was not an attempt on his part to keep people from knowing about the project. The lateness of the Planning Board meeting is also something not under his control. Whether he is being paid or not, he is not happy to be sitting there until midnight, but it is something that has to be done. Allen Acres, platted in the 1960s, is the only platted subdivision that has been through any review process that is within three miles of this project. All of the other parcels up there, including all the tracts up Sleeman Gulch, have been created by Certificate of Survey and the use of exemptions. None of those received any review by anybody with regards to impacts on wildlife, road standards, drainage requirements, park dedication, etc. There were no traffic studies done when Sleeman Gulch was done, because it was created by a Certificate of Survey, when the Denton ranch was cut up and sold at auction. This development has gone through the process set up by law and all the criteria have been met. By their vote, the Planning Board members were not opposed to this subdivision. They voiced some concerns as they always do, but ultimately voted unanimously for this subdivision with the conditions proposed. To indicate they were opposed to this development misrepresents the facts. Although there is no specific deceleration lane, the taper that Greg Robertson is suggesting is basically the same thing. The one exit and entrance issue was addressed early on because they knew it would be a concern. This is an unusual piece of property, it is 320 acres with 150 feet of frontage on the highway. All the owners in Allen Acres were contacted about possibly purchasing an easement through that property but none of them were willing to provide an access. The fire department was consulted and the design of the road system was based on their suggestions and input. They said they would be comfortable with the design, it is not ideal but the best it could be because of the unusual nature of the property. The lots along the south boundary were revised whether or not Ms. Schmidt thought they were. The original plan had the road closer to the southerly boundary and had a cul-de-sac. That was done at the request of Mr. and Mrs. Holmes and Mr. and Mrs. Wisner. The reason they are not here is not because they were paid off, it is because the plan as revised is acceptable. Mr. Holmes wrote a letter to that effect that is included in the packet. He was at the Planning Board meeting but did not testify. Both the Wisers and Holmes contacted the Beyers about purchasing lots but he did not know if any deals had been made. The Beyers did not give them any bargain price so they wouldn't come and object to the subdivision, that never took place. Betty Wilkins is the realtor who will market the lots for the Beyer family. He knew for a fact that the Beyers did not buy anybody off. The Wisers and Holmes are not wild about the idea of a subdivision in a meadow that has been vacant for years, nobody would be. But it is private property and it was known that someone would someday develop it. They feel comfortable with what has been done.

Jeannette Zentgraf stated that Mr. Ainsworth said she misrepresented what members of the Planning Board said about being opposed to the plan. She asked that the Commissioners listen to the tape.

Chair Curtiss stated the Commissioners have read the verbatim minutes of the Planning Board meeting.

Jan Holmes, 10700 Allen Lane, stated that she wanted to make it clear that she and her husband were not bought off by the Beyers. They were neighbors for over 20 years and it was always known that property would be subdivided someday. As Mr. Ainsworth said, they are not thrilled it is happening, but the Beyers made no deal with them to keep their mouths

closed. Some arrangements have been made to purchase some property, but they were certainly not bought off. If they do purchase the property they will be paying a fair price for it. They do have some concerns, but she wanted it to be clear that they were not bought off. The Wisers were not bought off either. Kendra Wiser was not present today because she had a babysitting problem, not because she wasn't willing to come to the meeting.

Betty Wilkins stated she was at the meeting at the Community Center and the meeting with the homeowners of Allen Acres. Mr. Ainsworth never said that he was going to shove this down anybody's throat. He was very open to their suggestions. He has been in the business long enough to know that you don't shove things down people's throats, you work with them. When Mr. Beyer called to tell her that the Wisers and Holmes may be interested in purchasing property, he asked her opinion of what to price the lots at. She told Mr. Beyer to get fair market value. She does not know what the details of the purchase are because she wasn't involved. She did not feel that Mr. Beyer made them any special deal. The Beyers wouldn't do that, that is not their way.

There being no further comments, the public hearing was closed.

Chair Curtiss asked if the density could be based on the total acreage of the ownership.

Monte Sipe stated that was correct. He had calculated density with both the 64 acres and the 320 acres, based on the 1978 and 2002 plans. The property is unzoned. Based on the 1978 plan, it would comply using just the 64 acres and based on the 2002 plan it would comply using the 320 acres.

Commissioner Evans stated that this subdivision was submitted prior to the adoption of the new Lolo Regional Plan so it had to be reviewed under the 1978 plan. The law allows any person one house on one acre. The law for notification has been met. The minutes of the Planning Board meeting state clearly that the proposal was posted as required. The Commissioners are not legally allowed to consider an impact on a school when they decide on a subdivision. If people don't want something done with land that adjoins them, the way to control that is to purchase the land. Others don't have the right to tell the owner of land they cannot do something with it. The six members of the Planning Board who were present at their meeting voted in favor of this project. She did have some concerns about the traffic and asked if the mitigations would address the concerns or if something more needed to be done.

Greg Robertson stated that he spoke with Mr. Ainsworth about the letter received from MDT. He essentially did his own traffic analysis. Based on approach volumes supplied by MDT in Helena, although they are a couple of years old they haven't changed significantly enough to affect the analysis, this project only needs a right turn taper so traffic can slow down without affecting the operational characteristics of the highway. MDT has adopted an internal policy in response to complaints by the development community for requirements of traffic analysis. Essentially, MDT will require a traffic analysis for developments with 150+ units, otherwise MDT will do the traffic analysis internally and will control the impact with their approach permit process. MDT is re-evaluating their threshold of 150+ units to see if it needs to be lowered. The total volume on this road in 1999 was approximately 3,000 cars per day, which is not a significant volume. It is high speed, posted at 70 mph as enacted by the Legislature. The right turn taper will address the concerns and it doesn't meet warrants for any additional improvements. The right turn taper will mitigate some of the traffic. It will not help left turn movement onto Highway 12 but that is not a concern of MDT, as traffic would stack within the subdivision.

Commissioner Evans asked if a speed study was requested, would it result in a lower speed limit?

Greg Robertson stated the 70 mph speed limit is required by statute on all secondary highways unless a traffic analysis or speed study could prove otherwise to adjust the limit. His best guess would be that the speed would remain the same.

Commissioner Evans stated the drainage was also a concern and asked if that has been adequately addressed?

Greg Robertson stated the property does have a classic alluvial fan formation which is notorious for shifting directions. He was not surprised there is no defined channel, they continue to change. The watershed is a little over 1 square mile. The volume in the preliminary report was underestimated. He felt a different analysis was appropriate to realistically determine the flow, which he has not done, but he will require that it be done. Some additional collection system will be necessary to route the water from the fan through the development to the culvert under Highway 12. The conditions imposed will adequately address drainage as he will have a chance to review all plans prior to final plat approval.

Commissioner Evans asked about having water drain away from the houses.

Greg Robertson stated that was always a good idea. He would expect PCI would address that in their plans. That will help the situation significantly as the land is quite flat once it leaves the alluvial fan.

Commissioner Carey stated that Mr. Bartlette raised an interesting question about the condition of the ground after a fire increasing runoff. It seems a valid concern and asked what could be done to protect the residents and the County.

Greg Robertson stated the County has an obligation to protect to the extent they can. Any stormwater drainage plan has inherent flaws and some are better than others. An appropriate one should be chosen that does realistically approximate the flows to be expected. The concerns Mr. Bartlette brought up are valid and need to be factored in.

Commissioner Evans asked about the condition regarding water rights.

Colleen Dowdall stated that anytime a condition is imposed about a particular factor, the danger must be identified. Drainage does need to be looked at carefully as it exist currently and as affected by the subdivision. To go farther to look at a natural disaster such as a forest fire is beyond what can be asked for in the way of mitigation. It is more important that conditions be required to help prevent the natural disaster. The last Legislature made changes that require a developer or landowner deal with how they are going to either get water to everyone within a ditch district or who have water rights to a ditch, or those rights be terminated so the landowners are not assessed for water they cannot get to.

Commissioner Evans stated she did not see anything regarding Wildland/Residential Interface (WRI) standards in the conditions.

Monte Sipe stated that information is already provided as a part of the covenants and controlled by an Architectural Control committee. It addresses defensible space and WRI standards. Homeowners can contact Rural Fire for additional details.

Commissioner Carey asked counsel to address what can and cannot be considered in approving or denying a subdivision.

Colleen Dowdall stated she would also like to address the notice issue. The legal requirements for notice have been met in this subdivision. The neighborhood meeting that is a requirement for the developer, done in December, goes beyond what is required by State law and is included in the Missoula County Subdivision Regulations. State law only requires adjacent property owner notice, notice in the local newspaper and posting. One of the things the Montana legislature has removed from the review of subdivisions is the opinion of the public. A factor in the decision on a subdivision cannot be the opinion of the public. The Subdivision and Platting Act provides specific criteria the Commissioners have to consider in approving or denying a subdivision. They include the impact on agriculture, wildlife and wildlife habitat, local services, etc. Those are what will be found in the staff report. Leapfrog or sprawl are often dealt with in a Comprehensive Plan. In this case, the 1978 plan is being used, as that was the plan in force when the application was made. It would not be legal for the County to impose new regulations for a plan that was not in force when the application was made. The other parts of the regulations don't address things like sprawl or leapfrog development because State law does not authorize the County to look at that. It could be addressed under the Comprehensive Plan but new legislation in 2001 said that the County can no longer consider compliance with the Comprehensive Plan as a factor in subdivision review. Only the review criteria she mentioned earlier can be considered. The County has a very narrow list of factors the Commissioners are allowed to consider in making their decision. Failure to follow or go outside those factors in making their decision could constitute a taking of land or violation of the subdivision regulations resulting in the decision being overturned by the Courts. State law also says every time a condition is imposed, it is done because a specific hazard or problem has been identified. Before a subdivision can be denied, the developer must be given an opportunity to mitigate an identified concern. If the Board says this subdivision will cause too much traffic, the developer is allowed the opportunity to mitigate the impact. State law says that the County must consider the expressed desires of the developer in determining what the mitigation is. That has been applied in this case with the traffic situation.

Chair Curtiss asked if any changes were required to Condition 5 regarding the right turn taper and/or a traffic analysis.

Greg Robertson stated he had already done a traffic analysis and would have no problem with deleting Condition 5 or changing it to state that the developer shall construct a right turn taper that conforms to AASHTO standards and shall satisfy the Montana Department of Transportation and Missoula County Public Works in terms of its location and configuration.

Commissioner Carey moved that the Board of County Commissioners approve amending Condition 5 to read: "The developer shall construct a right turn taper that conforms to AASHTO standards and shall satisfy the Montana Department of Transportation and Missoula County Public Works in terms of its location and configuration." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations to allow proposed Lot 25 and Lots 35 through 40 average depth to be greater than three times its average width and approve the variance request from Article 3-2(7)(B) of the Missoula County Subdivision Regulations from the requirement for curb and gutter on the roads within the subdivision with lots with an average street frontage of 175 feet or less, both based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations for roads within this subdivision to vary from the 24 foot paved surface width requirement to a 20 foot width, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Beyer Meadows Subdivision, based on the findings of fact in the staff report and subject to the conditions as amended.

Commissioner Carey stated that the concerns the public has expressed are real and genuine. It is frustrating not to be able to deal with them. The Board sees subdivisions almost every week going in further from town, that is where the market is. He would prefer the growth be from within in a steady, organized way, but that is not the way the real world works. In the County's Industrial Park, decisions can be made as to what goes in there and what it costs and so on because it is the County's property. On a private property basis, if the owners follow the rules they can go ahead and develop it. That is what they are dealing with here.

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

#### **Beyer Meadows Subdivision Conditions of Approval:**

1. The Phasing Plan shall be revised and submitted to OPG as follows: the final plat for Phase I (Lots 5-17, 28-30) shall be submitted for final plat approval by December 31, 2004. Phase II (Lots 18-27, 34 and 35) shall be submitted for final plat approval by December 31, 2005. Phase III (Lots 1-4, 31-33 and 36-41) shall be submitted for final plat approval by December 31, 2006. *Subdivision Regulations Article 4-1(17) and OPG recommendation.*

#### **Roads/Drainage/Primary Travel Corridor**

2. Engineering plans, calculations and specifications for all roadway and stormwater improvements shall be reviewed and approved by the Public Works Department prior to final plat approval of Phase I. *Subdivision Regulations Article 3-4 and Public Works recommendation.*



3. The proposed internal roads shall be constructed to a 24 foot paved width, except that portion of Beyer Meadows Loop road from the entrance to the subdivision to the Wye intersection, which shall be constructed to a 32 foot wide paved width, subject to review and approval by Public Works and Missoula Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E), 3-2(3)(F), Public Works and Rural Fire recommendation.*
4. A temporary emergency turnout shall be installed at the terminus of the Beyer Meadows Loop road construction proposed for Phase II of the subdivision. The turnout may be eliminated upon completion of Phase III road construction improvements which completes the looped road system. Plans for said turnout shall be reviewed and approved by Missoula Rural Fire District prior to final plat approval of Phase II. *Subdivision Regulations Article 3-2(1)(E) and Rural Fire recommendation.*
5. The developer shall construct a right turn taper that conforms to AASHTO standards and shall satisfy the Montana Department of Transportation and Missoula County Public Works in terms of its location and configuration. *Subdivision Regulations Article 3-2 and Public Works recommendation.*
6. The following statement shall appear on the fact of the plat:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID, based on benefit, for upgrading the streets within the subdivision, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities and may be used in lieu of their signatures on an RSID/SID petition. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations 3-2(3)(E).*
7. Grading, drainage and erosion control plans shall be reviewed and approved by the Public Works Department prior to final plat approval of each phase. Particular attention shall be given to Phase III, Lots 35-41 and 1-3 when designing the stormwater management plan. Plans may include a drainage channel to safely convey stormwater from a 100 year flood event produced from the drainage above the subdivision within a drainage easement across Lots 35-41 and 1-3. The covenants shall be amended to require the Homeowners Association to maintain the stormwater management system and a development agreement detailing maintenance plans of this system shall be filed with the Clerk and Recorder's Office prior to final plat approval of Phase I. The development agreement shall be subject to review and approval by County Public Works and the County Attorney's Office prior to final plat approval of Phase I. *Subdivision Regulations Article 3-4, 3-1(2), Public Works, Floodplain Administrator and OPG recommendation.*
8. The design engineer and the property owner shall agree to indemnify, hold harmless and defend Missoula County, its agents and employees from any loss, cost or claim that may arise out of the County's approval of this subdivision based upon the engineer's certification of the designed drainage plan, should such certification prove incorrect. The engineer shall provide evidence of coverage by errors and omission insurance prior to final plat approval of Phase I. This condition shall be addressed in a development agreement to be reviewed and approved by the County Attorney's Office prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(2), Floodplain Administrator, County Attorney's Office and OPG recommendation.*
9. A 50 foot setback line from the property line abutting U.S. Highway 12 shall be shown on the face of the final plat of Phase I. The covenants shall be amended to include a statement restricting any structures to be located within the 50 foot setback within the common area as shown on the face of the Phase I final plat. *Subdivision Regulations Article 3-14(3)(B) and OPG recommendation.*

#### Fire Protection

10. A storage tank/cistern for fire protection shall be provided with a 5,000 gallon capacity. The cistern must be self-filling and maintained by the Homeowners Association. The Missoula Rural Fire District shall review and approve the design of the system or any alternate water supply system prior to final plat approval of Phase I. *Rural Fire recommendation.*
11. The covenants shall be amended to include the requirement that the cistern and well are the property of the Homeowners Association and that the association will be responsible for all costs associated with the maintenance, repair and upkeep of the cistern and well for fire protection purposes. *Rural Fire and County Attorney's Office recommendation.*

#### Weeds

12. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval of Phase I. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation.*
13. The covenants shall be amended to include the following statement:

"Lot owners are required to maintain their lot in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate any disturbed areas caused by construction or maintenance at the first appropriate opportunity after construction or maintenance is completed." *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation.*

#### Irrigation

14. In accordance with MCA 76-3-504(9), the subdivider shall either 1) have the water rights removed from all lots except Lots 13-17 through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat; or 2) provide easements from the Denton-Hendrickson-Kuney Irrigation Ditch for a ditch or underground pipe for irrigation water to Lots 1-23 and 18-41, which must be indicated on the final plat. *Subdivision Regulations Article 4-1(13), MCA 76-3-504(9), County Attorney's Office and OPG recommendation.*

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**Wildlife/Solid Waste/Health Regulations**

15. The covenants shall be amended to include the following statement:

“All garbage shall be contained in bear proof dumpsters.”

The covenants shall be amended to eliminate language pertaining to recessed garbage containers and include the following statement:

“Missoula City-County Health Code, Regulation 3, Section IV(4)(e) states that residential containers shall not be recessed into the ground.” *Subdivision Regulations Article 3-1(10), Missoula City-County Health Department and Montana Fish, Wildlife and Parks recommendation.*

**Covenants**

16. Article IV, Section 1 of the covenants shall be amended to indicate that the covenants providing for fire protection, human/wildlife conflict, areas of riparian resource, Primary Travel Corridor standards and no-build zones shall not be changed without the consent of the governing body of Missoula County. *Subdivision Regulations Article 5-1(5)(K)(ix) and (x).*

**New Conditions**

17. The 60 foot wide future road easement shown on the face of the plat shall be amended to state “60 foot wide conditional public access and utility easement.” The following statement shall appear on the face of the plat and refer to the conditional public access and utility easement:

“The owners dedicate a 60 foot right-of-way for purposes of a public roadway over and across Lots 8 and 9 of the Beyer Meadows Subdivision as shown on the subdivision plat thereof, conditioned upon said right-of-way being used as roadway at the time that it is needed to serve future subdivision on the parcel to the east of Beyer Meadows Subdivision. The lot owners and future owners of lots in Beyer Meadows Subdivision will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the east. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway.”

If the lot lines for Lots 8 and 9 need to be adjusted to meet this condition, the revised plat shall be subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E) and OPG recommendation.*

18. A Primary Travel Corridor plan complying with Section 3-14 of the Missoula County Subdivision Regulations shall be developed and incorporated into the homeowners covenants. The plan shall contain a provision that allows the County to enforce the standards contained in Section 3-14 of the Missoula County Subdivision Regulations pertaining to the Primary Travel Corridor. The Primary Travel Corridor plan shall be reviewed and approved by OPG and the County Attorney's Office prior to final plat approval of Phase I. *Subdivision Regulations Article 3-14 and OPG recommendation.*

**Hearing: Charlie's Acres No. 2 (10 Lots) – Mullan Road near Deschamps Lane**

Dale McCormick, Office of Planning and Grants, presented the staff report.

Robert Jensen, represented by Julie Titchbourne of WGM Group, is requesting approval to divide a 50.2 acre parcel, legally described as Lot 3 of the Charlie's Acres subdivision, into 7 lots ranging in size from 2.1 to 20 acres. The property is zone C-A3 (Residential) with a maximum residential density of one dwelling unit per five acres. The 1998 Missoula Urban Comprehensive Plan designates Residential land use with a density of 1 dwelling unit per 5-10 acres.

This property is within the Air Stagnation Zone and outside of the Urban Growth Area (UGA) and the Building Permit Jurisdiction.

Access to the property is provided via Mullan Road and a proposed cul-de-sac named Graham Way. New driveways will serve each lot. Individual wells and septic systems are proposed.

There is an irrigation ditch than runs along the southern boundary of Lots 6 and 7 that is owned by the Grass Valley French Ditch Company District. In accordance with State law, staff is recommending a condition that the water rights for Lots 1-5 be removed or that easements to those lots be indicated on the final plat.

Lots 1 and 2 will access directly off Mullan Road, a Primary Travel Corridor. Lots 3, 4 and 6 will access off Graham Way, a proposed 24 foot wide, 590 foot long pave cul-de-sac road within a 60 foot private access easement. Lots 5 and 7 are proposed to access off a shared driveway.

OPG staff has determined that the proposed driveway access complies with the standards of the Missoula County Subdivision Regulations as long as a no-access strip along the eastern boundary of Lot 6 is recommended as a condition of approval.

The County Surveyor and County Public Works Department do not support the proposed driveway access to Lots 5 and 7 and instead are recommending an extension of Graham Way, the 24 foot wide paved cul-de-sac road for access to Lots 5 and 7. Based on the County Public Works Department recommendation, staff is recommending the extension of the Graham Way cul-de-sac as a condition of approval. This would result in a cul-de-sac that is 1,217 feet long, 20% greater in length than the 1,000 foot maximum length allowed by the Missoula County Subdivision Regulations. Therefore, a variance request is required and staff is recommending approval of the variance request.

The two parcels directly to the east of this proposed subdivision contain 112 acres of developable land that can only be accessed off Mullan Road at the southwest corner of these parcels. With the current C-A3 zoning, if other zoning and

subdivision requirements could be met, there could be up to 22 new lots created in these two parcels with only one point of access. Staff is recommending as a condition of approval that the proposed 60 foot private access and utility easement be changed to a public access and utility easement in order to allow future potential access to parcels east of this proposed subdivision. Staff is also recommending that a 60 foot conditional public access easement be included beginning at the end of the recommended 24 foot cul-de-sac road accessing Lot 7. This conditional public access easement would be centered on the boundary between Lots 5 and 7 and would end at the eastern boundary of the proposed subdivision. Missoula County Public Works Department supports this recommendation.

The Missoula County Subdivision Regulations require the subdivider to donate to the County 0.56 acres of the 50.2 acres of land proposed to be subdivided or to provide cash-in-lieu of parkland. The applicant is proposing to dedicate 7.36 acres of Common Area including and surrounding the pond and riparian area on the site.

The Subdivision Regulations require that outside the Urban Growth Area subdivision served by public roads should provide a system of pedestrian and/or bicycle circulation. The applicant has requested a variance from this requirement. Staff is recommending approval of this variance request. The applicant has indicated a 20 foot wide private non-motorized access easement along the western boundary of Lot 4 accessing the Common Area from Graham Way. Staff is recommending a condition that this easement be relabeled Common Area and that a 5 foot wide gravel walkway be provided in the easement connecting Graham Way with the Riparian Common Area.

Curt Belts, Missoula Rural Fire District, commented that any street servicing this subdivision shall have a 24 foot unobstructed horizontal clearance. Staff is recommending a condition that No Parking signs are installed by the subdivider to assure this width. The applicant is requesting a variance from the County Subdivision Regulations 3-7(1) requiring a water supply for fire protection purposes. Staff is recommending denial of this variance request. According to the Rural Fire District and Subdivision Regulations, there are three acceptable options for water supply: a well with a 350 GPM pump and 2,000 gallon storage tank; or a storage tank/cistern with an attached fire hydrant; or residential sprinklers. Staff is recommending these three options as a condition of approval.

The Missoula Consolidated Planning Board conducted a public hearing on this subdivision request on June 4, 2002 and voted unanimously to recommend approval of this subdivision with some modifications to the recommended conditions of approval. The items recommended to be modified by Planning Board are:

1. OPG staff has determined that the proposed driveway access complies with the standards of the Missoula County Subdivision Regulations as long as a no access strip along the eastern boundary of Lot 6 is recommended as a condition of approval. The County Surveyor and County Public Works Department do not support the proposed driveway access to Lots 5 and 7. Their recommendation is to extend the Graham Way cul-de-sac and pave it to a 24 foot width. The applicant explained that Phase 2 resulting in further subdivision of Lot 7 would require access to be built to road standards at that time. Planning Board voted unanimously to delete Condition 1 and accept the shared driveway as proposed. The motion to approve the variance request for cul-de-sac length was withdrawn because it would be unnecessary if the condition is deleted. If Condition 1 is deleted, an amended Condition 1 indicating a one foot no access strip along the eastern boundary of Lot 6 should be included.
2. Planning Board voted 4 to 3 to remove recommended Condition 2. This condition was recommended by County Public Works and OPG to make Graham Way a public access and utility easement rather than a private access and utility easement as proposed.
3. Planning Board voted 4 to 0 with 3 abstentions to removed Condition 3. This condition was recommended by County Public Works and OPG to create a conditional public access easement at the eastern boundary of the subdivision in anticipation of access for future development of the east of the subject property.
4. Planning Board voted unanimously to delete Condition 10 requiring No Parking signs on Graham Way as recommended by the Rural Fire District.
5. Planning Board voted unanimously to modify Condition 12a at the applicant's suggestion. The revised condition would allow further subdivision of all lots.
6. Planning Board voted unanimously to recommend a condition of approval to address concerns for potential high groundwater. In response to these concerns, Brian Maiorano, Missoula County Floodplain Administrator, commented: "There is lots of evidence for high groundwater on this property and I think it would be prudent to not allow basements. As for surface flooding, or surfacing groundwater, I don't have any direct evidence of it. However, we know so relatively little about this area that I wouldn't say it's impossible either." Therefore, staff is recommending an additional condition that the covenants be amended to state that the finished floor and mechanicals of all structures should be above the natural grade (Condition 16).

Julie Titchbourne, WGM Group, developer's representative, stated that the developer built a pond on this site about 10 years ago. When the Planning Board looked at this project, they recommended deleting Condition 1 (the proposal to extend the 24 foot paved cul-de-sac road all the way to Lot 7). They would ask that the Board go along with the recommendation and delete Condition 1. The development could be phased with Phase I being Lots 1 through 6. In that case, the cul-de-sac would be allowed as proposed. Phase II would be the subdivision of Lot 7 and if or when that ever happened, the cul-de-sac would be extended at that time. In lieu of doing a phased approach, they would ask that Condition 1 be deleted as Planning Board proposed and amend it to add the one foot no access strip. They also agree with the Planning Board recommendation to delete Conditions 2 and 3. The discussion regarding No Parking signs (in Condition 10) came up earlier today. They are willing to place a Private Road – No Parking – Fire Lane sign at the beginning of the road. They also agree with Planning Board's recommendation to change the covenants as noted in Condition 12a to allow for future subdivision of all lots. They offered an amendment to the new Condition 16 regarding no basements. Rather than prevent future owners the privilege of building basements, consider that the low spots on the site are above floodplain elevation and there is quite a bit of relief on the site. The groundwater monitoring done shows there is more than 9 feet to groundwater. There are likely to be many sites that could have basements installed. There is no contributing area that runs off onto this site, so stormwater is not a problem. Instead of the recommendation for

Condition 16 that finished floor and mechanicals be placed above natural grade, they suggest that instead a statement be placed on the face of the plat: "This subdivision is located in proximity to areas of high groundwater. It has not been reviewed by Missoula County for the threat of high groundwater and Missoula County makes no representations regarding the threat of flooding hazards." That should be considered for two reasons. The first is that the covenants often don't go with the final plat. If the statement is placed on the plat, future property owners have been notified and the statement will be on the final plat forever. The second reason is that once people know there is a threat of high groundwater, it allows them to creatively address the site through grading or having a basement or building on a higher area of the site or make their own decisions about placing finished floor and mechanicals above the natural grade.

Colleen Dowdall stated that one or the other of those recommendations is usually used in an area where there may be concern. She felt that the planners might be better able to comment on the condition as she had not had any conversations with Brian Maiorano.

Dale McCormick stated the problem on the site is more of high groundwater than floodplain, as evidenced by the pond on the site. Even though some of the lots may be 9 feet above the floodplain, what was of more concern was the build up of groundwater. However the condition is worded, it shouldn't address the 100 year floodplain as much, it needs to address high groundwater.

Commissioner Evans stated that rather than saying there is lots of evidence, she would like to see the evidence submitted. She would like it to be on record what the evidence shows.

Dale McCormick stated that Brian Maiorano had submitted an e-mail with such evidence. Only one portion of that correspondence was presented in his presentation. He would be happy to include the entire e-mail in the record.

Commissioner Carey asked Greg Robertson to comment on the Planning Board's recommendation about roads.

Greg Robertson stated the Subdivision Regulations require that each lot created within a subdivision have physical and legal frontage on a public or private roadway. This is an ongoing discussion with OPG and the County Attorney's Office. One way to resolve the problem is to do as Julie suggested with a phased plan. To go with what the Planning Board recommends goes against good planning in his opinion, the orderly layout of lots and blocks for subdivisions and guaranteeing adequate infrastructure to serve them. Future modification of this road could be problematic. He would prefer the Graham Way cul-de-sac be extended to Lot 7 if it is to be included within the subdivision at this time. It could be easily taken care of through Julie's suggestion to reserve the corridor for future development of Lot 7. He wasn't sure what the Planning Board was suggesting.

Commissioner Evans stated that the Planning Board minutes show that Troy Kurth asked Julie Titchbourne if she preferred this be phased Lots 1 through 6 and Lot 7 separately. That is what Julie indicated. That is what she would support.

Chair Curtiss stated that is not what the recommended change shows. It shows that the entire condition was deleted.

Dale McCormick stated he understood that if Lot 7 further subdivides, it would need to come in as a second summary subdivision and during that review process, County road standards would apply.

Chair Curtiss stated the condition has been amended to read: "A one foot no access strip shall be indicated along the western boundary of the access easement over and across the eastern boundary of Lot 6 from the end of Graham Way to the southern boundary of Lot 7." This would allow the driveway with a no access strip.

Jennie Dixon stated the Planning Board's recommendation is to follow what was proposed by the applicant. As Greg mentioned, this is an ongoing discussion between the various departments about interpreting the Subdivision Regulations. If the Commissioners accept the Planning Board's recommendation, it will give what is shown on the plat, a cul-de-sac with a road easement with a driveway within that easement, only allowing two lots to access from it, which is how the regulations define a driveway. If the Board chooses a phased development, it will result in the same thing. Lot 7 won't be platted until a later phase. Logistically it makes it more difficult, conditions will have to be written to address a phasing plan. Those conditions could be crafted on the floor today, but it will result in the same thing, a cul-de-sac road with a driveway from it to Lot 7. She understood that even if Lot 7 is part of Phase II, a house could still be constructed on the lot now.

Colleen Dowdall stated that was true if it had a legal description to include on a building permit application.

Jennie Dixon stated the Subdivision Regulations say that a road can be built with a driveway to serve two or fewer lots. Putting the no access strip on one side assures access by only two or fewer lots, which meets the requirements. That does not meet what Greg is recommending for a road.

Chair Curtiss stated she felt it was important that it be a road and have the connection to the east.

Jennie Dixon stated that when Lot 7 develops, it will be required to be built to road standards.

Commissioner Carey felt it would be better to accept the originally proposed staff condition.

Dale McCormick stated there are actually three issues. One is the shared driveway versus a road. The other issue is a public versus a private road. If it is a public road, it will allow the conditional public access easement, which is the third issue.

Chair Curtiss stated that to achieve having a road, not a driveway, a public road and a future easement, Conditions 1, 2 and 3 need to be reinstated as proposed by staff.

Dale McCormick stated that was correct.

Commissioner Evans stated that an issue raised at Planning Board was allowing the public to an area with a private lake which is a legitimate concern.

Chair Curtiss stated that would also create property to the east not having access. The Board needs to make good road connections.

Commissioner Evans stated that could be handled when Lot 7 is further subdivided.

Commissioner Carey stated it seemed to be simpler to get it done now.

Colleen Dowdall stated that Dale was correct. The first issue is what kind of right-of-way, public or private. Then, what kind of improvements are made to that right-of-way. If there is potential access in the future, this has to be a public road right-of-way, then determine what kind of improvements are wanted, which would change if and when Lot 7 is developed.

Chair Curtiss stated to accomplish that, Conditions 1, 2 and 3 as proposed by staff to Planning Board need to be reinstated, not changed by Planning Board.

Dale McCormick stated that Conditions 2 and 3 would provide the public road and the conditional public access easement. Condition 1 if reinstated would require a road paved to 24 feet all the way to Lot 7 as a cul-de-sac. If Condition 1 is deleted, it would be consistent with the applicant's proposal, which is to have a shared driveway with a one foot no access strip.

Colleen Dowdall stated that Conditions 2 and 3 give the right-of-way for future planning and development. Imposing Condition 1 requires it be built to roadway standards now, instead of when Lot 7 is developed in the future.

Chair Curtiss stated that if Condition 1 is deleted, the right-of-way still exists, it just wouldn't have to be built to road standards now and the conditional access can still be achieved.

Commissioner Carey stated that if they are going to build it, why not do it now, it would be more expensive to come back and build it later.

Jennie Dixon stated there would be additional expense in that 12 feet of gravel would be laid now and then they would come back later and pave it to 24 feet. There is no guarantee that Lot 7 will be split. Greg or Julie may have some thoughts about the cost.

Greg Robertson stated that whatever is done with the driveway would be obliterated. It could not be used. It would have to be removed, regraded and paved. It is a throw away. Putting in a driveway is a lot cheaper than putting in a road, but relatively speaking it isn't a huge expense to do at this time. It saves a lot of hassle later.

Julie Titchbourne stated that either way, if Lot 7 is subdivided, the road has to be 24 feet wide. It is a matter of paying now or paying later. It is a savings to the developer to sell the first 6 lots and use that money to extend the road and develop Lot 7. More importantly, she was concerned about the discussion to reinstate Conditions 2 and 3 to make this a public access and utility easement and provide a conditional easement to the east. The lot immediately east has access on Mullan Road. If the lot to the east is never developed, why should this developer be burdened with providing access to the lot to the east. These are large lots. When the Wye/Mullan Transportation Plan was adopted there was no contemplation of a connection road in this area. It is close to Deschamps Lane and Mullan Road and is not recommended for a collector road. It is also outside the 201 Service Area for public sewer. It is unlikely the area would become high density in the future. Mullan Road has a 32 foot wide surface within a 120 foot wide easement. Deschamps Lane runs north/south almost adjacent to this property. In reading the Subdivision Regulations, the developer has the choice of making a public or private road. There is good reason to make this a private easement, the developer wants to build a private subdivision with higher scale homes that have access onto a private lake. Part of the reason for putting in the common area is to limit liability to the future homeowners.

Dale McCormick stated that the two parcels to the east total 112 acres and are under the same ownership. That property does have access at one point on Mullan Road. To clarify, the Wye/Mullan Plan was for a collector road. This would be more of a loop road and could potentially connect to Snow Drift Lane. This would allow a loop road from Mullan Road and back onto Mullan Road, rather than creating a situation with an extraordinarily long cul-de-sac.

Commissioner Evans asked if the Subdivision Regulations give the developer the right to chose public or private roads.

Colleen Dowdall stated she would check the regulations.

Commissioner Carey asked Dale if, from a planners perspective, it makes sense to keep Conditions 2 and 3.

Dale McCormick stated that was correct.

Chair Curtiss opened the public hearing.

Tom Maclay stated he was at the Planning Board hearing when this was reviewed. The actual power point presentation showed that on the 112 acres there was room for a double road to loop around through there for access to the parcel to the east. There is plenty of room for that parcel to have a full loop road running through it, not a long cul-de-sac, independent of this subdivision.

Colleen Dowdall stated that Subdivision Regulation 3-2(H) says that all streets and roads within a subdivision shall either be dedicated to the public or be private streets or roads to be owned and maintained by an approved Property Owners Association.

Commissioner Evans stated that did not say who makes the decision between public and private.

Colleen Dowdall stated the governing body makes that decision. It is up to the developer to propose what kinds of roads based upon the developer's desires and also upon agency comment, policy, staff, etc. The County needs to deal with where to have County roads and where to have private roads. It is not necessarily the preference of the developer.

Commissioner Evans asked if this was made a public road was there a way to deal with the private lake.

Colleen Dowdall stated the lake is private property and as the developer expressed, it would be an enforcement issue.

Dale McCormick stated the only access to the lake from the proposed cul-de-sac is a pedestrian easement that is part of the common area. That would be the only private access from the street, otherwise people would go across an individual's lot.

Commissioner Carey asked how long that path was.

Dale McCormick stated that it was approximately 180 feet long.

Chair Curtiss asked Greg Robertson what his preference would be in regard to connection to the east.

Greg Robertson stated he was not a big fan of cul-de-sacs in general, mostly from a maintenance standpoint. From a policy perspective, the County needs to look at interconnecting developments. A lot of what is happening on Reserve and other corridors is there is no interconnectivity. Traffic is being forced onto the major thoroughfares causing congestion. Millions of dollars are being spent on studying the problem and trying to figure out solutions. In a lot of cases, the solution is easy, especially in undeveloped or minimally developed areas. That is planning for future connectivity of development. It may seem far fetched now, it doesn't take long for areas to develop, especially the Mullan Road corridor. The County should be thinking about looking at these larger tracts and trying to figure out how they might potentially develop and providing opportunities for future connections.

Horace Brown stated this should be looked at like the County did with the grid system. Maybe a system could be developed with input from the people that live in that area that may subdivide so it is done peacefully rather than forcing something on the subdividers. That is the way the grid system came about and it will work well in the future when it is all built. The whole grid system should be extended to the northwest to address these problems as well. On the grid system, the County staff determined where they thought the roads should go then presented that to the developers and land owners. They made suggestions which the County then used to accommodate the uses in the area.

Commissioner Evans stated that this location is the only place that an east/west road would fit.

Horace Brown stated that this should be done before the fact. With the grid system, before things started to develop, the transportation plan for the area was developed. This area is starting to develop so the same thing should be done.

Chair Curtiss stated that unfortunately this was the opportunity to do so with this property.

Horace Brown stated he understood that but this was being forced upon the developer. He did not always agree with that method.

Greg Robertson stated the grid road plan is basically collectors and arterials. This road would not function as that, it is merely providing connectivity and some through circulation on local roads rather than having everything cul-de-saced. He did not know if a grid road plan in this area would make a lot of sense.

Chair Curtiss stated she also saw this as not having as many people trying to access onto Mullan Road.

Julie Titchbourne stated she has worked on projects near Reserve Street where there are problems with connections. These developments are usually 6 homes per acre which creates a density where interconnection is vital. In this area, the development is one home per five acres. She felt that was completely different. She was raised in a farming community. People like to buy homes in rural areas that are on cul-de-sacs. Snow Drift Lane is an example. Those homes are worth more because there isn't interconnection. The Board also needs to consider if interconnection is needed on five acre lots and does that affect the value of the homes. In the City, it increases the value. As developers, they do not know if they will be asked to do the development adjacent to the east or not so it is in their best interest to look at interconnection as well.

Chair Curtiss stated that Target Range is a prime example of five acre tracts with no connectivity that have created a problem for transportation to schools and other services. She sees connectivity as being needed even on five acre tracts.

Julie Titchbourne stated that Target Range will ultimately have public sewer service and this area will not.

There being no further comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners reinstate Conditions 1, 2 and 3 as originally recommended by planning staff and Public Works. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0 (Commissioner Evans passed).

Commissioner Carey moved that the Board of County Commissioners reinstate Condition 10 as originally recommended by planning staff. Chair Curtiss seconded the motion. The motion carried on a vote of 3-0.

Dale McCormick stated that in the covenants as proposed, there was a sentence that stated that no lot shall be further divided or subdivided. It was pointed out that Lot 7, given the zoning district, could be further divided. The recommendation was to have a condition that says that no lot, except Lot 7, shall be further divided or subdivided. The

applicant then proposed at the Planning Board hearing to delete the sentence entirely, which in effect would allow any lot to be further subdivided.

Commissioner Evans stated she would support that.

Dale McCormick stated it made sense to him as well. The developer is the one that suggested the change.

Commissioner Carey moved that the Board of County Commissioners accept the Planning Board's recommended change on Condition 12a. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners accept the amended wording of Condition 16 as presented by the developer today, that a statement be placed on the face of the plat that states: "This subdivision is located in proximity to areas of high groundwater. It has not been reviewed by Missoula County for the threat of high groundwater and Missoula County makes no representations regarding the threat of flooding hazards." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Julie Titchbourne stated that if the original Conditions 1, 2 and 3 are going to be used, she would ask that Condition 3 regarding the conditional public access have some additional wording that would require that connection cannot be made unless there is also a connection to Mullan Road on the adjacent property to the east. She did not want to have this developer constructing and paying for a road that's only going to serve the property to the east.

Colleen Dowdall suggested the following wording: A 60 foot conditional public access and utility easement centered on the boundary between Lots 5 and 7 beginning at the end of the 24 foot wide road centered on the boundary between Lots 5 and 6 and extending to the eastern boundary of the subdivision shall be shown on the plat. The following statement shall appear on the face of the plat and refer to the conditional public access and utility easement: "The owners dedicate a 60 foot right-of-way for purposes of a public roadway over and across Lots 5 and 7 of the Charlie's Acres, No. 2 Subdivision as shown on the subdivision plat of Charlie's Acres, No. 2, conditioned upon said right-of-way being used as roadway at the time that it is needed to serve future subdivision on the parcels to the east of Charlie's Acres, No. 2, and to connect to Mullan Road. The lot owners and future owners of lots in Charlie's Acres, No. 2 will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the east or to making a connection with Mullan Road. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway."

Commissioner Carey moved that the Board of County Commissioners amend Condition 3 as suggested by Colleen Dowdall. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners deny the variance request from Article 3-7(1) of the Missoula County Subdivision Regulations to provide a water supply for fire protection, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(8)(A)(iii) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated that since Condition 1 was reinstated, a variance for the cul-de-sac length was needed.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(6)(C)(i) of the Missoula County Subdivision Regulations to exceed the maximum cul-de-sac length of 1,000 feet in rural subdivisions, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve Charlie's Acres No. 2 Preliminary Plat Subdivision based on the findings of fact in the staff report and subject to the amended conditions. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Charlie's Acres, No. 2 Preliminary Plat Subdivision Conditions of Approval:**

##### **Roads/Driveways**

1. The proposed driveway centered on the boundary between Lots 5 and 6 shall be constructed as a 24 foot wide paved cul-de-sac road extension of Graham Way ending at Lot 7, subject to review and approval by County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(J), County Surveyor and Public Works Department recommendation.*
2. The proposed 60 foot wide private access and utility easement containing Graham Way and the recommended extension of the cul-de-sac road accessing Lot 7 shall be labeled a public access and utility easement and Graham Way shall be a publicly maintained road. *Subdivision Regulations Article 3-2(1)(E), Public Works Department and OPG recommendation.*
3. A 60 foot conditional public access and utility easement centered on the boundary between Lots 5 and 7 beginning at the end of the 24 foot wide road centered on the boundary between Lots 5 and 6 and extending to the eastern boundary of the subdivision shall be shown on the plat. The following statement shall appear on the face of the plat and refer to the conditional public access and utility easement:

"The owners dedicate a 60 foot right-of-way for purposes of a public roadway over and across Lots 5 and 7 of the Charlie's Acres, No. 2 Subdivision as shown on the subdivision plat of Charlie's Acres, No. 2, conditioned upon said right-of-way being used as roadway at the time that it is needed to serve future subdivision on the parcels to the east of Charlie's Acres, No. 2, and to connect to Mullan Road. The lot owners and future owners of lots in Charlie's

Acres, No. 2 will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the east or to making a connection with Mullan Road. No structures, permanent improvements or utilities shall be placed within said right-of-way so as to interfere with the eventual use of the right-of-way as a public roadway." *Subdivision Regulations Article 3-2(1)(E), Public Works Department and OPG recommendation.*

4. Engineering plans, calculations and specifications for all subdivision public improvements, including roadway and stormwater improvements, shall be submitted to the County Public Works Department for review prior to commencement of construction of public improvements or prior to final plat approval, whichever occurs first. *Subdivision Regulations Article 3-2(1)(B) and Public Works Department recommendation.*
5. Grading, drainage and erosion control plans shall be reviewed and approved by County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4.*
6. An approved street name for the proposed Graham Way cul-de-sac shall be determined subject to County Surveyor review and approval and shall be indicated on the final plat, prior to final plat approval. *Subdivision Regulations Article 3-2(12), Missoula County Surveyor and Public Works Department recommendation.*

#### **Pedestrian Access**

7. The "20 foot wide private non-motorized access easement" between Lots 3 and 4 accessing the Common Area shall be relabeled "Common Area" and a 5 foot wide gravel walkway shall be provided in the easement connecting Graham Way with the Riparian Common Area. *Subdivision Regulations Article 3-8(8)(C), 3-2(8)(A)(iii) and OPG recommendation.*
8. The following statement shall appear on the face of the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Graham Way, including, but not limited to, the installation of pedestrian walkways or bikeways, 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." *Subdivision Regulations Article 3-2(E), 3-2(8)(A)(iii) and OPG recommendation.*

#### **Sewer/Water**

9. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes a waiver of the right to protest a future RSID/SID for public sewer and water systems, based on benefit. The lot owner shall connect to public sewer within 180 days of when the public sewer main is available to the subdivision. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Articles 3-1(1)(D), 3-7(2) and OPG recommendation.*

#### **Fire**

10. The subdivider shall install No Parking signs on the proposed cul-de-sac road, subject to review and approval by County Public Works Department and Missoula Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(7)(d) and Missoula Rural Fire District recommendation.*
11. Final plans for water supply for fire protection purposes shall be reviewed and approved by the Missoula Rural Fire District, prior to final plat approval. The development agreement shall be amended to include the following language:

"Water supply for fire protection purposes shall be provided by one of the following mechanisms and approved by the Missoula Rural Fire District, prior to final plat approval:

- a. Municipal water system with 1,000 GPM minimum and hydrants spaced no greater than 500 feet apart;
- b. Wells with 350 GPM and a 2,000 gallon minimum storage;
- c. Storage tanks/cisterns with fire hydrants attached; or
- d. Residential sprinkler systems. In the event that residential sprinklers are an acceptable alternative for fire protection, as recommended by the appropriate fire jurisdiction, the development agreement shall be amended to include the requirements of installation, subject to review and approval by Missoula Rural Fire District." *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*

#### **Covenants and Development Agreement**

12. The applicant shall amend the covenants, subject to County Attorney's Office and OPG approval, prior to final plat approval, to require that:
  - a. Article IV, Section 1, Land Use, shall be amended to delete the sentence that states "No lot shall be further divided or subdivided."
  - b. Driveways in excess of 150 feet in length shall have approved turnaround for fire apparatus, an all-weather surface width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches. The all weather surface and unobstructed clearance shall be maintained by individual lot owners that use the driveway. Maintenance shall include dust abatement. Driveway design, location, grade, surface type and turnaround or turnout locations shall be approved by the Missoula Rural Fire District prior to final plat approval.
  - c. A maintenance agreement for shared portions of private driveways shall provide for snow removal, grading, drainage and maintenance of the all weather surface and unobstructed clearance. Maintenance shall also include dust abatement.



- d. Covenants related to driveways are enforceable by Missoula County by any action required to compel performance, including injunction, suit for damages or by refusal to provide fire protection and emergency service, until driveways are brought to these standards.
  - e. The Primary Travel Corridor Standards, Weed Control Plan (Exhibit A) and Riparian Resource Management Plan (Exhibit B) from the Development Agreement shall be included in the Covenants. *Subdivision Regulations Article 3-1(1)(B), 3-2(10), 3-2(1)(G)(v), 3-4(3), Missoula Rural Fire District, County Surveyor, County Attorney's Office and OPG recommendation.*
13. If the recommended condition to make Graham Way a publicly maintained road is approved, the Development Agreement section under Private Road, stating "Maintenance and snow removal expenses for this road shall be shared equally by said lots" shall be deleted. *Subdivision Regulations Article 3-2(H) and OPG recommendation.*

#### **Irrigation**

14. In accordance with MCA 76-3-504(j), the subdivider shall either 1) have the water rights removed for Lots 1 through 5 through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat; or 2) provide easements from the irrigation ditch along Lots 6 and 7 for a ditch or underground pipe for irrigation water to Lots 1 through 5, which must be indicated on the final plat.
15. The irrigation ditch easement that runs along the western boundary of Lots 6 and 7 shall be shown on the final plat.
16. The developer shall include a statement on the face of the plat:

"This subdivision is located in proximity to areas of high groundwater. This subdivision has been reviewed for the risk of high groundwater, but Missoula County makes no representations regarding the likelihood of inundation of high groundwater by its approval of the filing of the plat."

Final language is subject to review and approval by the County Attorney's Office. *Subdivision Regulations Article 3-1(2), 3-4 and County Attorney's Office recommendation.*

#### **Consideration: Carlton Heights – Maple Creek Addition (5 lots) – Maple Creek area, between Lolo and Florence near old Highway 93**

Liz Mullins, Office of Planning and Grants, presented the staff report.

Bruce and Mary Maclay, represented by Tim Wolfe of Territorial Engineering, Inc., are proposing to create Carlton Heights – Maple Creek Addition Subdivision. The property is located south of Lolo and west of Old U.S. Highway 93. The applicants are requesting approval to subdivide 73.45 acres into five lots ranging in size from 6 acres to 28 acres, leaving an 87 acre remainder on a 160 acre parent parcel. 80 acres of the property is unzoned and 80 acres are in Zoning District #40, which has a maximum density of one dwelling unit per 5 acres. Approximately 6 acres of the 80 acres is in the lotted area. The 1975 Comprehensive Plan land use designation is Open and Resource which recommends a maximum density of one dwelling unit per 40 acres.

The site is currently used agriculturally for pasture and crops. The remainder will continue to be used for agriculture. The vegetation on the site is hilly grassland with scattered timber.

Individual wells and septic systems are proposed to serve each lot. There are two private irrigation ditches within 60 foot easements. No water rights will be transferred to the proposed lots.

Several no-build zones have been designated on this property. They include areas of riparian vegetation, areas with slopes greater than 25 percent and open space/scenic view areas. Riparian vegetation exists along the creek and is shown as a 150 foot wide no-build zone on the plat. A Riparian Management Plan in the covenants is being proposed.

In Lot 4, Maple Creek forks into the north fork and the south fork, heading west into Lot 5. There are existing ranch roads in the riparian area designated as a no-build zone in Lots 4 and 5 and a ranch road along the southern boundary.

The applicant has proposed a temporary easement on the existing ranch roads. There is a recommended condition that there will be a statement on the face of the plat indicating the nature of the temporary easement and the conditions upon which it would terminate.

Conditions for the Riparian Management Plan include stating that no new roads will be built in the riparian area unless the road is built for crossing the riparian area and that the existing ranch roads are limited to ranch vehicles. There are conditions that the riparian boundary is reviewed and approved by OPG and attached to the covenants and that the riparian protective covenants cannot be changed without consent of the governing body.

The Floodplain Administrator has concern for the south fork of Maple Creek. The area proposed for Lot 4 may be subject to sheet flooding caused by overbank flooding from the south fork, which has very shallow banks and channel scars on the alluvial fan. For these reasons, Condition 23 states that the area north of the ranch road and south of the riparian area on Lot 4 be designated as no-build or the developer provide evidence that the area will be free from flooding during a 100 year flood on the south fork of Maple Creek or that flood hazards to improvements from flooding can be mitigated. The condition also addresses that new construction have a lowest finished floor at least two feet above the elevation of the 100 year flood and that the crawl space floor may be at the 100 year flood elevation if it does not contain mechanicals.

There are also several conditions amending the covenants as recommended by Fish, Wildlife and Parks (FWP) to address wildlife concerns. They include amendments to sections on pets, vegetation damage, presence of bears, fencing height, feeding wildlife and garbage. These are included in Condition 17 and it is recommended the changes be reviewed and approved by FWP and OPG and cannot be changed without governing body approval.

The applicant is proposing a 10 foot trail easement extending south from the end of Maple Creek Road to the southern boundary and east to Lamar Trail South Road. A recommended condition is that the subdivider install a 5 foot gravel pathway maintained by the Homeowners Association.

The property is accessed by taking Sun Valley Road to Lamar Trail South Road to Maple Creek Road. Sun Valley Road is an 18 to 26 foot wide gravel County off-site road within a 30 foot right-of-way. Lamar Trail South Road is an on-site private road which borders the west boundary of Lots 1 and 2, proposed to be a 20 foot wide paved private road within a 36 foot easement. Lots 1 through 5 access off of Maple Creek Road, an on-site private road proposed as a 20 foot wide paved private road within a 60 foot right-of-way.

There are six variances being requested. The first is for the road and right-of-way width and the maximum road grade on Sun Valley Road. Greg Robertson, Public Works Director, does not object with the provision that the intersection of King Road, Sun Valley Road and Lamar Trail South Road aligns with Sun Valley Road, which is a recommended condition. Staff is recommending approval.

The second variance request is for a reduced road width on Maple Creek Road. Staff is recommending approval.

The third variance request is to allow for a reduced road width on Lamar Trail South Road. Greg Robertson states that because Lamar Trail South Road will extend to the north at a future date, this road should have a minimum width of 24 feet. Staff is recommending denial and a condition that Lamar Trail South Road be paved to 24 feet.

The fourth variance request is to allow the Maple Creek Road cul-de-sac to exceed 1,000 feet in length to 2,700 feet. There is a condition that turnarounds will be reviewed and approved by Florence Rural Fire District. Public Works is recommending approval of the variance.

The fifth variance request is to allow for the maximum road grade to exceed 8 percent on Maple Creek Road. Maple Creek Road varies in grade between 2.5% and 9.25%. Staff is recommending approval.

The last variance request is to allow for the maximum road grade to exceed 8% on Lamar Trail South Road. Lamar Trail South Road varies in grade between 3% and 11.81%. Greg Robertson did not support this variance request for Lamar Trail South Road. Subsequently, the road plans have been revised to 10% grades and Greg Robertson now supports the variance request. Subdivision Regulations allow for up to 10% for a maximum of 50 feet, if approved by the appropriate fire jurisdiction. The variance request may not be required and this condition should be included.

Staff is recommending approval of the subdivision request subject to 23 conditions of approval. A memo was also distributed to address the wording of Condition 16 regarding chemicals and on-site burning.

Tim Wolfe, Territorial Engineering and Surveying, developer's representative, was present, as was Tom Maclay. He had submitted a letter requesting some changes to the conditions. On Condition 3, they would like to delete "the subdivider shall install a 5 foot gravel pathway from the end of Maple Creek Road to Lamar Trail South Road within this easement" and change it to "the subdivider shall install a 5 foot pathway from the end of Maple Creek Road to the existing path (2 Track Ranch Road) along the south boundary of Lots 1, 2 and 3 to its intersection with Lamar Trail South Road." In Condition 17, FWP has recommended a 3.5 foot high fence that does not really work. It is too low to contain livestock. They would like that deleted from the condition. Also in that condition they would like to delete the sentence, "Keep dogs in an enclosed structure when not under the direct supervision of an owner." They feel this is excessive. The rest of the condition addresses preventing dogs from harassing wildlife. This seems to indicate a structure is needed to keep a dog in. The biggest issue is Condition 23. They ask that it be deleted in its entirety. There is no flooding issue, no evidence of such and no FEMA designation. Mr. Maiorano's memo eludes to the fact that there is a creek there that must flood. If there is some floodplain designation, it will be on the plat forever and every landowner will have to deal with insurance issues. This has to be dealt with all the time, proving that a piece of property is not in the floodplain. It may be 75 feet above floodplain but because it shows on a map, they are subject to certain restrictions. People have to pay a lot of money to prove they are not in a floodplain. There is no floodplain and no flooding issue. Mr. Maiorano's issue is the potential for sheet flooding because of a shallow bank on the south fork of Maple Creek. He presented some pictures that show the creek as it exists right now. They appreciate the concern but would like the condition deleted and put something in the grading and drainage plans that a deflective berm or swales be incorporated rather than calling it floodplain and creating the problems associated with that designation.

Chair Curtiss asked for public comments.

Horace Brown stated the road is named Maple Creek and there is another road not too far away named Maple Lane. This creates a conflict in the names and he requested the developer find another name for his street.

Chair Curtiss stated that the street names have to be approved by the Surveyors Office.

Tom Maclay stated the existing homestead that has been there for about 100 years has a cellar and there is no indication of flooding. It may well be that no house will ever be built on Lot 4. Lots 2 and 4 may be combined. It makes sense to allow a deflective device if it is ever deemed necessary. It does not make sense to require it until a house is actually built on the lot. The pathway on the south side is a road that serves one residence and a camp trailer. There are grades in excess of 15%. It is a gravel road presently and makes sense as a pathway without going to any great length to develop it. The point is that the existing road works well as a pathway as long as there is a connection from Maple Creek Road. On the fence issue, livestock owners are liable if animals jump out. The fence height around the hay stack yards had to be raised from 8 feet to 10 feet to keep animals out. A five foot fence won't be an issue for animals to jump over. He has seen 100 head of elk jump over an existing fence of 52 inches without breaking a wire.

Commissioner Evans stated that she thought Montana was an open range state.

Tom Maclay stated that was true until last year but there was a lawsuit that changed it. It is hard when a road goes through a ranch with 20,000 cars and the owner is responsible for protecting the cars even though they weren't invited.

Commissioner Carey stated that FWP wanted the low fence to facilitate wildlife movement, not to keep livestock in.

Tom Maclay stated that was correct, but the height is too low, wildlife can move over a low fence easily and similarly, livestock can get out easily. He felt four to five feet was more realistic.

Chair Curtiss stated that Tim Wolfe's suggestion was to delete the requirement.

Tom Maclay stated that would be best. It makes sense to leave it to the stock owner's discretion. Game can move quite readily over taller fences. An elk can jump six feet easily and eight feet if they want to; deer can jump five feet from a stand still.

Chair Curtiss asked if the dogs in kennels was a standard statement in the "Living with Wildlife" guidelines.

Liz Mullins stated it was a concern from Fish, Wildlife and Parks. Their letter said that they wanted the wording somewhat more strict and she borrowed the sentence from another subdivision. It may not be standard but it is included in other subdivisions.

Commissioner Evans stated the Animal Control regulations use the term "must be under the control of the owner." It can't be required that dogs be on a lease, but under the control of the owner at all times.

Chair Curtiss stated the sentence could read: "Do not allow domestic pets such as dogs to run freely and potentially harass wildlife and dogs must be under control of the owner at all times."

Commissioner Carey stated that this would strike the wording that dogs must be in an enclosed structure and put in that dogs must be under control of the owner at all times.

Commissioner Evans stated that it is lawful, if a dog is harassing wildlife, including cattle, deer, etc., that they can be shot.

Tim Wolfe stated that they would ask that the requirement that Fish, Wildlife and Parks review and approve any amendments to the covenants be deleted. FWP should be consulted by the governing body, but should not have approval power before the governing body acts.

Commissioner Evans stated that it was unusual for FWP to approve such changes.

Colleen Dowdall stated that had been required before on subdivisions in grizzly bear corridors. This probably did not need to happen on this subdivision.

Commissioner Carey asked if language about holding Missoula County harmless due to flooding could be inserted in place of Condition 23.

Colleen Dowdall asked why Brian Maiorano wanted the no-build area instead of the statement on the plat that it hadn't been reviewed for flooding.

Liz Mullins stated the language which would be on the face of the plat was: "This subdivision has not been reviewed for the risk of flooding." In this case, Brian Maiorano felt he had reviewed the subdivision for the risk of flooding. The language goes on to say: "and Missoula County makes no representations regarding a likelihood of flooding by its approval of the filing of the plat."

Commissioner Carey asked if the two statements could be combined, that he has reviewed it and Missoula County makes no representations.

Commissioner Evans stated she had a problem with the requirement that the subdivider provide evidence that it would be free from flooding.

Commissioner Carey stated he favored deleting Condition 23 altogether.

Liz Mullins stated that if the Board went with Tim Wolfe suggestion that they would be willing to put a section in the covenants that requires all surface drainage to be diverted away from new structures by the use of drainage swales and berms. Brian Maiorano has asked that "designed by a certified engineer" be added to that statement and that it be put in a Development Agreement instead of the covenants.

Commissioner Evans stated she would prefer that it be reviewed and approved by the Public Works Director.

Greg Robertson stated that he felt this was getting a little carried away on the designation of potential flood hazards. It could be said that the entire valley was subject to the Glacial Lake Missoula flooding and that inundation during the next ice age was likely to occur. If something is going to be designated floodplain it should be a mapped floodplain adopted by FEMA. The County should not be polluting subdivision plats with all these disclaimers unless there is a valid and legitimate threat. The onerous should not be put on the developer to prove it is not in a floodplain. It is the County's obligation under State statutes. The County should be more particular about putting these types of conditions on subdivisions without adopted FEMA floodplain maps rather than being subjective. There are identified methodologies for identifying floodplains and it is the County's obligation to determine those, not the developers.

Horace Brown stated that he agreed with Greg Robertson and previous Floodplain Administrators did not bring up something unless it was on a FEMA map and the County had to prove there was a problem.

Chair Curtiss stated the County may be a little gun shy because of the Mullan Trail situation.

Tim Wolfe stated that from an engineering standpoint, if there is even a remote potential for flooding, they will address it. This condition says that on this hillside, with a creek above, it could flood. That's true of any hillside in western Montana. If this was an obvious, identifiable floodplain, he would delineate that on the plat without anyone telling him to do so. This is unwarranted in this case.

Commissioner Carey stated that it would be in the property owners interest to have something about diverting drainage to protect an investment.

Tim Wolfe agreed with that and that could be done with the grading and drainage plans review.

Commissioner Carey stated that should be done.

Chair Curtiss asked if Greg Robertson had seen the new road plan and was okay with it.

Greg Robertson stated he was okay with it.

Chair Curtiss stated that would then allow Variance #6 to be approved.

Liz Mullins stated she had not seen the road plans.

Jennie Dixon stated that if the variance is approved, the Board is authorizing the road to be over 10% grade for distances greater than 50 feet.

Tim Wolfe stated the variance is needed as there is a part of the road longer than 50 feet over 10% grade.

Chair Curtiss stated the discussions so far were that Conditions 3, 17 and 16 have been amended and Condition 23 has been deleted.

Jennie Dixon ask how Condition 3 was amended.

Chair Curtiss stated the change was contained in Tim Wolfe's memo, the proposal to use the existing ranch road as part of the trail rather than building a path all the way.

Jennie Dixon stated this requirement was the same as what was required on Timberline Trail Estates earlier today, a subdivision outside the UGA requirement for internal pedestrian connections. Circumstances may be different to warrant a different width or type of trail in this subdivision. She just wanted to point that out for consistency.

Chair Curtiss stated that they are being required to put in a 5 foot gravel pathway along the road. Did they not want to do that.

Tim Wolfe stated they did not want to put a 5 foot gravel pathway on the existing road.

Tom Maclay stated the road is not used much and it would be duplicitous to install a 5 foot gravel pathway in addition to this gravel road that can serve as a pathway. This was very different than Timberline both in terms of grade and the level of use.

Jennie Dixon stated the difference is there are fewer lots.

Chair Curtiss stated that people could use the road as a path rather than constructing an additional path.

Tom Maclay stated his intention was to create a loop. There is plenty of room on the existing roadway for people to walk.

Commissioner Carey stated that Timberline had 14 lots with cars and bikes, etc. This situation does not allow access by vehicles.

Commissioner Carey moved that the Board of County Commissioners amend Condition 3 as suggested by the developer. It will read: "The final plat shall be revised to show the location and width of the 10 foot trail easement. The subdivider shall install a 5 foot pathway from the end of Maple Creek Road to the existing path (2 Track Ranch Road) along the south boundary of Lots 1, 2 and 3 to its intersection with Lamar Trail South Road." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans stated that some discussion was needed on Condition 16. The condition basically says that chemical herbicides and pesticides cannot be used except to get rid of noxious weeds and pests. The wording needs to be fixed.

Colleen Dowdall stated that Commissioner Evans point was that it says they cannot be used unless they are needed. This was wording proposed by the developer and what was being attempted was to make it better so that labeled pesticides could be used.

Commissioner Evans stated that the way it is worded says they can't be used unless they are needed.

Jennie Dixon stated it was language proposed by the applicant.

Tim Wolfe stated it was written by a lawyer.

Commissioner Carey stated that all pesticides are labeled in some way.

Tom Maclay stated the intent was to make clear that pesticides are used in accordance with the label.

Colleen Dowdall suggested it be reworded to read: "Chemical herbicides and pesticides shall be used according to the label."

Greg Robertson suggested: "Chemical herbicides and pesticides shall be used according to the manufacturer's recommendation."

Commissioner Carey asked if "and only for the control of noxious weeds and pests as required by law" should be added.

Tom MacLay stated that should be consistent with the manufacturer's recommendation and felt it should be left as Greg Robertson suggested.

Chair Curtiss stated that it should read: "The use of chemical herbicides and pesticides shall be used according to the manufacturer's recommendation."

Commissioner Evans moved that the Board of County Commissioners amend Condition 16 as stated. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners delete the section pertaining to fence height in Condition 17. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners amend the section on Domestic Pets in Condition 17 to read: "Do not allow domestic pets, such as dogs, to run freely and potentially harass wildlife. Dogs must be kept under the control of their owner at all times." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners amend the last paragraph of Condition 17 to remove "Fish, Wildlife and Parks" having to approve any changes to the covenants. The motion was not seconded.

Commissioner Carey suggested the wording be changed to: "The covenants shall be reviewed for these changes by Fish, Wildlife and Parks and OPG prior to final plat approval and these sections of the covenants shall not be changed without governing body approval."

Chair Curtiss stated the developer wants to strike Fish, Wildlife and Parks.

Commissioner Carey stated that he removed "and approved" yet allowed FWP to review the changes.

Colleen Dowdall stated that sounds like it is required that the changes be sent to FWP to be reviewed for the County and she felt staff wanted to be free to check with whatever agency is appropriate.

Commissioner Carey stated that his wording would not preclude that, OPG will still review it as well.

Commissioner Evans stated it indicated that FWP is reviewing for the purpose of saying yes or no.

Chair Curtiss stated that this language was not normally included.

Commissioner Evans stated this was referring to changes, not the initial review.

Commissioner Carey stated that he presumed that OPG would ask for FWP's opinion but it would not be stated in the condition.

Commissioner Carey moved that the Board of County Commissioners amend the last paragraph of Condition 17 to remove "Fish, Wildlife and Parks" having to approve any changes to the covenants. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners delete Condition 23 in its entirety. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey asked if a new Condition 23 should be added regarding a requirement for all surface drainage to be diverted away from new structures by the use of drainage swales and berms.

Greg Robertson stated that would be reviewed under Condition 4.

There were no further public comments.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations to allow for a reduced road width from 24 feet to 18-26 feet, a reduced right-of-way width from 60 feet to 30 feet and to exceed the maximum grade of 8 percent for Sun Valley Road; approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow a reduced road width from 24 feet to 20 feet for Maple Creek Road; deny the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow a reduced road width from 24 feet to 20 feet for Lamar Trail South Road; approve the variance request from Section 3-2(1)(I)(i) of the Missoula County Subdivision Regulations to allow the Maple Creek Road cul-de-sac to exceed 1,000 feet in length to a length of 2,700 feet; and approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations to allow for the maximum road grade to exceed 8 percent for Maple Creek Road, all based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision to allow for the maximum road grade to exceed 8 percent for Lamar Trail South

Road, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Carlton Heights-Maple Creek Addition Subdivision based on the findings of fact in the staff report and subject to the conditions as amended. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

#### **Carlton Height-Maple Creek Addition Subdivision Conditions of Approval:**

1. The plat shall be revised to show the south fork of Maple Creek Road on the final plat, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 5-1(F).*
2. The plat shall be revised to show the boundary of the 160 acre parcel, including the remainder on the vicinity map, subject to review and approval of OPG prior to final plat approval. *Subdivision Regulations Article 5-1(N).*

#### **Non-Motorized Facility**

3. The final plat shall be revised to show the location and width of the 10 foot trail easement. The subdivider shall install a 5 foot pathway from the end of Maple Creek Road to the existing path (2 Track Ranch Road) along the south boundary of Lots 1, 2 and 3, to its intersection with Lamar Trail South Road. *Subdivision Regulations Article 3-2(8) and OPG recommendation.*

#### **Roads**

4. Grading, drainage and erosion control plans including hydraulic calculations sizing the culvert shall be reviewed and approved by the Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4.*
5. Engineering plans, calculations and specifications for all roadway, paving and stormwater improvements including a stormwater management plan shall be reviewed and approved by the Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-4(3)(F), 3-6 and Public Works recommendation.*
6. The intersection of Lamar Trail South Road, King Road and Maple Creek Road shall be designed and constructed to meet AASHTO standards, subject to review and approval by Missoula County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2 and Public Works recommendation.*
7. Lamar Trail South Road shall be paved to 24 feet, subject to review and approval by Missoula County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2 and Public Works recommendation.*
8. A turnaround on Maple Creek Road shall be reviewed and approved by Florence Rural Fire District and Missoula County Public Works Department prior to final plat approval. *Subdivision Regulations Article 3-2(11)(A) and Florence Rural Fire District.*
9. Driveways in excess of 150 feet in length shall have approved turnarounds and a minimum unobstructed width of not less than 20 feet and unobstructed vertical clearance of 13 feet 6 inches, subject to review and approval by Florence Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-2(10).*
10. The plat shall include a statement indicating the nature of the temporary easement and the conditions and timeframe upon which it would terminate, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-6, County Attorney's Office and OPG recommendation.*

#### **Fire**

11. Final plans for water supply for fire protection purposes shall be reviewed and approved by Florence Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Florence Rural Fire District recommendation.*
12. Wildland/Residential Interface (WRI) standards shall be addressed within the covenants, subject to review and approval by the Florence Rural Fire District. This section of the covenants shall not be changed without governing body approval. *Subdivision Regulations Article 5-3(5)(R) and OPG recommendation.*

#### **Irrigation Ditch**

13. In accordance with MCA 76-3-504(1)(j), the subdivider shall either 1) have the water rights removed for Lots 1 through 5 through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat; or 2) a development agreement shall be filed prior to final plat approval that includes notification that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable, subject to review and approval by the County Attorney's Office, prior to final plat approval. *Subdivision Regulations Article 4-1(13), MCA 76-3-504(9), County Attorney's Office and OPG recommendation.*

#### **Weeds**

14. 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) and Weed District recommendation.*
15. The covenants shall be amended to include a section that requires lot owners maintain their lots in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners are required to revegetate any ground disturbance caused by construction or maintenance with beneficial species after construction or maintenance is completed shall be incorporated into the covenants, subject to review and approval by the Weed District. This section of the covenants shall not be changed without governing body approval. *Subdivision Regulations 4-1(12) and Weed District recommendation.*

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16. The covenants shall be amended in Article VIII, Chemicals, to state: "The use of chemical herbicides and pesticides shall be used according to the manufacturer's recommendation," and Article IX, On-Site Burning, to allow for controlled burns with the minimum equipment to manage a controlled burn or a Management Plan reviewed and approved by Florence rural Fire, prior to final plat approval. The covenants shall be reviewed and approved for these changes by OPG prior to final plat approval. These sections of the covenants shall not be changed without governing body approval. *Subdivision Regulations Article 4-1(12), Weed District and OPG recommendation.*

#### Wildlife

17. The following statements shall be incorporated into the proposed protective covenants under Article IX, General Provisions, to address property owners responsibilities for living with wildlife:
- Lot owners must accept the responsibility of living with wildlife and be responsible for protecting their vegetation from damage and acknowledge that wildlife damage to landscaping will occur, or they should plant only non-palatable vegetation. (Article IX, Section 7)
  - The developer is obligated to inform homeowners of the potential problems associates with the occasional presence of bears, mountain lions, etc. (Article IX, Section 7)
  - Garbage should be picked up on at least a weekly basis to avoid potential wildlife problems. Garbage, pet and/or livestock food and other potential attractants should be properly stored in secure animal-proof containers or inside buildings to avoid attracting bears, lions, raccoons, skunks and other species. (Article IX, Section 7)
  - Bird feeders and compost piles attract bears and should be discouraged within this subdivision (Article IX, Section 7)
  - Montana law prohibits supplemental feeding of game animals. Artificial concentrations of game animals resulting from such illegal feeding can attract mountain lions and also result in damage to gardens, ornamental shrubs, etc. (Article IX, Section 7)
  - Article IX, Section 6, Domestic Pets, should be amended to read: "Do not allow domestic pets, such as dogs, to run freely and potentially harass wildlife. Dogs must be kept under the control of their owner at all times."
  - The "Living with Wildlife" brochure shall be included as an attachment to the covenants.

The covenants shall be reviewed and approved for these changes by OPG prior to final plat approval and these sections of the covenants shall not be changed without governing body approval. *Subdivision Regulations Article 4-1(12) and OPG recommendation.*

18. Article V, Section 2, Closure of Open Space, cannot be amended without the consent of the governing body. *Subdivision Regulations Article 4-1(12) and OPG recommendation.*

#### Riparian

19. The Riparian Management Plan in the covenants shall be amended to specify that no new roads will be built in the riparian area unless the road is built for crossing the riparian area and that existing ranch roads are limited to ranch vehicles and will be used for ranching purposes, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-13(5) and Fish, Wildlife and Parks recommendation.*
20. The riparian boundary shall be reviewed and approved by OPG prior to final plat approval. *Subdivision Regulations Article 3-13 and OPG recommendation.*
21. The Riparian Resource Area shall be an attachment to the covenants, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-13 and OPG recommendation.*
22. The Riparian Management Plan in the covenants shall be reviewed and approved for these changes by OPG prior to final plat approval and shall not be changed without governing body approval. *Subdivision Regulations Article 4-1(12) and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 5:50 p.m.

**THURSDAY, JUNE 20, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 20, 2002, with a grand total of \$38,800.07. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 20, 2002, with a grand total of \$9,187.52. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 20, 2002, with a grand total of \$8,406.51. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 20, 2002, with a grand total of \$107,164.49. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 20, 2002, with a grand total of \$7,961.40. The Claims List was returned to the Accounting Department.

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Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 20, 2002, with a grand total of \$5,613.97. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 20, 2002, with a grand total of \$42,027.34. The Claims List was returned to the Accounting Department.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-027 for the Health Department, in the amount of \$25.00 (needed an object code for account), and adopting same as a part of the Fiscal Year 2002 Budget.

Agreement – The Commissioners signed an Agreement, dated June 20, 2002 between Missoula County and the City of Missoula Parks and Recreation, for maintenance of the Fort Missoula Park Complex grounds. The term will be July 1, 2002 through June 30, 2003. The total amount shall not exceed \$48,300.00. The document was returned to Donna Gaukler at City Parks and Recreation for further signatures and handling.

Letter – By signature, Chair Curtiss agreed and accepted a letter from Unisys Corporation, Contracts Department, Lombard, Illinois, acknowledging Missoula County's order for LX hardware, software and services. The Supplemental Schedule Order (to Agreement signed on June 6, 2002) has been accepted by Unisys subject to the following clarification: "Paragraph 4 of the Additional Terms and Conditions included in the Order is hereby amended to read as follows: 'The effective date of the Software set forth in the Software Licenses Schedule attached hereto will be June 30, 2002.'"

Other items included:

- 1) The Commissioners reviewed a letter written by Missoula County Parks Coordinator Lisa Moisey to Woody Germany, P.E., of the WGM Group, Inc., providing comments from the Park Board on the proposed Liberty Cove Addition Subdivision and proposed park (located on Highway 93 north of Lolo). The Park Board has safety concerns regarding the location of the park, and urged WGM to consider an alternate location.
- 2) The Commissioners approved a motion to purchase the 2002 Polk Directory.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **FRIDAY, JUNE 21, 2002**

The Board of County Commissioners met in regular session; all three members were present.

#### Election Canvass

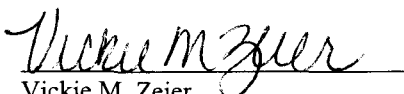
In the morning, the Commissioners canvassed the Shelby Water District Mail Ballot Recall Election.

Claims List – The Commissioners signed the Claims List, dated June 21, 2002, with a grand total of \$46,691.58. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 21, 2002, with a grand total of \$515.00. The Claims List was returned to the Accounting Department.

#### **SATURDAY, JUNE 22, 2002**

On Saturday afternoon, Chair Curtiss and Commissioner Carey attended the ribbon cutting for the AJ Memorial Bike Path held at the Frenchtown Pond State Park.

  
Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners

#### **MONDAY, JUNE 24, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated June 21, 2002, with a grand total of \$191.00. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 21, 2002, with a grand total of \$601.09. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 21, 2002, with a grand total of \$55,854.70. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Emily Goodrich-Day, Lolo, Montana, as Principal for Payroll Warrant #06-15712, issued June 5, 2002 on the Missoula County Payroll Fund in the amount of \$409.04 (payment for June 2002), now unable to be found.

Request for Action – Chair Curtiss signed Exhibit 12-C (Treasure State Endowment Program (TSEP) Final Closeout Certification For Preliminary Engineering Grants) and Exhibit 1-G (Montana Department of Commerce TSEP) so that

the MT Department of Commerce can reimburse Missoula County \$14,873.08. TSEP granted the County a maximum of \$15,000 in 50% matching funds for a Preliminary Engineering Report of the County's bridges, which is now completed. The document was returned to Joe Jedrykowski at the Public Works Department for further handling.

**TUESDAY, JUNE 25, 2002**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Chair Curtiss and Commissioner Evans attended the Airport Noise Study Hearing held in Room 201 of the Courthouse.

Claims List – The Commissioners signed the Claims List, dated June 24, 2002, with a grand total of \$30,221.72. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 24, 2002, with a grand total of \$10,724.09. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 25, 2002, with a grand total of \$45,661.01. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 25, 2002, with a grand total of \$7,649.92. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 25, 2002, with a grand total of \$21,507.73. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 25, 2002, with a grand total of \$20,270.56. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 25, 2002, with a grand total of \$1,697.05. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 25, 2002, with a grand total of \$80,418.45. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Placid Lake – South Shore Tracts, Phase 5 (Lots 12 and 14), a subdivision located and being a portion of GLO Lot 3, Section 29, T 16 N, R 15 W, PMM, Missoula County, a total area of 2.39 acres, with the owners/developers being Placid Lake Properties, LLP.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Addendum – The Commissioners signed an Addendum to the Buy-Sell Agreement, dated May 3, 2002, between the Missoula County Airport Industrial District and Michael DeNeve for the purchase of Lot 14, Block 3, Phase 4, Missoula Development Park. The Addendum extends the closing date from June 14, 2002 to July 12, 2002. The document was returned to Barb Martens in the Projects Office for further signatures and handling.

Agreement – The Commissioners signed an Agreement for Professional Services, dated June 19, 2002, between Missoula County and DJ&A, P.C., to complete the original plans and specifications for the Airport Interchange Project (Gooden-Keil Access Road). The total amount shall not exceed \$3,176.00. The term will be as defined in the Scope of Services attached to the agreement. The document was returned to Barb Martens in the Projects Office for further signatures and handling.

Agreement – The Commissioners signed an Agreement for Professional Engineering and Surveying Services, dated June 25, 2002, between Missoula County and Professional Consultants, Inc. to complete the construction of approximately 140 feet of Industrial Road, including asphalt surfacing, sidewalk, curb, gutter, and a storm drainage structure in the Missoula Development Park, Phase 1. The total amount shall not exceed \$3,286.00. The estimated date of completion shall be July 15, 2002. The document was returned to Barb Martens in the Projects Office for further signatures and handling.

Request for Action – Per recommendation by the Missoula Development Authority, the Commissioners approved a payment request for acquiring right-of-way from the Missoula County Airport Authority along West Broadway as part of the I-90 Interchange project. The following entry is a Budget Amendment related to said project.

Resolution No. 2002-067 – The Commissioners signed Resolution No. 2002-067, dated June 25, 2002, a Budget Amendment for Special Projects – Missoula Development Park, in the amount of \$36,900, using additional revenue received beyond budget for sale of fixed assets for the purpose of acquiring right-of-way from the Missoula County Airport Authority along West Broadway as part of the I-90 Interchange project. This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Other items included:

- 1) A discussion was held regarding the Butler Creek drainage road and property owned by Buster and Jackie Butler.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

**WEDNESDAY, JUNE 26, 2002**

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The Board of County Commissioners met in regular session; all three members were present.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 25, 2002, with a grand total of \$37,354.38. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Evans signed the Claims List, dated June 25, 2002, with a grand total of \$5,821.24. The Claims List was returned to the Accounting Department.

Plat – The Commissioners signed the Plat for Sorrel Springs, Lot 16, located in the E½ of Section 21, T 15 N, R 21 W, PMM, Missoula County, a total gross and net area of 10.02 acres, with the owners of record being James E. and Marcia A. Howard.

#### CHIEF ADMINISTRATIVE OFFICER MEETING

At the Chief Administrative Officer meeting held in the forenoon, the following items were signed:

Resolution No. 2002-068 – The Commissioners signed Resolution No. 2002-068, dated June 26, 2002, a Budget Amendment for the Health Department in the amount of \$8,000 (Capital – Tech Equipment / Health Alert Network). This Amendment adopts this action as part of the Fiscal Year 2002 Operating Budget for Missoula County.

Budget Transfer – The Commissioners signed Budget Transfer Control No. 02-028 for the Health Department, in the amount of \$180.00 (needed an object code for account), and adopting same as a part of the Fiscal Year 2002 Budget.

Task Order – Chair Curtiss signed Task Order No. 03-07-5-01-032-0 to the Missoula County Master Contract that Covers the Period July 1, 1998 through June 30, 2005. This is the annual Maternal and Child Health Block Grant from the Montana Department of Public Health and Human Services. The term will be July 1, 2002 through June 30, 2003. The Compensation Schedule and Source of Funding Conditions are set forth therein. The document was returned to the Health Department for further signatures and handling.

Contract – Chair Curtiss signed a grant contract for the ongoing Crime Victims' Advocate Program that serves victims of violent crime in the City and County of Missoula. The County was allocated the full amount of \$63,135 that was applied for. The document was returned to Leslie McClintock in the Office of Planning and Grants for further handling.

Other items included:

- 1) The Commissioners approved enhancements (via Budget Authorization Request) submitted by Robert M. Brown, Executive Director, to Chief Financial Officer Dale Bickell, for the Historical Museum at Fort Missoula. The enhancement items are as set forth in the Request.
- 2) The Commissioners approved the following: 1) A Congressional request for the Grant Creek Environmental Restoration Project (a Project Management Plan (PMP) implementation), and 2) the submission of a Missoula County Enhancement Request for FY 03 & 04 to fund 25% County match (assuming Federal Funds are received). This is a \$600,000 project.

#### PUBLIC MEETING – June 26, 2002

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and County Public Works Director Greg Robertson.

#### Pledge of Allegiance

#### Public Comment

None

#### Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims lists in the amount of \$584,340.82. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated that the Deputy County Attorney had to step out of the meeting for a few minutes so the decisions on Deadman Gulch Road would be next on the agenda.

#### Decision: Petition to Abandon a Portion of old Deadman Gulch Road – off Highway 93 between Missoula and Lolo

This is a petition to abandon “the old southerly fork of Deadman Gulch Road from Highway 93 on the east to the intersection with the Deadman Gulch Road (the GLO Road shown on Township 12 North, Range 20 West, P.M.M. Plat dated July 12, 1880) located in Sections 15 and 16, Township 12 North, Range 22 West, P.M.M., Missoula County, Montana.”

The reason for the request is as follows: 1) This road is no longer needed.

The following landowners have been notified: Molitor Development LLC; Katherine E. Lamoreaux; Mark E. and Jeri J. Tschida; Bryan and Norberta Rautio; and the State of Montana.

The public hearing on this matter was held June 5, 2002. Commissioner Jean Curtiss and County Surveyor Horace Brown conducted a site inspection on Tuesday, June 18, 2002.

Horace Brown stated this petition is to abandon the southern portion of the road. The road is not even built. The right-of-way goes through one house as well. The right-of-way is not needed because another road to the north serves the same area in a better fashion. He would recommend to the Board that the right-of-way be abandoned.

Commissioner Evans moved that the Board of County Commissioners approve the petition to abandon the old southerly fork of Deadman Gulch Road from Highway 93 on the east to the intersection with the Deadman Gulch Road (the GLO Road shown on Township 12 North, Range 20 West, P.M.M. Plat dated July 12, 1880) located in Sections 15 and 16, Township 12 North, Range 22 West, P.M.M., Missoula County, Montana. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Decision: Petition to Alter Deadman Gulch Road and a Portion of Cochise Drive – off Highway 93 between Missoula and Lolo**

This is a petition to alter “Deadman Gulch Road and a portion of Cochise Drive from the frontage road on the west side (Deed Book 103, Page 91) of Highway 93 approximately 2,855 feet westerly, measured along the centerline, to where the old road and the present traveled way converge, located in Sections 10, 15 and 16, Township 12 North, Range 20 West, P.M.M., Missoula County, Montana.”

The reason for the request is as follows: 1) The public would be better served by the new location.

The following landowners have been notified: Molitor Development, LLC; George Tyler Hangas; Leroy C. and Joanne R. Anderson; Patrick F. and Danielle L. Dauenhauer; and the State of Montana.

The public hearing on this matter was held June 5, 2002. Commissioner Jean Curtiss and County Surveyor Horace Brown conducted the site inspection on Tuesday, June 18, 2002.

Horace Brown stated this petition is to alter the right-of-way to an existing roadway that extends to the State lands. If the right-of-way was placed on the centerline of the existing road, it would include a property owner’s well. He would recommend that 100 feet east of the well, the right-of-way be transitioned to the property line and then transition back toward the right-of-way line that exists now, 100 feet west of the well. There is plenty of room to build a road in that area. The adjacent landowner has said there would be no problem with making the transition, as the land could not be used for anything else. Mr. Anderson, the owner of the well, has agreed that this would take care of his concerns. The County Surveyor’s Office will provide an exhibit showing the location of the alteration.

Chair Curtiss stated that this was being done as there was room to do it and so that the existing well will not be subject to an encroachment permit in the right-of-way.

Commissioner Evans moved that the Board of County Commissioners approve the petition to alter Deadman Gulch Road and a portion of Cochise Drive from the frontage road on the west side (Deed Book 103, Page 91) of Highway 93 approximately 2,855 feet westerly measured along the centerline to where the old road and the present traveled way converge, with a transition 100 feet east of the well to the property line and then transition back to the centerline 100 feet west of the well as shown on the exhibit provided by the County Surveyor’s Office. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Certificate of Survey): Kirkpatrick Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 8A2, COS 1915, located in Section 10, Township 14 North, Range 20 West, Missoula County, Montana.

Pat Kirkpatrick 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 5.26 acres in size located near O’Keefe Creek. Mr. Kirkpatrick proposes to create one approximately 1 acre parcel for transfer to his father, Maurice Kirkpatrick, for residential purposes and keep the remaining approximately 4.26 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1677	November, 1978	Greater than 20 acres	Geneva Cates	
COS 1828	March, 1979	Family Transfer (created Lots 8A and 8B)	Dennis Minemyer	Darlene Ann Minemyer
COS 1915	April, 1979	Occasional Sale (created Lots 8A1 and 8A2)	Darlene Minemyer	N/A

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act as listed above.

Pat Kirkpatrick was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Kirkpatrick really did intend to transfer this property to his father?

Pat Kirkpatrick stated that was his intention.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Pat Kirkpatrick 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated the Mr. Kirkpatrick would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing (Certificate of Survey): Biggins Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract C-1, COS 1424, located in the north one-half of Section 1, Township 16 North, Range 15 West.

Mike Biggins 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 6.7 acres in size located near Seeley Lake, Montana. Mr. Biggins proposes to create one approximately 3.35 acre parcel for transfer to his daughter, Autumn Elizabeth Biggins, for residential purposes and keep the remaining approximately 3.35 acre parcel for residential purposes as well.

The history of the parcel is as follows:

Parcel History	Year	Exemption Used	Owner	Transferee
COS 1424	1978	Occasional Sale	Western Montana Properties	
COS 1237	1993	20 Acres	Loren H. Otto	Michael Biggins

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed above.

Mike Biggins was present and came forward to answer any questions the Board may have.

Chair Curtiss stated that the Board is charged by State law to make sure that people are not trying to avoid subdivision review. She asked if Mr. Biggins really did intend to transfer this property to his daughter?

Mike Biggins stated that was his intention.

Chair Curtiss stated the application indicated his daughter was not a minor.

Mike Biggins stated that was correct.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Mike Biggins 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated the Mr. Biggins would receive a letter of approval for the family transfer. It will still be necessary to go through all the normal channels to get septic permits and other approvals to build on the site.

**Hearing (Certificate of Survey): Peters Agricultural Exemption**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create an agricultural covenant exemption parcel for that parcel described as Tract 4, COS 4244, located in Sections 7 and 8, Township 13 North, Range 17 West.

Russ Peters has submitted a request to create a parcel using the agricultural covenant exemption to the Montana Subdivision and Platting Act. The parcel is 5 acres of land owned by Russ Peters who wishes to sell it to a neighbor who does not want it developed so that he can preserve his view.

An agricultural covenant restricts the use of the land to agricultural uses and requires that the owner enter into the covenant as to the use of the property, revocable only with the consent of the Board of County Commissioners. Sanitary restrictions cannot be lifted on an agricultural covenant exemption parcel and no residential structures are allowed. There is an intervening ownership between the two parcels, the old Milwaukee Railroad Right-of-Way, so a boundary relocation is not possible.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Ron Ewart, Eli and Associates, representing Mr. Peters, was present. The reason Mr. Peters wants to create this exemption is that his neighbor wants to purchase the property to keep anyone from building there. The goal is to keep the parcel open.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request by Russ Peters to create a new parcel by use of the agricultural covenant exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

**Continuation of Hearing: Glacier Estates Subdivision (9 lots) – Mullan Road near Sunset Memorial**

Jackie Corday, Office of Planning and Grants, presented the staff report.

This is a request to review the revised Glacier Estates Subdivision, a revised proposal to subdivide a 9.38 acre parcel into 9 one acre lots. The property is located south of Mullan Road in-between Frey Lane and Sunset Memorial Gardens.

During the Board of County Commissioners May 1, 2002 Public Meeting on Glacier Estates, the Commissioners identified seven issues that would require mitigation in order to approve the subdivision. The Commissioners and the applicant mutually agreed to delay a final decision until the June 26, 2002, public meeting in order to give the applicant time to redesign the subdivision to address the seven concerns and to receive comment from key agencies. Comments were received from Public Works, Missoula Rural Fire District, the Missoula City-County Health Department and County Parks. The original proposal consisted of 8 lots ranging in size from about one-third to one-half acre and one 4 acre parcel. The major changes include increasing the lot size to one acre (9 one acre lots), eliminating the community water system in favor of individual wells and changing the location and reducing the size of the common area.

The first concern was small lot size and this has been addressed by changing the design to 9 one acre lots. The second concern was of flooding on the property itself and of homes on Frey Lane. The concern was if the proposal was for 8 one-half acre lots that could further subdivide into a total of 16 lots that the runoff caused by heavy rains or snow melt could be worsened on Frey Lane properties. This concern has been met with changing the proposal to 9 one acre lots. There will be more open space for water to be absorbed. The same swale system has been proposed for this revised proposal. The swales are approximately 12 feet wide and 2 feet deep running along the cul-de-sac road. Public Works will be reviewing the engineered proposal for drainage to see if that will work adequately to capture all the drainage. If it does not, Public Works will be able to impose additional requirements. The third concern was retention of storm drainage which has been addressed with the flooding issue.

The fourth concern was about high groundwater and having basements. Neighbors had testified that they have water in their basements on Frey Lane, due to the heavy clay soils. A proposal was made to have a condition for no basements on the lots in the flat area, Lots 4 through 9. Staff felt that since Lots 1 through 3 were on a gentle slope, basements would be appropriate.

The fifth issue was having enough space for replacement drainfield. There was concern that on a half-acre lot there would not be enough room for a replacement drainfield, especially in the heavy clay soil. Since they are now one-acre lots, there will be room for a replacement drainfield.

The sixth issue was access to Mullan Road. There are several accesses to Mullan Road in close proximity to the proposed access, including Frey Lane, Grassland Drive and a private road almost directly across from this access. The concern was having up to 18 homes using this access point. It is not new, there is currently one home using it, but the concern was expanding it that much. With the new proposal, there will be nine homes from this subdivision using the access point and the caretaker's home from Sunset Memorial Gardens. If the property owner to the west ever decides to connect up to the road, they could use this access as well, for a potential of 11 homes. This has lessened the impact on this access point.

The final concern was for a school bus stop connection. Neighbors had testified that the school bus stops at the top of Frey Lane and there was concern about children having safe access from this subdivision over to the bus stop. The applicant contacted Montana Department of Transportation to see if they could do a pathway within the Mullan Road right-of-way. MDT said that could be done if certain standards were met and an encroachment permit was obtained. This has been made a condition of approval.

In addition to addressing the concerns of the Board, OPG had a few other issue that came up with the change in design. Because of the sewer connection that is coming to this area and the potential for future development and the Comprehensive Plan designation of two dwelling units per area, staff has recommended a condition of placing a 30 foot no-build strip down the center of the lots to allow for splits in the future. This is a planning tool for the future.

The second item is the parkland dedication. The applicant's new design has a .31 net acre common area that does not meet the Subdivision Regulations. Regulations call for .61 net acres. The applicant has also dedicated a public access easement that comes from the cul-de-sac, goes between Lots 8 and 9 and then goes to the east and west to potentially connect the neighborhoods in the area. This is something that was mentioned at the neighborhood meeting as being desperately needed in this area of cul-de-sacs. The applicant's have asked that the easement be counted as part of the common area requirement. OPG felt this could be counted if it became functional. The only way it would become functional is the applicant obtained the easement they needed from the property owner to the west, to connect to Douglas Drive. Otherwise, it could be the easements would only exist on paper and people could not actually use them. The condition says that the applicant can count the public access easement strip if the easement is obtained from the property owner to the west and the Class II trial is actually constructed coming off the cul-de-sac, down between Lots 8 and 9 and over to the Douglas Drive cul-de-sac. The pathway to the east to connect to the Frey Lane neighborhood is more tenuous because they would have to obtain permission from the owners of Lots 7 and 8 and the Homeowners Association. Because of that, the pathway to the east would not be counted toward the required common area. The easement will still exist however. The developer did not express any objections to that condition as it is written.

The third item is the conditional access easement. This was recommended by Public Works, OPG and the Fire District. This had also been discussed with the first proposal. There was testimony of concern about connecting the road so it became a throughway to Kelly Island. That would not happen unless the property owner granted an easement for that. Staff felt it was important to have it on the plat map for potential future connection if the easement is ever granted. That has also been made a recommended condition of approval.

The last item was access to Lots 2 and 3. The lots do not front the public cul-de-sac road. The developer initially proposed a 12 foot wide driveway and later changed that to a 20 foot wide paved access. If this is a road, it would necessitate a variance for width, curb and gutter and sidewalks. Those three variances have the support of OPG and Public Works. A hammerhead will service both lots. Staff felt that was a better design than having individual turning circles on each parcel.

Ron Ewart, Eli and Associates, developer's representative, stated the revised proposal shows how the land could be developed. A point of concern for the developer is the conditional access easement off the south end which would not be a good idea for several reasons. There are reasons why it would be a good idea as well, but the reasons why it wouldn't outweigh them. The Fire District would use Cote Lane to access Kelly Island. There is also an incredible amount of neighborhood opposition to even potential vehicular access through there. They do want to facilitate pedestrian connections as Jackie explained. They are proposing pedestrian connections to the south, east and west. A Class II connector would have to be eight feet wide and they would rather see a five foot wide walkway, it is more quaint and less imposing. An eight foot wide walkway is important in other area like the Rattlesnake which access wilderness and see a lot of use. Here, a lot of pedestrian traffic is not anticipated, even into the future. They would like to keep it a five foot walkway which would require a change to Condition 10. A walkway is shown along the east side of the access roadway, a boulevard walkway set against the edge of the 70 foot right-of-way. It would either be asphalt or paved. It is shown on one side to meet the regulations. The developer may want to put the walkway on both sides. Street trees on average of every 50 feet are being proposed. Property owners would plant their own landscaping. Another issue has to do with the 30 foot no-build zone in the middle of each lot. It could mean more impervious surface which could make any drainage problems worse. The drainage plan will be designed for nine homes, not eighteen homes. If there is room around the home, some on-site detention can be planned. There is more that can be done to minimize runoff with nine homes as opposed to 18 homes. It would also change the character of the homes. The plan is to put a good sized home in the middle of the lot. More homes would also impact the access point on Mullan Road. Regarding Condition 3, they are proposing a 20 foot wide paved shared driveway within a 40 foot wide private access easement. The covenants would require that the owners of Lots 2 and 3 maintain the shared driveway. The main road will most likely be a public road. He did not feel it would be prudent to name the access. Lots 2 and 3 would have an address on the main road. Subdivision Regulations 3-1(1)(I) state that a private driveway serves two or fewer lots or dwelling units. 3-2(10) gives the standards for driveways. The Regulations require providing physical and legal access to all lots. They have tried their best to meet all the concerns brought forth by staff, the Commissioners, the neighbors and the landowners.

Chair Curtiss stated this was a continuation of a public hearing and asked for comments.

Paul Fredericks, 1839 Frey Lane, stated that Ron has tried hard to reach a compromise with the landowners. The solution is not perfect, but they have met in the middle and addressed a lot of concerns. They like Ron's proposal. He did not like the suggestions that OPG added. If someone has a one acre lot and they are told they can only build on one-half or the other, even though it is zoned one per acre, even if the master plan might say two per acre, it is fairly arbitrary. It could be suggested they build on only one-tenth of the lot, because at some time in the future, this could be like the University neighborhood. That is not allowing the landowner to use the value of their lot to build what they want. The other problem is the access through to Douglas Drive. The homeowners on Douglas Drive and Frey Lane have expressed concerns about that. He supports Ron on this point. This cuts back the amount of available land on Lot 8 and creates potential safety problems. Again, he supports Ron's suggestions for development.

Commissioner Carey asked for some examples of the neighbors safety concerns.

Paul Fredericks stated this is a young neighborhood, families with small children. The residents think of it as rural. Kids and pets run all over. There are very few fences in the area allowing the children to wander. He would hope this subdivision, if approved, would also be open. Kids will go back and forth between the neighborhoods. Frey Lane and Homestead are not through streets. If a through street is installed, it will lead to Cote Lane and will cause more concern for the parents of these young children.

Bill Davidson, 1853 Frey Lane, stated this looks a lot better than the previous proposal. He did not like the idea of further subdividing the one acre lots. The through street to Kelly Island should not happen. The extra traffic would be a problem. He is still worried about a road in his back yard. He and Ron discussed planting some trees.

Ron Ewart stated that Mr. Davidson has a concern about the road being so close to his home. Because of that, Ted Stettler and Rick Evans were contacted about moving the road further away from Mr. Davidson. That was not feasible. At that time, Mr. Crofts was the property owner but was trying to sell and the new owner was unknown. It would be most appropriate for Mr. Davidson and Mr. Langley, if he buys the property, to talk about that. As the developer's representative, it is not his place to determine if a fence or trees or whatever will be put in. In this case, it is better handled between the developer and the landowner. The road has been moved a little further away from Mr. Davidson property.

Ted Stettler stated he was one of the owners and managers of Sunset Cemetery. The new proposal is more in tune with the original idea presented with the easement request. They still do not like the idea of a connection to Douglas Drive. Living on a cul-de-sac provides some measure of security and limits traffic speed. The area seems to favor cul-de-sacs such as Douglas, Hayes, Maryanne, Stigner, Areo, Buckhorn, etc., etc. The walkway idea to allow pedestrian traffic is favored with development encouraged further from Mullan Road. They have discussed this idea with Ron and are willing to consider access through some of their property to facilitate the design and keep the kids safer. When they were originally approached, the design was as proposed and is zoned for, one house per acre. To require the no-build strip to allow for future subdivision goes against what their feelings were when approached for the easement. They favor the presentation as Ron suggested.

Poody McLaughlin, 1629 Douglas Drive, stated she supports the current plan. It is much improved from the other proposal. The density is more in keeping with the current neighborhoods. It will have a positive effect on traffic levels and the intersection at Mullan Road. She agreed that one house per acre is the preferred density and expressed concern about the density going higher. She also supports the bicycle/pedestrian path. It will be a boon for the kids in the neighborhood as well as for the adults. It would provide a safe path from the cul-de-sac to Frey Lane and the fishing



access. She hoped that the developer would be required to construct these paths, that they become a reality and not just be on paper.

Jared Langley stated he was representing P&L Homes. Their intention is to build upper end homes, \$400,000 to \$500,000 market range. He would like to stay with the same type of houses on Frey Lane to keep the homeowners happier, which they would not be if duplexes were being built. The connection to Douglas Drive would inhibit having upper end homes. Purchasers of upper end homes tend to want to be on a street that is not a through street. They want privacy and seclusion. That is what potential purchasers have related to him. He does see OPG's point of the no-build zone through the middle of the lots. It is a good point, however, upper end homes would not be feasible if that happens. \$175,000 homes would be more in keeping because of future planning for roadways, driveways, paving, etc. That would take out the upper end market which would lead them to build houses that are a lot cheaper than the surrounding homes. It drops the property value of the surrounding houses. He would be happy to talk with Mr. Davidson about putting trees in, they like to do that so that when they are done, the area looks good.

Commissioner Evans stated that everyone is expressing support for the walkway. The proposal states that the walkway will be maintained by the Homeowners Association. It has been her experience that Homeowners Associations start out good but end up not doing much. Would Mr. Langley have a problem with assessing an RSID for maintenance if the Homeowners Association fails to maintain the walkway. Can that be done.

Jared Langley stated he would support that and go one step farther. At his development off Short Street, P&L Homes is part of the Homeowners Association with 51% of the controlling vote so they can make sure that everything is maintained to their satisfaction. If it isn't, then assessments can be placed on properties.

Commissioner Evans asked if he would maintain that forever.

Jared Langley stated that he was only 31.

Colleen Dowdall stated it would have to be a public walkway in order to do an RSID.

Ted Stettler stated that Ron had proposed using a piece of property they have to the east of the roadway. Instead of running the walkway straight to Mullan Road, turn it east to connect with Frey Lane to give additional safety for the children. They would be willing to do that for a walkway.

Commissioner Evans stated her major concern was maintenance of the walkway.

Jared Langley stated he did not have a snow plan. He does have a maintenance plan with the paver and it makes good sense for him to keep things looking nice. If he has another plan before the Board in the future, they will remember that he has kept his word in the past.

Commissioner Evans stated the Fire Department would like emergency access to Douglas Drive and pedestrian access is also a good idea. Would Mr. Langley consider emergency and pedestrian access through to Douglas Drive.

Jared Langley stated that if he could be shown a plan of how to do this so that only emergency vehicles have access, he would be happy to do so. He would not purchase this property if there was a roadway that would connect to Douglas Drive. It would be a deal breaker. The pedestrian access is great and will help bring the community together.

Curt Belts, Assistant Chief of the Missoula Rural Fire District, stated that access to any subdivision is a major concern to the District, particularly in light of Wildland/Residential Interface issues, evacuation issues, servicing neighborhoods. Should they be at the end of Douglas Drive and have to respond to an emergency in this subdivision, how could they get there in a timely manner. When someone has had a heart attack, minutes are precious. If they had to go all the way back out to Cote Lane to Mullan Road then back to this subdivision, it would be longer than the four to six minute response window for cardiac care. There was also concern if a problem should arise at the access point on Mullan Road. How would residents evacuate. Residents don't often think of those things but he is paid to think about those things. That is why they have requested some type of emergency access. It doesn't have to even show as long as they know it's there. It can be planted in grass as long as the base is capable of supporting their vehicles and be used only for emergencies. A gate can even be installed that would be locked but they would have access to.

Commissioner Carey asked if there was a model from another subdivision that could be used as an example.

Curt Belts stated they have done a number of these, there are a couple that have done the grass path as he just suggested. Nobody knows there is a subsurface capable of supporting a fire truck. The Fire Department knows because they have a map and contact with the Homeowners Association. Those are used only for emergency purposes, a firefighter would not drive over it just for fun or to take a shortcut. There is one up the Rattlesnake with an access gate. The gate has a lock box and a key is provided for emergency responders. That does slow the process a little, but it does provide emergency access and more importantly, egress.

Commissioner Evans asked if this was done as suggested and there was an emergency and the grass was all torn up, who would pay to fix it.

Curt Belts stated that in similar situations, the Fire Department has split the cost with a homeowner. They always try to be a good neighbor.

Colleen Dowdall stated a similar access was done between Circle H Ranch and the roads in Goodan Keil to provide an emergency access and egress. The plan was to build a base capable of supporting emergency equipment and also use a locked gate.

Chair Curtiss stated that this easement would be restricted as to buildings or trees, etc.

Curt Belts stated that would be normal, that there would be no obstructions for emergency access.

Ted Stettler stated that he was not trying to keep anyone from being safe, but was it the intention to not build cul-de-sac communities. Is staff saying that is a major problem. Will easements be sought from the end of all the other cul-de-sacs in the area.

Colleen Dowdall stated the Subdivision Regulations were changed in 2000 after the Growth Management Process. The Regulations do state that cul-de-sacs will not be allowed unless there is no other alternative or there is no connection to be made. Cul-de-sacs are generally discouraged for a number of reasons that were all part of the public hearing process, including safety connections, but also not having connections between neighborhoods and trying to create more grid roads so people don't have to drive all the way around just to get to a neighbors house. It is a planning philosophy that has been adopted in Missoula County. Providing emergency access is something that the County always tries to do and is also a part of the Regulations. This is not the first time this has been requested.

Ted Stettler asked if this was a concern of people who lived on cul-de-sacs. Do they feel too isolated and want better connections.

Colleen Dowdall stated it is a planning concept that has been adopted by Missoula County.

Ted Stettler stated there are a lot of other communities on cul-de-sacs in this area and the people that live there don't feel that way. He understood the concept and did not disagree that an access could be put in there. What kind of assurance is there that a future owner couldn't give a permanent easement and it becomes a through street. It would make the developer seem like a liar.

Chair Curtiss stated the developer is not lying, he does not want a through street. The County Commissioners and planners in Missoula County are looking at connections in the future. People who live at the end of a cul-de-sac are not running to the Board asking to change things. If they were the one who needed emergency treatment to save their life and help couldn't arrive in time because of the cul-de-sac, they may change their mind. That is what the County is trying to do, look at the future connections that might be needed.

Colleen Dowdall stated that if this is an emergency access, it cannot be turned into a public road by people in the future. If the developer sold Lot 8 to someone and Lot 9 to someone and they wanted to dedicate it to the County so that a public road could go through their property, that could occur. That can happen anywhere. But the developer, in this case, could not sell Lots 8 and 9 to someone else and then dedicate it as a public road. He would not have that ability. The easement would be strictly for emergency purposes which is their protection, but nothing in life is that certain that in a number of years that connection won't be needed. It would be through some public process, not just because the developer decides to go back and do it. The government has the ability to condemn property if they need it for a public purpose. That could occur in the future also, although it is not common in Missoula County.

Greg Robertson stated that the two issues he looks at with subdivision roads are emergency access and connectivity between neighborhoods to reduce response time. A good example is the time required to go from the end of Douglas Drive all the way back to Cote Lane then to Mullan Road versus the short distance to Aisha Place to Mullan Road to reduce response time. The second issue has to do with maintenance and snow removal. Cul-de-sacs in general are very difficult to maintain, there is no room to put snow. Vehicles are often parked on cul-de-sacs which makes it difficult for the maintenance workers. Through streets are easier and more efficient. Cul-de-sacs are more time consuming and slows the entire process down and it is also hard on the equipment. Through streets are preferred. The County needs to be aware of that fact as development occurs in a largely undeveloped area that will see substantial development pressures as the sewer project moves forward. The County needs to be looking at the larger picture of the road network and how to maximize efficiency for the people who have to maintain the roads and emergency response. He is familiar with all the arguments, both pro and con, for cul-de-sacs. He was not aware of any studies that showed that property had been devalued because of a through street. In deciding between emergency versus public, he would prefer public with a future connection to Douglas Drive. Obviously that will not happen now. The parcel between Douglas Drive and this subdivision would have to be condemned or acquired, but at least the corridor is there for sometime in the future. Curt's idea about a stable subgrade with grass over it is a common practice. A crash gate is a barricade that could be knocked over by emergency vehicles but keep others out. The stable subgrade is a good method if it is of adequate depth. If the structural integrity is good, it is unlikely the grass will be torn up. He has seen a lot of these emergency accesses over the years and they work very well. However, his first preference would be that it be dedicated as a public road or a conditional public access easement be granted for future connection. Perhaps an additional condition could be added that an appropriate traffic study be done on Mullan Road before that connection could ever happen. One of the things that the County looks at is a balance of traffic volumes. Cote Lane is a very busy road because of the amount of homes. It would be nice to balance it out instead of overburdening one road.

Paul Fredericks stated that Frey Lane is a school bus route for the middle schools and during the past winter only one snow plow went through. He can guarantee that a cul-de-sac will not be plowed. If it is a through street and not a bus route, it probably won't be plowed either. When the original landowner sold this land, she did not grant access across her land, she sold a landlocked piece of land. She could have added to her profit but she did not want to have access through her corner of the lot. All the talk about an emergency or public route is moot unless the County condemns a portion of her property because she will not grant that easement.

There being no further comments, the public hearing was closed.

Commissioner Evans stated that when this was originally heard, the neighbors made it very clear they did not want 18 houses there. She believes that was one of the reasons it was sent back for mitigation. To put a 30 foot no-build strip on each lot violates the intention of the mitigation request. She did not favor the no-build strip to allow for future lot splits. She felt an emergency access and pedestrian easement only would be appropriate. Jared can work with Rural Fire to come up with a satisfactory solution. She also suggested working with Mr. Davidson to provide a satisfactory buffer would be the neighborly thing to do. Having Mr. Langley retains control of the Homeowners Association so snow will be removed from the walkway to Frey Lane for the children is also satisfactory.

Commissioner Evans moved that the Board of County Commissioners delete Condition 8 regarding the 30 foot no-build strips on each lot.

Commissioner Carey stated this was a tough decision. He understood what staff was attempting to do, they are paid to plan and that is what they are doing. He also shared Commissioner Evans view of the emergency easement.

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

Commissioner Carey stated that the access to Lots 2 and 3 needed more discussion, having a shared driveway versus a private road. He is in favor of keeping the condition.

Chair Curtiss stated she was also in favor of keeping the condition.

Greg Robertson stated that Section 3-3 of the Subdivision Regulations has a statement in it about standards for lots. It states that each lot shall abut on and have legal access to a public or private road. That implies there is physical frontage on a private road in this case. There is no definition in the regulations of what a driveway consists of. Based on the AASHTO standards, a driveway is simply providing a terminal access. It is assumed that the lot already has frontage on a public or private road. It is important for addressing purposes that lots have physical frontage on a road. An example would be the situation in Potomac finding properties on private roads. A grant has been requested to start naming these streets and having signs installed so they can be located. It is important in any subdivision that emergency personnel be able to find a particular address on a particular street, as time is of the essence. One of the canons of good subdivision law is a predictable layout of lots, blocks, streets and roads. Having physical frontage on a named street, public or private, will meet that intent.

Commissioner Evans asked Greg if he considered the two houses as having access.

Greg Robertson stated that he did not. If the road is named, then he would consider it as having access.

Commissioner Evans asked if the home was addressed from the main road and had an appropriate sign, shouldn't the fire department be able to find them. She felt that fit his description of a terminal access.

Greg Robertson stated that it does not because emergency responders would have to go through someone else's property to get to the home. They would be crossing Lots 1 and 4 to get to Lots 2 or 3. Lots 2 and 3 don't have physical frontage on a road unless it is called a road and signed as such.

Colleen Dowdall stated that this has been a continuing discussion with Greg. She has been trying to figure out how this has become so confusing. As revisions have been made to the regulations, it was assumed that it was legal to have two homes served by a private driveway that really is a private road serving two homes but has always been called a driveway. Standards have been set up for improvements based upon what it is called, not based upon what it is doing. The first problem is defining what it is legally, a road or a driveway. She did not have a problem calling this a private road for purposes of addressing and satisfying the requirements, but then there is another section for design standards for private roads. On the left side of a table it says private road, three or more lots or dwelling units, then it has standards for easement width, roadway width, maximum grade, etc. On the right side of the same table it says private driveway, two or fewer lots or dwelling units. The only place in the design standards for private roads that calls it a driveway instead is in this table. Take away those titles and it would just be talking about a private road with three or more dwelling units or a private road with two or fewer dwelling units, which would have a lesser design standard. That works well to call it a private road but that it falls under the two or fewer lots or dwelling units.

Chair Curtiss asked what the easement for a driveway was in that section.

Colleen Dowdall stated the easement was 20 to 54 feet.

Greg Robertson stated to clarify that what is proposed by the developer is okay with him. The physical improvements they are proposing are fine. The issue is whether it be named or not. He firmly believes it needs to be named.

Colleen Dowdall stated that when the regulations were changed, the thinking was two or fewer lots was a driveway. There were other standards in other places in the regulations that are triggered as a result of calling it a roadway. One of those standards include boulevard sidewalks. So a situation has been created where every one of these will have to request a variance. On this revision, three variances were needed as a result of calling it a road. She has not addressed that throughout the regulations to figure out a way to make it a roadway that serves two or fewer lots that doesn't have to meet the standards for sidewalks and curb and gutter. If it is called a driveway, it wouldn't require curb and gutter. If it is called a roadway, it requires curb and gutter. This is an ongoing discussion and will require some changes to the regulations.

Horace Brown stated that it be called a driveway and leave the regulations alone, then change it for the future. In the past, these have always been called driveways and it should not be changed just because there is a conflict in the regulations. A driveway has just as much weight as a roadway. It has never been required of anybody with two or fewer homes in the past to name the road. He did not want to see that start, there are enough roads now and the County will soon run out of road names.

Ron Ewart stated that he has discussed this with Scott Waldron before. At the driveway there will be two mail boxes each with an individual address. Down a ways there will be another post with the addresses for the individual homes. An emergency responder would be able to find the home. As Horace said, it is hard to get a road name approved. A new name cannot even be remotely similar to a name already in existence. All the tree names are taken, all the bird names are taken, kids names are taken. He felt that everyone was trying to get to the same point, it was just a matter of how to word it. The best thing would be for the regulations to say "shall abut or have direct access." Greg is right that the regulations say "shall abut." But it also says that a driveway serves one or two lots. The right thing should be done on each

subdivision. This one has 20 feet within a 40 foot right-of-way which makes sense. In the case of a 20 acre subdivision with a 5 acre lot in front and a 5 acre lot in back, a 12 foot driveway with 20 foot clearance within a 30 foot easement would be just right. That shouldn't have a road going all the way back, just a driveway that meets standards. Each one should be reviewed to make sure the right thing is being done.

Colleen Dowdall stated that in reading the regulations of other jurisdictions, there is another layer of roads that are called Lanes or Drives, etc. These are between roadway and the driveway to a house. Those may need to be considered when this is discussed further.

Chair Curtiss asked Curt Belts, from an emergency responder's point of view, was it better to name the road.

Curt Belts stated in this context, it was half and half, provided the address signs are available. The Fire Department will insist on what Ron suggested, numbered at the junction of the driveway and the road and again at the property line so a home can be readily identified. Without those numbers, it is difficult to find a home. The shorter driveways don't create a big problem as long as the number is present and consistent.

Jared Langley stated that if, between Lots 2 and 3, it is a driveway, he wanted to make sure the County was not responsible for plowing.

Chair Curtiss stated that was correct. A turnaround would be needed at the property line for emergency vehicles.

Commissioner Carey asked about Aisha Place. Would it be in the public and private interest to have that a private road as well. Would that address Greg's concerns.

Chair Curtiss stated that if it was private, a future connection could not be obtained.

Colleen Dowdall stated that if the future connection was not asked for, it could be a private road. If the connection is wanted, it should be made a public road.

Commissioner Evans stated she understood Greg's concerns about through roads and she agreed with him. However, in this case she viewed it as similar to what happened in Lolo. The road to the sewer plant has become such a through street it is very unpleasant for the people who live there. The same thing could occur here because of Kelly Island. She does not want to force the people who may live here to have this as a public thoroughway when there is already access to Kelly Island from Cote Lane. She is not in favor of making this a through road in this case.

Commissioner Carey moved that the Board of County Commissioners amend Condition 3 to read: "The shared driveway access serving Lots 2 and 3 will be a 20 foot paved driveway within a 40 foot private access easement and two reflective street name signs will be posted at the shared driveway entrance." Commissioner Evans seconded the motion.

Commissioner Carey asked Greg if that met his needs.

Greg Robertson stated that it did not, he would still like it to be a road.

The motion carried on a vote 2-1 (Chair Curtiss opposed).

Jackie Corday stated that if this remains a driveway, then the three variances relating to road standards for it are not needed.

Colleen Dowdall stated that was correct but a variance was needed to the provision that requires that all lots abut a road. She would provide some language for that variance.

Ron Ewart stated that there was a way to provide emergency vehicle access and a walkway from the end of the cul-de-sac bulb. The design can be worked out with Curt Belts.

Commissioner Evans stated that was a good compromise.

Chair Curtiss stated she would still like to have the access for the future, but add to the condition so that at this time it has the pathway and a stabilized subgrade for emergency access. She believes that at some time in the future that access will be needed. As Mr. Fredericks stated, the last piece of easement has not been secured and the County is not in the habit of condemning land. There is not a need now but it is important to maintain it for the future.

Jackie Corday stated that two separate motions are needed. One is to change Condition 6 to reflect the emergency access subgrade. The second motion could be if the Board also wants to make it a conditional access easement at some possible future date.

Commissioner Evans wanted to make sure that the emergency access was reviewed and approved by Public Works and the Fire District.

Greg Robertson stated he would provide Eli & Associates a typical cross section of a stabilized roadbed.

Jackie Corday again suggested separating the two items, the emergency access and pedestrian easement and the possible future public access easement.

Greg Robertson stated that 60 feet would be needed for possible future connections but the actual improvements would be limited to about 20 feet.

Commissioner Evans stated that she would prefer not to take more land than was needed.

Colleen Dowdall stated that if this is wanted for a future public road, then the 60 feet is the typical right-of-way, 30 feet on each side of the lot line.

Chair Curtiss asked Jackie what her reasoning was for separating the two items.

Jackie Corday stated that she is hearing that the some of the Commissioners will vote for the emergency access and others will vote for the conditional future access easement. The vote could be split. The Board is in favor of the emergency access idea, but not all of them are in favor of the potential future use as a road. That what she was hearing from the Board and thought it would be better to split the two items out.

Ron Ewart stated that he and the developer and the Fire District are okay with having a 20 foot easement and within that easement having a 5 foot walkway and on either side have 5 foot pavers covered in grass for a total driving width of 15 feet with 20 feet of vertical clearance, but not to have the conditional access easement. The conditional access would put this right back to where it was before and he did not know if Jared Langley would be willing to buy the property with that conditional easement. It is very important that this not be a through public road. There is a way to achieve the emergency access and pedestrian easement. If there is an actual conditional public access easement there, the whole deal will fall apart.

Colleen Dowdall stated that there was testimony that the additional easement from the adjoining property would never be granted. Is this all being done for a connection that would not occur anyway?

Chair Curtiss asked if the adjoining property owner would grant the easement for pedestrian and emergency access.

Ron Ewart stated that she has not said no to that proposal. She has said no to the conditional public access.

Commissioner Evans stated she would vote against making this a conditional easement for a road.

Commissioner Carey stated again this was a tough decision. On this particular subdivision he would vote with Commissioner Evans on this condition.

Chair Curtiss stated the condition could be amended to provide a 20 foot wide public pedestrian and emergency access easement.

Colleen Dowdall asked if it would need to be public.

Jackie Corday stated that the whole point was to connect neighborhoods.

A discussion ensued to craft amended language for Condition 6 to allow for the public pedestrian and emergency vehicle access.

Commissioner Evans moved that the Board of County Commissioners amend Condition 6 to read: "A 20 foot wide public pedestrian/bike and emergency vehicle access and utility easement shall be shown on the plat that extends from the end of the cul-de-sac centered on the boundary between Lots 8 and 9 and extending to the western boundary of Lot 8. The following statement shall appear on the face of the plat and refer to such easement: 'The owners dedicate a 20 foot right-of-way for purposes of a public pedestrian/bike and emergency access and utility easement over and across Lots 8 and 9 as shown on the plat of the Glacier Estates Subdivision. No structures or permanent improvements shall be placed within said right-of-way.' The developer shall construct an emergency access road subject to review and approval of Missoula Rural Fire District and Public Works prior to final plat approval." Commissioner Carey seconded the motion. The motion carried on a vote 3-0.

Commissioner Carey moved that the Board of County Commissioners amend Condition 4 to read: "The Glacier Estates subdivision covenants shall be amended to require the owners of Lots 2 and 3 to maintain the private driveway serving Lots 2 and 3." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve a variance request from Section 3-3(1)(D)(4) of the Missoula County Subdivision Regulations that requires that all lots abut on and access a public or private roadway. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

A discussion ensued regarding the width of the pathway within the public pedestrian/bike and emergency vehicle access, whether it should be 5 feet or 8 feet.

Commissioner Carey moved that the Board of County Commissioners amend Condition 10 to change the "Class II Neighborhood Connector walkway" to "a 5 foot wide asphalt walkway." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve a variance request from Section 3-15(2) of the Missoula County Subdivision Regulations that require a density reduction of one lot, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Glacier Estates Subdivision be approved, based on the findings of fact and subject to the conditions as amended. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

#### **Glacier Estates Subdivision Conditions of Approval:**

1. Plans for grading, drainage and erosion control shall be reviewed and approved by Public Works prior to final plat approval. *Subdivision Regulations Article 3-2 and Public Works recommendation.*

2. Engineering plans, calculations and specifications for all subdivision public improvements including roadway and stormwater improvements shall be submitted to Public Works for review prior to commencement of construction of public improvements or prior to final plat approval, whichever occurs first. *Subdivision Regulations Article 3-2(1)(B) and Public Works recommendation.*
3. The shared driveway access serving Lots 2 and 3 will be a 20 foot paved driveway within a 40 foot private access easement and two reflective street name signs will be posted at the shared driveway entrance.
4. The Glacier Estates subdivision covenants shall be amended to require the owners of Lots 2 and 3 to maintain the private driveway serving Lots 2 and 3.
5. The following statement shall appear on the face of the plat:  

“Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for improvements to Mullan Road, 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.” *Subdivision Regulations Article 3-2(8)(A)(ii) and County Surveyor recommendation.*
6. A 20 foot wide public pedestrian/bike and emergency vehicle access and utility easement shall be shown on the plat that extends from the end of the cul-de-sac centered on the boundary between Lots 8 and 9 and extending to the western boundary of Lot 8. The following statement shall appear on the face of the plat and refer to such easement:  

“The owners dedicate a 20 foot right-of-way for purposes of a public pedestrian/bike and emergency access and utility easement over and across Lots 8 and 9 as shown on the plat of the Glacier Estates Subdivision. No structures or permanent improvements shall be placed within said right-of-way.”

The developer shall construct an emergency access road subject to review and approval by Missoula Rural Fire District and Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E), Public Works, Missoula Rural Fire District and OPG recommendation.*
7. The final plat and the Glacier Estates covenants shall contain a statement prohibiting the construction of basements on Lots 4 through 9, subject to review and approval by OPG prior to final plat approval. *OPG recommendation.*
8. The applicant shall obtain an encroachment permit from Montana Department of Transportation to construct a minimum 5 foot wide pedestrian walkway within the Mullan Road right-of-way to connect the Glacier Estates Subdivision access road to the school bus stop on Frey Lane, subject to the review and approval of MDT. The applicant shall construct this walkway prior to final plat approval. *OPG recommendation.*
9. To meet the parkland dedication requirement of .61 acres, the applicant shall obtain a 20 foot public pedestrian/bike access easement across Lot 1 of COS 5192 that connects the 20 foot easement located on Lot 8 of Glacier Estates to Douglas Drive. The applicant shall construct a 5 foot wide asphalt walkway within the easement from the end of the Glacier Estates cul-de-sac to the Douglas Drive cul-de-sac, subject to the review and approval of Public Works and OPG prior to final plat approval. The Glacier Estates covenants shall be amended to require the Glacier Estates Homeowners Association to maintain the walkway. If the applicant cannot obtain the easement from the owner of Lot 1 of COS 5192, then the applicant shall donate to the park fund the fair market value of .30 acres of unsubdivided, unimproved land (cash-in-lieu). *Subdivision Regulations Article 3-8 and OPG recommendation.*
10. The subdivider shall provide a means for fire suppression for this subdivision in conformance with Subdivision Regulations Article 3-7(1). Final plans for the water system shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-1(1)(F), 3-7(1) and Missoula Rural Fire District recommendation.*
11. The final plat must contain a waiver of the right to protest a future RSID/SID for public water for fire fighting. *Subdivision Regulations Article 3-7(2).*
12. 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 County Weed District recommendation.*
13. The applicant shall petition into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations 3-1(1), 3-2(1)(3) and Missoula Urban Transportation District recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:30 p.m.

**THURSDAY, JUNE 27, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated June 27, 2002, with a grand total of \$1,697.45. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 27, 2002, with a grand total of \$99,371.78. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 27, 2002, with a grand total of \$2,140.15. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 27, 2002, with a grand total of \$3,296.03. The Claims List was returned to the Accounting Department.

Indemnity Bond – Chair Curtiss examined, approved, and ordered filed an Indemnity Bond naming Ryan Bann, Alberton, Montana, as Principal for Frenchtown Rural Fire Warrant #271859, issued June 14, 2002 on the Missoula County Payroll Fund in the amount of \$173.83, now unable to be found.

#### ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following items were signed:

Letter – The Commissioners signed a letter to the Office of Planning and Grants, dated June 27, 2002, approving the modification recommended by the Missoula Development Authority that Phase 5 be platted in two phases because of the way the lots have been selling within the Missoula Development Park. The phasing plan will allow Park 11 and Lots 5-8, Block 13, Phase 5, to be platted at this time. The letter was returned to Barbara Martens in the Projects Office for further handling.

Modification of Agreement – Chair Curtiss signed Modification 1 (No. 502041-01) of the Agreement between Missoula County and the Montana Department of Environmental Quality ("DEQ") for the following items: 1) to correct the number of photographs to be submitted in the inspecting and testing of small public water systems to ensure their safety; and 2) to reduce the funding for FY '02 to \$8,000 and increase the funding for FY '03 to \$14,000. The document was returned to the Health Department for further handling.

Contracts – Chair Curtiss signed three (3) District Court Grant contracts, between the Montana Supreme Court and Missoula County, effective July 1, 2002 through September 30, 2002, representing Missoula County's remaining local match of the Federal Funds for the following:

1. Contract 2002-402JAIBG, representing the pass-through portion of Missoula County's Juvenile Accountability Incentive Block Grant (JAIBG) to the State in order to fund newly assumed State employees. The total to be expended under this agreement is \$21,341.32;
2. Contract 2002-402DOJ, representing Missoula County's remaining match of the Federal Court Continuation Grant (which funds the salary of Ellie Greenwood). The total to be expended under this agreement is \$39,072.80; and
3. Contract 2002-402SAFE SCHOOLS, representing the pass-through portion of Missoula County's Safe School grant to the State in order to fund a newly assumed State employee. The total to be expended under this agreement is \$6,559.46 (there is no required local match).

The documents were returned to Brenda Desmond in District Court for further handling.

Bids – The Commissioners reviewed bids for the building of the new Animal Shelter. The Commissioners signed a Notice of Award from HDG Architects, dated June 27, 2002, awarding the project to HT Builders, Inc. ("HT"), Bigfork, Montana. HT's revised bid is in the total amount of \$523,604. The document was returned to HDG Architects for further signatures and handling.

Agreement – Chair Curtiss signed a Grant Agreement, dated June 27, 2002, between the Montana Department of Agriculture and the Missoula County Weed District, for the 2001 "After the Fires" Integrated Noxious Weed Management Area, in order to administer the Ninemile Weed Management Area's Fire Grant. Federal funding (from USDA Forest Service) has been approved in the amount of \$167,728.00. The term will be April 1, 2002 through September 30, 2004. The document was returned to Alan Knudsen in the Weed Department for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **FRIDAY, JUNE 28, 2002**

The Board of County Commissioners met in regular session; all three members were present.

Claims List – The Commissioners signed the Claims List, dated June 28, 2002, with a grand total of \$900.00. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 28, 2002, with a grand total of \$114,263.37. The Claims List was returned to the Accounting Department.

Claims List – The Commissioners signed the Claims List, dated June 28, 2002, with a grand total of \$15,718.39. The Claims List was returned to the Accounting Department.

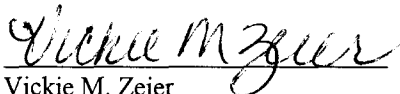
Claims List – The Commissioners signed the Claims List, dated June 28, 2002, with a grand total of \$34,842.96. The Claims List was returned to the Accounting Department.

Claims List – Chair Curtiss and Commissioner Carey signed the Claims List, dated June 28, 2002, with a grand total of \$85,749.17. The Claims List was returned to the Accounting Department.

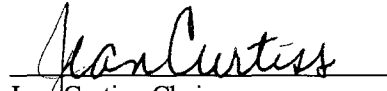
Plat and Agreement – The Commissioners signed the Plat and Development Agreement for River Run Estates, a subdivision located in the NW ¼ of Section 34, T 15 N, R 22 W, PMM, Missoula County, a gross and net area of 20.15 acres, with the owners of record being Andrew C. and R. Jolene Sherry. The Development Agreement, dated June 26, 2002, between Missoula County and the Sherrys, is intended to meet Condition #2b of the conditions of approval of the subdivision as follows: Residential Sprinkler Systems – Residential sprinklers meeting NFPA 13R standard shall be installed within each home.



Grant Application – Chair Curtiss signed a “Domestic Preparedness Equipment Grant Signatures – Postmarked by July 1, 2002” page, indicating the Commissioners’ support of a grant application submitted by the Missoula County Disaster Planning Committee, and accepting the terms and conditions associated with the grant. The document was returned to Jane Ellis in Emergency Services for further handling.



Vickie M. Zeier  
Clerk & Recorder

  
Jean Curtiss, Chair  
Board of County Commissioners