

WEDNESDAY, JULY 1, 1998

99 001

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Hart was on vacation July 1-2.

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated June 30, 1998, pages 3-44, with a grand total of \$381,356.79. The Audit List was returned to the Accounting Department.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, John Odlin, for the month ending June 30, 1998.

Quit Claim Deed - Chairman Evans signed a Quit Claim Deed to the State of Montana, Department of Transportation, Aeronautics Division, transferring a parcel of land in the E1/2 of Section 36, T17N R15W, MPM, Powell County, Montana and a parcel of land in the W1/2 of Section 1, T16N R15W, MPM, Missoula County, Montana, for the sum of \$10.00. This accompanies the Seeley Lake Airport Transfer Agreement signed June 2, 1998, and forwarded to the MDT Aeronautics Division in Helena.

PUBLIC MEETING - July 1, 1998

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

Public Comment

None.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$381,356.79. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Decision on Vacation of Railroad Crossing at Mullan Road in Huson

Michael Sehestedt gave the report. The Board conducted a public hearing on June 10, 1998, on a petition to close the railroad crossing on Mullan Road in Huson. Following an inspection of the site by the County Commissioners and County Surveyor, the Board will make a decision on this matter. There is no requirement for further public comment unless the Commissioners wish to take additional comment.

Chairman Evans asked for further public comment.

Joe Heuchert stated that the estimated quantity sheet concerned him, in regard to what kind of material would be used. He was also concerned about the cost, perhaps the entire road needed to be adjusted because it does not meet specifications.

There being no further comment, Chairman Evans closed the public comment.

Horace Brown stated that the material to be used will be existing material with other material added as necessary, because the road will be longer. The road on the railroad property is not wide enough and will probably need to be replaced. He described the new crossing. It will have 15 mph curves with stop signs on both side of the crossing. The new portion follows the existing railroad road, curves across the tracks and comes back to Mullan Road. If this plan is implemented, it will require a reconfiguration of Mullan Road right of way to fit this plan, so there is the same status of right of way as currently exists. The cost is an estimate only, the exact costs cannot be known until the type of material and full design are finalized. The reconfiguration plan at this point is only preliminary.

Chairman Evans asked the public if they had any specific questions for Horace Brown.

Joe Heuchert asked why the road is going to be longer?

Horace Brown stated this was only an estimate of requirements. The road as it exists is a very old road and the material may not be suitable for current specifications.

Delores Lehman asked if the crossing was changed will it include paving of Mullan Road, the entire half mile stretch of road.

Horace Brown stated that the road would not be paved.

Lori Weyer asked if the cost estimate presented was a "worst case" scenario, the highest cost for adjusting the road?

Commissioner Kennedy said that the work done in the past few weeks was in response to the first public meeting and the public's inquiry as to the cost of such work. This estimate was a hint of what it might cost, the final price was not known, but was getting closer. As the final design is approached, there is a better indication of what the cost would be. Not until a call for a bid is put out will the final cost be known. This is a preliminary estimate, a best professional guess, the actual cost may be less.

Horace Brown stated the estimate does not include the crossing itself, that is usually done by the railroad, nor does it include the cost for moving a pole which is in the path of the new road.

Steve Werner, Montana Rail Link, has briefly looked at the plan. It improves the geometry of the crossing which is a good thing. When a crossing is not closed, just realigned, the funding from the railroad and the state is not assured. It will involve negotiations with the railroad, is the benefit enough to justify MRL doing anything. As MRL has not had a chance to seriously review the plan, they cannot commit any funds yet.

Chairman Evans asked how long a negotiation with MRL would take?

Steve Werner stated it would only take a few weeks.

Colleen Dowdall wanted to remind the Commissioners that this is one of those rare occasions where the road predates the railroad, under those circumstances the law does provide that the railroad does have responsibilities for maintenance and upkeep.

John Lehman, 23645 Mullan Road, stated that the decision to have the road still cross the tracks was not a safe situation. During the winter where there is freezing ice, there is a chance of sliding off the road and becoming stuck on the tracks. Going across the tracks is a hazard waiting to happen. It is just a fact of life that more accidents will happen with increased traffic.

Commissioner Kennedy stated that this is not a new problem, the Board was made aware of it a couple of years ago. He has visited the site three times, Chairman Evans has visited it at least once, perhaps twice, and Commissioner Hart has visited the site several times. What has been noticed is that even though there have been few conflict incidents, there has been an increase in development and use of the road. This causes the probability of conflict to increase as well. Everyone acknowledges the crossing is not adequate, something needs to be done. The Board of County Commissioners has some responsibility in that area. Some of the things that have been done include restricted use for County employees and fire district personnel. The school district has also been notified to the danger of the crossing and limits their use. Something needs to be done, either improve the crossing so that it eliminates the safety hazards, or close the crossing. Leaving the crossing as it exists today is not an option. In light of all the testimony, he would offer a motion to close the crossing on July 4, 1999, unless there have been improvements made. The road would be realigned in a satisfactory fashion that would meet all safety requirements uncompromised and the cost of the realignment would not borne by the County taxpayer.

Commissioner Kennedy moved that the Board of County Commissioners grant the petition to close that portion of Mullan Road at the crossing with the Montana Rail Link line located in the East 1/2 of Section 25, Township 15 North and Range 22 West, in Huson. The closing will occur on July 4, 1999, unless the following occurs before then:

1. A realignment of the road is built that meets all safety requirements for traffic at the closing.
2. That the cost of the realignment not be borne by the county.

Findings of Fact:

1. The petition presented on May 27, 1998, for the closure of the road includes the signatures of at least 10 freeholders of the road district.
2. No affected owners object to the closure.
3. An investigation of the feasibility of the closure was conducted by the County Surveyor and Chairman Barbara Evans on June 24, 1998. Subsequently, Commissioner Hart and Commissioner Kennedy also investigated the site with the County Surveyor.
4. The closure is necessary and desirable because the railroad crossing is a hazard due to the alignment of the railroad with the roadway.
5. County road vehicles have been restricted from using the roadway because of the hazard.
6. The Frenchtown School District has been advised to avoid the crossing when carrying school children because of the hazard.
7. While the number of accidents at the crossing is low, there is potential for increasing accidents due to increasing traffic.
8. New development and higher usage will result in higher probability of conflict.

Conclusions of Law:

1. The Board of County Commissioners has jurisdiction over this matter by virtue of the properly prepared petition presented to it.
2. The Commissioners have followed the procedures provided by law for acting upon the petition.
3. Closure of the roadway is warranted unless the conditions included in the motion are complied with.

Chairman Evans seconded the motion.

Chairman Evans explained her feelings about this crossing, trying to keep in mind the needs of the public and their desires. She understands why the residents want to be able to use this crossing and does not want to take the crossing away from them. She also understands the hazard, it is not particularly safe especially without a 90° angle. What the Board has decided to do is close the crossing July 4, 1999, next year. The residents will have one year to come up with a solution, raise the money, and work with the railroad and the County Surveyor so the crossing will still be usable, safe for the railroad and safe from a liability position for the County. In addition to that the County Attorney has recommended that immediately signs are placed around the crossing indicating that it is hazardous, which further helps to indemnify the County.

Commissioner Kennedy stated that the immediate positing of hazard signs also serves as one last warning to those people who approach the crossing as to just how dangerous the County feels the crossing is. Chairman Evans called for a vote on the motion. The motion carried on a vote of 2-0.

Chairman Evans stated the residents would need to work with the County Surveyor, the railroad and the state, to obtain funding for the fix of this intersection, so it is still usable but much safer.

Bid Award for Custodial Services for Missoula County Buildings (Maintenance)

Chairman Evans gave the report. Solicitation was advertised and the bids were opened at 10:00 am on Monday, June 29, 1998, with the following results: Purity Cleaners, \$165,000; Automated Services, \$145,752; and Quality Maintenance, \$125,000. It is recommended to award the bid to Quality Maintenance as the lowest and most responsive bidder.

Chairman Evans stated there was no one representing Quality Maintenance to answer questions but wanted to make sure the County received better service than had been provided by Purity Cleaners. She would like some assurance before the bid is awarded.

Michael Sehestedt stated the reason for the re-bidding process was the dissatisfaction with Purity's service. He and Art Garner, Buildings & Grounds Supervisor, wrote a comprehensive set of specifications and the owner of Quality Maintenance was known to Art Garner. Art felt quite confident that the County would receive good performance from Quality.

Chairman Evans stated she was not happy with the changes in the quality of supplies that Purity had made without consultation. She wanted to make sure cheaper products which are not acceptable would not be used.

Michael Sehestedt stated the specifications had been written in such a manner as to provide for Chairman Evans concerns.

Commissioner Kennedy moved that the Board of County Commissioners award a County Office Building Contract for Custodial Services to Quality Maintenance in the amount of \$125,000, in that it is the lowest and most responsive bid. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Bid Award for Hydraulic Lift System (Road Department)

Horace Brown gave the report. Solicitation was advertised and the bids were opened at 10:00 am on June 29, 1998, with the following results: D & R Equipment, \$13,825 and A & I Distributors, \$15,890. It is recommended to award the bid to D & R Equipment as the best and lowest bid.

Horace Brown stated this was needed badly in the shop to replace the existing A-Frame lift which is unsafe.

Commissioner Kennedy moved that the Board of County Commissioners award a contract for a 4-Post Vehicle Lift System, including a Rolling Bridge Jack, to D & R Equipment in the amount of \$13,825, in that it is the lowest and best bid. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Family Transfer - Hobbs

Kathy Smith, Paralegal, County Attorneys Office, gave the staff report.

This is a consideration of a request to create four parcels using the family transfer exemption for Tract 71 of COS 1925, located in Section 9, T14N, R20W, for Roger C. Hobbs.

Roger C. Hobbs has submitted a request to create four parcels using the family transfer exemption to the Montana Subdivision and Platting Act for a 22.71 acre parcel located northwest of Missoula off Highway 93 near Evaro Hill and in the Meadows of Baron O'Keefe area. Mr. Hobbs proposes to create three parcels for transfer to his minor children: Jonathan B. Hobbs, age 12; Brandon R. Hobbs, age 7; and Robert J. Hobbs, age 15; a draft of an irrevocable trust prepared in this matter is attached. The proposed parcels would all be approximately 5.5 acres in size and would also include a remainder parcel.

The history of the parcel is as follows: COS 1925 was filed in April 1979 by Geneva Cates creating 64 parcels greater than 20 acres in size. Mr. Hobbs, d/b/a Landmark Homes, purchased Tract 71 in August 1993. In December 1995, Mr. Hobbs applied to use the family transfer exemption which was initially denied due to the fact the property was owned by a corporation. On January 23, 1996, Mr. Hobbs transferred the parcel into his sole ownership and again applied to use the family transfer exemption which, at that time, also included a request to create a fifth parcel for transfer to his wife, Kathy Hobbs. On April 24, 1996, a hearing was held before this Commission and Mr. Hobbs' request was denied. On May 29, 1998, Mr. Hobbs submitted a new Exemption Affidavit changing the request as set forth above.

According to the records kept by the Missoula County Surveyor, the applicant has used the following exemptions to the Subdivision and Platting Act: an occasional sale in December 1993 and boundary relocation in November 1995, both on unrelated property.

Roger C. Hobbs came forward to answer questions. He stated that he and his wife would sincerely like to transfer the property to their children. He is a member of the community, former faculty member at the University of Montana, and property owner. He apologized if the prepared irrevocable trust was not worded correctly. He is not trying to circumvent the subdivision act and would make any changes in language necessary to allow for this family transfer.

Chairman Evans asked for public comment.

Greg Martinsen, Martinsen Surveys, was present representing Roger Hobbs. He stated that the last time this matter was before the Board it was his understanding that having the property in Roger Hobbs' name and an irrevocable trust was required for this family transfer. An attorney was retained to prepare the irrevocable trust. Roger Hobbs is trying

to comply with all the requirements to accomplish this transfer. The wording of the trust will gladly be changed with a stipulation of approval by the County Attorneys if necessary.

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

Chairman Evans explained that in order to grant a COS, the law says the Board must determine whether or not it is an attempt to evade the subdivision act. The configuration of the land in this proposal looks like a subdivision. In order to find that this is truly a gift to the children, the trust documents need to be examined to see if there is any way to take the land away from the children before they reach the age of majority. The wording in the trust document implies that at any time Roger Hobbs decides it was in his or his children's benefit, he could sell the land. That puts it back in the realm of concern that it is indeed an attempt to evade the subdivision act. In her opinion, in order for this to be truly a gift to the children, the trust needs to be written so as it is impossible to take the land away from the children before they are old enough to make the decision on their own.

Colleen Dowdall stated she was not so much concerned with the language that Roger Hobbs could dispose of the property as trustee, that was his right and obligation as trustee. The language of concern was that the trust stated that in the discretion of the grantor, Mr. Hobbs, if the trustee needed the funds, the trustee could convert the property for his support and not for the support of the children. This language would need to be reworded so the trust would hold the funds for the benefit of the children.

Commissioner Kennedy asked Roger Hobbs if he was prepared to change the language in the trust so that the children would benefit from the disposition of the property, not himself?

Roger Hobbs stated he was prepared and willing to change the language accordingly. He apologized that the trust was written in such a way as he could manipulate the land. He will restrict the land in the manner that is appropriate.

Commissioner Kennedy stated that all of the benefit that might accrue from the sale of this land will go to Mr. Hobbs children and not to himself.

Roger Hobbs agreed with that statement.

Commissioner Kennedy stated that he agreed with Chairman Evans, this looked like a subdivision. What usually looks like a subdivision, is a subdivision. He was wondering why Roger Hobbs did not go through the subdivision process?

Roger Hobbs stated that he was told several years ago that the 20 acres was generally allowed in the area and subdivision would not be allowed.

Commissioner Kennedy asked Colleen Dowdall about Mr. Hobbs' answer.

Colleen Dowdall stated this was an area where the Comprehensive Plan has a recommendation of one house per 40 acres. If you look at how the area has developed, it seems as if there are other 20 acre parcels in the area which would be used in determining whether the neighborhood is changing and the subdivision is in compliance with the Comprehensive Plan. The answer is never that the density requirement are not met so the subdivision does not comply. The answer is an inquiry is made as to why the land is designated one per forty, what is happening in the area currently and are there ways this lot could be divided so that the reason for that designation is still honored. That would include if it was an Open and Resource designation. She believed that this area was designated at one per forty because at the time of the drafting of the Comprehensive Plan, it was not appropriate for development. It is currently being developed to a greater extent. There may be lots of the same size as proposed in the area.

Chairman Evans stated that there were lots even smaller in the area.

Colleen Dowdall asked Roger Hobbs if he had gone through subdivision review to try and create two 2-1/2 acre parcels which was denied.

Roger Hobbs stated he did submit such a plan in 1994.

Chairman Evans stated that Roger Hobbs had built some homes in the area.

Roger Hobbs stated that was correct and those were on one acre. There is a variety of sizes in the area. The Comprehensive Plan does say the land should be developed as one per forty.

Colleen Dowdall stated that the map of the area showed numerous other small parcels.

Commissioner Kennedy stated that if Mr. Hobbs reason for not going through subdivision review was based on an answer he received previously, perhaps the answer would be different now. He asked again the question of why Mr. Hobbs would not pursue subdivision review on this land, because the children are minor?

Roger Hobbs stated that he was told at the prior time there was no way a subdivision could be done.

Commissioner Kennedy asked when this happened.

Roger Hobbs stated he believed it was in 1994. He had spoken with Nick Kaufman about it as well, it was made clear that he would not spend a lot of money to get denied.

Colleen Dowdall recalled a Comprehensive Plan discussion on this parcel that noted the small lots were on the other side of Highway 93, but on this side there were still a number of larger parcels, which was the justification the Planning Office was using. The Board of County Commissioners have an adopted policy for purposes of determining compliance with Comprehensive Plan building permit issuance that if the land uses in the area of the request are within

300 feet of the parcel or use being requested, if it is in compliance with that use, within 300 feet, then there is Comprehensive Plan compliance.

Commissioner Kennedy stated that there are clearly lots on the northwest edge of this property that are substantially smaller than five acres. If Mr. Hobbs was given information that the property could not be subdivided, perhaps that was erroneous information. If the reason he did not pursue subdivision was the erroneous information, then perhaps subdivision review is really the way to pursue this division of property rather than the Family Transfer process. This is important to everyone because the subdivision process subjects the party to punitive rules and supports the applicant and surrounding landowners on property values and standards of living that are beneficial in the long run. In his opinion, subdivision review is in the long term benefit of Mr. Hobbs and his children.

Roger Hobbs did not object to the family transfer process and did not want to be discriminated against because the document is not correct or because he is a property owner in the community. He wants to give this property to his children and will comply with any restrictions.

Chairman Evans stated if Mr. Hobbs wanted to sell the land, subdivision review would be appropriate. To give the land to his children, subdivision review was not required.

Colleen Dowdall stated it was necessary to return to the issue of whether or not this was an attempt by Mr. Hobbs to evade the subdivision process. The Attorney General's office has given a number of areas that can be looked at in making that determination. One of the pieces of evidence the Commissioners can use is whether the individual is a developer in the community.

Commissioner Kennedy stated he was uncomfortable with this COS, but would support it. The discomfort was not with Mr. Hobbs, but with the law.

Commissioner Kennedy moved that the Board of County Commissioners approve the request to create four parcels using the family transfer exemption for Tract 71 of COS 1925 located in Section 9, T14N, R20W, for Roger C. Hobbs to his minor children: Jonathan B. Hobbs, age 12; Brandon R. Hobbs, age 7; and Robert J. Hobbs, age 15, in that it does not appear to be an attempt to avoid subdivision review, subject to the revision of the irrevocable trust language, to meet the satisfaction of the County Attorneys office. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Chairman Evans told Mr. Hobbs he would receive a letter from the Commissioners regarding the approval of his Family Transfer request.

There being no further business to come before the Board, the Commissioners were in recess at 2:15 pm.

THURSDAY, JULY 2, 1998

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioners Evans and Kennedy were out of the office all afternoon.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael Jaworsky, for the month ending June 30, 1998.

Plat - Commissioners Evans and Kennedy signed the plat for Buck Creek Homesites, a subdivision located in the NE1/4 of Section 18, T20N R16W, PMM, Missoula County, a net and gross area of 41.345 acres, with the owners of record being Lois Ekstedt, Rose Marie Cerovski, and Barry A. Seaman.

ADMINISTRATIVE MEETING

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

Contract Amendment - Chairman Evans signed Amendment Number One to a Contract with the Montana Department of Public Health and Human Services, supporting a statewide tobacco use prevention and control program, amending the Contract to reflect a restriction concerning the use of funding from the Centers for Disease Control and Prevention for local-level lobbying. The Contract was forwarded to DPHHS in Helena.

Encroachment Permit - The Commissioners signed a Missoula County Drainage Encroachment Permit allowing Tom and Rebecca Barkley to encroach on the drainage easement along the south 30 feet of Lot 60, Southpointe - Phase II, limited to the existing shed on a concrete pad and chain link fence. The permit is effective for a period not to exceed 10 years, renewable at the option of Missoula County.

Memorandum of Understanding - The Commissioners signed a Memorandum of Understanding with the Montana Department of Transportation for Six Mile Road landslide repair. County will complete all construction by October 1, 1998. MDT will reimburse the County for 86.58% of all direct costs incurred. The Memorandum was returned to Horace Brown, County Surveyor, for further signatures and handling.

The minutes of the administrative meeting are on file in the Commissioners Office.

FRIDAY, JULY 3, 1998

The Courthouse was closed for the Independence Day holiday. On July 4, Commissioner Evans spoke at the 4th of July celebration held at the Historical Museum at Fort Missoula.

Vickie M. Zeier
Vickie M. Zeier
Clerk & Recorder

Barbara Evans
Barbara Evans, Chairman
Board of County Commissioners

MONDAY, JULY 6, 1998

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

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of June, 1998.

TUESDAY, JULY 7, 1998

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

ADMINISTRATIVE MEETING

Commissioners Hart and Kennedy voted to approve an interim payment of approximately \$35,690.00 for the lease of the County Shop property at the Airport (3/31/97 - 3/31/99). Commissioner Evans opposed, because "the situation at the Airport is totally unacceptable to me--there are things going on out there that need to be fixed. They are in constant violation of State law and they do nothing to change it. I would like to see the Airport Authority de-created because I think they are not doing the job that I feel is required or serves the public the best."

The minutes of the administrative meeting are on file in the Commissioners Office.

WEDNESDAY, JULY 8, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was in Helena attending a Department of Transportation meeting.

PUBLIC MEETING - July 8, 1998

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Fern Hart. Also present were Commissioner Michael Kennedy, Deputy County Attorney Michael Sehestedt, and Deputy County Attorney Colleen Dowdall.

Public Comment

None.

Routine Administrative Actions

Due to the end of the fiscal year, there were no weekly claims to be approved for the week.

Bid Award - Roof Removal and Re-Roofing of Courthouse Annex (Maintenance)

Acting Chair Hart read the report. Solicitation was advertised on June 14, 1998 and June 21, 1998. Bids were opened on June 29, 1998. The only bidder was McLees Industries for \$65,775. After conferring with the architect, Art & Architectural Design, it was decided that McLees Industries is qualified and within the budgeted amount. Maintenance Department is recommending the bid be awarded to McLees Industries of Belgrade, MT.

Commissioner Kennedy moved that the bid for removal and repair of the roof of the Courthouse Annex be awarded to McLees Industries of Belgrade, MT, in the amount of \$65,775, based on the recommendation of the Maintenance Department. Acting Chair Hart seconded the motion. The motion carried on a vote of 2-0.

Proposed Motor Vehicle Wrecking Facility at 9919 Garrymore Lane (Tom Collins)

Acting Chair Hart gave the report. The Montana Department of Environmental Quality, Motor Vehicle Recycling and Disposal Program, has received an application for a motor vehicle wrecking facility license from Collins Auto Recycling & Sales, Thomas F. Collins, 9919 Garrymore Lane, Missoula, MT 59808. The proposed motor vehicle wrecking facility will be located in Missoula County. The legal description of the facility is the NE 1/4, SW 1/4, Section 28, Township 14 North, Range 20 West.

Section 75-10-516(2), MCA, provides that within 30 days of receipt of this notification, the governing body of the County may (a) conduct a public hearing to determine whether the proposed facility will significantly affect the quality of life of adjoining landowners and the surrounding community, and (b) adopt a resolution in support of or in opposition to the location of the proposed facility, and transmit a copy of the resolution to the Department of Environmental Quality.

Acting Chair Hart asked for public comment.

Roy Middlestead, owner of Ace Auto Salvage which is located next to the proposed site for Tom Collins, stated his approval of the application for Mr. Collins as long as he completes the same review process as Ace Auto Salvage was subjected to when they were granted their license.

There being no further comments, Acting Chair Hart closed the public hearing.

Acting Chair Hart asked Richard Corrigan about the rules that apply to wrecking facilities.

Richard Corrigan, Junk Vehicle Program Coordinator, stated the approval of this wrecking facility will require more stringent standards than what Mr. Middlestead went through when his license was granted. It would require meeting all shielding laws from all public roads, waiver of right to protest RSID's in the area, and the business would not adversely impact the surrounding neighbors.

Commissioner Kennedy moved that the Board of County Commissioners support the application of Collins Auto Recycling & Sales, subject to the conditions that the Junk Vehicle Program Coordinator will enumerate in a letter. Those conditions will satisfy state law and ensure that the facility will be in accordance with County land use and zoning requirements for the area. Acting Chair Hart seconded the motion. The motion carried on a vote of 2-0.

Family Transfer - Wise

Kathy Smith, Paralegal, County Attorneys Office, read the staff report.

This is a consideration of a request to create two parcels using the family transfer exemption for Tract 1 of COS 4809, located in Section 22, T12N, R17W, for Diana Mae Wise.

Diana Wise has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The parcel is 4 acres in size and located off Clown Lane and south of Highway 90 in Clinton. Ms. Wise proposes to create two 2 acre parcels for transfer to her adult children, Michael Lee Wise and Michelle Colwell and her husband, Scot Colwell.

The history of the parcel is as follows: COS 1091 was filed in February 1977, creating a parcel greater than 20 acres in size. In March 1998, Mr. Wise's parents, George and Anne Wilcox, received approval to create the 4 acre parcel using the family transfer exemption. On June 18, 1998, COS 4809 was filed, along with a Quitclaim Deed, to Ms. Wise creating the 4 acre parcel and remainder.

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

Diana Wise was present and came forward to answer questions. She stated that her children would be using the land as personal homesites.

Acting Chair Hart told Ms. Wise that when a Family Transfer is requested, the Board usually asks personal questions to determine the applicant is not attempting to evade the subdivision law. The Board also reminded Ms. Wise that granting the transfer does not commit that sanitary restrictions will be lifted or that any special services from the County will be received. These are the kinds of the things the Board looks at. She asked Ms. Wise if these were adult children.

Diana Wise stated they were adults.

Acting Chair Hart asked for public comment. There being none, the public hearing was closed.

Commissioner Kennedy moved that the Board of County Commissioners support the consideration of a request to create two parcels using the family transfer exemption for Tract 1 of COS 4809, located in Section 22, T12N, R17W, for Diana Mae Wise, for transfer to her adult children, Michael Lee Wise and Michelle Colwell and her husband, Scot Colwell, in that it does not appear to be an attempt to evade the Subdivision Act. Acting Chair Hart seconded the motion. The motion carried on a vote of 2-0.

Acting Chair Hart told Diana Wise she would receive a letter detailing the approval and other items associated with the Family Transfer.

Family Transfer - Davis

Kathy Smith, Paralegal, County Attorneys Office, gave the staff report.

This is a consideration of a request to create four parcels using the family transfer exemption for a parcel described in Book 212 Deeds, Page 214, located in Section 11, T12N, R20W, for Dennis D. and I. Annette Davis.

Dennis Davis has submitted a request to create three parcels and a remainder using the family transfer exemption to the Montana Subdivision and Platting Act. The parcel is 2 acres in size and located in the Miller Creek area off Lower Miller Creek Road. Mr. Davis proposes to create three 1/2 acre parcels for transfer to his minor children: Chelsey A. Davis, age 13; Brittney R. Davis, age 10; and Haley M. Davis, age 7. The Davises currently reside on what would be the 1/2 acre remainder parcel.

The history of the parcel is as follows: The parcel was created by deed in April 1959 and the Davises purchased the parcel in June 1993.

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

Acting Chair Hart: Is there someone here who would like to speak in support of this?

Zane Sullivan: Attorney-At-Law, 430 Ryman, Missoula, MT, appearing on behalf of the applicant, Dennis Davis. Also present today are Mr. Davis and Mrs. Davis to answer any questions that you folks may have. I would like to speak in connection with the application and point out that there are a number of items that I'm sure you are either

aware of or would like to be aware of. Currently this property is zoned C-RR-1. In order for the proposed use that the Davises intend to make of this property, this property would have to be rezoned, although, I would also like to note under Section 4C, that the current master plan does propose two units per acre. So, the Davis family is aware that it would need to obtain rezoning for this property in order to make this proposal workable. Also, I want to point out that this is a trust arrangement which was set up. The actual trust agreement was proposed in November 1997. It was not finally executed by the Davises until early 1998. It does have other assets in the trust as you will notice from the copy of the trust that is attached to this material. This is intended in part to be a school college funding mechanism on the part of the Davises for their children and this property will be used in significant part to fund that trust. Also wish to point out that this property is intended to be served by municipal sewer. An agreement and request for annexation to the City of Missoula is also involved, and I've also mentioned the rezoning situation that is necessary as well. I believe the Davises have not previously utilized any form of family transfer and this is their first application and we would certainly be willing to answer any questions that you folks may have relative to this application.

Acting Chair Hart: Thank you, Zane. Commissioner Kennedy, do you have any questions?

Commissioner Kennedy: I do. Zane, would you mind staying there for just a moment. In using this process, the notion of a trust agreement is an irrevocable trust, and this is not.

Zane Sullivan: Right.

Commissioner Kennedy: That creates somewhat of a problem because as a division of property, the way this is written, in my opinion, it really just accrues to the benefit of the grantors and not the grantees.

Zane Sullivan: You're suggesting that this needs to be a non-revocable trust?

Commissioner Kennedy: Yes.

Zane Sullivan: There are some concerns relative to a non-revocable trust. That poses some problems for me and my concerns on behalf of the Davis family. I'm not sure at their age, a non-revocable trust of this type is necessarily in their best interest. I realize what you're suggesting, that is this a mechanism by which they are able to create the parcels but not fulfill the intent of the trust agreement. Possibly some compromise could be made with the County in that regard. Ms. Dowdall has a comment.

Acting Chair Hart: Colleen?

Colleen Dowdall: A requirement for the trust typically is because children can't hold property and so a trust has to be created so that the trust can hold the property, if they're minor children. It was never used as a mechanism to insure that the property not, that the trust not be revoked or an irrevocable trust. We have never required that it be an irrevocable trust. The purpose of the family transfer, or one of the purposes, is to do estate planning and financial planning. The trust, in this case, I have concerns about tax and financial consequences that we would be imposing that aren't necessary to achieve our goal of simply having an entity that can hold the trust on behalf of the children. We have always known that the children can then transfer the property via the trustee, they can sell it, the trustee can do that for their benefit and if the terms of the trust were violated, the beneficiaries would have an action and the County could use that as evidence that the subdivision regulations were violated.

Acting Chair Hart: Let me see if I understand. So, you're saying that we do require that there be a trust when the children are under 18 and that the trust can simply be set up to the benefit of the trustee and that...

Colleen Dowdall: The benefit of the beneficiaries.

Acting Chair Hart: Beneficiaries. And that it would then fall upon the ... the trustee is the one who holds the trust, right?

Colleen Dowdall: Right.

Acting Chair Hart: It falls upon that person or that entity to manage the trust. If it's not managed for those three children...

Colleen Dowdall: According to the terms of the trust document.

Acting Chair Hart: Yes. Then they can sue the trust.

Colleen Dowdall: The trustees.

Acting Chair Hart: And the County then can say this was indeed an attempt to evade the Subdivision Act.

Colleen Dowdall: Correct. So if they file the Certificate of Survey, revoked the trust and transferred the property to themselves, or transferred the property to themselves without consideration to the trust, that is all evidence that we would use of an attempt to evade subdivision, just as we would if an adult acquired the property and sold it and transferred the funds to their parents who had just used the family transfer. It's difficult to enforce, but I think the presence of the trust makes it easier to enforce.

Acting Chair Hart: Have you read the trust?

Colleen Dowdall: I have read the trust. I think that we faced a similar issue with Mr. Hobbs, I believe, a week or two ago, but in that case the trust specifically provided for him transferring assets of the beneficiaries, his minor children, to himself, as trustee, for whatever purpose. This trust does not have that provision in it. It is irrevocable, but I ...

Acting Chair Hart: It is not.

Colleen Dowdall: It is revocable, I'm sorry. I can't recall, I think the Hobbs was irrevocable.

Acting Chair Hart: I have one more question. I think we can ask this because this is a request which is outside the subdivision. Evidently, the Davises do intend to go through zoning request?

Zane Sullivan: Yes.

Acting Chair Hart: Do intend to develop this property?

Zane Sullivan: Yes.

Acting Chair Hart: What I hear from you is that the trust then will protect the revenue from that development for those three children.

Zane Sullivan: Yes, specifically, you're right on target. The Davises intend to develop the property and use the proceeds, or some of the proceeds from the net of that activity for the benefit of the beneficiaries of this trust. That's exactly their purpose, they intend to retain one of the lots as their family residence, although I don't believe necessarily at this point have they identified the remainder parcel as necessarily being the long term residence. But one of the parcels is intended to be retained by them, the others will ultimately be used pursuant to the trust.

Acting Chair Hart: Thank you. Michael?

Commissioner Kennedy: Zane, I'm concerned about your use of the word 'some.' What about the balance of it? I thought the trust is for the benefit of the kids, not some of it but all of it.

Zane Sullivan: Not 100%. The Davises are going to have the cost and expense of developing this property and that cost and expense is going to come out of pocket to them. Any structures that are built on that property, and any road improvements that are put in, sewer connections, water connections, that type of thing, are going to have to come out of the Davises pocket. The Davises cannot afford, obviously, to bear that expense without recouping it as part of the transactions that would be forthcoming as a result of this development. They also need some of the money themselves. The present consideration for the Davises is that they are intending to designate 30% of the profit resulting from these transactions into the trust, the 30% was derived from 10% per child, of the three children that currently exist in the Davis family.

Commissioner Kennedy: I need a comment about that.

Colleen Dowdall: I have concerns.

Commissioner Kennedy: It seems to me like what, I appreciate this being done for some benefit for the kids, but I'm not sure that this is the way to do it. Maybe the way to do it, in order to achieve what you want to achieve, is to go through subdivision. I'm not sure this is the intent of that. Some language really gives me concern and your explanation of it gives me further concern.

Acting Chair Hart: Subdividing with a family transfer and saying that 10% goes to each child, that's just hard to take.

Zane Sullivan: If I might comment on that.

Acting Chair Hart: Please.

Zane Sullivan: I'm not aware of any restriction in the family transfer concept that indicates that the transfer must be made 100% with all consideration passing one way or the other. As a matter of fact, I believe the statute and the Missoula County subdivision regulations are both equally silent on that point. This is a family transfer that is going to be used to place the property into a trust in part for the benefit of the children. Now, we could place the property into the trust in its entirety, but that retains a basically losing asset if you will, it's appreciating probably in value but it's drawing tax expense from the Davises on an ongoing basis. In order to make this a productive asset, which is typical to be held in a trust and frequently used to be one of the requirements for holding property on an asset in a trust, was that it be a productive asset. This property needs to be developed by the Davises and affords them an opportunity to benefit their children. I'm not aware of any regulation or restriction in the statute that indicates that that has to be 100% exclusive to the trust.

Colleen Dowdall: What the statute says is that someone may transfer, an individual may create a parcel for transfer sale to a family member without undergoing subdivision review unless it is an attempt to evade subdivision review. Supreme Court cases and Attorney General opinions have interpreted that statute to give the discretion to the Board of County Commissioners to determine if there is an attempt to evade subdivision review. The purpose of the exemption is to create parcels of land, and those parcels of land to be transferred to family members, and the statute does not address 50/50 or 10%, it's to transfer the parcel. I do not believe that this is the way that the family transfer was intended to be used. I have concerns.

Acting Chair Hart: I could have, I followed as much as I could, your explanation. I could even have understood that the expenses for the connection to the sewer, for going through zoning, for other expenses for getting this to the market could be taken from the profit but I would think that after that all of it should go to the children.

Zane Sullivan: In response to that if I might, the Commissioners then are going beyond the transfer of the parcel into the aspects of what is going to happen to the parcel after that parcel is transferred. I question that that's within the purview of this statute. I agree with Ms. Dowdall's comment that it is within the purview of the County Commissioners to determine whether or not in your opinion this is an attempt to evade the subdivision review. My

argument would be in response to that is that these folks can come in and presumably go before this same organization, submit this property into a four lot subdivision review, come out the other side of this process and be in exactly in the same position that they're asking to be in today. The difference is, yes we do have a more extensive review, I agree with that. We have put the Davises to a substantially greater expense and the Davises will then be able to develop the property exactly as they have very honestly and straightforwardly come to this Board and asked to do. They have not hidden any agenda, they have not kept anything secret or back from you, they have tried to be very straightforward and honest. The only thing we are accomplishing is to put them to a substantially greater expense to achieve the same result.

Acting Chair Hart: Colleen?

Colleen Dowdall: What used to happen under this statute is that the Commissioners would approve family transfers to minor children and the certificate of survey would be filed and the transfers would never occur, and the parents would develop the property and sell it and whether they used the money to benefit their children directly or indirectly, or not at all, was not addressed. So as Supreme Court cases and opinions from the Attorney General have evolved, we required that any family transfer parcels had to be transferred at the time of the filing of the certificate of survey. With adult children that works. With minor children, it doesn't work because minor children do not have the ability to hold title without a trust to real property or to transfer that property without a trustee acting on their behalf. If these were adult children and we didn't need the trust, we would require that you file a deed transferring the entire parcel to the children. And in this case what it appears is happening is that the parcels would be transferred to the trust and then the trust would award to the children 10% of the value of the parcels developed or undeveloped. To me that is not the use of the trust that the family transfer envisioned. It was established to transfer so the child could hold the property for his benefit and if the parent, unless the parent used proceeds for that same child's benefit, I would believe we would have evidence that there was an attempt to evade subdivision review. Exemptions, what an exemption means is that we cannot inquire into how the property is developed according to our subdivision standards. The primary reason the Davises will be in a position, why it will be more expensive is because we require certain things in subdivision that we cannot require in exemption requests. The legislature intended it that way, but also put a tight reign and gave the Commissioners lots of discretion.

Commissioner Kennedy: I just want to add a comment to that last part about subdivision application and some certain regulations. Those accrue to the benefit of the surrounding property owners as well as the people who own the property, so this isn't, this doesn't come without benefit, the subdivision review. There are certain protections that result from subdivision review that really accrue to the owner and to me it's pretty obvious there's no urgency in terms of time here and you can achieve the same result going through subdivision. And in my judgment, it is, this exemption in this case appears to be used to subdivide the property without, in a way that's different than we think the statute intended. So I can't support it.

Zane Sullivan: If I might make one final comment. I want to make sure that the record here is absolutely clear. The Davises intend to execute a deed, Mr. Davis intends to execute a deed that would be filed concurrent with the filing of the certificate of survey that would convey 100% of the title in this property to the trust. That, as Colleen has indicated, is a very legitimate question and concern on the part of the County Commissioners. I want to make absolutely certain that your denial of this application is based upon what the trust would intend to do in the way of developing the property and not based upon the fact that title would not be conveyed to the trust upon filing the certificate.

Acting Chair Hart: May I say just, there's two things that I think that I will base my vote on. One is with subdivision review, we are accomplishing responsible planning for all the citizens of the County. And if you're asking us to indeed look at the result, the end result of this, it is a subdivision. Any comments from Colleen? This is a public hearing and if there is someone here who would like to make a comment about the Davises request for a family transfer and establishment of the trust, from either point of view, would you please come to the microphone and state your name and give us your comments. Anyone to speak about the Davis request? There being none, I will close the public hearing.

Commissioner Kennedy: I would like two minutes with counsel before I frame a motion.

Commissioner Kennedy: I'm going to work on this a bit, but I have to make a comment about the law and I think the law is obviously subject to interpretation because it places us, the County Commissioners, in really an odd place of having more latitude than perhaps other laws do with respect to making these kinds of judgments and decisions. And we ask questions that allow us to make that decision and to make that judgment and we did ask questions and we did receive testimony and based partially on that testimony comes my judgment that, in fact this is an attempt to evade the subdivision. We acknowledge that the property will be developed, that's not at issue, whether or how it's developed. The benefit accruing from this subdivision, though, is at issue. It is my opinion that the benefit really ought to accrue to the beneficiaries, not to the benefactors, and the testimony suggests otherwise.

Commissioner Kennedy: So, based on that, I would offer a motion to deny the request to create four parcels using the family transfer exemption for a parcel described in Book 212 Deeds, Page 214, located in Section 11, T12N, R20W, for Dennis D. and I. Annette Davis, in that, in my opinion, is an attempt to evade subdivision.

Colleen Dowdall: If I could just refine that finding, that you are concluding that it's an attempt to evade subdivision review in finding that the transferor will control the property and the proceeds of the development of the property so that it isn't truly a family transfer.

Commissioner Kennedy: Thank you, Colleen, I thought I said that but I'm glad you clarified it.

Colleen Dowdall: You may have.

Commissioner Kennedy: Thank you.

Acting Chair Hart: I would second the motion. It has been moved and seconded that the Board of County Commissioners deny the request to create four parcels using the family transfer exemption for Dennis D. and I. Annette Davis, in that it does appear to be an evasion of the Subdivision Act, based on the findings of this Board. All those in favor please say 'Aye.'

Commissioner Kennedy: Aye.

Acting Chair Hart: The chair votes 'Aye.' Is there any other business to come before us? We will recess until next Wednesday.

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

THURSDAY, JULY 9, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was in Helena attending a Board of Investments meeting.

ADMINISTRATIVE MEETING

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

Agreement - Chairman Evans signed an Agreement with the Montana Department of Environmental Quality for the purpose of providing local sanitary review of minor subdivisions. Performance schedule is July 1, 1998 through June 30, 1999. Compensation to Missoula County shall be according to rule 17.36.804 of the Administrative Rules of Montana. The Agreement was forwarded to DEQ in Helena.

Standard Lease Contract - The Commissioners signed a State of Montana Standard Lease Contract with the Montana Department of Health and Human Services, for lease of space at 301 West Alder for the Office of Public Assistance. Term of the lease is from July 1, 1998 through June 30, 1999. Compensation shall be \$69,463.00. One original was forwarded to the DPHHS in Helena.

Master Contract - Chairman Evans signed a Master Contract with the Montana Department of Health and Human Services for health related services required by specific task orders issued under this contract. Payment shall be from monthly or quarterly billing statements for each task order. The Contract was forwarded to DPHHS in Helena.

Contract - Chairman Evans signed a Contract with the Montana Children's Trust Fund Board for continuation of a grant program providing services to prevent abuse and neglect of children in Montana. Duration of the Contract is from July 1, 1998 through June 30, 1999. Compensation shall be \$15,000.00. The Contract was returned to the Health Department for further handling.

Notice of Hearing - Acting Chair Hart signed a Notice of Public Hearing regarding water meter requirements in Lolo RSID 901. The hearing is scheduled for July 22, 1998 at 1:30 pm in Room 201, Courthouse Annex.

Interlocal Agreement - The Commissioners signed an Interlocal Agreement with Flathead County to provide for secure detention of Missoula County delinquent youth in the Juvenile Detention Center owned and operated by Flathead County. Duration of the Agreement is from July 1, 1998 through June 30, 1999. Cost shall be \$238.00 per day of detention. The Agreement was forwarded to Flathead County for signatures.

Resolution - The Commissioners signed Resolution No. 98-054, supporting a Motor Vehicle Wrecking Facility license for Thomas F. Collins, Collins Auto Recycling and Sales, 9919 Garrymore Lane in Missoula County, subject to conditions.

The minutes of the administrative meeting are on file in the Commissioners Office.

FRIDAY, JULY 10, 1998

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

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Sheriff, Doug Chase, showing fees and collections for the month ending June 30, 1998.

Vickie M. Zeier
Clerk & Recorder

Barbara Evans, Chairman
Board of County Commissioners

MONDAY, JULY 13, 1998

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

Resolution - The Commissioners signed Resolution No. 98-055, setting a special school speed limit of 30 MPH for the Bonner School.

Waterlines Relocation Agreement - The Commissioners signed a Waterlines Relocation Agreement with American Eagle Properties for Lot 2 and 2A, Block 2, Missoula Development Park Phase I. Approximate cost of relocation may be \$7,500.00.

99 012

TUESDAY, JULY 14, 1998

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:

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Dale Burk, Stoneydale Press, for photographing of the Paxson paintings in the Missoula County Courthouse during July, 1998. Burk will produce a full set of transparencies which will become the property of Missoula County.

Contracts - Chairman Evans signed three Domestic Violence Grants with the Board of Crime Control:

1. County Attorney Pilot Project VOCA, in the amount of \$35,806.00.
2. STOP VAWA (Seeley Lake Crime Victim's Advocate), in the amount of \$24,378.00.
3. City Attorney/County Sheriff VOCA, in the amount of \$21,135.00.

Duration of each contract is from July 1, 1998 through June 30, 1999. The Contracts were returned to Leslie McClintock in OPG for further handling.

Submittal Letter and Grant Documents - Chairman Evans signed a submittal letter and grant documentation for continuation funding for the Missoula County Domestic Violence Program (YWCA Shelter Grant). Fiscal impact is \$46,974.00, which includes local match of \$15,995.00 for the Jesuit Volunteers who provide staffing in the YWCA shelter. The documents were returned to Leslie McClintock in OPG for further handling.

Other items included:

- 1) The Commissioners reappointed Nancy Moe to a three year term on the Missoula Development Authority; they appointed Jim Bell to a three year term on the MDA; and they appointed Ron Ewart to fill an unexpired term on the MDA through June 30, 2000. They also appointed Stan Hendrickson to the Lolo Community Council.

The minutes of the administrative meeting are on file in the Commissioners Office.

WEDNESDAY, JULY 15, 1998

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

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Joanne Dutton as principal for Warrant #81960 issued 6/23/98 on the Missoula County Trust Fund in the amount of \$500.00 now unable to be found.

Payroll Authorization Form - The Commissioners signed a Payroll Authorization Form for the Emergency Management Assistance Grant Program, changing the salary of Bill Silverman, OEM Coordinator, from \$13.98/hour to \$14.33/hour. The form was returned to OEM for further handling.

PUBLIC MEETING - July 15, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, Deputy County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Due to the end of the fiscal year, there were no weekly claims to be approved for the week.

Commissioner Hart moved that the Board of County Commissioners approve the Weekly Administrative Actions. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Bid Award - O'Brien Creek Bridge Deck (Road Department)

The bid award for O'Brien Creek Bridge Deck was postponed to July 22, 1998.

Bid Award - Tower Street Landscaping/Engineering RFP and Tower Street Park Construction Project (OPG - Parks)

Philip Maechling, Office of Planning and Grants, gave the report.

This action request has three parts. The first part is to select a proposal from Professional Consultants Inc. (PCI) and Kent Watson & Associates to perform engineering and landscape design services for the Tower Street Park ball field expansion. The second recommendation from the Park Board is to read the estimated budget for engineering and landscape design services, those negotiations will begin if the Board accepts PCI and Kent Watson for the project.

The third part is to award the construction bid for the excavation of aggregate material at the Tower Street Park for the purpose of expanding the ball field and new land form including trail purposes.

There were two bids offered by JTL Group Inc. for the aggregate material, one bid was for 10 cents per cubic yard and the other bid was for the County to pay \$1,190,000 to do the construction. The Park Board recommended accepting the bid for 10 cents per cubic yard for the aggregate material.

The Tower Street Park has a number of Little League fields and a land form that rises approximately 25 feet to the south of the existing fields. The proposal is to build two small fields and one larger field at the same level as the existing fields. To do that, the aggregate material would need to be removed (JTL Contract) and the land form, ball field design and trail design, and excavation and finish grading would be handled through the consulting contract with PCI and Kent Watson.

Chairman Evans asked for public comment. There being none the public comment section was closed.

Commissioner Hart asked if there really was a bid for \$1,190,000 from JTL?

Philip Maechling stated that was correct, to haul the material away and do the finish grading. There was another bid, which was the recommended bid, to buy the material for 10 cents per cubic yard. The estimate is that there are between 150,000 and 250,000 cubic yards of material to be removed. This could result in a net to the Park Board.

Chairman Evans stated it was hoped that the net result would be between \$15,000 and \$25,000, or could be less.

Commissioner Kennedy expressed concern about the amount. When this project was first proposed, there was an estimate of 25 cents per yard. This is about 60% less than initially estimated. With this estimate, there is only approximately enough money to cover the engineering fees. Based on this fact, he was hesitant to approve the bid. He wanted analysis as to why the original estimate from JTL is so substantially different than the bid.

Horace Brown stated that JTL told him originally they did not want to pay anything for the cost of hauling and stockpiling this material to crush it. This was a token payment as it was a County park.

Commissioner Kennedy expressed concern about the "token payment" statement as JTL provided the initial estimate of 25 cents. The initial estimate for net revenue was approximately \$50,000 and this bid is substantially lower.

Horace Brown stated this was the amount JTL provided, it would be between \$800,000 and \$900,000 to haul the material, then they have to stockpile it and crush it, it cannot be crushed on site.

Chairman Evans asked for an update on the Park Board discussion on the subject.

Horace Brown stated the Park Board was disappointed that it was not 20 to 25 cents, leaving less money for development. However, this project is so big there were very few bidders that could handle it, including the County.

Chairman Evans asked legal counsel if there was a reason to return the bids or not accept them when they were sent out in good faith.

Michael Sehestedt stated that legally the County was required to solicit bids for the property. It is difficult to value gravel in this situation. If, at the time this went out for bid, there was a contractor with a need in the immediate area for this material, it might be worth more. Legally, the Board can award or reject this bid. The question is accepting this bid now or putting it out for bid again and taking the risk of getting less money, or possibly more.

Commissioner Kennedy was hesitant to go forward because the overall resource available to the County barely covers the cost of engineering, and the initial estimate provided by JTL was much higher. He would prefer the issue be re-bid.

Chairman Evans stated that her feeling was that there were no other companies in town that have the storage space for this much material, and the Park Board has recommended acceptance. She did not want the development of the park to be delayed. She was prepared to accept the bid based on the recommendation of the Park Board.

Commissioner Hart asked if the 25 cent estimate might have included on site crushing?

Philip Maechling stated the original estimate did not include on-site crushing, rather what the material would be worth at the site.

Commissioner Hart stated she appreciated Commissioner Kennedy's comments. There had been a staff update on the 10 cent per cubic yard bid when the bid was opened and that would have been the time to ask for more information.

Commissioner Hart moved that the Board of County Commissioners approve the bid for the proposal from PCI and Kent Watson & Associates to perform engineering and landscape design services and award the construction bid to the highest bidder, JTL Group Inc., based on the County Park Board and Office of Planning and Grants recommendation. Chairman Evans seconded the motion. The motion carried on a vote of 2-1. Commissioner Kennedy opposed.

Abandonment of Former Old Mullan Road Right-of-Way at El Mar Estates

Nancy Moe, representing El Mar Estates, Phase I, Supplement II, gave the report. The subdivision was approved in January, 1997, and in reliance on that approval, El Mar Estates has continued its development expenses, including sewer connection. The purpose of this hearing is to abandon any County interest in the land owned by El Mar Estates that is no longer a part of Mullan Road, the issue of the subdivision is not in question before the Board.

Commissioner Hart stated that to clear any confusion, this abandonment should be referred to as being on "Old" Mullan Road.

Chip Johnson, Druyvestein, Johnson & Anderson, Inc. (DJ&A), explained that the diagram presented showed the area to be abandoned due to the realignment of Mullan Road by the State, this area represents those portions of the old Mullan Road right-of-way that lie outside of the new Mullan Road right-of-way. This is basically a bookkeeping issue, when the State Highway Department realigned Mullan Road, this action should have taken place then. The entire area is to be abandoned. The small sliver of land to the north is from the center line of the Old Mullan Road right of way and would revert to the State Highway Department upon abandonment. The Highway Department has given a release to these lands.

Commissioner Kennedy asked if the abandonment was approved would the right-of-way in the area to the east be 152 wide?

Chip Johnson stated that was not correct, the right-of-way continues on in that dimension for some distance to the east.

Commissioner Kennedy stated that on the west, the right-of-way is 150 feet and as it passes in front of this property it is reduced to 130 feet. Does the existing reconstructed Mullan Road occupy the center line of the new right-of-way?

Chip Johnson did not know if this was correct. His supposition was that the existing right-of-way was down the center line of Mullan Road and Horace Brown agreed.

Commissioner Kennedy asked if there was need for any additional right-of-way?

Horace Brown asked where the new frontage road was located.

Chip Johnson stated the frontage road had been built entirely within the new Mullan Road right-of-way.

Horace Brown stated that if the frontage road did not lie within the new right-of-way, the County would not maintain it.

Zane Sullivan, Insured Titles, stated that from the title perspective this is not a unique matter. When the state builds new roads it does not always take care of "housekeeping matters" of what is left behind. There is no need for public use of the area to be abandoned. This situation exists in other places along Mullan Road and other roads in the County due to state reconstruction.

Chairman Evans opened the public comment.

Dirk Williams, representing Connie and Bob Chestnutt who live on Pheasant Lane, just to the south of the property in question. The subdivision proposed acts a buffer between the Chestnutt's property and Mullan Road. His clients object to this subdivision. At the last public meeting on this issue, the Chestnutt's objected to the fact that the covenants on this new subdivision permit mobile homes. Mr. Frame corrected the statement and said mobile homes are not permitted. He was unable to verify that fact, the covenants stated that manufactured homes were allowed, and in his opinion that said the same thing using a "politically correct" term. He also restated his client's objection to this abandonment, saying that the County was giving away a property interest for no consideration from El Mar Estates to allow this ill-advised subdivision.

Zane Sullivan stated that the County does not own the property involved, but holds an easement. Mr. Frame has and does own the fee interest in this piece of property. He also stated his objection that manufactured home is synonymous with mobile home or trailer home. He cited other cases which upheld his point of view.

Nancy Moe clarified that the covenants provide for a dwelling that is manufactured, with a minimum width of 24 feet, modular or conventionally constructed residence.

Commissioner Kennedy asked counsel if there were underlying restrictions on the property with regard to zoning.

Colleen Dowdall stated the covenants have not been filed as the plat has not been filed yet but she was unaware of any zoning restrictions. She also stated that there is a difference between manufactured homes and mobile homes by statute, they are not the same by Montana law.

There being no further comment, Chairman Evans closed the public hearing.

Commissioner Hart was willing to make a motion and noted that the state has abandoned their interest in this property.

Colleen Dowdall stated that there is nothing in County rules or regulations that would preclude El Mar Estates from filing their plat if this abandonment was not granted.

Commissioner Hart moved that the Board of County Commissioners accept the petition to abandon the old Mullan Road right-of-way located in Tract 1 of Certificate of Survey 4580 in the SW 1/4 of Section 10, Township 13 North, Range 20 West, based on testimony and that the County Surveyor and a County Commissioner inspected the site, and that this right-of-way is not necessary for the County. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Family Transfer - Huset

Kathy Smith, Paralegal, County Attorneys Office, read the staff report.

This is a consideration of a request to create a parcel using the family transfer exemption for Tract 9 of COS 1608 located in Section 28, T15N, R21W, for Gary and Lori Huset.

Gary and Lori Huset have submitted a request to create a parcel and remainder using the family transfer exemption to the Montana Subdivision and Platting Act. The parcel is 21 acres in size and located north of Highway 90 just west of the Frenchtown Pond. Mr. and Mrs. Huset propose to split the parcel in half for transfer to Gary Huset's father, Leonard Huset.

The history of the parcel is as follows: COS 1608 was filed in 1977 by the Bud King Construction Company creating 25 parcels greater than 20 acres in size and a remainder. Mr. and Mrs. Huset purchased Tract 9 in April 1997.

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

Chairman Evans opened the public hearing.

Gary Huset was present and came forward to answer questions.

Commissioner Hart stated that when the Board has a request for a family transfer, it is their duty to determine that this does fit the guidelines and is not an attempt to evade the Subdivision Act. She asked if Gary Huset's father was alive and if he planned to live on the property?

Gary Huset stated his father was alive and did plan to live on the property.

Commissioner Kennedy asked what road accessed the property.

Gary Huset stated access for both properties would be off Moonlight Lane.

There being no further comment, Chairman Evans closed the public hearing.

Commissioner Hart moved that the Board of County Commissioners approve a request to create a parcel using the family transfer exemption for Tract 9 of COS 1608 located in Section 28, T15N, R21W, for Gary and Lori Huset, for transfer to Gary Huset's father, Leonard Huset, in that it does not appear to be an attempt to evade the Subdivision Act. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans told Gary Huset he would receive a letter detailing the approval and other items not guaranteed associated with the Family Transfer.

Family Transfer - Philpott

This is a consideration of a request to create a parcel using the family transfer exemption for Tract 5 of COS 358 located in Section 1, T14N, R21W, for Daniel B. and Jessie E. Philpott.

Daniel Philpott has submitted a request to create a parcel and remainder using the family transfer exemption to the Montana Subdivision and Platting Act. The parcel is approximately 12-1/2 acres in size and located near Highway 90 and southeast of Frenchtown. Mr. and Mrs. Philpott propose to create a small parcel at the north end of the property for transfer to their adult daughter, Andrea D. Philpott.

The history of the parcel is as follows: COS 358 was filed in June 1974, creating 9 parcels, probably as parcels greater than 10 acres in size. Mr. and Mrs. Philpott purchased Tract 9 on May 1, 1998.

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

Daniel Philpott was present and came forward to answer questions.

Commissioner Hart asked what size the parcel would be?

Daniel Philpott said the exact size had not been determined yet, it would probably be split 5 acres and 7-1/2 acres.

Commissioner Hart asked if Andrea D. Philpott was alive and planned to live on the property.

Daniel Philpott stated Andrea was alive and did plan to live on the property.

Chairman Evans asked for public comment. There being none the public hearing was closed.

Commissioner Hart moved that the Board of County Commissioners approve a request to create a parcel using the family transfer exemption for Tract 5 of COS 358 located in Section 1, T14N, R21W, for Daniel B. and Jessie E. Philpott, for transfer to their adult daughter, Andrea D. Philpott, in that it does not appear to be an attempt to evade the Subdivision Act. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans told Daniel Philpott he would receive a letter detailing the approval and other items not guaranteed associated with the Family Transfer.

Family Transfer Reconsideration - Davis

Kathy Smith, Paralegal, County Attorneys Office, stated that this family transfer request had already been read into the record. This was a reconsideration from July 8, 1998, at which time the family transfer was denied. The original request as entered into the record is below.

This is a consideration of a request to create four parcels using the family transfer exemption for a parcel described in Book 212 Deeds, Page 214, located in Section 11, T12N, R20W, for Dennis D. and I. Annette Davis.

Dennis Davis has submitted a request to create three parcels and a remainder using the family transfer exemption to the Montana Subdivision and Platting Act. The parcel is 2 acres in size and located in the Miller Creek area off Lower Miller Creek Road. Mr. Davis proposes to create three 1/2 acre parcels for transfer to his minor children: Chelsey A. Davis, age 13; Brittney R. Davis, age 10; and Haley M. Davis, age 7. The Davises currently reside on what would be the 1/2 acre remainder parcel.

The history of the parcel is as follows: The parcel was created by deed in April 1959 and the Davises purchased the parcel in June 1993.

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

Zane Sullivan, attorney representing Dennis and Annette Davis, was present. The applicants, Dennis and Annette Davis, were not. Mr. Sullivan said, "Two of the Commissioners were present last week when this matter was discussed. The discussion centered in part around what consideration was ultimately going to derive to the trust that has been established for the Davis children, who were to be the recipients of three of the lots that are to be created as a result of this. There is a home existing on the fourth parcel, or what would be the fourth parcel, already. At the time of the discussion, a question was raised by one of the Commissioners as to what amount the consideration would be. I believe I stated to the group that I understood the consideration was going to be 30% of the profits to be derived from the family from the development of these lots. That obviously raised a concern with the Commissioners. I have discussed this matter further with the Davises and believe that I probably misstated their position. The Davises, as is further clarified by Mr. Davis' statement, which is attached to my cover letter to Colleen Dowdall, indicates that the properties are to be transferred to the trust, they are to be improved to make them salable as residential building sites and 100% of the difference between their current value and their sale value less costs of those improvements to make them residential building sites, will be dedicated to the trust. So, on that basis, I hope that may clarify and hopefully alleviate any concerns that the Commissioner had that the trust was not truly benefiting from this transfer and therefore the children were not. I would happy to try to answer any questions you may have relative to this."

Chairman Evans asked for public comment. There being none, the public hearing was closed.

Chairman Evans stated that she had read the minutes from the previous week's hearing so she was aware of what had transpired.

Commissioner Hart stated that there was no comments from the Davises last week and she would like to have them present to answer questions.

Zane Sullivan stated that Mr. Davis was not able to be present due to work commitments, but could be available at a future date or time.

Commissioner Hart stated the decision last week was difficult and Mr. and Mrs. Davis were very quiet during the proceedings. She stated she wanted to know that they knew what they were committing to.

Commissioner Kennedy stated that this peculiar law allows the Board to ask questions of the petitioners. He would also like to have the petitioners here. He was uneasy with the previous hearing and testimony which lead to his objection of the transfer. One of the reason given today was the misunderstanding that Mr. Sullivan had about what the Davises intention was. He was uneasy again having Mr. Sullivan correct the misunderstanding and would like to hear from the petitioners.

Zane Sullivan stated if the Commissioners would continue this matter the Davises would be available.

Chairman Evans stated something she did not find in the minutes that perhaps counsel could answer for her was that it was unusual for someone to come before the Board and say they were going to take care of this by doing a certificate of survey for the children, put it in trust and then develop it. That is the part that is unusual for her. She would like to know if this is within the intent and allowances of the law in regard to a COS and if so, that would be easier for her.

Colleen Dowdall stated that it is certainly within the law that whoever receives the property, develop it and do with it as they see fit. In this case, because they are minors, it makes it more complicated and requires the parcels be transferred to a trust to hold the property for them. If the trustee chooses to develop it and sell it, it is one of those little pieces of evidence that the Commissioners can look at to see if there is an attempt to evade subdivision review, but it is only one of the elements.

Commissioner Hart moved that the Board of County Commissioners reconsider the application for family transfer by the Davises on July 22, 1998, with the Davises present to answer questions. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Orchard Park Subdivision (Preliminary Plat) - 56 lots - Lolo

Pat Keiley, Office of Planning and Grants, gave the staff report.

Shelter West, Inc., is requesting approval for Orchard Park, a 56-lot preliminary plat subdivision on 41.79 acres. The property is currently vacant.

The proposed subdivision is located on property in Lolo, Montana. The proposal calls for a three-phase subdivision. The site can be reached from Missoula, by driving south through the town of Lolo and turning left (east) onto Lewis and Clark Drive. At the railroad tracks, Lewis and Clark Drive turns south and the road continues to the east as Farm Lane. Phases I

and II of Orchard Park are located south of Farm Lane and east of the railroad tracks. Phase III is located at the end of Farm Lane adjacent to the Bitterroot River.

The property is legally described as the N 1/2 of Section 35, the NW 1/4 of Section 36, T12N., R20W., Principal Meridian, Missoula County, Montana.

Legal notification is required and has been provided in the form of notification letters to adjacent property owners through certified mail, a legal ad in the newspaper running two consecutive weeks with the first run at least 15 days prior to the Planning Board public hearing, and a notice of hearing poster placed adjacent to the subject property proposed for subdivision.

The project has three phases. Phases I and II have 47 lots, Phase III has 8 lots, as opposed to the 9 lots originally proposed. The proposed subdivision property is unzoned.

The proposed subdivision is located within the boundaries of the 1978 Lolo Land Use Comprehensive Plan:

1. 1978 Lolo Land Use Comprehensive Plan:

- * Residential, maximum density of 6 dwelling units per acre (Phase I and II), and (the approximate west 1/3 or 50-100 feet of Lot 1, Phase III)
- * Parks and Open Space (the east 2/3rds of Lot 1, Lots 2-9, Phase III)

Adjacent land uses to the north, south and west include residential. Adjacent land uses to the east include vacant land, residential, and a church.

External access to Phase I and II is from the existing Farm Lane and the existing Lewis and Clark Drive. External access to Phase III is from the existing easterly-most portion of Farm Lane. Farm Lane is an existing county maintained road that measures 24 feet in paved surface width within a 60 foot wide public right-of-way from Highway 93 South to approximately 50 feet to the west of the railroad crossing. From a point 50 feet to the west of the railroad crossing to where Farm Lane ends at proposed Phase III of the subdivision, Farm Lane measures approximately 24 feet in gravel surface width within a 60 foot wide public road easement.

Lewis and Clark Drive is a county maintained road that measures approximately 22 feet in paved surface width for the initial approximately 50 feet from the railroad crossing at the intersection with Farm Lane, and then approximately 22 feet in gravel surface width within an approximate 60 foot wide prescriptive public road easement.

Phase I and II of the proposed subdivision calls for internal access off four proposed paved county maintained roads, Stone Creek Court, Stone Creek Road, Indian Springs Drive, and Indian Springs Court. These roads measure 24 feet in paved surface width within a 54 foot wide public road right-of-way. Phase III of the proposed subdivision calls for internal access off of one paved county maintained road, River Park Drive. River Park Drive measures 24 feet in paved surface width within a 60 foot wide public road right-of-way.

Phase I and II call for a 1.82 acre common area located between Lots 8-15 of Phase I and Lots 1-7, 21 of Phase II. This common area is relatively flat and contains both an active small irrigation line and a mature stand of aspen trees. Phase III calls for a common area to the east of Lots 8 and 9 of Phase III. This common area is part of a wet slough and island area located in the 100-year floodplain and adjacent to the Bitterroot River. The proposed subdivision calls for connecting the common area in Phases I and II with the common area in Phase III via a 30 foot wide common area strip and a 20 foot wide public non-motorized access easement, for approximately 1200 feet in length. The proposal calls for all 56 lots to have access to the Phase III common area adjacent to the Bitterroot River.

Phases I and II call for hookup to the existing public Lolo sewer and water systems. Phase III calls for water and sewer to be provided by individual private wells and individual private septic/drainfield systems.

For pedestrian facilities, the proposal calls for a curb-side concrete sidewalk along one side of Stone Creek Court, Indian Springs Drive and Indian Springs Court only in Phases I and II. No pedestrian facilities are proposed for Phase III.

The Planning Board met on July 7, 1998 and held a public hearing. They recommended approval of Phases I and II based on findings of fact and conclusions of law in the staff report, subject to conditions in the staff report.

Phase III is now proposed for 8 lots, as opposed to the 9 lots originally proposed. Staff made a recommendation to Planning Board for 3 lots within Phase III. The Planning Board, on July 7, 1998, made a recommendation to deny Phase III altogether. The reasons for the now proposed 8 lots in Phase III include language from the 1978 Lolo Comprehensive Plan introduction, parks and open space designation intent, and language from the Land Capability for the Lolo Land Use Plan, dated November 1977. The structures for Phase III would have setbacks 150 feet from the waters of the river edge, with landscaped lawns or fences starting at 100 foot setbacks. The viewshed from the river should be mitigated with the 150 foot setbacks. There is not a critical wildlife corridor and the setbacks should allow for wildlife travel through the area.

Staff is recommending approval of Phases I, II and III, based on the findings of fact and conclusions of law. Staff is also recommending approval of variance requests 1 and 2, based on the findings of fact and conclusions of law. Variance 3 is not needed.

Nick Kaufman, WGM group, was present representing Shelter West, the developer. Kevin Mytty from Shelter West was also present. Jim Murphy from Murphy Development Company, the owner of the property, was also present. The process used for this development included meetings with the Lolo Community Council and members of the community. The phases of the development tried to match existing communities in the area, with the same density or slightly lower density. Phases I and II will connect to the Lolo water and sewer system. The developer has no problems with staff recommendations for Phases I and II. Several issues have been raised by the Lolo Community Council regarding the

development, including street lighting. This is a preliminary plat and final designs have not been completed. Final designs will be completed upon approval of the subdivision. According to staff, Phase III is in conformance with the Lolo Comprehensive Plan. The 30 foot common area neighborhood connection would remain between Phase I and II and Phase III, as amended to eliminate the common area along the Bitterroot River. One of the lots in Phase III has been eliminated since part of the area has been identified as fragile, and the entire area placed in one lot under private ownership. The other 7 lots will have 100 foot setbacks from the river's edge, designated as a river corridor/buffer area, which requires a management plan. 50 feet beyond this 100 foot setback would be the building restriction line for decks, patios and homes. Lolo Community Council is recommending a 200 foot setback. A management plan is being proposed in the 150 foot setback to mitigate erosion and other problems. Because of the difference of issues between Phases I and II and Phase III, it would be requested that the Board review Phases I and II separately from Phase III.

Steve Fischer, Fischer & Associates, stated that his company specializes in managing, restoring and enhancing riparian and aquatic resources. He was requested by the developer to look at the area and explain some of the sensitivity of the river bank areas and propose a restoration plan, including weed management. The weeds would need to be eradicated before progress could go ahead for the restoration plan. Bio-stabilization techniques would be used on the banks of the Bitterroot River. The 100 foot proposed wildlife corridor should be adequate for the area, including the slope of the river bank and part of the flat area as well.

Chairman Evans asked for public comments.

Jean Belangie-Nye, President, Lolo Lakeside Estates/Rossignol Homeowners Association, complimented the developers in there response to the people of Lolo. It seemed there was a lot of confusion and misunderstanding in terms of the sewer question. In regard to Phase III, that is a habitat area for osprey and eagles, heavily populated with 25 different bird species. Another issue regarding the river is historical. The Lewis and Clark bi-centennial is coming up and is becoming a real focus for the Lolo community, so river preservation and habitat are becoming important issues. This recommendation is more acceptable than previously submitted. Environmental and historical issues needs to be addressed. The community does not want any more surprises, such as the Rossignol Estates surprise.

Peggy Chilcote, representing the Lolo Community Council, stated that the citizens of Lolo agreed with the staff proposals for Phases I and II and the addition of street lights. The proposal for 3 lots in Phase III was also approved by the Lolo citizens, keeping in mind that land to the south is one home per five acres. The citizens would ask that the 3 lot proposal be looked at again, or a have a setback of 200 feet. The citizens of Lolo are currently working on a update to the comprehensive plan. The citizens accept Phases I and II, but still have some problems with Phase III. They would like to see larger, one-level, ranch homes not visible from the river on 3 lots in Phase III.

Colleen Dowdall asked Peggy Chilcote if there was a basis for the 200 foot setback.

Peggy Chilcote stated the 200 feet was optimum with some room for negotiation.

Don Bedunah stated that he lived adjacent to Phase III and his home had a setback of 300 feet, as were the other homes near him. He would like to see the setback changed to 300 feet to match the existing homes. He felt Phase III did not meet density standards either to the west, east or north of the property. He felt a wildlife corridor of 50 feet was inadequate. He suggested that homes built on Phase III should be even with existing homes to the north, a minimum of 300 feet from the river, or at least at the very west edge of the land. There was a lot of river bank erosion last year in the area and development will continue to aggravate the problem. The power of the river impacts the area of Phase III where Lot 8 would be developed, if that area is changed it will impact other areas to the north and south along the river. There has been a flip/flop of the Planning Board and staff on numerous occasions. This area is shown as open space and 3 lots would be the best for the area. Phase III would also cause road degradation in the area on all the roads, not just the ones covered by the development.

Todd Schule, 5355 Terry Lane, has property which abuts this development on three sides. He commented on the flip/flop done in the last week with the number of lots in Phase III. He also commented on the roads in the area, including Terry Lane, which is in poor shape, a non-maintained County road. He has raised the issue of the road several times but it has not been addressed. He felt this is the last chance to fix this road. Phase III in his opinion is a total nightmare. It was stated last week that Phase III would be eliminated, now it is proposed for 8 lots.

Chairman Evans asked Colleen Dowdall to explain the change in Phase III during the last week.

Colleen Dowdall stated this was heard last week by the Planning Board with a recommendation that Phase III be approved at 3 lots, the proposal was for 9 lots. The reason for the staff's recommendation was based upon a parks and open space designation of this property in the Lolo Land Use Plan. After reading the plan, it referred to the Land Capability for the Lolo Land Use Plan which was prepared to help make the recommendations for land use in this area. It analyzed land use for the Lolo Plan in terms of slopes, soils, ground water hazard, floodplain, etc. The analysis for this property according to maps approved in 1977 or 1978 described it as having slight limitations for land use development, except for a map which discussed potential ground water hazard. This area is not in the floodplain except along the bank and the slough area. In looking at this and reading all the language, it was discovered that the land north of this is designated at 6 per acre. The shape of the designation are close. It was her opinion that the final map had a drafting error in designating this land as parks and open space. Nothing in the plan, except for the potential ground water hazard, supports limiting development on this parcel. As a result of that investigation, Planning Board discussed this new information. It was believed that the County Commissioners needed this information based on her analysis of the plan. As a result, staff determined there was not comprehensive plan backing to limit development on this parcel. Therefore, the change was made to recommend 8 lots as opposed to the 9 lots or the 3 lots.

Todd Schule asked if the land was parks and open space or not?

Colleen Dowdall stated that her interpretation was that the land use plan was not zoning, it is a recommendation. The whole plan needs to be looked at, not just the land use map. Parks and open space is floodplain land and this is not floodplain land. She believed there was a mistake in the designation but it would require more investigation. This land is

shown in all the maps as having slight limitations for development. In her analysis, review of the parks and open space designation is necessary. She could not find a supportable reason why that designation was made. 99 019

Todd Schule stated that he believed everything on this side was parks and open space.

Colleen Dowdall stated there was one map which supported the parks and open space designation, but it is not zoning. If it were zoning it would mean no development, but it is only a recommendation for land use and subject to interpretation.

Todd Schule stated that interpretation was the thing that could harm you, no two interpretations were the same.

Colleen Dowdall stated that ultimate interpretation would be the District Court judges. She tried to base her opinions on their views.

Todd Schule continued with Phase III. A study showed that there used to be an island in the area and in building the area up, it is putting more pressure on both sides of the river. If a change is made in one location on the river, it will affect other areas of the river. This area was traditionally farm area. He could accept 3 lots in Phase III but now it is back to 8 lots which does not match the rest of the area. The walkway from Phase II to Phase III also concerned him. He does not want to be part of a subdivision, he is a farmer. He felt the public access to the river would be harmful. He felt the 8 lots is a big mistake.

Suzanne Miller stated she owned property south of Mr. Schule. She echoed the comments of Mr. Bedunah with respect to the wildlife corridor and erosion aspects of the river. The community has been working in good faith with the developer. When decisions made at one meeting have been changed by the next meeting it undermines the community's confidence. She would like to have the decision on Phase III delayed, more time is needed to work with the developer to come up with an acceptable solution. The river is very important to the community of Lolo and she does not want to see the ecological balance upset. The public process is very important and the community has been caught by surprise with the changes in Phase III.

Colleen Dowdall explained about the relationship between the Planning Board and the community. The Planning Board had an application from the developer for 9 lots, a recommendation from staff for 3 lots, and they recommended no development. Their action is simply a recommendation to the Board of County Commissioners, they serve as a sounding board and do not make a decision. The Commissioners have the ultimate decision to make.

Diana Mitchell stated she was very concerned with dismissing the open space designation from the Land Use Plan. She asked that a decision on Phase III not be made today.

H.L. (Mac) McChesney stated he owned Lot 43B in Rossignol Orchard Tract 2 Subdivision which is adjacent to farm land. Farm Lane is a County road but the road is in terrible shape and will have extensive travel, the road is not maintained by the County. This plan does not make any provision for pedestrians crossing the railroad track, having no lights. The 24 foot wide pavement does not make any provisions for walkways.

Horace Brown stated that Farm Road is a County road but it is a non-maintained County road because it has not been accepted for maintenance. The road has to be paved, in this case, to be brought up to County standards for maintenance.

Chairman Evans stated that the County requires roads to be brought up to standards before they will be accepted for maintenance.

Todd Schule stated that there are other roads that are maintained that are not up to specifications, because they have been granted variances. He felt this was the last chance for Terry Lane to be corrected.

Horace Brown stated that Terry Lane is a non-maintained County road. Lewis & Clark was accepted for maintenance in 1974, at that time it met acceptance for a County road. It would not be accepted today. There are a lot of roads in the County that are maintained that would not meet acceptance today but were accepted in the past.

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

Nick Kaufman stated that one of the comments that has come up at this meeting was to build homes in Phase III to the same standards as existing homes to the north. He felt that would create urban sprawl. The developers are trying to match existing neighborhood and correspond to the comprehensive plan. In Phase III the homes would be 150 feet from the edge of the river. The developer felt there was a lot of contention about the 30 foot easement, it could be left as is for now until the RSID is heard at a future date. There needs to be a balance in the Phase III area. MRL stated there are 3 trains a week on the tracks in question as well as work trains. There would not be a lot of kids crossing the tracks when the trains would be going through. Safety and signalization are also being investigated. All the homes in Phases I and II would be accessed through the subdivision roads, any access to Terry Lane would be occasional farm access only.

Commissioner Hart asked if all the lots have a waiver for improvement?

Nick Kaufman stated that at least Phase II did.

Commissioner Hart stated that the RSID was based on benefit and asked about other large landowners who had significant frontage?

Nick Kaufman stated that an RSID is based on benefit, there should not be assumptions made about lot size or frontage. There will be public hearings and citizen participation. The people of Lolo will be contacted to see what they want when the RSID's are being planned. There are several ways to do RSID that are fair, it is not the developers intention to overburden any person who accesses those roads.

Commissioner Hart asked how fair an RSID could be made?

Colleen Dowdall stated one way to do an RSID based on benefit is by the ownership of lots, there would be benefit for one dwelling unit.

Nick Kaufman stated an RSID could be done that way instead of on a basis of frontage or land area.

Colleen Dowdall stated that initiating the RSID waiver is for the whole roadway.

Nick Kaufman stated that Farm Lane is the primary exit from the subdivision.

Commissioner Kennedy asked about the 150 foot setback from the river, was that from the 100 year floodplain.

Nick Kaufman stated that the 150 foot setback was from the edge of the river as it is shown on the preliminary plat.

Commissioner Kennedy asked how the edge of the river is determined.

Nick Kaufman stated that the area was site mapped this Spring to determine the shoreline.

Commissioner Kennedy felt the floodplain line was a more accurate measurement than the edge of the river mapped this Spring, as that line may vary depending on when it is mapped.

Nick Kaufman stated if the floodplain line was used, the setbacks would change appropriately.

Commissioner Hart asked if there were transfer documents from the Dolly Stewart rights to this subdivision.

Nick Kaufman stated that was absolutely documented.

Commissioner Hart stated the 47 sewer connections mentioned are in the current capacity of the sewer district.

Chairman Evans asked the public if anyone knew who submitted the petition protesting the sewer connections, could they please inform that person about the current capacity of the sewer system. The people who signed the petition may be under the wrong assumption regarding the 47 connections.

Commissioner Hart asked to hear from Bill Lindstrom regarding his concerns about this subdivision and his preference for hookup to Lolo water system for fire suppression.

Bill Lindstrom, Fire Marshall's Office, Missoula Rural Fire District, stated he did not have any problems with Phases I and II as hydrant locations have already been agreed on. However, Phase III at his last meeting was 3 lots, and he could have accepted the water assessment. Now that it has grown to 8 lots, he would like to see an easement to get fire suppression water there. RSID 901 has assured him that if they get the easements they could furnish water to hydrants in Phase III.

Chairman Evans asked Nick Kaufman to reiterate on the map what roads have what requirements, if this subdivision is passed.

Nick Kaufman stated that there was no required road improvement for Terry Lane with this subdivision. Lewis and Clark Drive would have a waiver of protest for RSID to pave it from the railroad tracks to Highway 93. An RSID has to be initiated to pave Lewis and Clark Drive from the subdivision road to the edge of the payment of Lewis and Clark Drive. If the RSID fails, the subdivision waives the right to protest. A condition also states that the developer works with the County Surveyor to provide assistance for paving. If Phases I and II are adopted, the subdivision has to initiate an RSID to pave Farm Lane from its intersection with Lakeside back to the intersection of Lewis and Clark. If the RSID fails, the right to protest future RSID's is waived. If Phase III is adopted with enough lots to pay for the suggested infrastructure, then an RSID has to be initiated to pave Farm Lane from the end of the existing road all the way to Lakeside Drive. When the SID's are done the developer will work with the residence to see if a walkway is appropriate and affordable.

Chairman Evans asked Colleen Dowdall to clarify what the law requires in the way of subdivisions, considerations the Commissioners have to take into account, what things they are allowed to consider and what things they are not allowed to consider.

Colleen Dowdall stated that State law and subdivision regulations require the Commissioners consider zoning of the property and the comprehensive plan designation and that the subdivision be evaluated to determine its effect on services such as roads, emergency services, schools, etc., its effect on public health and safety, the effects on the natural environment and wildlife habitat. These are primary subdivision review criteria. State law also requires that the Commissioners support their decision with findings of fact and conclusions of law, which support the imposition of any conditions.

Chairman Evans stated that she has heard a recommendation that the Board sets a specific setback footage. She did not believe setting a specific setback footage for everybody across the board would work because every lot is not the same configuration, common sense needs to dictate the setback. The environment is very important but there is nothing in the law that states a person cannot build a house so it is not visible from the river. The developers have been very sensitive to the viewshed issue and have mitigated the matter effectively. The Commissioners must give developers the chance to mitigate any problems if the subdivision is denied.

Commissioner Kennedy stated the Planning Board approached this subdivision as having significant differences between Phases I and II and Phase III that they separated them in the decision making process. They also voted unanimously to approve Phases I and II and unanimously to disapprove Phase III. Based on the testimony the Board has received today, it was his recommendation that the Board do the same, act on Phases I and II separate from Phase III.

Colleen Dowdall stated the applicant requested the same in his presentation.

Commissioner Hart moved that the Board of County Commissioners grant the variance request from Article 3-2, Missoula County Subdivision Regulations, to decrease the required Stone Creek Road right-of-way width from 60 feet to 54 feet. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners grant the variance request from Article 3-2, Missoula County Subdivision Regulations, to decrease the required Indian Springs Drive right-of-way width from 60 feet to 54 feet. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners deny the variance request from Article 3-2, Missoula County Subdivision Regulations, to decrease the required Lewis and Clark Drive gravel road surface width from 24 feet to 22 feet. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve Orchard Park Preliminary Plat Subdivision, Phases I and II, subject to the conditions and based on the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

ORCHARD PARK CONDITIONS OF APPROVAL

Roads:

1. The County Surveyor shall approve all road names within the subdivision prior to the applicable final plat record set signoff.
2. The applicant shall participate with the County Surveyor's office in the paving of Lewis and Clark Drive with millings made available by state highway projects between Lolo and Missoula. In the event that the millings do not become available, the applicant shall initiate and create an RSID to pave Lewis and Clark Drive, extending from the intersection with Farm Lane to Indian Springs Drive to a county paved road standard of 24 feet, including a 5 foot wide concrete boulevard sidewalk, with a 7 foot wide grassy boulevard on both sides of the road. If the RSID fails, the applicant shall pave Lewis and Clark Drive, extending from the intersection with Farm Lane to Indian Springs Drive to a county paved width standard of 24 feet- waive the right to protest an RSID for future pedestrian and road improvements. The applicants participation shall be to supply oil for the millings project or in the alternative, provide a level of roadway improvement upon which to place the millings. Plans shall be approved by the County Surveyor prior to the Phase I final plat record set approval.
3. The applicant shall connect Stone Creek Court to Indian Springs Drive in the vicinity of Lots 3-4, Phase II with a 5 foot wide asphalt walkway. Plans shall be approved by the County Surveyor and OPG prior to the Phase I final plat record set signoff.
4. The applicant shall develop a dust abatement plan and provide dust abatement to all roads adjacent to and within the Orchard Park Subdivision, including Farm Lane, Lewis and Clark Drive, during and through construction of the subdivision and until the gravel roads are paved. The dust abatement plan shall be approved by the Health Department and incorporated into the subdivision covenants prior to final plat record set signoff.
5. The applicant install "L-Type" curb and gutter in Phases I and II. Plans for curb and gutter shall be approved by the County Surveyor prior to final plat record set approval.
6. 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 assent of the lot owner for all lots within Phases I, II of Orchard Park subdivision to waive the right to protest a future RSID/SID for any improvements to Farm Lane, extending from the portion of the subdivision abutting Farm Lane to Highway 93 South, based on benefit, 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 depicted herein."
7. The applicant shall petition for the subdivision to be included within the Missoula Urban Transportation District, with petition to either be accepted or rejected by Mountain Line prior to final plat record set approval.
8. Each lot owner within the Orchard Park Subdivision shall pave the individual driveway to the homesite, to be approved by the County Surveyor through building permit issuance.
9. The applicant shall initiate and create an RSID to pave Farm Lane from the unpaved portion of Farm Lane, located on the west side of the railroad tracks, to the intersection with Lake Side Drive, to a county road standard of 24 feet, including a 5 foot wide concrete boulevard sidewalk with a 7 foot-wide grassy boulevard with deciduous street trees with a minimum 2 inch caliper at time of planting, every 30 feet, on both sides of the road, based on benefit, prior to the filing of Phase I. If the RSID fails, the applicant shall waive the right to protest the creation of an RSID to pave Farm Lane from the unpaved portion of Farm Lane to the intersection with Lake Side Drive to a county standard of 24 feet, prior to the filing of Phase I. Plans shall be approved by the County Surveyor prior to the Phase I final plat record set approval.

Pedestrian Facilities:

10. The applicant shall install a 5 foot-wide boulevard concrete sidewalk with a 7 foot wide grassy boulevard on both sides of Stone Creek Road, Stone Creek Court, and Indian Springs Court. The applicant shall install a 5 foot-wide concrete boulevard sidewalk with a 7 foot wide grassy boulevard on both sides of Indian Springs Drive from the intersection with Lewis and Clark Drive to the intersection with Stone Creek Road, and then on the north side of Indian Springs Drive to the end of the road. The applicant shall install a 5 foot-wide concrete boulevard sidewalk with

a 7 foot wide grassy boulevard on the south side of Farm Lane adjacent to the subdivision. Plans shall be approved by the County Surveyor and OPG prior to the applicable phase of the final plat record set signoff. 99 022

11. The applicant shall mark a designated crosswalk extending from the pedestrian sidewalk adjacent to Lot 21, Phase II to the pedestrian sidewalk across Indian Springs Drive adjacent to the common area in Phase I. Plans shall be approved by the County Surveyor and OPG prior to final plat record set signoff.
12. The applicant shall designate on the final plat a 20 foot pedestrian walkway easement extending from the Indian Springs Court cul-de-sac bulb, between Lots 13, 14, Phase II to the property line. The easement shall be approved by OPG prior to final plat record set signoff.
13. 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 assent of the lot owner for Lots 17-21, Phases II of the Orchard Park subdivision to waive the right to protest a future RSID/SID for boulevard sidewalk extension from the end of the sidewalk on the south side of Indian Springs Drive, adjacent to Lot 21, Phase II to the northeast corner of Lot 17, Phase II at the time in which the property to the east of Phase II is developed and Indian Springs Drive is extended to the east, based on benefit, 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 depicted herein."

Utilities (Fire):

14. The Missoula Rural Fire District shall approve the subdivision's water supply for fire protection purposes. The District shall approve the plans prior to final plat record set signoff.
15. The applicant shall petition for annexation into the Missoula Rural Fire District.

Natural Environment (Drainage, Erosion Control, Vegetation/Revegetation, Weed Control, Refuse Removal)

16. The applicant shall submit a vegetation management retention plan that outlines how the maximum amount of natural vegetation can be preserved for the entire subdivision. The applicant shall submit a revegetation plan for all disturbed slopes and revegetate all disturbed slopes. The applicant shall submit a noxious weed control plan for the common areas (with the exception of the common area in Phase III) and the road easement areas, to be approved by the Weed Control Board and Health Department and incorporated into the subdivision covenants prior to final plat record set approval. The applicant shall develop an erosion control plan, using best management practices, for all areas that may experience erosion due to all cuts, fills, and road, driveway, and utility improvements and implement the erosion control plan. The plan shall address erosion and drainage control during and after road construction, with emphasis placed on not allowing siltation and debris from entering the river. Plans shall be approved by OPG prior to final plat record set approval.

Covenants:

17. The subdivision covenants shall be amended to include the following:

"Each lot owner who owns a lot in Phases I and II that abuts Stone Creek Road, Stone Creek Court, Indian Springs Drive, Indian Springs Court, Farm Lane and Lewis and Clark Drive shall install grass landscaping in the 7 foot wide boulevard area and install deciduous boulevard trees, minimum 2" diameter at planting, placed within the 7 foot wide grassy boulevard every 30 feet, on center along the road(s). The lot owner shall maintain the grassy boulevard and the boulevard trees in a healthy state."

Language shall be approved by OPG prior to final plat approval.

18. The subdivision covenants shall be amended to include the following:

"The pedestrian 5 foot wide, either asphalt or concrete sidewalk in the road right-of-ways interior to Phases I and II and in the Phase I common area shall be maintained by the individual homeowner of the Orchard Park Subdivision Homeowner's Association."

Language shall be approved by OPG and the County Surveyor prior to final plat approval.

19. The Phases I and II parkland dedication shall be satisfied by the proposed common area dedication on the proposed preliminary plat for Phases I and II and a cash-in-lieu of parks payment by the applicant, which, together, will satisfy the statutory requirement.

Commissioner Hart stated she would prefer to delay the decision on Phase III. She would like the Planning staff to get the minutes of the Commissioner decision from archives for the Lolo Comprehensive Plan. There needs to be clarification about what the plan means now and into the future. There needs to be some more research done.

Commissioner Kennedy felt if asked to make a decision today on Phase III it would be no. He has read the Planning Board's decision and their belief that it does not comply with the comprehensive plan. Counsel believes there was a mistake in land use designation, however, the citizens and staff feel otherwise. There is sufficient confusion that requires more examination. He agreed with Commissioner Hart and would like to delay the decision on Phase III.

Commissioner Hart asked Nick Kaufman his timeline and if he could accept the delay?

Chairman Evans asked if the decision was delayed, would we go past the 60 day limit.

Pat Keiley stated the 60 day period ends July 18, 1998.

Chairman Evans asked if the applicant wished the Board to wait?

Nick Kaufman stated there had been a lot of testimony as to the work done with citizens groups. The developer waited almost 6 weeks before agency review which took another 3 weeks. Planning Board moved the review back an additional two week. Much time has been lost on this project and time is of the essence. The developer has tried to accommodate and believes they have a good plan. What are the Commissioners asking for in the way of a delay?

Commissioner Hart would like to look at the minutes of the Lolo Comprehensive Plan meeting and understand the difference between the map used since 1978 and the appendix which shows a different kind of map.

Colleen Dowdall stated the Planning Office still has the maps and documents used in the 1978 process. The question that she had was if you look at the reason for the designation and you get to this particular piece of land, knowing its not zoning and not a hard line and knowing that 6 per acre is right next to it and it doesn't have the limitation that were described in the plan, even if that was the case, would you then be inclined to leave it as parks and open space and not approve Phase III.

Commissioner Kennedy stated that based on what he heard today, he would not approve Phase III. He has several reasons.

Commissioner Hart stated she needed to look at the areas that are marked as floodplain and areas that are designated for 6 units per acre. She needed to look at comparison maps to see if there was testimony a greater request for open space and parks.

Nick Kaufman asked how much time the Commissioners were looking for.

Chairman Evans stated she was looking at July 29, 1998.

Nick Kaufman stated he would prefer July 22, 1998, if possible.

Commissioner Kennedy felt that was not possible. When the developer was asked how long this project would take, the answer was up to three years. It seems like an additional week and considering the overall time for development, an additional week would not be detrimental. The extra time will allow the Commissioners to make a good decision.

Nick Kaufman stated that the Comprehensive Plan interpretation from the Planning Board was not available until the Wednesday before the Planning Board hearing. The developer lost valuable time during the process. He is willing to work with the Commissioners.

Chairman Evans stated that what the map seemed to represent was that certain parcels of land in the area are different, which is clear. However, the land is question does not appear to be different from the land to the west which allows 6 per acre. She did not see the difference. The configuration and type of land needs to be looked at when making their decision.

Commissioner Kennedy stated that when the Board makes interpretations which may be stretches, it opens the door for other interpretation. He wanted to be very cautious. It is important for this subdivision and others who might be affected by it in the future. The developer has stated they would agree to July 29, 1998.

Colleen Dowdall stated she did not believe the interpretation was a stretch. She felt the Planning Staff's first recommendation was a stretch. They had no basis for three lots except to read into the documentation their views. There was nothing in the plan to support three lots. She believes the plan supports 6 per acre. If the Board wants to do a strict interpretation of the plan that the lines are followed as zoning lines, and not look at the topography or language of the plan, then the Board can make their decision based upon that information. She has no question in her mind. She does not believe it is a gray area, it is black and white. She believes the ultimate land use designation map is a mistake, it is not supported by the Lolo Land Use Plan text or the land capability map.

Chairman Evans agreed with Colleen Dowdall. In looking at the aerial photo, the map and the text in the plan does not show the uses are the same. She was willing to approve Phase III today, but was the only one. She would support a delay. She asked Nick Kaufman if July 29, 1998 was satisfactory.

Nick Kaufman agreed that July 29, 1998 was satisfactory.

Commissioner Kennedy stated there is an equity issue here brought up by testimony that the Board can't treat lightly. Up until now, the staff and the citizens believed one thing about how the comprehensive plan was to be interpreted, even the Planning Board did. Now we have a different interpretation that is in conflict with that. He is not in disagreement with the new interpretation, but in order to be fair the Board needs to take into account that up until this point, everybody believed something else. It takes time to investigate so the Board has a better understanding when the decision is made. Had this new interpretation been made then perhaps the testimony might have been different before the Planning Board and perhaps the decision might have been different. The process was faulty because of lack of information. There are problems here which need to be resolved. If we let this settle for two weeks and be firm about what the decision is, it will be much easier for the Board, staff and citizens. He asked that there be this delay.

Colleen Dowdall agreed with Commissioner Kennedy. This would allow parties involved to look at the plan more carefully. These facts were brought to the Lolo Community Council yesterday. The council was aware of the information, the greater community was not.

Commissioner Kennedy stated this process has been in development a long time. It is unfortunate that this new information has been put forth in the last few days. He would like to continue the public hearing on this process for the next two weeks.

Chairman Evans stated she had already closed the public hearing. She stated it could possibly be re-opened.

Colleen Dowdall stated it would have to be re-advertised.

Pat Keiley stated that he wanted to make it clear that staff's initial recommendation for 3 lots was not a stretch. This is a gray, difficult issue that is not clear cut at all. To say staff's recommendation was a stretch is simply not true.

Chairman Evans stated she understood the rationale used. She agreed with Colleen Dowdall that the number were picked out of the air, based on what staff thought was appropriate. She does not feel they are appropriate.

Commissioner Kennedy wanted to clarify one more time that it was his understanding that the Board can re-open the hearing today. The Board is not finished with this meeting and could not understand why the hearing could not be continued until the time is certain without re-advertising.

Colleen Dowdall stated there were people who had already left the meeting who thought they would not be able to comment again. If the Board is going to re-open the public hearing, she believed it would be best to re-advertise.

Commissioner Kennedy hoped re-advertising would be done and would so move to do that.

Chairman Evans asked if she needed a motion in order to hold this to July 29, 1998. She also stated a request from the developer was needed to do that.

Commissioner Hart stated she wanted to continue this hearing because she supported the community of Lolo and did not want them to lose faith in the planning process. It does not mean that there is agreement with everything that is opposed. It means that it will be taken seriously and try to make a benchmark in the understanding of the plan.

Nick Kaufman asked if staff's current position is the same position that they will have in two weeks? That the proposal in front of them, along with the conditions protects the resource identified in the Lolo Comprehensive Plan and conforms to their interpretation of that plan.

Pat Keiley stated they would spend the next two weeks looking at the data requested by Commissioner Hart. He would be premature in trying to answer Mr. Kaufman's question right now.

Chairman Evans stated that leaves her with no credibility of the system. It can be interpreted in various ways, but the Planning Staff is based on the advice of County's counsel. County's counsel and planning staff came to a conclusion. She would not be happy if there continues to be a flip/flop on what the applicants are told. Before Pat Keiley answers the question, he should discuss the matter with the director of OPG.

Pat Keiley stated that it sounded as if Commissioner Hart wanted staff to take a look at that information.

Chairman Evans stated that Commissioner Hart wanted to look at the information.

Commissioner Hart stated she may ask for help but it was doubtful, however she did need staff to find the information for her. She understood Nick Kaufman's question, the developer needs to know when they return what the staff's position is. The Board has been sued before. The Planning Board voted no on Phase III on the basis of their information. The staff and the attorney have new information and have changed the recommendation. That is one of the reasons she does not want to proceed.

Nick Kaufman stated Kevin Mytty agreed to an extension for the approval period for the subdivision. He had one question for Commissioner Kennedy. As he understood, Commissioner Kennedy wanted to understand the comprehensive plan issues because they form the direction of whether or not this subdivision can be approved with conditions or denied. The developer's understanding in granting an extension was to have a decision on the subdivision in two weeks, allowing the Board to consistently and properly interpret the comprehensive plan. He felt there was a very strong staff recommendation that what was proposed today for Phase III both protects the resource and the comprehensive plan. If that is not the case then he is misunderstanding something.

Commissioner Kennedy stated that fortunately or unfortunately the Board sits in final judgment of what would happen, short of the court. The Planning Board took a position that was unanimously against this project. Suddenly things have happened since then that caused some reconsideration on staff's part with respect to their recommendation. The Board still has to pass judgment on that. The new information came to him only yesterday that formed the basis for the change in that decision. He is not comfortable with it. He was not sure he completely agreed with counsel yet. He needs to be comfortable with that before he makes a conscience decision on behalf of the developer that affects the community. That is why he needs the additional time. He needs to speak with counsel and make his own interpretation and solve this for himself.

Kevin Mytty stated that in regard to the public hearing issue, the way he understood it was the application was still for 9 lots with the common area on the river, which was denied at Planning Board. In the meantime, the developer has had a staff change to 8 lots with no common area on the river and slightly more setback. As far as public comment is concerned, it was based on the developers initial application which was more severe than what staff is recommending. He could see this process dragging out. The big issue was the interpretation of the comprehensive plan.

Chairman Evans stated it was 5:15 pm and called the meeting to a halt today. The Board will reconvene on July 29, 1998, same time, same place with this issue on the agenda first.

There being no further business to come before the Board, the Commissioners were in recess at 5:15 pm.

THURSDAY, JULY 16, 1998

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

Payroll Transmittal Sheets - The Commissioners signed Payroll Transmittal sheets for Pay Period 13, with a total Missoula County Payroll of \$645,986.53, and Pay Period 14, with a total Missoula County Payroll of \$624,632.98. The sheets were returned to the Auditor's Office.

Plat - The Commissioners signed the plat for El Mar Estates Phase I, Supplement No. 2, an urban residential subdivision, located in the SW1/4 of Section 10, T13N, R20W, PMM, Missoula County, a total area of 1.94 acres, with the owners/developers being El Mar Estates, Inc.

ADMINISTRATIVE MEETING

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

Contract - The Commissioners signed a Contract with Quality Maintenance Ent. for cleaning services for various County office buildings. Duration of the Contract is through July 15, 1999. Compensation shall be \$125,000.000. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Bargain and Sale Deed - The Commissioners signed a Bargain and Sale Deed with Lester Bruce Madsen, Bruce Anthony Madsen, Patricia M. Madsen, and Erik Andrew Madsen, for Parcel No. 31 on Montana Department of Transportation Project No. DPI 0195 (001)F, releasing right of way for original alignment of the Airport access road. Sale price was \$1.00. The Deed was returned to Mike Sehestedt, Deputy County Attorney, for further handling.

Memorandum of Agreement - Chairman Evans signed a Memorandum of Agreement with the US Department of Housing and Urban Development for renewal funding for the SHARE House from January 1, 1999 through December 31, 2002. Fiscal impact is \$579,328.00 in federal funds, and \$30,000.00 in County funds. The Agreement was returned to Leslie McClintock in OPG for further handling.

Warranty Deed - The Commissioners signed a Warranty Deed with American Eagle Properties, LLC, in the sum of \$10.00, for Lots 1, 2 and 2A Block 2 Missoula Development Park Phase I, Missoula County. The Deed was returned to Mike Sehestedt, Deputy County Attorney, for further handling.

Other items included:

- 1. The Commissioners approved payment of MACo dues in the amount of \$7,000.00 for FY99.

The minutes of the administrative meeting are on file in the Commissioners Office.

PRELIMINARY BUDGET HEARING - FY '99 - THURSDAY, JULY 16, 1998

Chairman Evans called the Fiscal Year 1999 Missoula County Preliminary Budget Hearing to order at 7:00 p.m. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, Chief Financial Officer Jane Ellis and Superintendent of Schools Rachel Vielleux.

Jane Ellis explained that this was a preliminary budget recommended by the County Budget Team. The Commissioners have made no final decisions on budget matters as yet. The hearing early in the process is to give the public more information and allow for comments in person or in writing. The budget figure for this year is \$44.6 million. This budget assumes an increase in the mill value of \$2,000, the final mill value for FY '99 has not been determined yet. A new item which will have an impact this year are the jail bonds.

Chairman Evans explained that the North Reserve contribution to the budget is one-time only, FY '99 only. After that, the increased revenue from growth is the County's to use.

Chairman Evans then opened the public hearing.

The following persons spoke regarding various issues:

SPEAKER'S NAME	SUPPORTER OF
Craig Brewington	Missoula Public Library
Shawna Hooper	Partnership Health Center
Fran Maronick	Family Services / Children's Shelter
Joanie Sebring	Partnership Health Center
Karyn Collins	Partnership Health Center
Cindy Raymond	YWCA
Shannon Parker	SSIT Program / Partnership Health Center
Patty Kent	Mental Health Center Housing Programs
Kathryn Sheehan	Community Exchange
Howard Reinhardt	Missoula Aging Services
Paulette Baird	Community Exchange
Gene Duran	Western Montana Mental Health Center
Kelly Rosenleaf	Child Care Resources
Cindy Bartling	Friends to Youth
Eric Taylor	Salvation Army
Beryl Stover	City of Missoula Park Board

Marcia Cressel	Partnership Health Center
John Oetinger	Fort Complex (Against Levying Fees on Sports Groups)
Kate Jerrim	SSIT Program
John Crawford	Partnership Health Center (Indian Population)
Renee Vaillancourt	Missoula Public Library
Ron Kelley	Partnership Health Center
Ruby Dunn-Owens	Partnership Health Center
Angie Ford	Partnership Health Center
Donald Hathaway	Partnership Health Center
Ed Mayer	Missoula Housing Authority
Dave Huerta	Fort Complex (Against Levying Fees on Sports Groups)
Mark McMurray	Parks
Peggy Chilcote	Community Councils / Parks
Pat McDonald	Ft. Missoula (Against Levying Fees on Sports Groups)
Larry Shock	Ft. Missoula (Against Levying Fees on Sports Groups)
Patricia Hiscoe (Letter)	Partnership Health Center
John B. Snively, DDS (Letter)	Partnership Health Center
Pam Burchfield (Letter)	Partnership Health Center
Barb Bush (Letter)	Partnership Health Center
Eric C. Taylor, Greg Burham, Larry DeGarmo, Ed Mayer, John Collins, Hilary Bush, Susan Selback, M.D. (Letter)	SSIT Program

Chairman Evans stated she believed government should provide for public safety, public health, roads, law enforcement, etc. These things enrich our lives but are not required by law to be funded by the government. She wanted to know if there was support from the public to put on the ballot the question of whether or not they would pay additional taxes to pay for parks and recreation. This has been tried before in conjunction with Ravalli County and did not pass.

Dave Huerta stated a plan such as that would be more fair by spreading the bill than to make larger groups pay more. He felt that would be a possible solution and would support such a process.

Commissioner Hart stated there was more money in the Park Fund and legislation to support it. However, the legislation was then changed. The County has been capped as well, even the growth on North Reserve is limited. If this remains the tax system, the ballot will be the opportunity to have broad based service for the area. She appreciates the support for a ballot issue for park funding.

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

John Oetinger asked what services are mandated by law that government fund?

Chairman Evans said it would be easier to list those things that government does not have to fund. These include: Library, Museum, Fair, Mental Health, Parks, Day Care, Community Based Organizations Basic Needs Assistance.

John Oetinger asked if the amount spent on required services is mandated?

Chairman Evans stated the County was not mandated any specific monetary limits on any specific required services.

John Oetinger asked when the budget decisions would happen?

Chairman Evans stated the next public hearing on the budget would be Wednesday, July 29, 1998, at 3:30 p.m. in Room 201 of the Courthouse Annex and continued that evening at 7:00 p.m. at the Library Meeting Room. The issues would also be discussed on July 27, 1998 in the afternoon, and all day on Thursday, July 30, 1998, these two meetings were not published as public meeting but anyone may attend. The budget would be adopted on August 3, 1998.

Sue Matthewson, County Park Board, was concerned about the need for a Public Works Director in this budget year with the North Reserve payment.

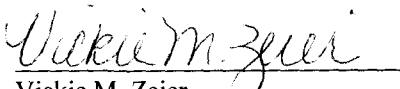
Commissioner Hart stated that for several years the County has been funding increases in public safety and criminal justice. That trend will continue, meaning the County will have fewer discretionary funds.

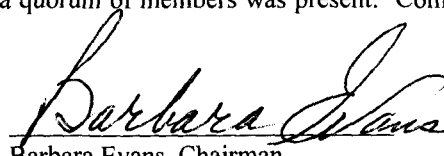
Chairman Evans thanked the everyone for coming.

There being no further business to come before the Board, the Commissioners were in recess at 9:15 p.m.

FRIDAY, JULY 17, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Hart was in Kalispell attending a Mental Health Board meeting.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, JULY 20, 1998

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

TUESDAY, JULY 21, 1998

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

Extension Letter - The Commissioners approved a 90-day extension for Richter Lots Summary Subdivision Final Plat, extending the filing deadline to October 29, 1998, with a letter to Andrew Fisher, Eli & Associates.

ADMINISTRATIVE MEETING

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

Grant Agreement - The Commissioners signed a Noxious Weed Trust Fund Project Grant Agreement - O'Keefe Weed Management Group, between the Missoula County Weed District and the Montana Department of Agriculture, to manage spotted knapweed, sulfur cinquefoil, and Canada thistle on private and public lands in the O'Keefe Creek Weed Management Group Project. Term of the Contract is through June 30, 1999. Compensation shall be \$4,711.00. The Agreement was returned to Alan Knudsen in the Weed Department for further handling.

Other items included:

- 1) The Commissioners moved Bob Tutskey to regular member of the Historical Museum Board, filling an unexpired term through December 31, 1998.

The minutes of the administrative meeting are on file in the Commissioners Office.

WEDNESDAY, JULY 22, 1998

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

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated July 21, 1998, pages 2-36, with a grand total of \$265,644.75. The Audit List was returned to the Accounting Department.

Notice of Hearing - Chairman Evans signed a Notice of Hearing on Submission to Electors of Question Authorizing a 1 Mill Levy for Aging Services in Addition to Current Mill Levies. The Hearing is scheduled for August 12, 1998 at 1:30 pm in Room 201 of the Courthouse Annex.

PUBLIC MEETING - July 22, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, Deputy County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$659,788.50. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Bid Award - O'Brien Creek Bridge Deck (Road Department)

Horace Brown gave the report. The bids were taken on July 13, 1998 for 2,200 square feet of prestressed concrete bridge deck for O'Brien Creek Bridge LB-05. The following bids were received: Missoula Concrete Construction in the amount of \$45,452 and Central Pre-Mix Prestress Co. in the amount of \$26,103. The product offered by Central Pre-Mix Prestress Co. requires an additional 3" concrete topping to be applied after the beams have been set. The cost of the topping was not included in their bid and will be an additional cost to Missoula County of \$3,520 if the work is contracted. The product bid by Missoula Concrete Construction requires no additional topping. In order to compare the two bids, the additional amount of \$3,520 must be considered with the bid of Central Pre-Mix Prestress Co. increasing the total cost to Missoula County to \$26,623. The product offered by Central Pre-Mix does not violate any provisions of the specifications. The Road Department is recommending awarding the bid to Central Pre-Mix Prestressed Company in the amount of \$26,103.

Commissioner Kennedy asked if the specifications allowed prestressed.

Horace Brown stated they were allowed.

Commissioner Kennedy stated the bids should be comparable, stating that prestress did require additional topping, because the units themselves are not a wearing surface. It seems that should be their obligation without additional cost. A comparable bid should include the wearing surface.

Horace Brown stated the specifications did not require that. Either the County or the contractor may install the additional topping, it has not been determined yet who will install the topping.

Chairman Evans asked for a recommendation from counsel if we should go ahead and award the bid.

Michael Sehestedt stated the offer by Central Pre-Mix did not violate any provisions of the specifications.

Fred Crisp stated it was not a requirement to include the topping in the bid.

Commissioner Hart asked if the bidding process gave an equal opportunity to all.

Fred Crisp stated it was did.

Commissioner Kennedy moved that the Board of County Commissioners support award solicitation 9907-01 for concrete deck for O'Brien Creek Bridge to Central Pre-Mix Prestressed Company in the amount of \$26,103. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Reconsideration of Family Transfer - Davis

This family transfer was originally heard on July 8, 1998 at which time it was denied. The matter was brought up for reconsideration on July 15, 1998 and was continued to July 22, 1998 so that the applicants, Dennis and Annette Davis, could be present for questioning by the Commissioners.

The original request as entered into the record is below.

This is a consideration of a request to create four parcels using the family transfer exemption for a parcel described in Book 212 Deeds, Page 214, located in Section 11, T12N, R20W, for Dennis D. and I. Annette Davis.

Dennis Davis has submitted a request to create three parcels and a remainder using the family transfer exemption to the Montana Subdivision and Platting Act. The parcel is 2 acres in size and located in the Miller Creek area off Lower Miller Creek Road. Mr. Davis proposes to create three 1/2 acre parcels for transfer to his minor children: Chelsey A. Davis, age 13; Brittney R. Davis, age 10; and Haley M. Davis, age 7. The Davises currently reside on what would be the 1/2 acre remainder parcel.

The history of the parcel is as follows: The parcel was created by deed in April 1959 and the Davises purchased the parcel in June 1993.

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

Zane Sullivan stated that the matter was continued from last week so the Davises could appear and respond to the Commissioners questions. Mr. and Mrs. Davis were present and came forward to answer questions.

Commissioner Hart asked if the Davises understood the condition that the children should receive all of the benefit of the division of the land. In order for the Board to make the judgment there is no attempt to evade the subdivision law, they must administer their conditions equitably.

Mr. and Mrs. Davis stated they did understand the condition.

Commissioner Kennedy stated that the peculiarity of the law allowed the Board to ask questions that other pieces of legislation do not. The testimony Mr. Sullivan gave for the Davises was confusing and the Davises were not present to clarify and did not allow him to question the Davises face to face. Is this being done for the benefit of the children 100%?

Annette Davis stated they did intend to give all the benefit to their children as it is the only thing they have to give to their children. Mrs. Davis explained that her mother passed away recently without a will which had created significant problems for the surviving siblings. Both Mr. and Mrs. Davis are from large family and they felt this is the only way to give something to their children, to get started now.

Commissioner Kennedy stated the way this was first interpreted was that only a small portion of the benefit would go to the children. He was happy the Davises were present to clarify the matter.

Chairman Evans stated the law gives the Board the requirement to determine if someone using the Certificate of Survey process is using it really to give property to a family member or using it to evade subdivision review. It is difficult for the Board to determine if the applicant is not present.

Commissioner Kennedy stated that even if the Family Transfer is granted, it does not guarantee the land can be split. There are a number of other processes which must be approved, such as zoning, septic, sewer service, etc.

Annette Davis stated they understood the process.

Chairman Evans asked for public comment. There being none, the public hearing was closed.

Commissioner Hart moved that the Board of County Commissioners approve the request to create four parcels using the family transfer exemption for a parcel described in Book 212 Deeds, Page 214, located in Section 11, T12N, R20W, for Dennis D. and I. Annette Davis, for transfer to their minor children: Chelsey A. Davis, age 13; Brittney R. Davis, age 10; and Haley M. Davis, age 7, in that it does not appear to be an attempt to evade the Subdivision Act. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans told Mr. and Mrs. Davis they would receive a letter detailing the approval and other items not guaranteed associated with the Family Transfer.

Family Transfer - Schloesser

Kathy Smith, Paralegal, County Attorneys Office, read the staff report.

This is a consideration of a request to create a parcel using the family transfer exemption for a parcel described in Book 547 Micro, Page 790, located in Section 19, T12N, R19W, for David T. and Janet S. Schloesser.

Janet Schloesser has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 10 acres in size and located off Miller Creek Road in the Miller Creek area. Ms. Schloesser proposes to split the parcel in half for transfer to her parents, James and Marilyn Stewart.

The history of the parcel is as follows: The current parcel was created by deed in 1971. The Schloessers purchased the parcel on July 3, 1998.

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

David and Janet Schloesser were present and came forward to answer questions.

Janet Schloesser stated her parents lived in Bothell, WA, and had a love for the land in Montana. They plan to build a cottage on the land for summer visits.

Commissioner Kennedy stated the land was currently not developed. If the Stewarts planned to build a cottage on their part, what were the plans for the other part.

Janet Schloesser stated they would be building a house there as well.

Chairman Evans asked for public comment. There being none, the public hearing was closed.

Janet Schloesser stated she had a letter from her parents which she presented to the Board of County Commissioners.

Commissioner Kennedy moved that the Board of County Commissioners approve a request to create a parcel using the family transfer exemption for a parcel described in Book 547 Micro, Page 790, located in Section 19, T12N, R19W, for David T. and Janet S. Schloesser, for transfer to her parents, James and Marilyn Stewart, in that it does not appear to be an attempt to evade the Subdivision Act. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans told Mr. and Mrs. Schloesser they would receive a letter detailing the approval and other items not guaranteed associated with the Family Transfer.

Michael Sehestedt stated Mr. and Mrs. Schloesser should use a registered land surveyor and stated they should be careful about the shape of the two lots. Zoning requirements state a lot may not be more than 3 times longer than they are wide.

Commissioner Kennedy stated it would be wise for the Schloessers to speak with the Office of Planning and Grants to be certain of the zoning regulations.

Family Transfer Reconsideration - Haggar

Kathy Smith, Paralegal, County Attorneys Office, read the staff report.

This is a consideration of a request to create a parcel using the family transfer exemption for Tract 2, COS 3621, located in Section 4, T12N, R19W, for Carl M. Haggar.

Carl Haggar has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 20.04 acres in size and located in the Pattee Creek area. Mr. Haggar proposes to create a 7 acre parcel for transfer to his wife, Leslie A. Haggar.

The history of the parcel is as follows: COS 3621 was filed in 1988 creating five parcels greater than 20 acres in size. Mr. and Mrs. Haggar purchased the parcel in June 1998, and Mrs. Haggar quitclaimed her interest on June 30, 1998.

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

Carl Haggar was present and came forward to answer questions. He stated he was establishing an estate and all the properties he holds are being transferred in various ways according to his attorney to benefit his estate. This transfer was purely for the purpose of estate planning and establishing a will. He stated this would become the property of his wife and would be her estate.

Commissioner Hart asked if this was a gift to Mr. Haggar's wife, to use this procedure for a transfer to separate the land to Mrs. Haggar's benefit.

Carl Haggar stated that was correct.

Commissioner Kennedy asked why Mrs. Haggar quitclaimed her interest in the entire parcel and was now being given only 1/3 of the land.

Carl Haggar stated the original papers when the land was purchased were done incorrectly so Mrs. Haggar needed to quitclaim her interest for estate purposes.

Commissioner Kennedy asked about the difference in size and value

Carl Haggar stated the division was appropriate due to topography and approximately equal in value.

Commissioner Kennedy asked what Mr. Haggar intended to do with the property.

Carl Haggar stated that at this point he had no plans for the land, did not intend to sell it and it would stay in the family.

Commissioner Kennedy asked if it was characterized as investment property.

Carl Haggar stated that was correct, he also owned other pieces of land, none of which were for sale.

Commissioner Kennedy asked if there was any urgency in this process.

Carl Haggar stated that his will was being established and all his properties were being redefined to accomplish that.

Commissioner Kennedy asked where Mr. Haggar currently lived.

Carl Haggar stated he lived in East Glacier, Montana.

Commissioner Kennedy asked why Mr. Haggar did not utilize subdivision for this property.

Carl Haggar stated that he did not have a will, and his attorney was advising him to create a will using this process.

Chairman Evans asked for public comment. There being none, the public hearing was closed.

Commissioner Hart moved that the Board of County Commissioners approve a request to create a parcel using the family transfer exemption for Tract 2, COS 3621, located in Section 4, T12N, R19W, for Carl M. Haggar, for transfer to his wife, Leslie A. Haggar, in that it does not appear to be an attempt to evade the Subdivision Act. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart told Mr. Haggar he would receive a letter detailing the approval and other items not guaranteed associated with the Family Transfer.

Beck Homestead (Subdivision for Lease/Rent) - Off Cold Creek Road north of Condon

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicant, Thomas W. Parker, is requesting approval to add one dwelling unit to an 80 acre parcel where one dwelling unit currently exists. The property is located in the Swan Valley, one mile south of the Lake County Line. The property is the southern half of the original Beck Homestead which at one time included the 80 acres to the north.

The current owner is finalizing a conservation easement to prevent future subdivision and protect the natural, historic, and cultural resources of the property. An outline of the Beck Homestead Land and Resource Management Plan is included with the application.

Agnes Beck has a life estate on the property but can no longer live in the original 1916 homestead cabin. The cabin, which has structural problems but is not suited for modern renovation, will be maintained to preserve its historic value. A new log cabin is being constructed for Agnes Beck.

The property is accessed via Highway 83 to Cold Creek Road to Ed Road to a private driveway serving the homestead. The Swan River flows through the northeast corner of the property. Both buildings are clustered on a terrace above the river.

Forest Service and Plum Creek lands are located to the west and south. Private land is located to the north and east.

Thomas Parker and Melanie Judge Parker were present and came forward to answer questions.

Commissioner Hart stated that Thomas Parker and Melanie Judge Parker has numerous concerns regarding this process. She stated she would appreciate having their point of view.

Thomas Parker clarified that this is not a subdivision, a lease or a rent. He never made any suggestion to anyone that it was any of those things. He initially spoke with Ed Zuleger regarding the sanitation permit to upgrade the living situation for Agnes Beck. The system would tie together both buildings, the old existing cabin and the new cabin which is being built as they can afford it. It was their intention to fix the old cabin to preserve the historical nature of the structure. He resented the whole connotation of subdivision but County regulations required this process to add the cabin for Agnes Beck. He has been forced by the system to go through a very humiliating and frustrating process, it completely misrepresents their intentions.

Melanie Judge Parker stated they are both active in their community promoting conservation and this process made them look hypocritical.

Thomas Parker stated there should be a separate process looked at for the addition of a guest cabin, applicants should not have to go through the subdivision for lease or rent process. He understood the need for regulations but noted several instances when others put new structures on their property without consulting the County because of the process involved. They used non-certified installers to subvert the process. It is also very time and resource intensive and has no flexibility. This kind of extensive, non-flexible process stimulates an ultra conservative response in the people it is trying to protect.

Chairman Evans agreed with the Parkers and ways to simplify the process need to be investigated.

Michael Sehestedt stated there might have been a way around the process, however, the reason for these regulations were from past misuse of the system by others. He also mentioned the mortgage exemption process that Mr. Parker had problems with. The mortgage exemption had been misused to actually create a parcel of land, even after the mortgage had been paid off. This again was because of a number of misuses of the process and needed to be changed to protect everyone involved.

Commissioner Kennedy stated he agreed with Mr. Parker, however, the name of the process is Subdivision for Lease or Rent. The Board understood that Mr. Parker was not a subdivider. The need for conservation and protection of the land is obvious and to protect everyone. He sympathized with the Parkers but hoped they understood the need for the process for the good of all.

Nancy Heil stated OPG did look for ways to accommodate the Parkers without the subdivision process and they really isn't another process available. She has also begun discussions with Deputy County Attorney Colleen Dowdall to see if there is a way to streamline the process as it relates to similar situations.

Melanie Judge Parker suggested there might be a streamlined process for people with conservation easements and non-subdivision in perpetuity. The bank also required the legal description and the process of loaning to people in rural setting could also be improved.

Chairman Evans stated that the Parkers were both very impressive in their presentation. She felt government needed representatives like them.

Commissioner Hart stated the Parkers suggestions were good and asked that they not turn their back on government because of some of their frustrations with this process.

Thomas Parker thanked the Commissioners and OPG for their time and stated that Condon was not quite ready for a Community Council.

Chairman Evans asked for public comment. There being none, the public hearing was closed.

Commissioner Hart moved that the Board of County Commissioners approve the Beck Homestead Subdivision based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

1. The applicant shall provide written documentation that the Swan Valley Volunteer Fire Company approves the driveway design and fire protection water supply prior to plan filing.
2. The applicant shall provide the final Beck Homestead Land and Resource Management Plan for OPG review prior to plan filing.

Proposed Rule Governing Installation of Water Meters in RSID 901 (Lolo Water and Sewer District)

Paul Webber, Chief Administrative Officer, gave the report.

This is a continuation of an action taken through a public hearing in January, 1995. The purpose is to get input before the Commissioners take action to adopt the rule that would require meters on new construction and when businesses and homes are sold. It is a conservation and equity issue. Reports indicate there is a high consumption of water on a per unit basis, during the summer approximately twice of what is experienced on metered use in Missoula. The Commissioners have taken this action to give them the opportunity to require meters for a new subdivision in Lolo, Orchard Park, approximately 50 units. It is expected to require a high tech meter such as is being used in Missoula that is able to be read remotely by radio signal. Those meters are \$150 to \$200 each and installation should be approximately \$100.

Proposed Rule 8 - Metering

8-1 Meter Installation - All new buildings connected to the water services operated by Rural Special Improvement District 901 or residences sold or exchanged in any manner shall install a water meter provided by the District. Cost for the meter shall be included with the standard RSID #901 Water and Sewer Permit. New homes will be required to pay for the meter prior to connection to the system. Homes sold or exchanged shall be required to pay for the meter at the time of sale. Actual district costs will be charged for the meters. All new or resold commercial users shall apply to the District for a meter and size shall be determined based on need. Installation costs shall be the responsibility of the property owner.

On existing services the District may furnish, set and maintain a meter and customer shall provide and maintain free of expense to the District an unobstructed location satisfactory to the District, for installation of the meter.

Meters may be installed on any service when the same becomes necessary to prevent improper use or waste of water which is prohibited.

Chairman Evans asked for public comment.

Louann Hansen stated she was aware that meters were being discussed for installation in Lolo and was under the assumption these meters would be installed on new construction and home sales. On the proposed Rule 8, she had concerns with Paragraph 2 which set forth installation for existing services. In the way of clarification she was told that tomorrow or next week she could have a meter installed. This is a major change from new construction and home sales. She asked why a letter to users was not sent as this is a major change regarding water usage in Lolo. She asked who proposed this change. She had heard that Lolo uses more water per household than Missoula and asked if the lines have been checked for leaks and where this water is going. Lolo has the same water usage regulations as Missoula and it doesn't make sense. She also asked how many people have been ticketed or warned about improper use of water. She also had concerns about the rate structure and high rates such as in Pattee Canyon. She had a concern about people poking sandpoints, what does this do to the existing RSID 901 wells. Another question she had was about the new subdivision Orchard Park. It was her understanding that not all of it would be on sewer and wondered why. Another question was regarding the 47 Dolly Stewart connection rights, what was the deal struck with her. She also presented a petition to the Commissioners with 69 signatures protesting this proposed rule.

Chairman Evans asked David Haverfield from Lolo Water and Sewer to sit at the front table and be prepared to answer questions.

Raymond Brault stated he has lived in the Lolo Water & Sewer District for 5 to 6 years. He had some concerns about the age of different areas in Lolo. The area where he lives was fully developed when he moved in and he has never been informed that there is not adequate revenue derived from this taxing mechanism. He also asked who initiated this proposal. He felt this might be beneficial to Realtors in Missoula because of competition in Lolo and the cost of water. This could kill sales in Lolo.

Chairman Evans stated the Realtors did not do that.

Raymond Brault stated that he and his wife would like to sell there home in a few years as they retire and felt the installation of a meter could jeopardize the sale. He voiced his opposition to the installation of water meters.

Max Enseleit, 1008 Lakeside Drive, stated that beyond the cost of the meter and installation, there has been no discussion about the ongoing cost of administration, and would the cost be assessed in addition to other 901 fees already being paid. The general statement that Lolo uses about double the amount is water is not enough justification for the installation of meter, he would like more precise figures such as annual usage per homeowner.

Daryl Bingham, 328 Tyler Way, stated he moved to Lolo about 8 years ago. At that time the water and sewer system had limited capability for new growth. He felt the people moving in and doing subdivision are not being required to meet the actual costs of services required. Now the system is inadequate and proposals for fixing it would be \$40 per month per residence, \$480 per year which is a substantial amount. It seems that the developers have sold their land and got their money and they are gone. The people who bought the houses will have to pay, along with residents who have been there. Couldn't a developer meet the actual costs, not just for water and sewer, but for schools as well.

Jim Boege, 246 Red Fox Road, was curious about how to resolve the excess water usage in Lolo. Would some voluntary measures be invoked to resolve the problem before going to meters. There are new developments in the area which will increase capacity, which could lead to another RSID.

Raymond Brault stated that the 47 Dolly Stewart hookups could be sold without having to pay or impose the obligation which seemed unfair.

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

David Haverfield came forward to answer questions asked by the public speakers. *Question - "Why was no letter sent to the residents?"* This subject has been covered many times in the RSID 901 Board of Trustees meetings, each meeting and agenda is posted to the public and anyone who would like to come and speak is welcome to do so. Many different methods have been used to notify the public. *Question - "How many tickets have been issued for water violations?"* This year no tickets have been issued, there is a voluntary system in place and the water usage regulations are hand distributed each year to all houses in the district. When District employees "cruise for vios," offenders are asked if they are informed and handed a copy of the regulations resulting in voluntary compliance. For the most part the people of Lolo are honorable and follow the guidelines. *Question - "What about this excess water usage, twice as high as Missoula?"* Druyvestein, Johnson & Anderson did the study for RSID 901 and have determined that Lolo users appear to be using a high amount of water compared to metered users. That is partially correct but may not be as high as reported. Part of the reason is that meter users can be more precisely measured and the District can only be measured by the master meters. Missoula has tremendous amounts of water lost through their water mains due to bad pipes. That is not the case in Lolo, the pipes are newer and are repaired as necessary, leakage is minimal. This could be a case of comparing apples to oranges, one system on meters and the other one using a master meter, causing a misstatement of usage. The District realized the new well will be costly and conservation is important. *Question - "Why was the new well and holding tank necessary?"* The new well was necessary as a backup. Should a pump break, the system would be approximately 600,000 gallons per day short of water. It would be a major inconvenience for homeowners and a fire protection issue. It also seemed wise to find an additional aquifer to obtain water from in the event of a catastrophic accident which might contaminate the other two wells which are close to each other.

Chairman Evans asked about the Dolly Stewart issue, the 47 hookups.

Michael Sehestedt stated that when the District was looking for another well site, they entered into an agreement with Dolly Stewart that if a well site pumped and proved itself for production, she would be allowed 47 units, not free, the hookups were valued at the capital contribution charge. The well site proved out but in looking at other issues, the

District eventually abandoned pursuit of that well. The commitment had been made with Dolly Stewart and the agreement was honored even though the well was not used.

Chairman Evans asked Michael Sehestedt to explain that the 47 hookups were included in the capacity plan.

Michael Sehestedt explained that at the time these agreement were made, the sewer system had a limiting factor. These 47 Dolly Stewart hookups were within the capacity of the sewer system and would not stress the system and were charged at the capital contribution rate.

Chairman Evans explained that the structure of the 901 SID is unique. The charge for water and sewer in Lolo is not based on the number of people or bedrooms in the house, it is based on the value of the land on which the house sits. There are some inequities in the amount of water paid for but that is not what is driving the desire to install meters. The valuation method is very unusual in Lolo.

Michael Sehestedt stated that when the District was established the decision was made to spread the cost of the SID, including maintenance and operating costs, based on the value of all of the unimproved real estate within the district and spread equally against that value the cost of operating RSID 901. It is important to note that it is the unimproved value of the real estate. A 5-bedroom house and a 2-bedroom house on the same sized lots would pay the same amount.

Chairman Evans stated that the 47 hookups that Dolly Stewart held were sold to Orchard Park subdivision. They are 8 other units that will be on septic systems, as the law allows. She asked David Haverfield to explain who initiated the process of possibly installing water meters.

David Haverfield stated the request for water meters was based on a recommendation by DJ&A Engineering. In order to obtain additional water right from the Department of Natural Resources and Conservation (DNRC) to get CBDG and Treasure State Endowment Fund (TSEP) loans, proof of conservation measures must be in place. Plan enhancement will also require additional treatment to include nutrient removal. The District must meet discharge requirements or there could be problems with the EPA.

Chairman Evans asked someone to explain "sandpoint."

Michael Sehestedt explained this was an old-style well. A piece of 2 inch pipe has a point on one end which is slotted and screened and driven into the water table. A pump is set to draw the water out. It is a quick and easy method of well drilling when the water table is within 32 feet of the surface.

Chairman Evans asked if this was being done a lot in Lolo?

Louann Hansen stated that it will probably happen knowing how high the water table is in Lolo.

Chairman Evans asked if Louann Hansen's concern was that everyone would do this if meters were installed.

Louann Hansen stated she expected a lot of people would do this, especially not knowing what the cost of water would be. People would find others ways to obtain water. She also voiced concern about water rights issues, pumping water from the lakes and what effect sandpoints would have on the existing 901 wells.

Michael Sehestedt stated the Water Quality District takes a dim view of sandpoints, the more you have the greater the threat of contamination. However, sandpoints tap shallow aquifers and the 901 wells are pumping at 150 feet, so sandpoints should not affect 901 wells.

Louann Hansen stated that currently RSID 901 does not chlorinate the water. She felt sandpoints and additional subdivisions could cause Lolo water to be chlorinated in the future.

Raymond Brault asked if the District was in default or delinquent in any fashion on meeting their obligation on the bond issue?

Chairman Evans replied they were not.

Raymond Brault asked if meter installation was for additional revenue?

Michael Sehestedt stated the charge would be an alternative to funding the system by the current assessment method, it would be one or the other, not both. Meters would help address excessive water waste and high demand businesses.

Commissioner Hart stated that in order for the District to access money to do the upgrades required on the sewer plant, the District must be able to show conservation measures have been instituted. This is money needed for the future.

Raymond Brault was then confused because David Haverfield stated he didn't see much waste in the system.

David Haverfield stated anytime someone has something for free (almost) consumption goes up.

Commissioner Hart stated the comment about the regulation killing real estate sales in Lolo was interesting. We are currently in a growth phase and growth costs money. The property in Lolo is very valuable because of this growth. The administrative costs will need to be justified when meters are installed. It would also be advantageous to have a more precise accounting of water use but that cannot be accomplished at this time. The only measure of water use is what goes through the plant, however, there may be some loss of water through pipes. Voluntary restrictions are valuable but when homeowners can save money they are more willing to conserve. She hoped the public understood the Dolly Stewart situation, the District had to honor the agreement they made with her for the new well. These 47 hookups are still required to pay like anyone else. The least the District can do is get meters on new unit so it can have

some notion of water usage amounts. She felt frustrated that meters were not installed at Rossignol. New restrictions are coming, things can't stay the same forever. She also did not feel that sandpointing would affect the Lolo water but could pose problems for individuals using sandpoint wells.

Commissioner Kennedy stated he was very much in favor of metering in Lolo, it is in the public's best interest. He cited six reasons why. 1) Metering has not been controversial in recent years, most systems are metered in the United States. Metering is more equitable, especially in Lolo. The type of capital funding used in RSID 901 would not be used today. He felt RSID 901 is operating the best it can, but is faced with enormous costs to improve to it to new standards. 2) Metering allows predictable budgeting, there needs to be methods of financing these systems as they grow and require operation, maintenance and replacement. There is currently no way to pay for that and metering allows provision for such growth and replacement. 3) Access to financial assistance, a benefit Lolo could enjoy as it is a non-profit system. 4) By water conservation, it will reduce the overall capital expense for both operations and maintenance on water and sewer, resulting in a savings to the public. Some of the upcoming expenses could have been reduced if there was metering at the beginning of this project. 5) Conservation, helping to save this diminishing resource. Sandpoints will cause problems eventually. 6) Efficiency of operation, finding a way to sell what is pumped. In Lolo, this will help to improve the system and make sure the public only pays for what they use and use what is pumped with no waste. Metering makes good economic sense for the public, even though for the first time water use will be measured. The wastewater treatment facility will be costly and the cost needs to be shared by all to be effective. To facilitate this, the system needs to be optimized. Knowing that every gallon of water will be paid for leads to conservation. Meters are long overdue and he strongly recommends they be installed in Lolo.

Commissioner Hart stated she would like to redefine Paragraph 2 referring to existing users so it is clear to everyone. She felt a lot more detail was needed to allow for predictability. She asked if RSID 901 allowed for irrigation of fields.

Dave Haverfield stated that it did not, it only covered lawns.

Commissioner Kennedy stated Commissioner Hart's comment concerned him about not wanting to go forward on this issue. If this is not acted upon, the first paragraph becomes meaningless with respect to any new development. Sooner rather than later is better in terms of the metering issue. If the 2nd paragraph regarding existing users is problematic, remove it for now and get on with installing meters in new subdivisions and deal with it later. He felt there was some urgency in doing this and asked her to reconsider. The District can work out a program for retrofitting existing users at the least cost.

Commissioner Evans stated she understood what Commissioner Kennedy was saying. She has few problems with the first paragraph, but has problems with paragraphs 2 and 3, they are not clear or predictable enough. She stated the letter from Peggy Chilcote was compelling in that it stated the District is full and there would not be much more new home construction. Peggy would like to see the community have the power to decide the future of an upgrade or expansion. She favored community involvement, and asked that paragraphs 2 and 3 be made clearer. Paragraph 3 seemed too arbitrary, and would like it to be made clear as to how many violations could be incurred prior to installation of a meter. She also asked how meters installed in home sales would impact the system. She would like the Board to continue looking at this issue for another 2 weeks.

Commissioner Hart stated she felt there was not enough information to do this installation. She felt that after 50% of the homes in Lolo were on water meters, then the entire District should have them installed. In order to make this work and indicate to outside agencies that Lolo is doing a good job of conservation, a more detailed timeline is needed.

Commissioner Kennedy stated that metering of an entire community doesn't happen overnight, it takes a long time, perhaps even years. The meters used are simple and durable and will last 40 years. Just because a meter is installed doesn't mean it is used to meter or sell water. The overall cost of administration during the early time of metering is not a real cost. There must be a critical mass of the number of meters before the District begins using that as a method of charge. The whole purpose is not to burden anyone with excess costs, it is to save money. There is no intent to install meters and add an administrative burden that will actually increase the cost of water. The critical mass needs to be determined, get the metering installed and not until the critical mass is met does the District start administering. The overall administration cost, if done properly, does not have to be a burden at all.

Chairman Evans asked Commissioner Kennedy if she understood him correctly, in essence, the meters would be installed but not turned on.

Commissioner Kennedy stated that was absolutely correct. Even Mountain Water has hundreds of meters that are not read, because they haven't reached that critical mass in certain areas. There is no requirement that a meter needs to be read once it is installed, and it will not wear out because it is installed. It will take a period of several years in Lolo not only to install meters but to arrange the financing so that it becomes less of a burden on the public. It will take a long time to do this.

Chairman Evans said she had no idea that was the case, that the meters would be installed but not used.

Commissioner Hart stated she also did not understand that was the case. She asked Paul Webber if the Public Service Commission would have some involvement?

Paul Webber stated that was an issue which was discarded, as to what happens when the District reaches the implementation mode. The research has not been done, but it makes good sense that PSC is going to establish the rates based on a rate structure that takes care of the investment and the operating costs of the system. He felt the criticism of not sending notices to everyone was valid. The effort of doing such a mailing was prohibitive, the timing was critical prior to the Orchard Park hearing, and it was also felt this did not pose an immediate threat to any existing home or business owner.

Commissioner Hart stated that this action is just to get the meters in.

Paul Webber stated the critical mass figure of when to begin using meters would have to be determined through the public process. To accomplish this action, paragraph 2 can be removed.

Chairman Evans stated that hurrying to get something done before a subdivision hearing caused her problems. Unless the action is in the rules when the subdivision is heard, she was not willing to change the rules after approval to impose meters.

Commissioner Kennedy stated he understood Chairman Evans comment but this was a publicly owned water system. The last thing he wanted to do is to burden the existing homeowners with added costs because the Board did not take an action to require a subdivision to do something that will eventually be done. It is important to protect the resources of the existing community that we require meters on an urgent basis, before there are any more new subdivisions.

Chairman Evans stated there would not be any more subdivision in this District as the maximum capacity of the system has been reached. If we do this at the last minute, it could lead to a lawsuit.

Commissioner Hart stated that RSID 901 cannot put walls around it. The decision to enlarge will undoubtedly be made.

Michael Sehestedt stated the District would not have to deal with PSC as it is a publicly owned utility. If the rates charged were unreasonable or unjust, PSC would be able to intervene however. Rate setting is a matter for governmental entity without being subject to review for publicly owned utilities. He stated that paragraph 3 which Chairman Evans objected to was already part of the existing regulations. The general regulation that requires meter installation was to be a painless way of getting them in place and when there were enough meters in place, then a rate making process would be initiated, establishing a metered rate and a flat rate. When that mass was reached, it would be substituted for the current revenue source. The critical mass number will be established later. Having a meter will also provide statistical information for future use. The question today is if the Board wants to take the action to begin movement toward the metered system or continue with spreading utility services based on the value of the real estate.

Commissioner Hart stated there was an agreement with Ken Allen and Missoula County. Item #5 in this agreement read: "The County is pursuing a district wide policy relative to the installation of water meters. The intent of this policy is to require meter installation in all new construction, changes of ownership's, refinance and commercial establishments with a date certain for total conversion to meters. The Property Owner is in support of such a policy and will install meters in all homes constructed in Orchard Tracts II if the policy is adopted prior to start of construction. If the policy has not been adopted, the Property Owner is willing to have the homes appropriately plumbed to accept meters at a later date." This is a step that does not mean the meters are there, but the plumbing is. She would be willing to support a motion that meters be installed in new construction and in homes and businesses are sold, and omit paragraph 2 which does not have a good explanation.

Commissioner Kennedy stated that he understood Commissioner Hart was saying she would move to adopt this rule as written except to omit paragraph 2.

Commissioner Hart stated Chairman Evans wanted the third paragraph removed as well.

Chairman Evans stated paragraph needed more criteria.

Commissioner Kennedy asked Michael Sehestedt if paragraph 3 was enforceable.

Michael Sehestedt stated the provision would be enforceable, it hasn't become an issue as yet.

David Haverfield stated the term meter had not been used, but there was a discussion of a possible fine for violation.

Chairman Evans pointed out there was a Lolo Sewer and Water Board and she had not heard what their feelings were on the issue. She felt that on any flagrant misuse of water, the decision should go to that Board, not the Board of County Commissioners, and there should be specific criteria included in the rule language, such as after the third notice of violation. She did not want it to be so subjective.

Commissioner Kennedy stated additional work on retrofitting was needed. That should come in a different form at a different time. For that reason he is willing to eliminate both paragraphs 2 and 3 and move forward with new construction installation.

Chairman Evans asked if this could be imposed on a subdivision that has already been approved?

Michael Sehestedt said this could be done, the same way that there are unbuilt lots within 901 currently. As this rule is written, if someone were to build on one of those lots, a meter would have to be installed before the could connect the lot to the system.

Commissioner Kennedy stated is was not an imposition on the developer, the developer has to install water and sewer infrastructure to the property line. When the lot is bought from the developer, the buyer will have to install the meter.

Chairman Evans asked if installing meters becomes a new condition of the subdivision.

Michael Sehestedt stated it was not an issue for subdivision review at all.

Chairman Evans stated she was then satisfied with the proposal.

Raymond Brault asked where the money would come from for existing homeowners to install meters, and how would the tax be abated when the meters went into effect.

Commissioner Kennedy stated if this action was taken, it would not affect Mr. Brault at all. Addressing his issue would be done later to determine the best and most cost effective way to have meters installed.

David Haverfield stated that RSID 901 has the water rights and it does not allow someone to put in a sandpoint or drill a well without permission.

Chairman Evans stated that was a problem for the Health Department and Water Rights Bureau.

Commissioner Hart moved that the Board of County Commissioners adopt Rule 8 - Metering - 8-1 - Meter Installation - All new buildings connected to the water services operated by Rural Special Improvement District 901 or residences sold or exchanged in any manner shall install a water meter provided by the District. Cost for the meter shall be included with the standard RSID #901 Water and Sewer Permit. New homes will be required to pay for the meter prior to connection to the system. Homes sold or exchanged shall be required to pay for the meter at the time of sale. Actual district costs will be charged for the meters. All new or resold commercial users shall apply to the District for a meter and size shall be determined based on need. Installation costs shall be the responsibility of the property owner. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Michael Sehestedt stated the Board had adopted paragraph 1 but had not repealed anything. The prior Rule 8 still contained the 2 objectionable paragraphs.

A discussion ensued between Chairman Evans, Commissioners Kennedy and Hart and Michael Sehestedt regarding how to remove the two objectionable paragraphs from the existing Rule 8. It was determined that Commissioner Hart's motion was meant to replace the existing Rule 8.

Chairman Evans stated that as understood, Commissioner Hart's motion to adopt Rule 8-1 as read today would replace the previous Rule 8-1. Did the second still stand?

Commissioner Kennedy stated it did.

Chairman Evans asked did the vote still stand?

Commissioners Kennedy and Hart answered affirmatively that their votes did stand.

Louann Hansen asked if this applied to a refinance on a home.

Chairman Evans and Michael Sehestedt stated it did not, it was on ownership change.

There being no further business to come before the Board, the Commissioners were in recess at 4:30 pm.

THURSDAY, JULY 23, 1998

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

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated July 22, 1998, pages 2-34, with a grand total of \$394,096.70. The Audit List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Support Letter - The Commissioners signed a letter supporting the Seeley Lake Historical Museum and Visitor Center. The letter was returned to Zoe Molesky in OPG for further handling.

Contract - Chairman Evans signed a Contract with the Montana Children's Trust Fund Board to continue evaluation of the CS Porter Project to provide services to prevent abuse and neglect of Montana's children. Compensation shall be \$10,000.00. Term of the Contract is July 1, 1998 through June 30, 1999. The Contract was returned to Peggy Seel in OPG for further handling.

Contract - Chairman Evans signed a Contract with the Montana Board of Crime Control to continue services at CS Porter School to help kids withstand the risks inherent in adolescence. Value of the Contract is \$30,000.00. Project duration is from July 1, 1998 through June 30, 1999. The Contract was returned to Peggy Seel in OPG for further handling.

Contract - Chairman Evans signed a Contract with the Montana Department of Public Health and Human Services for provision of activities for the Montana Breast and Cervical Health Program. Performance schedule is from July 1, 1998 through September 29, 1998. Compensation shall not exceed \$24,650.00. Two copies of the Contract were forwarded to the DPHHS in Helena, and one copy was sent to the Health Department.

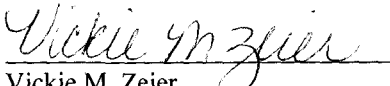
Other items included:

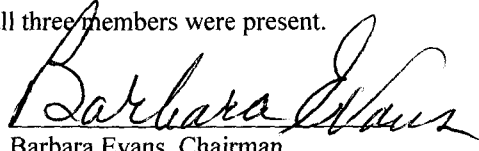
- 1) Commissioner Kennedy moved to forgive administrative fees for the Seeley Lake Refuse District for FY99 and FY2000, and will begin administrative fees in FY2001. An outline of the services we have provided would be included in a letter to them enumerating the fee schedule. Also, the Commissioners are in support of expanding the RSID Administrative Charge Policy to include the Seeley Lake Refuse District, as well as other similar districts. Commissioner Hart seconded the motion, which carried on a vote of 3-0.

The minutes of the administrative meeting are on file in the Commissioners Office.

FRIDAY, JULY 24, 1998

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


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, JULY 27, 1998

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

Resolution - The Commissioners signed Resolution No. 98-056, a Resolution to abandon the Old Mullan Road located in Tract 1 of COS 4580 in the SW1/4 of Section 10, T13N R20W, PMM, Missoula County.

At a departmental meeting with the Office of Planning and Grants, the Commissioners approved Baker Subdivision for Lease or Rent, subject to conditions, with a letter to Mamie Baker.

The applicant is requesting approval to add a home to a 5.3 acre parcel where one home currently exists. The property is located in Clinton on Schwartz Creek Road and Osprey Lane. The property is unzoned. The 1975 Comprehensive Plan designates suburban residential land use with a density of up to 2 dwelling units per acre.

CONDITIONS OF SUBDIVISION APPROVAL

1. The lot owner shall file a document of record with Missoula County waiving the right to protest future upgrading of Schwartz Creek Road including installation of pedestrian walkways, based on benefit, which may be used in lieu of 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. Such document shall be filed prior to final plan filing. *Subdivision Regulations Article 3-2, County Surveyor recommendation.*
2. The lot owner shall file a document of record prior to plan filing waiving 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 Article 3-7(2) and staff recommendation.*
3. The applicant shall provide a document showing legal access across the property adjacent and to the east of the subject property prior to plan filing. *Subdivision Regulations Article 5-3(3) and staff recommendation.*
4. The applicant shall provide written documentation that the Clinton Rural Fire Department approves the driveway designs and fire protection water supply prior to plan filing. *Subdivision Regulations Article 3-2, 3-7(2) and staff recommendation.*
5. A development agreement shall be filed, subject to County Attorney approval, that states that the driveways shall meet the requirements of Missoula County Subdivision Regulations and the Clinton Rural Fire District. The development agreement shall be filed prior to plan filing. *Subdivision Regulations Article 3-1(1)B, 3-1(1)(E), 3-1(2), 3-2, and staff recommendation.*
6. The lot owner shall contribute \$100.00 per new dwelling unit to the Clinton Rural Fire Department prior to plan filing. *Subdivision Regulations Article 3-7(2) and Clinton Rural Fire Department recommendation.*
7. The lot owner shall file a document of record with Missoula County assenting to the creation of an RSID for the maintenance of a park or parks in the Clinton area, defined as the Clinton school district, on an equal basis with other properties in the area. Such document shall be filed prior to final plan filing. *Subdivision Regulations Article 4-1(12) and staff recommendation.*

At the same meeting, the Commissioners approved and Chairman Evans signed a permit for John Balyeat to replace an existing dock on Seeley Lake, on property described as Lot 19 of Seeley Lake Shore Sites, located in Section 3 of T16N, R15W, per the recommendation of OPG staff.

TUESDAY, JULY 28, 1998

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:

Resolutions - The Commissioners signed two resolutions:

1. Resolution No. 98-057, to accept an easement interest in real property from William R. Maclay, Sr., M. Josephine Maclay, and Fleta Elizabeth (Betty) Kenna, for River Pines Road.

2. Resolution No. 98-058, to accept an easement interest in real property from Dean L. Parker and Elise M. Parker, for Six Mile Road.

Letters - The Commissioners signed sponsorship letters for Cultural and Aesthetic Grants through the Montana Arts Council for MCAT, the Missoula Symphony, and the Missoula Art Museum. The letters were returned to Leslie McClintock in OPG for further handling.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Child and Family Resource Council to provide special classes and home visits with developmentally delayed parents. Performance schedule is from August 1, 1998 through June 30, 1999. Compensation shall be \$3,000.00. The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Beth Thompson, MD, to serve as medical advisor for public health programs. Performance begins July 20, 1998. Compensation shall not exceed \$6,000.00.

Resolution - The Commissioners signed Resolution No. 98-060, a resolution correcting Resolution No. 98-040, creating Rural Special Improvement District No. 8924, for application of dust abatement material on a portion of Zaugg Drive from Division Street to 9th Street, Missoula County, Montana.

Warranty Deed - The Commissioners signed a Warranty Deed conveying Lots 25-33 in Block S of Carline Addition No. 3 (the Pepsi Warehouse vacant lot) to Mother Goose and Gander Children's Development Center, LLC.

Resolution and Loan Agreement - Chairman Evans signed Resolution No. 98-059, authorizing an Intercap Loan for the County Shops property. She also signed the Loan Agreement, in the amount of \$1,650,000.00. Term of the loan amortization is July 31, 1998 through June 30, 1999. Two originals were sent to the Board of Investments in Helena. One copy was recorded with the Clerk and Recorder.

The minutes of the administrative meeting are on file in the Commissioners Office.

WEDNESDAY, JULY 29, 1998

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

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated July 28, 1998, pages 2-43, with a grand total of \$342,002.47. The Audit List was returned to the Accounting Department.

Plat and Improvements Agreement and Guarantee - The Commissioners signed the plat and improvements agreement and guarantee for Evan's Ridge, a nine lot subdivision located in the SW1/4 of Section 19, T12N R19W, PMM, Missoula County, a total area of 63.39 acres, with the owner/developer being Evan's Ridge Inc., Dean Herbst, President.

PUBLIC MEETING - July 29, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, Deputy County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, Clerk and Recorder/Treasurer Vickie Zeier and County Surveyor Horace Brown.

Public Comment

Dennis Hardwick, 5510 Nickel Drive, stated that there has been a rumor circulating that Phase I of Orchard Park, which has already been approved, is going to increase sewer costs to help the developer.

Chairman Evans stated that there were 47 sewer units left in the capacity of the Lolo Water and Sewer District. Those sewer connections will be used in Phases I and II of Orchard Park. There will be a need to expand the Lolo Sewer plant at some time in the future, however it is not being made necessary by this subdivision. There are 8 lots in Phase III that have yet to be approved will be on septic systems and will not affect the capacity of the plant. The potential for increasing taxpayers cost because of this subdivision is not accurate.

Dennis Hardwick asked about the waiver to protest future RSID and SID, that this follows the land, if the land is sold to someone else, a signature is not needed and the waiver of protest is still valid. Is that true for Rossignol Acres.

Chairman Evans stated that was generally true and asked Nick Kaufman to explain further.

Nick Kaufman stated that Rossignol Acres was completed in two phases, a northerly phase and a southerly phase. The northerly phase waived the right to protest future RSID's for upgrading Tyler Way to the north and the southerly phase waived the right to protest future RSID's for upgrading Farm Lane. Those statements are on the face of the plat and show up in title reports and issues of transfer.

Christina McArthur, Bison Lane, stated the area residents received certified letters telling them to come to the meeting today. Why were certified letters sent out? Everyone is panicking because a petition has been circulating that this is going to raise their taxes.

Chairman Evans stated the petition was created with misinformation.

Christina McArthur stated this was not going to raise taxes and there was nothing to panic about.

Chairman Evans stated that was correct, it will not raise taxes and there is no need to panic. The reason the letters were sent was because the original hearing on Orchard Park was closed. Further comment was requested, so the public hearing had to be reopened. In order to make sure people were notified in time to give testimony, the certified letters were sent.

Christina McArthur asked if she could go back to her neighborhood and tell them that there would not be an increase in taxes, this was not going to impact them?

Chairman Evans stated that was correct, however, if and when the sewer plant needs expansion, it was not known who would be paying for the expansion at this time. An expansion is being planned and there have been some public hearing which very few people attended. The public will be notified as more public meetings are scheduled. Nothing that will occur today with regard to Orchard Park will have an impact on Lolo's sewer, water or taxes.

David Houston asked why water meters were going to be installed in a community the size of Lolo. His research has showed that only one county in Montana has meters attached to homes. Is this going to happen?

Chairman Evans stated that last week at the Public Meeting it was decided that all new homes in the Lolo RSID 901 will have meters installed. That does not mean they will be turned on immediately. Any homes that are sold will also be required to put in a water meter with the same condition. In the future, if over approximately 50% of the homes change ownership, then every home would be required to install meters. A couple of provision that were proposed were deleted, such as if there is misuse a meter could be installed and another one about existing users that was hard to understand.

David Houston asked why there was no public notice of the intentions of the County of requiring the residents to pay for a developers piece of property.

Chairman Evans stated that was a misinterpretation. The developer has purchased 47 sewer units for use in this subdivision, which are included in the capacity of the Lolo plant. The developer will be paying the cost for the development. There is no need to expand the Lolo plant because of this development.

There being no further comments, Chairman Evans closed the Public Comment section.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$342,002.47. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Family Transfer - Chaput de Saintonge

Kathy Smith, Paralegal, County Attorneys Office, read the staff report.

This is a consideration of a request to create a parcel using the family transfer exemption for a parcel shown in Book 381 Micro, Page 789, located in Section 24, T16N, R20W, for Neil and Jeanne G. Chaput de Saintonge.

Neil and Jeanne Chaput de Saintonge have submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The parcel is 20 acres in size located on the Flathead Indian Reservation northwest of Evaro. Mr. and Mrs. Chaput de Saintonge propose to create a 6 acre parcel and remainder for transfer to Mr. Chaput de Saintonge's mother and step-father, John R. and Ruth Ross.

The history of the parcel is as follows: The parcel was created in 1993 as an aliquot parcel by Roger C. Hobbs and sold to the Chaput de Saintonges in May, 1993.

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

Neil Chaput was present and came forward to answer questions. He stated his parents visit twice a year and are getting older. The Chaputs would like to build a small place for his parents so they can stay longer in the summer.

Chairman Evans stated that state law requires that the Board of County Commissioners determine, when during Certificates of Survey, whether there is any intent to evade the Subdivision Act, or if it a legitimate family transfer. The Board may ask questions of the applicant to make their decision.

Commissioner Hart asked if Mr. Chaput intended to create this parcel and then transfer it by deed to his parents.

Neil Chaput stated he was planning to do that and his parents would be building a small summer place, not a large house.

Commissioner Kennedy asked why they needed this subdivision if his parents only visited once or twice a year.

Neil Chaput stated he would like his parents to stay here all summer.

Chairman Evans asked if Mr. Chaput wanted to give the land to his parents.

Neil Chaput stated he did.

Commissioner Hart reminded Mr. Chaput that the family transfer process did not assure that he could get sanitation restrictions lifted. Any other plans to subdivide this land would come under subdivision review.

Neil Chaput stated he understood the restrictions.

Commissioner Kennedy asked Mr. Chaput if when he purchased the property, were any representations made to him about future development or land split possibilities by the seller.

Neil Chaput stated there were no such representations.

Commissioner Hart moved that the Board of County Commissioners approve a request to create a parcel using the family transfer exemption for a parcel described in Book 381 Micro, Page 789, located in Section 24, T16N, R20W, for Neil and Jeanne G. Chaput de Saintonge, for transfer to John R. and Ruth Ross, in that it does not appear to be an attempt to evade the Subdivision Act. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans told Mr. Chaput they would receive a letter detailing the approval and other items not guaranteed associated with the Family Transfer.

Orchard Park Subdivision Phase III (Preliminary Plat) - Lolo

Colleen Dowdall stated that if OPG did their presentation at this point, followed by the applicants presentation, then one of the Commissioners could move to reopen the public hearing.

Dave Loomis, Office of Planning and Grants, accompanied by Pat Keiley, OPG, reviewed the project. On previous action the Board of County Commissioners approved Phases I and II of Orchard Park Subdivision with conditions and variances. There was no decision on Phase III and the public hearing was closed. Since then, staff has re-noticed the hearing for Phase III. Staff has also reviewed all the data and files for the Lolo Land Use Plan and background documents. Staff is recommending approval of Phase III with conditions as written at the previous hearing. With the condition that connects all three phases, the variance originally needed for pedestrian facilities in Phase III is no longer necessary and is fulfilled by the alternative pedestrian access proposed in Phase III.

Chairman Evans explained the map used to designated the land use for Phase III and the text used in the Lolo plan did not match. Counsel discovered this inconsistency and possible error. To limit the use of this land would have been in error, as that is not what the text of the land use plan stated.

Colleen Dowdall stated there is still more information being discovered. She felt that the developer should make their presentation and allow public testimony then move forward from there.

Commissioner Hart asked Dave Loomis which documentation he was using, she did not seem to have the same thing in her packet of information.

Dave Loomis handed the correct documents to Commissioner Hart so she could follow the presentation

Colleen Dowdall stated the next item should be to have the developer make his presentation.

Nick Kaufman, WGM group, developers representative, was present on behalf of the applicant Shelter West represented by Kevin Mytty, and Murphy Development Company represented by Jim Murphy and Mary Lou Houck. He stated that this process was started in March, 1998 with Phases I and II and later added Phase III, the river front lots, which are being heard today. There have been numerous meeting with the Lolo community and the Office of Planning and Grants. The river front lots were reduced from 10 lots to 9 lots to the current proposal for 8 lots. There have been some mitigation plans developed regarding bank stabilization, planting and wildlife corridors to help lessen the impacts on the resources. They have also granted a two week extension for the public hearing. This demonstrates that the owner of the property and the developer have been working to try to address the concerns on Phase III of this project. Significantly hampering this process is the fact that the Comprehensive Plan interpretation was not made until 4 days before the Planning Board hearing. Had the Comp Plan issue been addressed during the 15 day public agency comment period, the discussion and research and differing opinions would have been discovered a lot sooner in the process, instead of become the issue it is now. Based on what he had heard today, the Board is still uncovering information about the Lolo Comprehensive Plan. It would seem the best course of action would be to keep the public hearing open to a future date no later than the first Wednesday in October, to allow all interested parties to gather, review and assimilate the information which is continuing to be uncovered. This will also allow both side to get together and review the issues and reach an agreement or level of tolerance. If a solution can be agreed on prior to October 7th, and a hearing could be sufficiently noticed, perhaps a decision could be made prior to that date, but certainly no later. Having been in the planning business for almost 20 years, he has never seen a process like this one. He asked the Board to defer their decision, keep the public hearing open and allow testimony today, but he did not believe it was in the best interest of the spirit of cooperation which has been demonstrated in this project to push forward today.

Commissioner Kennedy moved that the Board of County Commissioners reopen the public hearing to allow testimony on Orchard Park Phase III Preliminary Plat Subdivision. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated the Public Hearing had been reopen and if anyone would like to give testimony, please come forward and do so. She stated this was on Phase III only, the 8 lots along the river, for Orchard Park.

David Houston stated it was an inconvenience to attend a meeting during the day and he recommended an evening meeting which would give people who work during the day an opportunity to speak before the Commissioners.

Chairman Evans stated the suggestion would be considered and that written testimony was also welcomed if the meeting could not be attended.

Phil O'Connell, a lawyer representing a group of neighbors to Orchard Park Phase III, stated the people he represents have been in contact with Mr. Kaufman in terms of negotiating some type of agreement and wish to join in Mr. Kaufman's request that any consideration be deferred for a period of at least 6 weeks. He stated his clients would also like to have the matter continued but not to have any further public hearing or decisions made until at least the last week in September, because two of his clients will be out of the country during that time period. Several of the neighbors would like to do further investigation and bring in additional witnesses who did not have the opportunity to testify today.

Clarence Rule stated that Lot 1, Phase III is approximately 120 feet from Allamont Drive. It seemed logical to him to eliminate the proposed cul-de-sac and connect the road to Allamont Drive, and have the cost properly divided with the people who abut that road as well as use it. It would make sense to get the road paved and brought up to County standards.

Chairman Evans stated she understood the proposal by Mr. Rule but it would require more information on land ownership and further discussion with Mr. Kaufman, Horace Brown, and other interested parties.

Clarence Rule stated the owner was Mr. Barrett.

Chairman Evans stated Mr. Barrett should then also be included in any discussions.

Chairman Evans asked if there was anyone else who cared to speak. There was no further public testimony today, however, the public hearing on this matter was left open.

Commissioner Hart asked for clarification of protocol in light of the fact that the public hearing had been left open.

Colleen Dowdall stated the Commissioners are free to discuss this matter with any citizen who wishes to discuss it with them.

Chairman Evans asked if a specific time for additional public testimony and a decision was necessary.

Colleen Dowdall stated that the request was that the public hearing remain open and this matter be continued. It is up to the Commissioners to determine if they want it a certain date or leave it open for a decision in the interim. If there was an opportunity to make a decision before October 7th, it would need to be re-noticed because the public hearing is still open and the public would need to know that.

Commissioner Hart stated she preferred to keep October 7th as a firm date, it was not good use of County money to continually notify the public.

Chairman Evans stated that if there were people out of town or out of the county and they were not back by October 7th, the Board could not set their schedule based on that fact.

Commissioner Kennedy concurred with the October 7th date, but as a formality, the developer had to make the request. Currently the developer stated setting a date of no later than October 7th, but a request to hold the hearing on a specific date had not been requested.

Nick Kaufman reiterated the request, to keep the hearing open, to allow the developer to work with all concerned parties and that the Board make a decision on this no later than October 7th. There can be a decision arrived at prior to that date. If the controversy can be removed there is no reason to wait until October 7th.

Colleen Dowdall stated her interest was having a date set for the public hearing. She was concerned that the public be properly notified of when public testimony will be taken on this matter again.

Chairman Evans asked if there was any reason to wait until October 7th, if the decision can be made sooner than that, perhaps a date can be set sooner than October 7th.

Nick Kaufman stated it might be in everyone's best interest to set the date sooner and let October 7th be the fall back date, so that all the research will be done before the public hearing. He stated the request had been made and it was up to the County to look at the logistics and legalities. The developer requested the delay and will conform to the rules and regulations relative to that request.

Phil O'Connell stated the developer had requested a continuance and the reason for his remarks about some of his clients being out of town is because they are prepared to testify and would like the opportunity to do that. It should not be an issue. He believed it would be a good idea for the Commissioners to pick a date and schedule the public hearing today so everyone will know when to be back to address these issues.

Commissioner Hart stated October 7th was fine.

Commissioner Kennedy stated the developer still needs to make a request to have the meeting on October 7th.

Colleen Dowdall stated the Commissioners have to ask the developer to agree to extend the time period to October 7th. If the date of October 7th is decided on, the developer needs to tell us that he agrees to extend the 60-day period for decision until that time.

Nick Kaufman stated the developer grants permission to extend the review period to October 7th.

Commissioner Hart moved that the Board of County Commissioners accept the developers request to extend the decision and continue the public hearing on Orchard Park Phase III to October 7, 1998. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated every effort would be made to have this matter first on the agenda on October 7th. She asked anyone who found it difficult to be present during the day express their concerns to the Commissioners in writing.

Commissioner Kennedy stated the purpose of public hearings was to add to the wisdom the Commissioners needed to make a decision and would urge all those concerned about Orchard Park Phase III to submit the information well in advance of the October 7th date if possible. If there is information that would be useful in helping the Commissioners make their decision, please put it in writing and send it to them as quickly as possible.

There being no further business to come before the Board, the Commissioners were in recess at 2:20 p.m.

FINAL BUDGET HEARING - FY '99 - WEDNESDAY, JULY 29, 1998, 3:30 P.M.

Chairman Evans called the Fiscal Year 1999 Missoula County Final Budget Hearing to order at 3:30 p.m. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, Chief Financial Officer Jane Ellis and Superintendent of Schools Rachel Vielleux.

Jane Ellis explained that this was a preliminary budget. The Commissioners have made no final decisions on budget matters as yet, final decision will be made Thursday and Friday, and the budget will be adopted on Monday, August 3, 1998. The budget figure for this year is \$44.6 million. Specific construction projects which have contributed to the 7% increase in the total budget from last year are the Partnership Health Clinic and the Airport Interchange by the Development Park. The mill value for this year is \$151,539, increased approximately \$2,800 from last year's value of \$148,729, which is a reasonable, average increase. A unique item in the budget this year is the one-time only contribution to the North Reserve Street project which has been spread across all the various funds that will benefit from the growth there. The budget amount for the Public Works Director has been cut in half since the preliminary hearing as this position will not be staffed until January of next year.

Chairman Evans opened the public hearing.

The following persons spoke regarding various issues:

SPEAKER'S NAME	SUPPORTER OF
Roberta Manis	Historic Preservation
Howard Reinhardt	Missoula Aging Service
Judy Wing	Partnership Health Center
Karyn Collins	Partnership Health Center
Shannon Parker	SSIT Program / Partnership Health Center
Margaret Watson	Western Montana Mental Health Center / PHC
Tina Gottfried	Family Basics Program - Women's Opportunity Resource Development
Joni Stormo	Montana Court Appointed Special Advocate (CASA) Program
Lee Bastian	Blackfoot River Recreation Corridor

There being no further business to come before the Board, the Commissioners were in recess at 4:05 p.m. Chairman Evans stated the final budget hearing would be continued today at 7:00 p.m. in the Meeting Room at the Public Library.

FINAL BUDGET HEARING - FY '99 - WEDNESDAY, JULY 29, 1998, 7:00 P.M. - Missoula Public Library

Chairman Evans called the Fiscal Year 1999 Missoula County Final Budget Hearing to order at 7:00 p.m. at the Missoula Public Library. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, and Chief Financial Officer Jane Ellis.

Jane Ellis explained that this was a preliminary budget. The Commissioners have made no final decisions on budget matters as yet, final decision will be made Thursday and Friday, and the budget will be adopted on Monday, August 3, 1998. The budget figure for this year is \$44.6 million. Specific construction projects which have contributed to the 7% increase in the total budget from last year are the Partnership Health Clinic and the Airport Interchange by the Development Park. The mill value for this year is \$151,539, increased approximately \$2,800 from last year's value of \$148,729, which is a reasonable, average increase. A unique item in the budget this year is the one-time only \$350,000 contribution to the North Reserve Street project which has been spread across all the various funds that will benefit from the growth there. The budget amount for the Public Works Director has been cut in half since the preliminary hearing as this position will not be staffed until January of next year.

Chairman Evans opened the public hearing.

The following persons spoke regarding various issues:

SPEAKER'S NAME	SUPPORTER OF
Dan Doyle	Missoula Aging Services
Rick Magnuson	Missoula Aging Services
Bruce Hall	Parks (Bonner/Milltown Area - Children's Programs)
Susan Brown	Parks
Doug McCluskey	Parks (Against Increasing Fees on Sports Groups)
Mary King	Ft. Missoula Complex, County Parks, Blackfoot Corridor
Sue Stanley	Parks (Ninemile Community Center)

Larry Schock	Ft. Missoula Complex (Softball Fields)
Charlie Brown	Parks
Brian Kaehler	Parks (Softball Fields)
Christine Foster	Parks

Chairman Evans stated she favors putting on the November ballot a Park District question. This is not an easy prospect, it involves a lot of work. There will be little time to share with the public why this should be done. She explained about Initiative 105 which capped taxes and other caps which severely limit the amount of money to be distributed while needs continue to grow. The only way to increase taxes would be to put a Park District on the ballot. She is willing to make the commitment to put it on the ballot this year, but she needs a commitment from the public that it will be supported and explained to their respective teams and neighborhoods. She asked how many would be willing to get such a measure passed if it appears on the November ballot.

A member of the audience asked what was meant by a Park District?

Chairman Evans stated that would allow the County to tax 1 to 2 mills over the I-105 cap which could then be used for park maintenance, etc. What government should provide for the people is public safety, public health, roads, and the other things the law requires, but there are a lot that are not required. These include mental health, the library, the museums, the parks, the things that make life worth living.

Susan Brown asked what the mill authority of a Park District was?

Chairman Evans answered it was 2 mills.

Susan Brown asked if this would be inclusive of the city, one district that would include all City and County parks, taking over the City's park budget?

Chairman Evans answered it would not, it would be outside the City park budget, it would be a County park levy including city residents, which would be administered by the County Park Board. It would levy roughly \$300,000 at the full 2 mills to be used on parks however the law states.

Susan Brown asked if the Park Board members would be appointed or elected?

Chairman Evans stated they would most likely continue to be appointed, but more research would be needed.

Charlie Brown asked what levying 2 mills would cost the average County resident.

Jane Ellis stated it would be approximately \$60 per year.

Commissioner Hart stated it would be important that everyone in the County be included. The City residents would see themselves as voting essentially for Fort Missoula, the residents in Frenchtown would want to see what would benefit them, as would the residents in Clinton, Seeley Lake and Lolo areas. That would mean a tax over and above the I-105 limit. Aging Services is also looking for approval of a tax over the I-105 limit.

Chairman Evans clarified the amount would be \$6 per year, not \$60, which would make it more palatable for taxpayers.

Brian Kaehler stated that even if this could not be accomplished this year, there would be the hope that it might be forthcoming in the future. He would personally be willing to pay more to play softball if there would be some light at the end of the tunnel, there would be money to fix the fields within the next few years.

Chairman Evans stated that even if this Park District is on the ballot this year the money will not be available in Fiscal Year 1999.

Dave Huerta stated that when Chairman Evans posed this question at the first meeting, he went back to the Softball Association and they would back such an item. There are over 2,000 softball players in the association.

Commissioner Hart stated she wanted everyone to realize this tax would be \$6 and for the City residents it would be over and above the current amount of \$26 they now pay for City parks. This issue would impact different people differently. The Aging Services issue, if it passes this fall, will not recognize revenue until November, 1999. This would be the case for park money as well.

Commissioner Kennedy stated it was an easy solution to suggest placing this item on the ballot and there would be \$300,000 for the Parks Department to use each year. It is more difficult to achieve, the jail bond is a good example. When it was on the ballot several years ago, it failed miserably and took several years to gather support for it to be successful again. The Open Space ballot was another example, it passed but there was very low voter turnout which did not validate the election. Another election had to be held in order to pass it. The Board does not want to place anything on the ballot unless it has a more than reasonable chance of succeeding at the polls. The Board has to make a decision between now and August 20, 1998 to have this item on the ballot. Aging Services has been working on their ballot proposal for some time, but the Parks issue has not had the same effort. The Park Board needs to work on their proposal as to what will be done with the resources. The only way to fund some of the things that are not mandated by law is to ask the citizens if they are willing to tax themselves for those items. The three that will be discussed this year include Roads, Aging and now Parks. This will create competition at election time. The Board must make the decision as to which ones will be on the ballot and the public will support. These are not one time only issues, they will be taxed each year. This is a difficult decision for the Board.

Chairman Evans stated the Park Board has a "can do" attitude and will have a plan ready for discussion in a short period of time.

Charlie Brown asked about the timing of the money, if the ballot issues passes but the money will not be available until November, 1999, does the Park Board still face a budget cut for this Fiscal Year?

Chairman Evans stated that was correct.

Commissioner Hart stated that there was only so much money within the box created by the I-105 cap, to fund parks would require taking money from somewhere else. Most of the increases have been in public safety and criminal justice.

Charlie Brown stated that public testimony tonight has shown the people want a shift from somewhere to fund parks.

Chairman Evans stated she has heard they want a shift, but have not said where they want the money taken from.

Horace Brown asked if the money that would be gained from the 2 mills is outside the I-105 box, but the budget cut for parks that was discussed this evening was inside the I-105 box?

Commissioner Hart stated that was correct.

Julie Foster asked about the user fees, if the additional money was available in the following year, would the user fees then be reduced?

Chairman Evans stated that was very likely.

There being no further business to come before the Board, the Commissioners were in recess at 8:00 p.m.

THURSDAY, JULY 30, 1998

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:

Professional Services Agreement - The Commissioners signed a Professional Services Agreement with Land and Water Consulting for a Blackfoot River Cross-Section and Flow Analysis. Effective date of the Agreement is July 30, 1998. 90 days will be allowed for Phase I, and 30 days for Phase II from a written request to proceed. Compensation shall be \$5,000.00.

Payroll Authorization Form - The Commissioners signed a Payroll Authorization Form for the Emergency Management Assistance Grant Program, setting Office of Emergency Management Secretary Gwen Sebestin's salary at \$9.26 per hour. The Form was returned to OEM for further handling.

Notices of Hearings - Chairman Evans signed two Notices of Hearings:

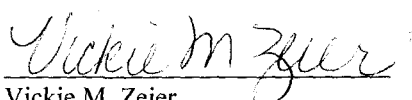
1. On Submission to Electors of Question Authorizing a 2 Mill Levy for Park Purposes in Addition to Current Mill Levies. The Hearing will be held August 12, 1998 at 1:30 pm in Room 201 of the Courthouse Annex.
2. On Submission to Electors of Question Authorizing a 5 Mill Levy for Road Purposes in Addition to Current Mill Levies. The Hearing will be held August 12, 1998 at 1:30 pm in Room 201 of the Courthouse Annex.

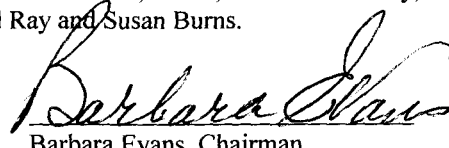
The minutes of the administrative meeting are on file in the Commissioners Office.

FRIDAY, JULY 31, 1998

The Board of County Commissioners met in regular session; a quorum of members was present in the forenoon. Commissioner Evans attended a Judicial Standards Commission meeting held at Judge McLean's cabin at Georgetown Lake; and Commissioner Kennedy was out of the office all afternoon. In the afternoon, Commissioner Hart participated in a program and luncheon at the Double Tree held in honor of the delegation from Park City, Utah; and in the evening, she attended the Law Enforcement Youth Camp awards ceremony at Camp Paxson in Seeley Lake.

Certificate of Survey - The Commissioners signed a Certificate of Survey creating two agricultural tracts and showing a boundary relocation, located in the NE1/4 of Section 13, T13N R19W, PMM, Missoula County, Montana, with the owners of record being William and Robertha Engelstad and Ray and Susan Burns.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, AUGUST 3, 1998

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners and the City Council held a Joint Hearing regarding the Voluntary Nutrient Reduction Proposal (VNRP) at the City Council Chambers. The minutes are available at the City Clerk's office.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael Jaworsky, for the month ending July 31, 1998.

Review of WIC Program - The Commissioners reviewed and approved the FY97 and FY98 Review of the WIC Program in the Missoula City/County Health Dept., as prepared by Susan Reed, County Auditor. The Review was forwarded to the Clerk and Recorder for filing.

At a departmental meeting with the Office of Planning and Grants, the Commissioners approved and Chairman Evans signed a permit for Lou Whitsell to replace an existing dock on Lindbergh Lake, on property described as Lot 68 of the Diamond L Bar Lakeshore Tracts III, per the recommendation of OPG staff.

Resolution - The Commissioners signed Resolution No. 98-061, Adopting a Budget for Missoula County for Fiscal Year 1998-1999.

RESOLUTION NO. 98-061
ADOPTING A BUDGET FOR MISSOULA COUNTY
FOR FISCAL YEAR 1998-1999

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 1998-1999, as required by law; and

WHEREAS, PURSUANT TO SECTIONS 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;

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 1998-1999 be as set out in Attachments A and B, 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 1998-1999, based on the value of a mill of \$151,539 County-wide, and a value of \$74,515 outside the city limits of Missoula.

<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	45.05	A and B
Bridge Fund	3.84	
Poor Fund	3.53	
Fair Fund	.61	
Museum Fund	1.88	
Extension Fund	1.25	
Weed Fund	0.65	
Planning Fund	2.00	
District Court Fund	6.07	
Open Space	0.01	
Mental Health Fund	0.47	
Aging Fund	0.56	
Park/Recreation Fund	.31	
Risk Management	1.89	
Child Daycare	0.30	
Library	<u>5.00</u>	
<u>SUB-TOTAL</u>	<u>73.42</u>	
 <u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail	8.73	
G O Issue (Computer)	<u>1.00</u>	
<u>SUB-TOTAL</u>	<u>9.73</u>	
<u>TOTAL COUNTY-WIDE & DEBT SERVICE LEVIES</u>	<u>83.15</u>	
Road Fund	13.83	
Health Fund	6.47	

Animal Control

.83

99

046

TOTAL COUNTY-ONLY LEVY21.13

DATED THIS 3rd DAY OF AUGUST, 1998
BOARD OF COUNTY COMMISSIONERS

The attachments for Resolution No. 98-061 are on file with the original Resolution in the Clerk and Recorder's Office.

TUESDAY, AUGUST 4, 1998

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:

Amendments - Chairman Evans signed two Amendments to Agreements for Engineering Services with HDR Engineering, Inc.:

1. Amendment No. 1 to the Agreement for Engineering Services for the Missoula County El Mar Estates Wastewater Facilities Study. Compensation shall not exceed \$26,300.00;
2. Amendment No. 1 to the Agreement for Engineering Services for the Missoula County Golden West Wastewater Facilities Study. Compensation shall not exceed \$12,900.00.

Both Amendments were returned to Dan Harmon at HDR Engineering for further signatures.

Preliminary Main Extension Contract - The Commissioners signed a Preliminary Main Extension Contract with Mountain Water Company for the County share of CY98 water improvements in the Missoula Development Park. Cost of the Contract is \$138,538.50 (\$119,101.88 + \$5,500.00 tapping fees and \$13,936.62 service line costs). The Agreement was returned to Orin Olsgaard in Projects Office for delivery to Mountain Water for further signatures.

Bid Awards - The Commissioners awarded the bid for specified street improvements in the Missoula Development Park to JTL Group, Inc., in the amount of \$311,681.00. They awarded the bid for specified CY98 sewer improvements in the Missoula Development Park to Embe Contracting, in the amount of \$118,089.00. Both bid awards were returned to Doreen Culver, Bidding Officer, for further handling.

Contract Agreement - The Commissioners signed a Contract Agreement with the City of Missoula for provision of sanitary sewer services for Phase 2 of the Missoula Development Park. They also signed a Petition for Annexation to the City for Phase 2 of the Missoula Development Park. Both were returned to Orin Olsgaard in the Projects Office for delivery to City Public Works.

Supplement - The Commissioners signed Supplement No. 1 to Missoula Development Park Contract dated August 28, 1997, for bidding and construction supervision services on CY98 construction of streets and sewer. Cost is 4% of construction cost for streets and sewer.

Other items included:

- 1) The Commissioners discussed the I-90 Interchange Ribbon Cutting Ceremony and Reception (approval of invitation and guest list, traffic control and security concerns).

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

WEDNESDAY, AUGUST 5, 1998

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

Audit List -- The Commissioners signed the Audit List, dated August 4, 1998, pages 2-31, with a grand total of \$114,739.90. The Audit List was returned to the Accounting Department.

Consent to Grant of Easement - The Commissioners signed a Consent to Grant of Easement with Lloyd A. Twite Family Partnership to grant an easement to Linda Vista Water Company on Tract 3 of COS 3455. Cost of the Easement shall be \$10.00. The Consent document was returned to Attorney Zane Sullivan for further handling.

PUBLIC MEETING - August 5, 1998

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Fern Hart. Also present were Commissioner Michael Kennedy, Clerk and Recorder/Treasurer Vickie Zeier and County Surveyor Horace Brown. Chairman Barbara Evans was delayed and arrived at 1:37 p.m.

Public Comment

None.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$114,739.90. Commissioner Hart seconded the motion. The motion carried on a vote of 2-0.

Bid Award - Sixmile Road 1997 Landslide Repair (Surveyor)

Acting Chair Hart gave the report. The Montana Department of Transportation will reimburse the County for 86.58% of all direct documented costs. A good portion of the County's match will be in Right-of-Way and Engineering. Four bids were received: Keeney Construction in the amount of \$53,384.95; G. Nelson Contracting in the amount of \$55,553.00; Johnson Brothers Contracting in the amount of \$42,992.00; and Roks Contracting in the amount of \$50,925.73. The bid from Roks Contracting was not signed and therefore not eligible for consideration.

Commissioner Kennedy noted that there were substantial differences in the bid items from each bid which caused him some concern. He asked if Horace Brown had any concerns that the bidding contractors understood the scope of work adequately as these were unit price bids.

Horace Brown stated the contractor would have to provide a bond for the work that needs to be done which covers any risk the County would have. The difference could be where each contractor chose to put their profit in the bid. Each bidder received the same specifications.

Acting Chair Hart stated that one contractor did not sign their bid which made them ineligible, but it was one of the higher bids.

Commissioner Kennedy asked about the estimated quantities where profit could be made up. The low bid allows \$15 per cubic yard for special borrow, it does not take too many yards to add up to a substantial increase in the value of the contract. He questioned what the special borrow bid estimate number was and how it compared to the low bid.

Horace Brown stated he did not have that information with him. One of the costs involved is to transport the material to the Sixmile area which is not near some of the pits. Johnson Brothers does have a pit in the area which would make some difference in their costs. There is always a variance whenever bids are received on these jobs, when you compare one against the other.

Commissioner Kennedy was concerned about the ultimate value of the contract if the estimated quantities are incorrect based on the unit prices which may be out of line with our estimate.

Horace Brown stated the quantities were provided in the specification and each contractor bid a dollar value on each item.

Commissioner Kennedy stated that if the County estimated special borrow at \$5 per yard and it was bid at \$15, there is a problem, particularly if the unit is not correct. This would lead him to believe that the contractor may understand there may be more special borrow and that is the place that can increase the value of the contract even if they are the low bidder.

Horace Brown stated that was the contractors option and he had no control over that. He would not turn down a bid that was about \$10,000 less than the money available to do this project.

Commissioner Kennedy stated he would like to see the unit estimate before the bid was awarded, he was uncomfortable with that item.

Chairman Evans stated she was not uncomfortable with the bid or awarding it.

Horace Brown stated that would be micro-management. The Surveyors Office has made a recommendation for the lowest bid which is a good bid. The contracting company is a good company and he did not have any problems with how they bid.

Commissioner Kennedy stated if this was micro-management, then could Horace Brown assure the Board that the contract would not exceed \$43,000.

Horace Brown stated that was correct, that is the total amount of money available for this project.

Chairman Evans apologized for being late and asked for a motion on the bid award.

Commissioner Hart moved that the Board of County Commissioners award the contract for the Sixmile Road 1997 Landslide Repair to Johnson Brothers in the amount of \$42,992.00, in that it is the lowest and best bid. The other bids were: Roks Contracting for \$40,925.73 but that bid was unsigned; the next highest was Keeney Construction at \$53,384.95; and the highest bid was G. Nelson Contracting at \$55,553. The Johnson Brothers contract has been recommended by the Surveyors office. Commissioner Kennedy seconded the motion and would like to see the final cost of this contract when the work is done. The motion passed on a vote of 3-0.

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

THURSDAY, AUGUST 6, 1998

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

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, John Odlin, for the month ending July 31, 1998.

Plat and Improvements Agreement - The Commissioners signed the plat and improvements agreement and guarantee for RR Riverside Estates (formerly known as Double R Acres No. 4), a subdivision of Missoula County, located in the SE1/4 of the NW1/4 of Section 26, T13N R20W, PMM, a total area of 5.889 acres, with the owners of record being Kenneth and Lorna Richardson.

ADMINISTRATIVE MEETING

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

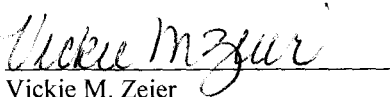
Agreement - The Commissioners signed an Agreement with the Montana Department of Transportation for new signage on State Secondary Route 533 (Pattee Canyon area), for the safety of the traveling public. MDT will pay all costs associated with the work, which is to be completed by November 30, 1998. The Agreement was returned to Horace Brown, County Surveyor, for further handling.

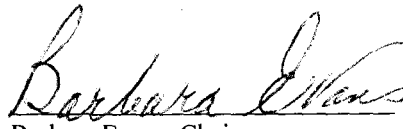
Contract - Chairman Evans signed a Contract between the Montana State Department of Public Health and Human Services and the Missoula County Partnership to Strengthen Families to continue the project begun in January, 1995. Services include home visiting, respite care, and parent education for families at risk of abuse and neglect of their children. Duration of the Contract is from July 1, 1998 through June 30, 1999. Compensation shall not exceed \$134,000.00. The Contract was returned to Peggy Seel in OPG for further handling.

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

FRIDAY, AUGUST 7, 1998

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


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, AUGUST 10, 1998

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

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of July, 1998.

TUESDAY, AUGUST 11, 1998

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:

Professional Services Contract - The Commissioners signed a Professional Services Contract between the Missoula City/County Health Department and the Missoula County Sheriff's Department for participation by the Sheriff's Department in conducting child occupant protection workshops and child safety seat check-up events sponsored by the Missoula Traffic Safety Task Force. Funded by a grant from the Montana Department of Transportation. Performance schedule is from June 10, 1998 through September 30, 1998. Compensation shall be up to \$1,000.00. The Contract was returned to the Health Department for further signatures and handling.

Standard Agreement - Chairman Evans signed a Standard Agreement with the Montana Department of Transportation for funding from the US Department of Transportation for community-based occupant protection plans (seat belt and child safety restraint increase plans). The project shall be completed no later than September 30, 1998. Payment shall not exceed \$2,903.00. The Agreement was returned to the Health Department for further handling.

Standard Agreement - Chairman Evans signed a Standard Agreement with the Montana Department of Transportation for funding from the US Department of Transportation for continuation of the SoBear program, a collegiate/community designated driver program targeting tavern patrons between the ages of 21 to 34 years. The project shall be completed no later than September 30, 1998. Payment shall not exceed \$5,000.00. The Agreement was returned to the Health Department for further handling.

Grant Agreement - The Commissioners signed a Grant Agreement between the Montana Department of Agriculture and the Montana Weed Control Association for coordination of a team effort on the biological weed control program. Term of the Agreement is through June 30, 1999. Funding is a \$7,800.00 grant from the Noxious Weed Trust Fund. The Agreement was returned to Jerry Marks in the Extension Office for further handling.

Agreement - The Commissioners signed an Agreement for Provision of Professional Security Services between the University of Montana and the Missoula County Sheriff's Department for the purpose of providing law enforcement, crowd control, and general security at University events. Term of the Agreement is from July 1, 1998 through June 30, 1999. Compensation shall be determined by multiplying the total number of hours worked by \$12.00 per hour for concerts or similar events, and \$10.00 per hour for other events, plus 12.90% of the total for work performed by reserve deputies, and 33.48% of the total for work performed by regular deputies. One original was recorded with the Clerk and Recorder, and the other three were returned to Mike McMeekin in the Sheriff's Department.

Other items included:

- 1) The Commissioners appointed Mike Sehestedt as interim County Attorney, from September 1 through December 31, 1998, with a letter sent to Mike Sehestedt.

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

WEDNESDAY, AUGUST 12, 1998

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

Audit List -- The Commissioners signed the Audit List, dated August 10, 1998, pages 2-46, with a grand total of \$1,448,770.81. The Audit List was returned to the Accounting Department.

The Commissioners approved a request for refund of taxes in the amount of \$2,755.38 for Tract D of Blocks 17 and 18, McWhirk's Addition, Missoula County, for John March, due to an erroneous assessment. The documentation was returned to Mike Sehestedt, Deputy County Attorney, for further handling.

PUBLIC MEETING - August 12, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, Deputy County Attorney Michael Sehestedt, Clerk and Recorder/Treasurer Vickie Zeier and County Surveyor Horace Brown.

Public Comment

None

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$1,448,770.81. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

A. Submission to Electors of Question Authorizing a 1 Mill Levy for Aging Services in addition to current mill levies

B. Submission to Electors of Question Authorizing a 2 Mill Levy for Park Purposes in addition to current mill levies

C. Submission to Electors of Question Authorizing a 5 Mill Levy for Road Purposes in addition to current mill levies

Michael Sehestedt gave a report on all three mill levy proposals, however, testimony for each mill levy was taken separately. He stated the County's authority to levy taxes is limited both by statutes and overall cap imposed by I-105. The three hearings today are to use an exception to the overall mill levy cap. Specifically, the law allows the Commissioners to submit to the people the question of whether or not the I-105 cap can be exceeded for a particular purpose. Should the Commissioners decide to submit the question to the voters, it would go on the November 3, 1998 ballot. If approved by the voters the levy authority would then be available to fund programs and budget activities for Fiscal Year 2000, which would begin in July 1999. No action at this hearing will or can make revenue available for this budget year. Should any of these be approved by the voters, then the County would be authorized to levy up to the total mill levy value in addition to the existing I-105 cap, that millage would have to be used exclusively for the designated purpose. The Aging levy and the Parks levy are County-wide, both inside and outside the City limits; the Road levy is applicable to property outside the city limits only. For any of these questions to pass, it would require a simple majority of at least a 40% turnout of qualified electors on the active voter registration list. If there is less than a 40% turnout, the request would be deemed denied.

A. Aging Services Mill Levy

This is a decision to place the question of a 1 Mill Levy for Aging Services in addition to current mill levies on the November ballot. The Missoula County Board of County Commissioners will conduct a public hearing on the question of whether or not to submit to the electors a request for authorization to exceed the property tax limit imposed by MCA § 15-10-402 for the purpose of levying not to exceed one mill for the purpose of funding recreational, educational and other activities of the elderly as authorized by MCA § 7-16-101. Statute MCA § 7-16-101 is the authorizing statute that gives the Commissioners the basic authority to levy for these services.

Chairman Evans asked for public comment on the Aging Service ballot question.

Howard Reinhardt, President of the Governing Board of Missoula Aging Services, stated he was in support of submitting the question to the voters of Missoula County, to see if they will approve 1 mill to promote and maintain services for the elderly. There is precedent for going beyond the cap of I-105 for aging, in 1996 voters in Yellowstone County approved a 1 mill levy for aging. He stated if the levy is passed and the Board chooses to allocate a full mill to Missoula Aging Services, practically all of the money will go into the "other" category. Aging Services provides or coordinates the provision of nutritional, transportation and home care needs for the elderly, services essential to allow seniors to maintain their independence. He stated that should this question be placed on the ballot, the Aging Services will have to provide education and advocacy for passage of the mill levy. He asked the Board of County Commissioners to support putting this question on the ballot.

Dan Doyle stated he was in favor of placing the question on the ballot in November. The needs of the agency are increasing and funding is decreasing, creating a difficult financial situation. To maintain the level of service they are providing will require additional funding. He felt the people of Missoula County were generous and would support this mill levy. The services provided are vital to Missoula's elder population, such as Meals on Wheels, Congregate Meals, Senior Dining Club, nutritional programs vital to maintaining health and ability of elders to be active in the community and independent. He would hate to have to cut any of the programs that support Missoula's elders. He hoped the Commissioners would vote in favor of placing this resolution on the ballot.

Rick Manguson stated he was in favor of placing this question on the ballot in November. By the year 2000, statistics show there will be more elderly in the nation than children. Missoula should continue to be on the independent cutting edge of elder programs and let the voters decide that they want the area elders to be independent and keep them out of Federally funded programs. Losing some of these programs due to lack of funding would not look good for Missoula. He thanked the Commissioners for their support.

Robert Schurr, Chair of the Advisory Council for Aging Services, stated he was new to Missoula but was amazed at how many things are being done to support the elders of the community and all the programs available. He was also amazed at how the funding has not been able to keep up with the needs. This is an opportunity to give the citizens a chance to say they want to support the elderly of the community. He felt the public was owed the chance to make this decision. He hoped the Commissioner would support placing the aging question on the ballot in November.

Commissioner Hart stated everyone needed to keep in mind what is at stake with all the levy issues. She assured that even if the 1 mill levy passes, the Commissioners are not obliged to levy that amount. There is no entitlement in this issue, that because the voters said they would be willing to be taxed up to 1 mill, that the Commissioners are obliged every year to agree to levy that 1 mill. The Commissioners would still look at budget proposals and still get recommendations from the Citizens Review Committee. There is also a .56 mill levy for aging inside the I-105 box. Even if the 1 mill levy should be passed by the voters, that does not mean that it frees up the .56 mill. The moving of levies within the box can continue to happen. If this 1 mill levy vote passes, all the money must always go to aging issues. It is not necessarily the case that it must always be levied. Voters may ask if aging will be funding fully outside the box, will taxes be reduced by that small amount inside the box. This will not be the case, the solutions to the funding problems are not simple.

Commissioner Kennedy stated that, as described by Commissioner Hart, this issue can be complicated. Should the Board decide to place this on the ballot, the ballot title and issue the voters will vote on should be as simple as possible. Since 1994, the aging mill inside the box has varied from .76 mills to .44 mills. There is no consistency in the millage levied in favor of aging services support. At the same time, the total funding for Aging Services, even though the mill changed, has remained the same, with the difference made in separate resources. Voting for this mill, if phrased corrected, would favor taxing your property an additional mill each year, with the Board of County Commissioners determining if the entire mill will be assessed.

As there was no further comment on the Aging Service mill question, Chairman Evans closed the public hearing.

B. Parks Mill Levy

This is a decision to place the question of a 2 Mill Levy for Park Purposes on the November Ballot. The Missoula County Board of County Commissioners will conduct a public hearing on the question of whether or not to submit to the electors a request for authorization to exceed the property tax limit imposed by MCA § 15-10-402 for the purpose of levying not to exceed two mills, for the purpose of funding County Parks as authorized by MCA § 7-16-2102.

Chairman Evans asked for public comment on the Parks ballot question.

Sue Brown stated the Park Board decided just last week to ask the Commissioners to place this question on the ballot and have only had the opportunity to meet once since then with City Parks representatives, active sports teams representatives, etc., to try to figure out a package fair to all groups. The proposal that was designed would be 1/3 for City Parks, 1/3 for County Parks and 1/3 for the Fort Missoula. She also asked about the levy for each group that was inside the box, would that money continue to be used to support each issue.

Chairman Evans stated that would be decided each year based on the needs. This Board could not say what a subsequent Board might decide, it would be looked at carefully as the budget was designed for each year.

Michael Sehestedt stated the Board could not exceed 1 mill for aging services or 2 mills for park purposes, both inside and outside the box, those are limits imposed by statutes other than I-105.

Dan Morgan reiterated what Sue Brown had said regarding splitting the money in thirds for City, County and Ft. Missoula. Roughly half the County population lives in the City as well, but a 50/50 split would not work as Fort Missoula is considered both a city and county park. If the Commissioners agree to put this issue on the ballot, then it needs to be passed. This is where some concessions have been made so there is more support for the issue. The 1/3 split will receive the support of the City Council and the Mayor, and will be perceived as fair and equitable among all parties concerned. The Softball Association supports this plan and will be the ones to go out and get this issue passed.

Chairman Evans complimented the Park Board on the work done in such a short period of time and a recommendation that was equitable. She also stated that due to summer schedules, the Board of County Commissioners would make their decision on whether or not to put these issues on the ballot at 10:00 a.m. on Friday, August 14, 1998, in Room 201 of the Courthouse annex.

Jim Van Fossen, City Parks and Recreation Director, thanked the Commissioners for considering to adopt this resolution for Parks facilities and programs. He agreed with the 1/3 split to make sure it was proportional for City and County residents, it made perfect sense. This issue needs to be as simple and understandable as possible for all

residents. He encouraged the Commissioners to allow the public to decide if they wanted to pay this amount for parks. He felt there was a great deal of support for this issue and would pass if allowed to be put on the ballot.

Chairman Evans asked Michael Sehestedt if all these questions required the same 40% voter turnout with a simple majority to pass each issue.

Michael Sehestedt stated that was correct.

Jim Parker stated he managed the Open Space Bond in 1995 and he supports this current issue with the 1/3 split between the City, County and Fort Missoula. This is a favorable and beneficial way of allocating this money. He strongly urged the Commissioners to place this issue on the ballot. Through recent surveys, it shows that citizens are very willing to pay additional monies for their parks. This is the time to act on that feeling from the public. The City residents must feel they are getting an equitable distribution of their monies and being served well by the allocations. The County residents will also be served well. He urged the Commissioners to keep the question very simple, very clear and equitable and felt this measure would pass in November to the benefit of City and County residents.

Ed Curnow stated he was a County resident and urged the Commissioners to place this question on the ballot. Unless something like this is done, there will eventually be no funding for parks, which make the difference in a community. Recent surveys show the need for our parks. As a County resident he would vote for this issue, but he is also a City resident. As a City resident he wouldn't support it, because he also pays for City parks. However, this 1/3 split, particularly including the Fort, would make the issue very palatable and felt the issue would pass. He is also in favor of this measure as it could lead ultimately to a City County Park District. He urged the Commissioners to place this on the ballot.

Jean Belangie-Nye stated she was not speaking against the issues but as a devil's advocate. She represents the Highway 93 Focus Group for Lolo and the Lakeside Estates Homeowners Association. Of the 125 acres of park land in Lolo, 85 acres are owned by the County and 40 acres are owned by the Homeowners Association. Over the last three months in Lolo, there has been work done on a Highway Beautification Plan for Highway 93, because the State and the Department of Transportation have proposed to give the project \$100,000 for irrigation, landscaping and lighting. A maintenance plan needs to be developed to receive these funds and there have been several suggestions offered. A commitment has to be made by the end of September for the maintenance plan or lose the \$100,000. She asked how Lolo fits into this plan, the residents of Lolo would like to support this issue but wants to know what their share would be.

Chairman Evans stated that the Lolo residents should proceed with the SID. Even if this issue is placed on the ballot in November and it passes, there would not be any funds available from it until at least July of 1999.

Jean Belangie-Nye stated that the people of Lolo felt they were not part of the county, even though they are. She would like to be able to work together to get the job done.

Dave Huerta, Softball Association, stated he has worked the past few weeks with the Park Board and he and the Association are in full favor of asking the Commissioners to put this issue on the ballot. If this issue passes, it could increase the number of softball teams in the area and expand to include Lolo, Frenchtown, etc. This is also the possibility of a start with the City and County being more together on Park issues, it can only mean good things for Missoula County and City and all those involved in recreation.

Commissioner Hart stated the County levy authority has two facets, County-wide which includes the city, and County-only which includes people outside the City of Missoula proper. The Aging mill will be levied across both City and County as will the Parks mill. She wanted to make sure the public understood the distinction of where the 1/3 splits would be allocated.

As there was no further comment on the Park mill question, Chairman Evans closed the public hearing.

C. Road Mill Levy

This is a decision to place the question of a 5 Mill Levy for Road Purposes in addition to current mill levies on the November ballot. The Missoula County Board of County Commissioners will conduct a public hearing on the question of whether or not to submit to the electors a request for authorization to exceed the property tax limit imposed by MCA § 15-10-402 for the purpose of levying not to exceed five (5) additional mills, for the purpose of funding construction, maintenance and improvement of county roads. MCA § 7-14-2501 authorizes the imposition of a tax of not more than twenty (20) mills on all property outside of the city limits for the purpose of paying the cost of construction, maintenance and improvement of county roads. Missoula County currently levies 13.83 mills for the Road Fund. If submitted to and approved by the electors, the proposal would allow the County to levy up to 18.83 mills on property outside the City for road purposes.

Horace Brown stated this request is for 5 mills in the County only. This results in a smaller amount, approximately \$72,000 per mill. He is in favor of this if it is in addition to the 13.83 mills the Road Fund currently received and that it is used to fund projects and maintenance outside of what the Road Department can afford with the current mill amount within the I-105 cap. There is a lot of need out there and there are not enough funds to take care of the needs.

Chairman Evans asked if Horace Brown had any specific roads that would be covered by this increase.

Horace Brown stated he had a preliminary list of projects and maintenance that spans the next 5 years that the increase could be used for.

Jean Belangie-Nye stated a problem in Lolo is removal of gravel from winter sanding which does not happen until almost the middle of June. She agreed with Horace Brown that there was not enough manpower or money to improve

the situation currently. She stated the people of Lolo are screaming and shouting at each other, this increase is much needed.

Dick Ainsworth stated he was a County resident in the Pattee Canyon. There are several roads in his area that are deteriorating and need maintenance. He is all in favor of putting this question on the ballot.

Commissioner Kennedy stated the Road Department has deteriorating equipment and levels of service, both attributed to deteriorating resources. The additional services and added mileage that happen when a new subdivision comes in add to the cost. The cost of road equipment has increased 30% to 35% in the last 10 years. When there are no additional resources, equipment or people and the burden of additional mileage to maintain, you get the kind of situation that exists in Lolo. This levy will add to the resource that the County Road Department has to adequately maintain the road systems over a longer period of time. The amount is probably not enough overall but will hopefully be enough for now and meet favorably with the voters.

Wally Condgon stated that the Commissioners are faced with always providing more for residents with the same amount of money due to the I-105 cap. There has been a substantial investment in roads in the County and to let them deteriorate to the point of replacement is a poor investment of time and money. It is appropriate to send this measure to the voters to allow the County to take care of the investment already made.

Commissioner Kennedy stated that other counties in the state are taking a similar stance, they simply don't have the resources. Cascade County is an example which is going to the voters with a 13.84 mill levy, almost three times what Missoula County is asking for. This mill levy increase should be a good start for Missoula County and hoped the voters will support it.

As there was no further comment on the Road mill question, Chairman Evans closed the public hearing and the Commissioners took a five minute break.

River Ranch II (5 lot subdivision) between Frenchtown and Huson off Mullan Road

Barbara Martens, Office of Planning and Grants, gave the staff report.

The applicants, B.J. and Patti Lefler, are requesting approval to split a 102.74 acre parcel into 5 lots. Four lots would be 4 acres in size. Lot 5 would be 86.74 acres. The property is located south of Mullan Road between Frenchtown and Huson.

Portions of the subject property have undergone 2 previous subdivision reviews. In 1996 the applicant applied for a 10 lot subdivision of 106 acres located in Sections 30 and 31 of Township 15 North, Range 21 West. The acreage comprised 26 acres in Section 30 and 80 acres in Section 31. The proposal included nine lots ranging in size from 4 to 8 acres and one lot of 58.5 acres. This proposal was denied in June 1996 because it was found not to be in substantial compliance with the 1975 Comprehensive Plan.

The applicant submitted a revised subdivision proposal that consisted of 5 lots that were 4.2 to 6.5 acres in size and an 80 acre remainder. This proposal was approved in September 1996. Since the remainder was actually a separate parcel it was not shown on the final plat of the River Ranch subdivision.

In January 1998 the applicant filed a boundary relocation that added 22.69 acres to the 80 acre parcel. The resulting 102.74 acre parcel is the subject parcel for the current subdivision proposal. The applicant has proposed the creation of four 4 acre lots in the northern portion of the parcel and one 86.74 acre parcel in the southern portion.

There is an existing house on proposed Lot 5 occupied by the property owners. Individual wells and septic systems will serve the lots. The lots are accessed via Mullan Road to Lefler Lane, a private road. Lefler Lane was designed to serve the 5 lots of the first subdivision and would be extended to serve the 4 new lots.

Much of the property is under agricultural production. The applicant's stated intention is to maintain agricultural uses on all of the lots. The irrigation system would be extended to serve the 4 new homes.

The southern portion of Lot 5 is within the 100 year floodplain of the Clark Fork River. Roman Creek also runs through this area. No building is proposed in the floodplain or riparian areas. Some increased agricultural production may occur south of the Roman Creek riparian area.

The current proposal is for Lefler Lane to curve within the cul-de-sac easement and form a T/ hammerhead intersection at the northern boundary of the property. The applicant proposes to pave Lefler Lane to a 22 foot width in places where it serves more than 2 lots.

The River Ranch I subdivision approval required a 5 foot gravel walkway on the west side of Lefler Lane. The applicant is proposing to continue the walkway along the south side of Lefler Lane where the road serves more than 2 lots.

The northern portion of the property is currently irrigated hayland. The area south of the southernmost bench is dryland pasture. Roman Creek flows through the southern portion of the property in proposed Lot 5. There are two benches north of the creek as shown on the proposed plat. The southernmost bench forms the approximate northern boundary of the Clark Fork River's 100 year floodplain. The existing house is located just north of the northernmost bench. North of the benches, the land is relatively level to rolling. Most of the property is open hay or pasture land.

No development is proposed in the riparian area on the property and minimal impacts to the riparian area are anticipated from the residential uses. Continued or increased agricultural use of the riparian area will further impact the vegetation and creek bank.

The applicant has defined a riparian resource zone along Roman Creek with a northern boundary along the northern bench and the southern boundary along a rise in the floodplain. A Riparian Resource Management Plan has been included with the proposal which addresses vehicular access and building restrictions.

Staff recommends that the Riparian Resource Management Plan be amended to address grazing, stock watering, restoration of native species, and flow control structures. The riparian plan should be added to the covenants. Staff and the applicant have discussed further measures that could be taken to enhance the wildlife and habitat values on the property.

The property is unzoned and the 1975 Missoula County Comprehensive Plan designates Open and Resource land use with a density of 1 dwelling unit per 40 acres. This designation is made to protect areas of important resource production and extraction, to protect areas of natural hazard, and to reserve land for the future where development during the time frame of the plan would be premature and costly. The Plan calls for land use policies that will "encourage the continuation of agricultural production."

The 1996 proposal for a 10 lot subdivision of 106 acres had an overall density of one dwelling unit per 10.6 acres and would have substantially altered 40 acres of land in agricultural use. This proposal was denied in June 1996 based on incompatibility with the 1975 Comprehensive Plan with respect to density and impacts to agricultural lands.

The revised subdivision proposal, consisting of 5 lots on 26 acres and an 80 acre remainder had an overall density of one dwelling unit per 17.7 acres. Staff concluded that while the proposal was not generally consistent with the recommended density in the Comprehensive Plan that it was generally consistent with the developing land uses in the area and other Plan policies encouraging the retention of the maximum amount of agricultural land and preservation of rural character. This proposal was approved in September 1996.

The current proposal is to divide the 102.74 acre parcel into four 4 acre lots and one 86.74 lot. The proposed overall density on the subject parcel is approximately one dwelling unit per 20 acres. The resulting density for the 129.33 acres included in both River Ranch I and River Ranch II would be one dwelling unit per 12.9 acres.

The applicant has added additional lands to the property in an effort to increase the agricultural viability and to offset the loss of agricultural land proposed for the subdivision. Production on other portions of the property could be increased to more than offset the yield from the 16 acres. However, the soils on these portions of the property are not considered by the Missoula Conservation District to be the best soils for agriculture.

The applicant has also stated that the owners of Lots 1 through 4 could still keep approximately 3 acres each in hay production. However, if these portions of the property are fenced, it is difficult for large farm equipment to maneuver in these areas. In response to staff comments, the applicant submitted an amended proposal designed to mitigate agricultural impacts and bring the proposal more fully into compliance with the Comprehensive Plan. The revised proposal shows a building area on Lots 1-4, which restricts building to the northern 150 feet of each lot. This will cluster the homesites to keep more land potentially in agricultural production. The number of proposed lots will remain the same, but each lot would have 3 acres available for agriculture.

The proposal as submitted and revised does not substantially comply with the goals of the 1975 Missoula County Comprehensive Plan due to impacts on agricultural lands and services. Alternatively, creation of only one additional 4 acre lot in the northeast corner of the property would allow for access off the existing driveway and keep the remaining 12 acres of productive agricultural land viable for cultivation and harvest. It would keep the overall density consistent with the approval for the first River Ranch subdivision.

Staff is recommending approval subject to several conditions that are standard and Condition 1 which recommends that Lots 1, 2 and 3 be removed from the plat.

Ron Ewart, Eli and Associates, developers representative, was present, as was the applicant B.J. Lefler. They are in agreement with all of the conditions in the staff report with the exception of Condition 1 to delete Lots 1, 2 and 3. According to the report, this would bring the proposal into general compliance with the density and resource goals of the 1975 Comprehensive Plan. Of the subdivision review criteria, only the effects on agriculture was viewed negatively. This is an agriculturally oriented subdivision that also pays a lot of attention to wildlife resources and riparian resources. Lots 1 through 4 would be 4 acres each toward the north as far away as possible from the riparian resource, Lot 5 would be the remaining 86.74 acres. B.J. Lefler and his family live in the existing house on Lot 5. There is a main irrigation line along the west boundary of the property and an irrigation easement will be platted along the south boundary of the 4 lots so the main can be extended. This subdivision as proposed could result in the loss of only approximately 4 acres, (possibly up to 16 acres), out of a total of 102 acres. B.J. Lefler has farmed the land for several years and plans to continue farming. After consultation with the Natural Resources Conservation Service (NRCS), there are various methods B.J. Lefler could use to increase the agricultural viability of the property substantially. The NRCS also encouraged the keeping of some of the subdivided acres in production. With the restricted buildable area, expansion of the irrigation system to serve the lots, and plans to substantially increase production of the property, this proposal could be viewed as one in which impacts on agriculture are not seen as adverse. It could be argued the 1975 Comprehensive Plan is not up to date enough and the land use designations are not appropriate. He felt this was an orderly development with protected covenants, a homeowners association, architectural control committee, etc., to protect the area. B.J. Lefler has not received any negative comments from any agency or area property owner.

Chairman Evans asked for public comments.

B.J. Lefler stated his plans for this development was to meet all state and local codes and laws, not create any costs to the City, County or Road Department, and that it did not create any opposition to the local community in Frenchtown. All the input he has received has been positive, landowners of the previous lots are favorable to this development. He has not had a decrease in hay production because of the previous subdivision. His decision for this subdivision was for economic reasons. This development has the advantage of creating connectivity between Frenchtown and Huson,

which was part of the intent of the Comp Plan. The overall density will be one dwelling per 20 acres which is acceptable. For him to increase production and put 80 acres back into viable hay ground is an economic decision he cannot do unless this subdivision is passed with all 5 lots. He would prefer to fund any riparian development himself without grant money. He felt this was a good subdivision and asked for the Commissioners support on it as presented with the 5 lots.

George Sherwood stated he was speaking as a developer, real estate person and resident of Frenchtown, and was committed to the development of the Frenchtown valley. There is a lot of hodgepodge development in the valley and he felt that B.J. Lefler's project was a good one. There is a need for affordable housing in the area and also 4 to 5 acre lots, especially with water. He asked the Commissioners to support this development, it is a real asset to the community. He suggested the Commissioners review the 1975 Comp Plan for the area.

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

Commissioner Kennedy stated he remembered the discussion of River Ranch I and his comment that it was a fine subdivision that was at the wrong place at the wrong time. One of the major issues that led to rejection of the original River Ranch I was use of agricultural land. In the second proposal for River Ranch I which was ultimately approved, the question was asked if there was any plans for the balance of the acreage. At that time there were no plans for the 80 acres except to continue use as agricultural land. Now, less than 2 years later, there is this plan to develop the land. This is some of the finest agricultural land in the County and part of the Comp Plan was to protect the erosion of agricultural land to development. This remains an issue today. There are a lot of "coulds" in this proposal, such as increased agricultural use and output. These "coulds" need to be turned into "wills" in order to go forward with it. In the first discussion the size of the lots was discussed and whether or not they would be fenced. At that time, there was assurance regardless of the fencing issue, they could continue in agricultural use at the same intensity. If the dwelling area is restricted and the rest of the lot is in agricultural use, that suggest no fences. Why would an owner need 4 acres of land if it was going to remain in agricultural use with no fences.

B.J. Lefler stated he would expand the irrigation system to serve these new lots. He farms several 5 to 10 acre tracks in the area with his equipment and the fencing does not create a problem. After the first subdivision the agricultural productivity did increase. He would be willing to put into the covenants that his proposals "will" be done. His intent is to upgrade the agriculture and create an economic base at his expense.

Commissioner Kennedy asked Mr. Lefler why the lot needed to be 4 acres if the building was restricted to the northern portion of the site?

B.J. Lefler stated a minimum amount of property that can be put into a parcel and still productively farm is 4 acres.

Commissioner Kennedy asked Mr. Lefler what the value would be to the property owners to own land that Mr. Lefler uses for agricultural purposes. Why not only sell the portion of land where the house would be constructed and keep the rest for farming purposes?

B.J. Lefler stated most of the people who have purchased his lots are horse owners and are able to hay enough to get them through the winter. Less acreage than that does not work to support one or two horses. He feels this is a benefit to agriculture and a good subdivision.

Commissioner Kennedy stated that Mr. Lefler had stated in 1996 there were no plans for this land and it would remain in agriculture use. That statement was made less than two years ago, what other plans will there be in the coming years.

B.J. Lefler stated there were no plans. It is an economic situation. Several promises made to him for reimbursement were not available after the first of the year.

Commissioner Hart she would support the staff's recommendation. She appreciated the prime consideration of land with water but did not agree that there needed to be connectivity between Huson and Frenchtown. She urged B.J. Lefler to accept the grant for the riparian work, that is why the County got the grant so there riparian areas could be protected without taxing the citizens. This is the fairest way to support the Comp Plan.

Chairman Evans complimented B.J. Lefler on his plan which supports the Comp Plan and helps to maintain and encourage agricultural use. Government needs to recognize that it may not always be economically feasible to keep land in agricultural production. He has tried to find ways to increase production and still meet economic needs and personal property rights.

Commissioner Kennedy stated he has appreciated Mr. Lefler's conduct and honesty before the Board in his dealing with them. Mr. Lefler brings proposals before the board which he believes are good ones. He is also concerned about the loss of agricultural land, any time you build a home on the land, you are taking that land out of production. It does not matter if the production of other land will be increased to compensate, the net available acreage and potential is reduced as a result of this development. He will support Commissioner Hart's motion to support staff's recommendation and to include Mr. Lefler's commitment of changing the "coulds" to "wills, for the land's agricultural use.

Commissioner Hart stated her understanding was that there will not be an increase in the agricultural investment if the 4 lots are not allowed.

Commissioner Kennedy asked Mr. Lefler to address the fact that staff's recommendation was less than his request and the Board will approve that recommendation. What do you intend to do with the balance of those pieces of property, will you increase the agriculture use under those circumstances.

B.J. Lefler stated his intention would be to agriculturally farm that land as he has in the past whether he is allowed to have this subdivision or not. From an economic standpoint, for him to sell one lot he would be unable to do the things he stated he would do if he sold the 4 lots. He would not be able to extend the roads or bring in power, or do the rest of irrigation.

Commissioner Hart stated she understood that NRCS said all of the production could be increased but he could not do the extra work in Fields 3 and 4 of the 86.74 acres unless he had revenue from the sale of the lots.

B.J. Lefler stated he and Sady Babcock from NRCS spoke about a magnitude of different things, one of which was working with her to develop an irrigation system for the remainder of the property. If the subdivision is not passed with the 4 lots, he will probably not proceed beyond what he has already done, because of economic reasons.

Commissioner Hart moved that the Board of County Commissioners approve the variance request for Lefler Lane to vary from a 24 foot width to a 22 foot width and the variance request for Lefler Lane to form a hammerhead instead of a cul-de-sac and to exceed the 1,000 foot maximum length, based on the findings of fact and conditions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the summary subdivision River Ranch II with the nine conditions listed in the staff report, based on the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated the subdivision was approved and Mr. Lefler would receive a letter from the Commissioners that includes all the conditions and findings of fact and conclusions of law.

Commissioner Hart stated that Mr. Lefler received only one lot and his remainder as stated in the conditions of the subdivision.

Chairman Evans stated this was not her understanding. She wished to change her vote to "No."

Chairman Evans said: "I thought we were talking about the 4 lot subdivision which I think he has every legal right to. I think it is wrong to require people to keep their land in agricultural use if that does not fit their economic capability and if Mr. Lefler chooses to sue us, I will say so in court."

Based on Chairman Evans statement, the motion carried on a vote of 2-1, with Chairman Evans opposed.

1. Lots 1, 2, and 3 shall be removed from the plat.

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 improvements to Mullan 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."

3. The location of the 5 foot gravel walkway along Lefler Lane shall be shown on the plat.

4. A road maintenance agreement for Lefler Lane shall be developed and approved by the County Attorney approval prior to plat filing.

5. 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 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."

6. The developer shall contribute \$100.00 per new lot to the Frenchtown Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing.

7. The following statement shall appear on the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes the assent of the owner to the creation of an RSID/SID for the maintenance of a park or parks in the Frenchtown-Huson area, defined as the Frenchtown school district, on an equal basis with other properties in the area."

8. The Riparian Resource Management Plan shall to be amended to address grazing, stock watering, restoration of native species, and flow control structures. The plan shall be approved by the Office of Planning and Grants prior to plat filing. The riparian plan shall be added to the covenants prior to plat filing.

9. Covenants related to wildlife, driveway standards, and the riparian resource management plan shall not be amended or deleted without governing body approval. Such statement shall be included in the covenants prior to plat filing.

Rolling Hills Subdivision (28 lots - Preliminary Plat) off Roller Coaster Road

Pat Keiley, Office of Planning and Grants, gave the staff report and an overview of the conditions of approval.

Mr. Drake Lemm is requesting approval for Rolling Hills, a preliminary plat subdivision on 140.3 acres. The property is currently vacant. The applicant has amended the submittal to incorporate two separate access roads, ending as cul-de-sacs on the property, in order to mitigate potential significant adverse impacts of the cuts and fills needed to cross three significant woody riparian draws on the property. The revised submittal results in 28 lots.

The proposed subdivision is located on property northwest of Missoula, with access off of Highway 10 (West Broadway) and south of Roller Coaster Road. The Missoula Airport lies southeast of the subdivision. The Missoula County Sheriff's Department Field Training Facility lies adjacent to the subdivision, to the east and north. Deschamps Lane borders the western edge of the subdivision, while the Grass Valley Ditch borders the southern edge of the subdivision.

The subject property is legally described as Tract A of COS 4300, located in the N 1/2 and N 1/2, S 1/2 of Section 33, and the SW 1/4, NW 1/4 and the NW 1/4, SW 1/4 of Section 34, T14N., R20W, Principal Meridian, Missoula County, Montana.

Legal notification is required and has been provided in the form of adjacent property owner letters through certified mail, a legal ad in the newspaper running two consecutive weeks with the first run at least 15 days prior to the Planning Board public hearing, and a notice of hearing poster placed adjacent to the subject property proposed for subdivision. In addition, a notice of continued public hearing was mailed on July 16 for the July 21 Planning Board meeting.

The proposed subdivision property is zoned both C-RR1 (residential, maximum density of 1 dwelling unit per acre) and "CI-1(Light Industrial).

The proposed subdivision is located within the boundaries of the 1990 Missoula Urban Area Comprehensive Plan Update and the 1983 Missoula County Airport Plan Revision.

1. 1990 Missoula Urban Area Comprehensive Plan Update:
 - * Residential, maximum density of 2 dwelling units per acre
 - * Parks and Open Space
 - * Missoula County Airport Plan Area, Airport Influence Area
 - * Light Industrial
2. 1983 Missoula County Airport Plan Revised:
 - * Missoula County Airport Plan Area, Airport Influence area.

Adjacent land uses to the north include residential, industrial, and the Missoula County Sheriff's Department Field Training Facility. Adjacent land uses to the south include Agricultural and the Grass Valley Ditch. Adjacent land uses to the east include the Missoula County Airport, agricultural, and the Missoula County Sheriff's Department Field Training Facility. Adjacent land uses to the west include agricultural and Deschamps Lane.

This entire subdivision is in the Airport Influence area, according to the Airport Master Plan of 1996, as well as according to the 1990 Missoula County Comprehensive Plan Update. The Airport Master Plan states: "Residential uses are generally not compatible with the operation of the airport, as the average noise levels associated with aircraft operations can exceed Federal guidelines for residential compatibility, which is 65 LDN." In a letter from Gary Gates of the Federal Aviation Administration, he stated the residents would be subject to aircraft travel overhead on approach and departure to the airport and subsequent potential noise impacts. The FAA specific concerns include the location of lots particularly at the easterly end of the project. These lots should consider additional soundproofing construction or removal of these lots from this portion of the subdivision that lies within the current 65 LDN noise contour.

The proposed subdivision calls for external access from two points along the existing Roller Coaster Road, with roads extending from Roller Coaster Road to the subdivision. Roller Coaster Road is a county maintained road approximately 20 feet in gravel surface width within a 60 foot wide public road easement. The westerly access road off of Roller Coaster Road that connects Roller Coaster Road to the subdivision is named Rolling Hills Drive and is proposed to be a county maintained road 24 feet in paved surface width, within a 60 foot wide public road easement. The easterly access road off of Roller Coaster Road that connects Roller Coaster Road to the subdivision is proposed as Tinara Court, a county maintained road 24 feet in paved surface width, within a 60 foot wide public road easement.

Rolling Hills Drive is proposed as a 2,600 foot long cul-de-sac serving 16 lots. Tinara Court is proposed as a 3,000 foot long cul-de-sac serving 12 lots. Lots 1, 2, and 3 are accessed by a shared private driveway extending off Tinara Court. Driveways also provide access to lots 9, 10, and 11, 19 and 20, 21 and 22, and lots 26, 27, and 28. The shared private driveways measure 16 feet in paved surface width within a 30 foot wide private driveway easement.

Originally staff was recommending a through road to provide connection between lots, between the neighborhood areas and to provide two accesses in and out of the subdivision which also provides better service for emergency vehicles such as fire and police. However, due to the topography of this site, it has many rolling hills with steep grades throughout and natural drainage areas. There are riparian resource areas within the drainage areas as well as areas for wildlife and wildlife habitat. For these reasons, staff is recommending that the road does not go through the common area and there are two to three primary natural drainage areas that will not be disturbed if the road dead ends in the two cul-de-sacs and does not go through.

In addition, by not having the road go through, it will reduce the chance of debris getting into the drainage areas and ultimately getting into the Grass Valley French Ditch, which borders the southern portion of the property.

Condition 7 deals with providing fire service and water supply to the subdivision. Originally the proposal as staff recommended was to provide a through road. The fire department was more comfortable with that situation than the two long dead-end cul-de-sacs. However, there has been a compromise reached where the developer would be required to install two underground water storage tanks each with a minimum of 10,000 gallons, with a dry hydrant, and provide connection of the tanks to wells for refilling of the tanks. Based on a discussion with Bill Lindstrom of Missoula Rural Fire Department, the following language is proposed to be added to Condition 7: "The subdivision covenants shall be

amended to state that the Rolling Hills Subdivision Homeowners Association shall be responsible for the operation and maintenance of the underground water storage tank system, installed for firefighting purposes."

Someone will be required to operate and maintain the system, either the applicant or the Homeowners Association. Staff feels the Homeowners Association is the appropriate body for maintaining the system.

The proposal calls for common areas along the southern, eastern, and western boundaries of the subdivision, as well as the major riparian woody draws that bisect the property. The common areas total approximately 50% of the proposed subdivision area. Most of the common area has a slope in excess of 20%.

Water and sewer will be provided by individual private wells and individual private septic/drainfield systems.

The proposal calls for no pedestrian facilities within or adjacent to the subdivision. A variance has been requested.

Conditions of Approval:

1. The applicant shall perform dust abatement on the roads through construction of the roads and subdivision grading. The dust abatement method shall be approved by the Health Department prior to final plat record set approval.
2. The applicant shall build Rolling Hills Drive to the intersection of Rolling Hills Court, from the intersection of Roller Coaster Road, and Tinara Court from the intersection of Roller Coaster Road to the proposed driveway to Lots 1-3 to 26 feet in paved surface width, including a designated 5 foot wide on road pedestrian pathway/bicycle lane on one side. The applicant shall build the remaining portion of the internal roads to a county standard width of 24 feet, with no designated pedestrian pathway/bicycle lane. Road plans shall be approved by the County Surveyor prior to final plat record set signify.
3. The applicant shall provide names for the driveways that provide access to 3 or more lots. Each lot owner shall be responsible for paving the driveway to the homesite, to be approved by OPG at the time of building permit issuance. Driveway (road) names shall be approved by the County Surveyor prior to final plat record set approval.
4. 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 assent of the lot owner to waive the right to protest a future RSID/SID for any improvements, including dust abatement, to the portion of Roller Coaster Road from Rolling Hills Drive to Highway 10, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

In addition,

"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 and sewer systems based on benefit, and may be used in lieu of their signatures on an RSID/SID petition. 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."

5. The applicant shall petition for the subdivision to be included within the Missoula Urban Transportation District, evidence of such petition to be submitted prior to final plat record set approval.
6. The applicant shall amend the subdivision covenants to include language such as, "Due to the sensitive nature of the common areas, including the natural drainage ways, the erosive soils and the riparian vegetation, recreational uses and trails through the common areas shall be limited to low impact trails only, with narrow footpaths following the contours and sidehill along the slopes, avoiding impacts of trails on steep slopes. The subdivision covenants shall be amended to state that the Homeowners Association shall maintain the natural drainage and the common areas in their natural state, with no filling or grading except as approved for the recreational trail connecting the two portions of the subdivision.
7. The developer shall install two (2) underground water storage tanks, each with a minimum of 10,000 gallons, with a dry hydrant, and provide connection of the tanks to wells for refilling of the tanks. The required tanks and wells shall be located near the points where the two off-site access roads enter the development (near Lot 4 and Lots 14-24 on the revised submittal). The District shall approve the plans prior to final plat record set signoff.
8. The applicant shall petition for annexation into the Missoula Rural Fire District.
9. The applicant shall submit a vegetation management retention plan that outlines how the maximum amount of natural vegetation can be preserved for the entire subdivision. The revegetation plan for all disturbed slopes shall include a noxious weed control plan for the common area, the road easements, and the lot areas, that either prohibits or severely limits the use of chemicals, to be approved by the Health Department and Weed Control Board, and incorporated into the covenants prior to final plat record set approval. Plans shall be approved by the Missoula Weed Control Board and OPG prior to final plat record set approval.
10. The applicant shall mitigate the impact that the filling in of the woody draws (to rough in the road system) has had on the natural drainage system and riparian resources by restoring the natural drainage and riparian resource areas to their natural state, to the maximum extent possible by removing the fill and temporary culverts in the drainage ways, and re-seeding those areas with native grasses. Every effort will be made in preventing siltation of the Grass Valley French Ditch and impacting adjacent properties. It is understood that due to the steep slopes it may be impossible to completely remove all fill material and to restore the disturbed areas to its natural state. Restoration plans shall be approved by OPG prior to final plat record set approval, and implemented within one year of the final plat approval.

11. The applicant shall submit a final drainage plan and erosion control plan using best management practices. The erosion control plan shall address all areas that may experience erosion due to all cuts, fills, and road, driveway, and utility improvements with emphasis placed on not allowing siltation and debris from entering the irrigation ditch. Plans shall be approved by the County Surveyor and OPG prior to final plat record set approval.
12. The applicant shall place a building envelope on Lots 8, 9, and 15-21. To the extent permitted by other constraints such as drainfield and replacement area locations, steep slopes, etc., the envelopes shall be back from the slope break and steep slopes, and be located toward the access road or driveways.
13. The applicant shall clearly designate on the face of the final plat Lots 1 through 21 only the areas with slopes greater than 25% as unbuildable on the face of the final plat, to be approved by OPG prior to final plat record set approval.
14. The applicant shall amend the subdivision covenants to include the following items regarding predator intrusion and air particulates. The covenants shall be approved by OPG prior to final plat record set approval, filing with the County Clerk and Recorder.
 - A. Pet food shall be stored indoors.
 - B. All portable barbecues shall be cleaned regularly and stored indoors when not in use.
 - C. All garden fencing shall be at least eight feet high and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement.
 - D. Apiaries should be avoided. Prior to their placement on a lot, the Department of Fish, Wildlife and Parks should be contacted to discuss how best to avoid wildlife conflicts.
 - E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged.
 - F. Fireplaces shall be restricted. Wood burning stoves shall be restricted to pellet stoves with emissions under 1.0 grams per hour to reduce air particulates.
 - G. The brochure, "Living with Wildlife" shall be distributed to all lot owners.
 - H. No yard lights visible to the south.
 - I. Use only non-reflective glass on south facing walls.
 - J. All structures to be earth-tone colors.
 - K. All pets confined to a fenced yard when not in the house.
15. The applicant shall delineate building envelopes for Lots 2 and 3, outside the 65 decibel level noise contour. The applicant shall also identify a building envelope for Lot 1 outside of the direct line of fire of the Sheriff's training facility located to the northeast of the project.

Missoula County Sheriff's Department Field Training Facility:

16. The applicant shall place the following statement in the subdivision covenants:

"The Missoula County Sheriff's Department Field Training facility is located to the north and east of the Rolling Hills Subdivision. This multi-purpose facility is used primarily for firearms training and qualification. User agencies offer basic, intermediate, and advanced training with handguns, shotguns and carbines. Several of the agencies also provide training and qualification for specialized teams that work with rifles, distraction devices and gas delivery systems in addition to the normal field weapons. The facility is also used for searching a building, identifying and classifying threats that can be taught by using the site's shooting house. The controlled examination and disarming of suspected destructive devices such as pipe bombs is performed in the facility by members of the city/county bomb team. The site is also used for regional schools, and is occasionally used for law enforcement handgun competitions. The site is used both during the day and during the evening, throughout the year."
17. The applicant shall mitigate the impact that placing a residential subdivision near the Missoula County Sheriff's Department Field Training Facility has on both the residents of the subdivision and the County's Training Facility by contributing 50% of the cost of fencing that portion of the Facility that is common to the subdivision ownership, and the installation of signage on the site that provides notification of the Missoula County Sheriff's Department Field Training Facility. The County Sheriff's Office shall determine the contribution, which will be held in an identified account until such time as the County provides their share of the cost and the fence is constructed. The County Sheriff's office shall approve the signage and location prior to final plat record set approval.

Fencing - Grass Valley French Irrigation Ditch:

18. The applicant shall amend the subdivision covenants to require the subdivision homeowner's association to maintain the respective ownership portion of the existing fence on the subdivision's property that buffers the subdivision from the Grass Valley French Irrigation Ditch, if requested by the ditch company. Language shall be approved by OPG prior to final plat record set approval.
19. The Rolling Hills Subdivision covenants shall be amended to include the following language:
 - a. The Rolling Hills common area will remain as permanent open space with no further subdivision and no motorized vehicles allowed.
 - b. Agricultural practices in adjacent and nearby agricultural areas may have impacts on this subdivision such as noise, lights, smells, etc.

Language shall be approved by OPG prior to final plat record set approval.

20. All Commissioner approved subdivision conditions that concern amending the subdivision covenants shall include a statement that says that these covenants shall not be amended or deleted without approval by the governing body. The statement shall be approved by OPG prior to final plat record set approval.

Pat Keiley stated staff is recommending approval of the three variance requests and the subdivision, all based on findings of fact and conclusions of law in the staff report.

Chairman Evans stated she could not find any comments from the airport regarding this subdivision. Were there any included in the packet. She was directed to the appropriate section of the presentation where these letters were included.

Dick Ainsworth, Professional Consultants, Inc. (PCI), developers representative, was present, as was Drake Lemm, the developer of this project. He stated there were no problems with any of the conditions, except Condition 15 which spoke about building envelopes on Lots 1, 2 and 3, as related to the Sheriff's Training Facility. According to Sheriff Mike McMeekin, none of this property is in the line of fire, it is out of line of sight from the training area. The owners of the property to the south, the Mastels, had several items they wanted included in approval of this subdivision which the developer had no problems with and were incorporated.

Chairman Evans opened the public hearing.

Wally Condgon stated he was present on behalf of the neighbors to the south of the proposed subdivision, George and LaVerne Mastel, and Mrs. Mastel was in the audience to respond to questions. As Dick Ainsworth said, the changes that were talked about before the Planning Board meeting were incorporated. The Mastels do not like the fact that the ground north of them is being subdivided, but in looking at the Comprehensive Plan and the other details surrounding the property, they will take what they can get to mitigate their concerns. An issue they had requested was that Condition 19, regarding open space, vehicular uses and agriculture uses, be put on the face of the plat. The other issue pertained to water and the Mastels water rights on the land below this site and the potential impact this subdivision has on those rights. The problem is proving the link between the two sites is impossible. The developer has agreed to not oppose the State's process for temporary ground water closure above this site so some study can be done as to what is going into the aquifer out there. This is a significant concern for the Mastels and they have elected to address that through some other mechanisms in the system before it becomes a problem.

David Pengelly, an attorney specializing in water laws, stated the Mastels asked him to look at this proposed subdivision with regard to the water rights. This development may have an impact on the agriculture land to the south of it and it was noted that the Commissioners are concerned about the loss of agricultural land. The Mastels would like to pursue with the developer a temporary controlled ground water area, a specific provision allowed under state water law, to control development so data may be gathered to determine the scope of potential problems. The Mastel have already experienced some degradation of their water availability through prior development to the north of this project and are concerned that this project could further harm their water rights. The developer plans to put a well on each of the 28 lots and there is no way for the Mastels to participate in the water right permitting process. The only legal recourse for the Mastels of dealing with problems which may arise in water problems is dealing with each homeowner individually, which concerns them. They would be happier to see one well installed for the entire development.

Dick Ainsworth stated he would provide the Commissioners with an aerial photo of the area. The developer also has no problem with the suggestion that the Homeowners Association be responsible for the maintenance and operation of the water storage tanks.

Mark Zimmerman, 5788 Deschamps Lane, which is the Mastel Ranch right below this proposed subdivision. He stated the impact of creating this new neighborhood will forever change the quality of life for the residents in this area. What the residents want is a thoughtful approach to this development which is compassionate for the abundant wildlife and addresses the concerns of the property rights of the residents that have lived there for decades. The residents directly affected by this development live on Deschamps Lane and Roller Coaster Road. He has discussed several of his concerns with Dick Ainsworth, Drake Lemm and Pat Keiley, including the erosion of the clay hills and Grass Valley French Ditch Company. He presented photos of the area showing sedimentation in the ditch, dust in the air from traffic and the railroad crossing. This new development will double the amount of people living in the area and using the roads. There is need for a school bus turnaround in the development, the placement of Tinara Court next to a drainage swale should not be a county road and the underground water storage tanks cause concerns for fire protection. He also questioned the future plans for the area called "Not part of the subdivision." He asked the Board to find that this area is inappropriate for a subdivision of this magnitude.

Walt Spencer, 9675 Roller Coaster Road, stated he was in full agreement with Mr. Zimmerman's oppositions to the subdivision.

LaVerne Mastel stated there have been instances of bullet ricochet from people shooting at the clay hills. This concerned her especially because of the proximity to the Sheriff's Training Area. She stated there had been an illegal road put into the area as well. She is opposed to this subdivision.

Bill Lindstrom, Missoula Rural Fire Department, has been working with the developers on this subdivision for about a year. The storage tanks are a compromise and as an emergency service provider he would prefer a through road. The main cul-de-sacs are very long with other driveways (cul-de-sacs) coming off the main ones. If there is no way for these tanks to be maintained, then it was not much of a compromise. There is another subdivision which this developer was involved with and their storage tank is sitting empty and non-operational.

Michael Sehestedt stated he did not want the County involved with maintenance of fire hydrants or water reservoirs. If Rural Fire is willing to undertake the obligation of pursuing enforcement, it could be added to the covenants.

Bill Lindstrom asked if the County would be the enforcing agent.

Michael Sehestedt stated Rural Fire would be the enforcing agent. Rural Fire would sue the Homeowners Association under a contract as a third party beneficiary, giving Rural Fire the right to enforce that particular piece of the covenants.

Bill Lindstrom stated there was no sense in going through the motions of requiring these tanks if they would be non-operational.

Drake Lemm, 10225 Lolo Creek Road, stated that on Trails End Estates, Rural Fire Department was given an easement and he felt they were to maintain that storage tank and well. He felt it was Rural Fire's responsibility to maintain the tank at Trails End Estates. In Rolling Hills case it would be either Rural Fire or the Homeowners Association to maintain these tanks.

Commissioner Hart stated when there is a community water system, the developer is asked to provide an amount for maintenance, then when the development is complete, the homeowners pay into the maintenance fee.

Drake Lemm stated the initial costs were substantial but the maintenance costs should be small.

Chairman Evans asked if there was a way to include in the Homeowners Association that a specific amount be levied for maintenance.

Michael Sehestedt stated this would be an RSID item. He felt the funding was not such a problem but the actual on site maintenance could be.

Chairman Evans suggested the money be paid to Rural Fire and it be their responsibility.

Bill Lindstrom stated he was governed by an elected Board and they have made the decision not to accept the responsibility for maintenance on water systems.

Michael Sehestedt stated the Board has probably taken that position due to the same advice he had been giving to Rural Fire today. It is a significant concern because water availability is an important public safety issue. If there is a failure in the system and someone is injured, he wanted to make certain there would be no repercussion to the County. It would be best if the responsibility stayed with the neighborhood.

Dick Ainsworth stated if Rural Fire did not want the maintenance issue, then it belonged with the Homeowners Association. The amount involved would not be considerable and would probably not require an RSID.

Commissioner Hart stated there should be a fund of some sort for maintenance.

Dick Ainsworth stated the use of the pump would be minimal as would the cost, and would not require an RSID.

Chairman Evans suggested Drake Lemm stay a party to the covenants, it is his subdivision and he would be making the revenue from the sales. If tank maintenance is not completed, he could then take responsibility to get it done.

Wally Condgon asked if an alternative would be appropriate if the Homeowners Association did not complete maintenance to tie the obligation to a specific lot in some way. The lot runs much longer than the parties involved do and the owner takes the obligation on at purchase.

Commissioner Hart asked what would happen if the lot was placed in a living trust or the lot was abandoned.

Wally Condgon stated the ownership would then revert to the County.

Commissioner Kennedy stated this is a serious issue. The tanks are a compromise because of the long cul-de-sacs and maybe not a good compromise after all since there is no assurance that maintenance will be handled. This is a life safety issue and the homeowners have a right to expect a certain level of safety. He felt the Board should not consider approval of this subdivision because experience tell them the situation does not work. It requires a fail safe way of providing fire service and it is the developers obligation to provide it. To try to mitigate ways of taking care of maintenance is not the Board's responsibility, it is between the developer and Rural Fire.

Drake Lemm stated that installing tanks and not putting a through street was a compromise with OPG. Even with a through street it would not provide a fail safe method of fire protection.

Bill Lindstrom stated a through street would give the residents two ways in and out in the event of a serious emergency. A long cul-de-sac puts the residents in a bad situation regarding evacuation. Because of the riparian areas he tried to figure out some kind of compromise. Water for fire protection in a subdivision this size should be considered from the start.

Chairman Evans stated that Bill Lindstrom would prefer the road go through than to have these two tanks. Was that correct?

Bill Lindstrom stated that was correct.

Pat Keiley stated that in looking at the Comprehensive Plan staff felt these were significant natural drainage areas with significant riparian resource areas to try to design the subdivision around. Staff does not disagree with Rural Fire but do not want to see these natural areas encroached upon by roads.

Commissioner Hart stated it was not the Board's responsibility to choose between those two items, it was the developers responsibility to solve this problem and bring the solution to the Board.

Commissioner Kennedy stated he echoed what Commissioner Hart had just said. The cul-de-sac is unacceptable, the natural areas are important to protect, and it is the responsibility and duty of the developer to figure out an acceptable solution.

Commissioner Hart stated the Board did not have to produce optimum conditions for development in an area like this. That is not the Board's job.

Dick Ainsworth stated the issue of tank maintenance came up today and is the first time the developer had heard there was a problem. There had been meetings with Rural Fire and Pat Keiley where discussions were aired regarding the through roads and the compromise of the tanks. This matter was discussed with Planning Board who approved it as presented today. There was no idea this was a big problem until today. He thought everyone was comfortable with the compromise situation, the developer is not trying to skirt the issue, it is that this problem has just been brought to their attention.

Commissioner Hart stated maintenance of the system is a significant issue.

Dick Ainsworth stated the through roads make more sense than the cul-de-sacs, he felt there was a real question as to the significance of the riparian areas. The staff's recommendation was to have the cul-de-sacs and he said they would work with that detail. Again, the problem of maintenance of the tanks came up today. If the Board is not comfortable making the decision today, perhaps the developer could come back next week with a solution.

Chairman Evans stated that was a good suggestion. She then asked Officer Mike McMeekin to address his concerns about the proximity of this subdivision to the Sheriff's Training Facility.

Officer Mike McMeekin, Sheriff's Department, stated that Mr. Ainsworth's comment was correct about "in the line of fire." The officers still do aim for the hill, not anything built on the top of the hill. It would be better worded "in the line of sight." As Pat Keiley has indicated, all parties have visited the site. His main safety concern is that projectiles do ricochet, you cannot stop that. Anyone who buys in the area should be aware of this fact. Because of the safety concerns, it does involve the expenditure of County funds if the Sheriff's Department is going to address them. The Sheriff's Department has made the promise to try to be good neighbors and if there is County money involved, it needs to be budgeted for, including all safety issues.

Chairman Evans asked if, from a safety perspective, is Officer McMeekin concerned about putting homes near the training facility?

Officer McMeekin stated he was concerned.

Chairman Evans asked if the places that are currently being proposed gave him serious concern?

Officer McMeekin stated they did not based on the changes the developers and Mr. Ainsworth and OPG have made.

Commissioner Hart stated she had an issue of putting some of these conditions on the plat rather than in the covenants. However, according to the last condition, "All Commissioner approved subdivision conditions that concern amending subdivision covenants shall include a statement that says these covenants shall not be amended or deleted without approval of the governing bodies," and that includes the agricultural practices, the common area/open space, fencing, and the whole issue of the training facility. It also states, "The Homeowners Associations shall maintain the natural drainage in common areas in their natural state." Is that what the Board is saying they will be hearing?

Wally Condgon stated there were two different sets, one including non-reflective glass, lights, etc., which seemed appropriate in the covenants. The issue of the agricultural statement, the shooting range, etc., were felt to be better on the plat, because if they are on the face of the plat and somebody comes back to amend them, that constitutes an amendment of the subdivision plat. To do that you have to go through the public notice and hearing process. Amending the covenants would not require this process.

Commissioner Hart stated that was not true, changes to covenants would also have to be noticed and go through the public process.

Dick Ainsworth stated that at a previous meeting he thought Colleen Dowdall had said that some of those things did not belong on the plat, they belonged in the covenants.

Pat Keiley stated he had a note concerning that question to Colleen Dowdall. Some of the most significant ones should be on the face of the plat; possibly in both places, the plat and the covenants. There was a question regarding Condition 19 and whether it should be in the covenants or on the face of the plat.

Commissioner Hart stated she would not approve accepting these internal roads, nor the access roads, for County maintenance. With this subdivision, she predicted the Board would eventually have to go to a large County cost on Roller Coaster Road.

Chairman Evans stated with regard to the aviation easements that Michael Sehestedt review those to make sure they are in line with recent technology and it fits for residential use. She wanted the County protected on this issue. She recalled that not too long ago the County was sued by someone who lived east of the airport, who had come in after the airport, and the County lost that suit.

Michael Sehestedt stated it was at the point where the airport shifted from piston operated aircraft to early generation jet aircraft. There was no easement at the time and it was more in the nature of a nuisance suit. He will review the aviation easement.

Chairman Evans wanted to make sure the County protected itself even though the airport authority would be initially responsible.

Commissioner Hart stated that according to Colleen Dowdall she recommended "that the plat clearly shows that a portion of the lots in the 65 decibel level influence area, the applicant has redesigned the lots so that building envelopes are provided that are outside the 65 decibel level. These lots were also reconfigured under the guidance of the Sheriff's Office so that those houses would not be subject to ricocheting bullets. We cannot warn buyers of all dangers with language on the face of the plat. Avigation easement itself protects the airport from claims by future landowners and serves as a notice to potential buyers of the presence of aircraft. Putting it on the face of the final plat is something the subdivision regulations do not contemplate."

Dick Ainsworth stated he knew that at some point Colleen Dowdall had addressed that issue. The old condition 30 was the one about putting a notice on the final plat that it was in the proximity of the airport. Colleen suggested that be deleted in its entirety. The old condition 31 concerned the firing range and Colleen recommended the statement be only in the covenants, rather than on the face of the plat. She stated if there was a warning in the covenants she could defend that.

Pat Keiley stated he had numerous discussions with the Sheriff's Department and airport personnel. The way these conditions were originally worded was based on their recommendations, that there be as much notice and awareness as possible. The avigation easement was on the original conditions but was not on the new set of conditions. Perhaps the dedication of the avigation easement has already been taken care of.

Chairman Evans stated she would not consider approving this subdivision without the requirement for avigation easement. She also wanted the avigation easement looked at from Missoula County's perspective even though the airport is directly involved. She did not care to be sued again, she wants the language as tight as possible. She wanted clarification on what the additional requirements are on construction. She had been told by the airport that it requires, in the airport influence area, that it have additional insulation and triple glazed glass on windows. She had some concerns that the residents of the homes built out there are not going to be complaining about the noise. She has had complaints from people in areas not near the airport recently who are concerned about the noise. She wanted to make sure that any construction done in the subdivision will protect the residents from undue noise and the County from complaints. Even though the building envelope is outside the 65 decibel zone, the noise is still a factor.

Commissioner Kennedy stated that since the developer would be coming back with mitigations, he wanted to list his concerns. The developer needs to address these issues at the next meeting and Commissioner Kennedy considered them important concerns. Depending on how these concerns are addressed will influence his vote at the next hearing. The issues included:

1. The 65 decibel contours are technically derived from a model and are not necessarily accurate. Just because a house is just outside the contour line, it should not be assumed it will be free from 65 decibel noise. The only way to assure that is to measure it at the site specific location. This is particularly important when the contour is so close to some of this development's lots.
2. A serious concern is in regard to Officer McMeekin's testimony. He is very concerned about safety and does not want anyone involved to assume that Officer McMeekin, speaking for the Sheriff's Department, certified the safety of this subdivision from ricocheting bullets, he did not say that. He did not want any misunderstanding about the safety from flying bullets.
3. A large issue is concerned with how the finding of fact got developed regarding air quality. Shannon Therriault's memo of June 16, 1998, where it discusses the amount of emissions that are expected as a result of this subdivision, and the department requested the impact be mitigated pound for pound. This seems to have gotten lost in the findings. The finding states: "The subdivision will have a direct impact on Roller Coaster Road." Shannon's memo states the impact is significant and the preference is that Roller Coaster Road be paved, and at a minimum it would require an SID. He did not feel an SID is a mitigation that is appropriate for Roller Coaster Road. It isn't likely than an SID will happen any time soon, and in the meantime there will be dust from the increased trips. Roller Coaster Road is one of the dustiest roads in the County, and the County will not take care of that problem. This requires attention before he would approve this subdivision.
4. The fence separating the target range is inadequate. He respectfully disagreed with Officer McMeekin on this point. There needs to be something more than a fence separating that use from the subdivision. A small child isn't going to read the sign or pay attention to a fence. This is a serious potential hazard that needs mitigation beyond the fence, nor should the County be responsible for paying for half the fence.
5. The issue of fire protection needs to be reiterated. The Fire District is in the business of accommodating as much as they can any activity that occurs in the County, including development. The Fire District has attempted to accommodate this subdivision by offering a compromise solution if the long cul-de-sacs were allowed. This needs to be solved so the County and the Fire District do not have responsible for enforcing it. Just because there is a covenant does not mean that anyone will enforce it. There needs to be assurance that this fire protection will work all the time. It should not be left up to a potential lot owner. This is a very serious issue. Residents have the right to expect reasonable fire service.
6. The long cul-de-sacs are not acceptable.
7. He disagreed with the finding of fact and conclusion of law that the SID mitigates the air quality problem on Roller Coaster Road, it does not.
8. He disagreed with the conclusion of law that Missoula County Schools provide service to the subdivision, he finds that interesting given the crowded conditions of the schools.
9. Regarding the evidence of surface slumping and erosion on the south side of the hill on Lot 10, he is not unfamiliar with the area having been out there a lot. This kind of soil is more or less relative stable as it sits, but there has been some failure as when the irrigation ditch fills up. Under this proposal, there will be a new water source introduced to the surface which will exacerbate the slumping problem, beyond which have occurred in the past, and the overall surface area will be reduced by introducing impervious areas to it. There needs to be work done to deal with the potential slumping of the entire subdivision. It is in a relative state of equilibrium now and still has failure, when you add additional water to it from the ground water that will cause problems. The gravity

of those problems and their solution need to be investigated. He disagreed with the conclusion of law on this item.

10. He agreed with the conclusion of law on the effects on public health and safety requiring conditions by the applicant to mitigate the impacts, but it needs to be more descriptive.
11. Again regarding the fire issue as addressed by Mr. Zimmerman, the Fire District is there to assist when there are fires from any source and any fuel, including structures as well as range fires. When there is a major egress of people and an ingress of fire equipment, there is the potential for serious conflict which needs to be address in the overall issue of fire protection.
12. In his opinion, an RSID relating to the fire issue, has problems with how that can work. He is not sure he can support this item, there still has to be a way to insure safety.
13. The distance to services, institutions, recreation and work are substantial. The overall goal of the transportation plan is to reduce vehicle miles traveled, which does apply to this subdivision. There needs to be a way to mitigate this and should be considered.

Chairman Evans stated she had very few problems with the subdivision but did have some concerns, including the avigation easements, and providing safety to the residents regarding the Sheriff's Training Facility. She did not like the cul-de-sacs, and would prefer the road to go through from a safety perspective and the Board has denied cul-de-sacs frequently in the past. A through road would also eliminate the concern over the water tanks and how to maintain them. She suggested perhaps higher berms around the training facility might be more beneficial than a fence and the County should not pay for this item.

Michael Sehestedt stated he was deeply concerned that there are rounds wandering off of the training facility. If the land is kept in agriculture, there is a possibility of injury to a farmer moving cows or horses. The County cannot operate a firing facility with vagrant rounds wandering on to neighboring property. This is really outside the subdivision discussion.

Chairman Evans stated there needs to be a way found to mitigate the training facility concern, such as higher berms, fence, etc., she did not want projectiles flying all over. If it means moving some lots to provide for safety, she would rather see that happen. The County does not have the money to pave roads but these roads need to be paved from a dust abatement perspective, a solution needs to be developed. She also asked Mr. Lemm and the Fire Department to take care of the situation with the water tank at Trails End.

Dick Ainsworth asked Commissioner Kennedy, based on Shannon Therriault's letter, how to mitigate, pound for pound, the dust abatement situation?

Commissioner Kennedy stated there is a long menu of ways to accomplish this, but presented one way. For example, someone who might develop on a hillside, the hillside obviously is going to pollute more than on the flat ground, it takes more energy to get there, that creates a problem. So you can measure what that difference is and you can mitigate that by taking care of a problem within the air stagnation zone. It doesn't have to be there, it can be someplace else. So, for example, if you want to pave a street in another location it would take out the same amount of pollution, that would be an acceptable mitigation trade off. There are a number of menu items that can work and have been used around the United States to do that.

Commissioner Hart stated that Shannon Therriault has listed one way in the report. It states: "If Roller Coaster Road is paved from Highway 10 to Tinara Drive, emissions could be reduced to 938.05 pounds per year, a 57.25% reduction.

Chairman Evans stated the developer could speak with Shannon Therriault.

Horace Brown asked about Condition 2, which lists the width of the road at 26 feet including a 5 foot wide pedestrian/bicycle pathway on one side, which does not meet County standards. It would need to be a 24 foot road plus the 5 foot wide walkway, at least 29 feet wide.

Pat Keiley stated staff looked at the amount of lots and topography, trying to reduce cuts and fills and make the road as narrow as possible to save pavement and impacts on the hillside area. There have been variances from this particular standards, typically flexible between 20 and 24 feet. The other issue is whether it is a private road or a County road, and to try to get pedestrian facilities on this road, staff felt it was reasonable to look at a narrower roadway for this stretch.

Horace Brown stated that was too narrow.

Commissioner Hart asked Horace Brown if he was not maintaining it, did he have a concern about the width.

Horace Brown stated he did not care if he was not maintaining the road, but if he is maintaining the road, the minimum amount would be 27 feet, 22 feet in the road plus the walkway.

Commissioner Kennedy stated both Pat Keiley and Horace Brown made good points. He did not know where the dividing line was. His tendency was toward narrower streets unless they compromise safety. We need to work with that, there does not need to be any more impervious surface out there than necessary to access the area. However, that cannot come at the sacrifice of safety.

Horace Brown stated the only way he would agree to a 22 foot road would be to separate the trail from the road.

Commissioner Kennedy stated there is a maintenance issue anyway, because the County would not maintain the road, it would be private. If the trail was separate, then it may be an opportunity to get by with a narrower road.

Horace Brown stated the trail did not necessarily have to follow the road. He asked about the last sentence of Condition 2: "The road plan shall be approved by the County Surveyor prior to final plat record set signify." What did that mean?

Pat Keiley stated that the correct last word was "sign off."

Dick Ainsworth asked if he understood that Commissioner Hart was not in favor of any of these roads being County roads and why.

Commissioner Hart stated that was correct, not inside the subdivision. She stated the County could not afford any more roads and she did not want responsibility for roads inside any subdivision.

Dick Ainsworth stated that if the County was going to do that, they should pass a policy that says they will not accept any more roads, because right now no policy exists and they have been accepting other subdivision with County roads.

Commissioner Hart stated that the roads in this subdivision were the worst kind of roads to maintain, they are long and stringy.

Dick Ainsworth asked about a through road.

Commissioner Hart stated she was considering that fact.

Horace Brown stated a through road increases the distance and maintenance. His other concern with these roads is that over half of them are not on the subdivision, but outside the subdivision, and those people are not paying anything toward the maintenance of these roads, because those lots already exist as COS. If they are owned, they pay a small amount for road tax and does not increase because of these subdivision. The only thing the County is getting an increase on are the lots inside the subdivision and that will not pay for the cost of maintaining these roads.

Dick Ainsworth stated he had asked Horace Brown if he had any problem with these being County roads and Horace replied he did not as long as they met County standards. That is the direction they pursued.

Commissioner Kennedy stated that when Horace Brown makes a statement like that, he assumes the road will be approved as a County road. The Commissioners are the ones who make the decision whether or not the road is public or private. Sometimes in the past it has not been decided by the Board and happens by default, but it will not happen that way any longer, it will be taken on a case by case basis. The question of a policy on roads was an unspoken one, the road has to go somewhere and serve the general use of the community, not just the subdivision. In this case it does not meet that criterion.

Dick Ainsworth stated that lots of roads in lots of subdivision don't meet the standards.

Commissioner Kennedy stated that was in the past.

Dick Ainsworth stated that in a subdivision like this they probably cannot because of topography, they can't go through and serve some adjacent property. He was not aware of that policy, some Counties, such as Ravalli, haven't taken County roads for years.

Chairman Evans stated it was not a policy but it should be one that is known.

Officer McMeekin asked if the Board could schedule some time with the Sheriff's Department to address concerns about the training facility. He needed the Board's guidance in all fairness to the other parties involved.

Chairman Evans gave a rundown of the Commissioners' schedule for the next few weeks. It was determined that August 26, 1998 would be an acceptable date to continue discussion on the Rolling Hills Subdivision. As it was beyond the time limit for a decision, the developer would need to make a request to the Commissioners to continue this hearing until August 26th.

Dick Ainsworth stated that he really did not have a choice and the date of August 26th was acceptable.

Chairman Evans stated that at the request of the developer and his representative, the decision on Rolling Hills Subdivision would be postponed until Wednesday, August 26, 1998, and it will be put near the beginning of the agenda.

Dick Ainsworth stated for the record that August 26th was acceptable with him and the developer.

There being no further business to come before the Board, the Commissioners were in recess at 5:30 p.m.

THURSDAY, AUGUST 13, 1998

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 due to illness

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Sheriff, Doug Chase, for the month ending July 31, 1998.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Art Museum of Missoula for budget funding for FY99. Value of the Agreement is \$138,575.00. Duration of the Agreement is from July 1, 1998 through June 30, 1999.

Contract - Chairman Evans signed a Contract with the Board of Crime Control for the Minors in Possession Court Screener Program. Award amount is \$8,833.00. Project duration is from July 1, 1998 through June 30, 1999. The Contract was returned to Peggy Seel in OPG for further handling.

Intergovernmental Service Agreement - The Commissioners signed an Intergovernmental Service Agreement with the Fort Peck Assiniboine and Sioux Tribes to provide for secure custody of County juvenile prisoners at the Fort Peck Indian Youth Services Center in Poplar, MT. The Agreement shall be in effect indefinitely, until terminated in writing by either party. County shall reimburse the Local Government at a daily per diem rate of \$85.00. The Agreement was returned to Judge Larson for further handling.

Detention Services Agreement - The Commissioners signed a Detention Services Agreement between the Martin Hall Juvenile Facility Board and the Missoula Youth Court to allow juveniles under the jurisdiction of the Missoula Youth Court to be housed at the Facility at Medical Lake, WA. Youth Court will pay MHJFB \$109.00 per day per juvenile. The Agreement was returned to Judge Larson for further handling.

Other items included:

- 1) The Commissioners appointed Gary Johnson to the alternate position on the Historical Museum Board; and they appointed Linda Plick to the alternate position on the Library Board.

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

FRIDAY, AUGUST 14, 1998

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.

Proclamation - The Commissioners signed a Proclamation noting Geoffrey Sutton's contributions to the Historical Museum at Fort Missoula, and proclaiming August 19, 1998 "Geoffrey Sutton Day."

Resolutions - The Commissioners signed three resolutions:

- (1) Resolution No. 98-062, to submit to the electorate the question of a permanent increase in property taxes of up to one mill for services to the elderly;
- (2) Resolution No. 98-063, to submit to the electorate the question of a permanent increase in property taxes of up to two mills for park purposes;
- (3) Resolution No. 98-064, to submit to the electorate the question of a permanent increase in property taxes of up to five mills for road construction, maintenance, and repair.

DECISION ON NOVEMBER BALLOT ISSUES - August 14, 1998

The meeting to decide which issues should be on the November ballot was called to order at 10:00 a.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, Deputy County Attorney Michael Sehestedt and Chief Financial Officer Jane Ellis.

Commissioner Kennedy stated there were two issues he wished to discuss. The second issue was the merits of the individual issues. The first issue is the mechanics of how this works and how it is perceived and what the electorate would be asked to vote on if the Board approves these issues. As a background he referred to a memo he wrote on his investigation of the budgets from 1993 to 1999, a seven year period. He determined that inside the I-105 cap the Board of County Commissioners in each budget year manipulated the mills depending upon the annual need that is perceived by the Commission, and the results of that manipulation is that the Board maintains its legal status under the I-105 cap and at the same time, the relationship between the funding levels of various funds and the mill levels do not have any perceivable pattern to them. His conclusion from this study is that the Board is free to, and has, used the practice of that manipulation to annually assess the needs and develop resources for the various funds that are justified in that particular year. Since that is the case, in his opinion, if the Board goes to the voters requesting an increase in their tax amount, then it should not restrict the Board on that practice inside the cap. The net effect would be, if the Board currently assesses a mill or part of a mill inside the cap, and the Board asks the voters for a new mill outside the cap, it does free up the mill inside the cap for other uses, if the Board chooses to. After studying this carefully, and having examined what the Board has done, anytime the mill is manipulated inside the cap, permission of the electorate is not required, because it is within the Board's legal right to do so. Based on that, it simplifies the issue.

Aging has petitioned that the Board place on the ballot a single mill to support Aging Services. His suggestion is to do that and the language might read: "I approve a permanent increase in property tax of up to 1 mill to support services to the aging population in Missoula County. Yes or No."

The Parks question might read: "I approve a permanent increase in property tax of up to 2 mills to support City and County parks in Missoula County. Proceeds from this levy would be distributed approximately 1/3 to Missoula County parks, 1/3 to Missoula City parks and 1/3 to the Fort Missoula Park System. Yes or No."

The Roads question might read: "I approve a permanent increase in property tax of up to 5 mills to support Missoula County road maintenance. Yes or No."

The language for these three issues as written by Commissioner Kennedy is subject to changes as necessary by counsel.

With that background, should the electorate approve any or all of these, they would have the expectation that their taxes could increase up to the amount they are voting on.

Commissioner Hart asked Jane Ellis if these levies outside the I-105 box pass, would those services benefit from the Motor Vehicle distribution.

Jane Ellis replied she believed they would, a piece of the Motor Vehicle "pie" has to be distributed according to particular statutes.

Commissioner Hart asked if there were any other distributions.

Jane Ellis replied there were others such as the Corporate License Tax and the Personal Property Reimbursement that would be entitled to a share.

Commissioner Hart stated these distributions might make a difference in how much the Board chose to levy in a particular year out of the potential increases.

Chairman Evans stated there was no doubt that the financial support for the issues is needed. She felt if one issue were put on the ballot, it would likely pass. She did not know if by placing all three issues on the ballot, they would all be doomed to failure. She also felt the public had the right to vote on issues and make their own decisions. Each group requesting a ballot issue would have to do their best to bring their issue to the voters and get their issue passed. She was willing to put all three issue on the ballot in spite of the fact that it could have a mixed reaction by the taxpayers, especially during this year when land sales are perceived as problems.

Commissioner Kennedy stated Chairman Evans comments about the choices the electorate may make were valid. He thought long and hard about that possibility, but it is balanced against the obvious need in these three areas. A choice to combine all three needs into a single ballot issue was rejected after his careful study, allowing the electorate to make a decision on each one of the three issues separately.

Chairman Evans stated if these were offered as a single ballot issue, it would doom all three of them to failure.

Commissioner Hart stated that the voters in the County will see all three issues, the voters in the City will see only two issues. The County voters will feel hard hit, they generally do not expect urban services. The need is great and unless there is a major change in the tax system, this is the way needs will have to be dealt with. To not place this on the ballot now would mean another two years before the question could be asked of the voters and any relief would be even further away.

Chairman Evans stated there was the risk that if a 40% turnout was not achieved, the vote would not matter anyway.

Commissioner Kennedy stated that happened with the Open Space Bond issue the first time around, it got a 60% approval but under the 40% turnout necessary to validate it.

Commissioner Kennedy moved that the Board of County Commissioners place all three issues on the November ballot and use, with any legal modifications necessary, the language he suggested. Commissioner Hart seconded the motion.

Michael Sehestedt stated there would be minor changes to the ballot questions as proposed by Commissioner Kennedy. Those changes would include using "authorize" instead of "approve," and instead of using "Yes or No," use the format such as "for authorization to increase" or "against authorization to increase."

Chairman Evans stated she wanted the wording clear, and not have it written in such a manner as to approve was being against the issue.

Michael Sehestedt stated the ballot questions should convey their message in the shortest language possible.

Chairman Evans called for the vote. The motion passed on a vote of 3-0.

Chairman Evans stated these three issues will unanimously be put on the November ballot. The supporters of each issue will now need to educate the public as to their particular cause.

Commissioner Hart asked Jim Van Fossen if he was restricted because of his status as a City employee.

Jim Van Fossen stated he could provide factual information but could not take a position one way or the other officially. He could, however, voice his opinion as a private citizen.

Michael Sehestedt stated that was a correct assessment of his obligation.

Ed Curnow asked if the Parks issue included City and County only, or was Fort Missoula also included.

Commissioner Kennedy stated it was all three, 1/3 to each, City, County and Fort Missoula.

Michael Sehestedt stated the definition of the Fort Missoula Park System would need clarification, which could be determined at a later date.

Jim Van Fossen asked how specific the money for each 1/3 would be utilized?

Chairman Evans stated the ballot question should be as broad as possible.

Commissioner Hart stated that how money was distributed would be looked at if the Park issue passes.

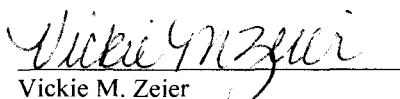
Commissioner Kennedy stated the Park Board and the Board of County Commissioners should address and agree to any representations made during the campaign.

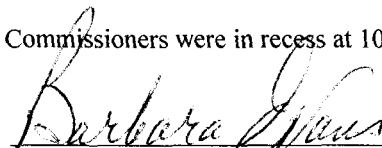
Michael Sehestedt stated the vision for use of these funds needs some agreement from the Park Board and the Commissioners.

Ed Curnow stated there will be a joint meeting of the City Park Board, the County Park Board and the Open Space Advisory Committee to kick off the campaign and make sure everyone is headed in the same direction.

Chairman Evans reminded Ed Curnow to keep the campaign as broad as possible.

There being no further business to come before the Board, the Commissioners were in recess at 10:30 a.m.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, AUGUST 17, 1998

The Board of County Commissioners did not meet in regular session; Commissioner Evans was out of the office all day due to a death in her family, and Commissioner Kennedy was on vacation the week of August 17 through August 21.

TUESDAY, AUGUST 18, 1998

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

Audit List -- Commissioners Evans and Hart signed the Audit List, dated August 18, 1998, pages 3-33, with a grand total of \$129,617.54. The Audit List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Letter - The Commissioners signed a letter in support of American Eagle Instruments' request for USDA funds. The letter was returned to Cindy Wulfekuhle in OPG for further handling.

Award Documents - Chairman Evans signed the grant award documents, including the special conditions for the Rural Domestic Violence continuation grant. Value of the grant is \$252,872.00. The documents were returned to Leslie McClintock in OPG for further handling.

Contract - The Commissioners signed a Contract with Embe Contracting, Inc. for construction, installation, and completion of sanitary sewer improvements in Missoula Development Park Phase 2. Total bid is \$118,089.00, which was awarded on August 4, 1998.

Contract - The Commissioners signed a Contract with JTL Group, Inc. for construction, installation, and completion of street, pathway and drainage improvements in Missoula Development Park Phase 2. Total bid is \$311,680.10, which was awarded on August 4, 1998.

Master Agreement - The Commissioners signed a Master Agreement with IUOE Local 400, Butte Teamsters Union Local #2, IAM and AW, District 86, Local Lodge 88 (Road Dept. labor agreement). Term of the Agreement is from July 1, 1998 through June 30, 2000.

Resolution and Loan Agreement - Chairman Evans signed Resolution No. 98-065, authorizing participation in the Board of Investments of the State of Montana Intercap Revolving Program. Loan amount is \$402,990 for three years, to fund motor pool cars, Sheriff's Dept. cars, microwave sites, and repair of the Courthouse Annex roof.

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

WEDNESDAY, AUGUST 19, 1998

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 afternoon. The Weekly Public Meeting scheduled for this date was canceled as two Commissioners were out of the office.

THURSDAY, AUGUST 20, 1998

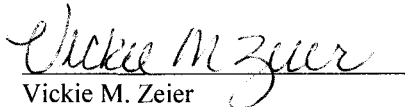
The Board of County Commissioners did not meet in regular session. Commissioner Evans was out of the office August 20 and 21. In the forenoon, Commissioner Hart participated in the signing ceremony for the Voluntary Nutrient Reduction Proposal (VNRP) held at Caras Park.


Application for Issuance of Replacement Warrant -- Acting Chair Hart approved an Application for Issuance of Replacement Warrant naming Daniel Minton as principal for Warrant #251634, issued 8/14/98 on the Missoula County Payroll Fund in the amount of \$780.79, not received in the mail.

Letter - Acting Chair Hart signed a letter in support of Johnson Brothers Contracting, Inc.'s request for USDA funds.

FRIDAY, AUGUST 21, 1998

The Board of County Commissioners did not meet in regular session. During the day, Commissioner Hart attended the Mental Health Board meeting held at Fort Missoula.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, AUGUST 24, 1998

The Board of County Commissioners did not meet in regular session.

TUESDAY, AUGUST 25, 1998

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:

Contract - The Commissioners signed a Contract with John Richards for chip seal cover material for the Seeley Lake area. Cost of the Contract is \$7,250.00. Contractor's agreed delivery period is to be completed by August 25, 1998.

Agreement - Chairman Evans signed an Agreement with the Montana Department of Environmental Quality for the purpose of assisting Missoula to conduct its own air pollution control program. Performance schedule is from July 1, 1998 through June 30, 1999. Funding is \$77,716.00 from the US Environmental Protection Agency, \$6,229.00 from the State of Montana, and \$20,763.00 in local funds. The Agreement was forwarded to DEQ in Helena.

Amendment to Agreement - The Commissioners signed an Amendment to the 1998 Missoula TDM Planning Agreement between the Montana Department of Transportation and the Missoula Office of Planning and Grants. The Amendment extends the completion time of the TDM contract to May 15, 1999.

Contract - The Commissioners signed a Contract with Johnson Brothers Contracting for the Six Mile Landslide Repair Project. Work will be substantially complete within 60 calendar days after Contract Time commences. Contract amount is \$42,992.00. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Task Order - Chairman Evans signed a Task Order to Missoula County Master Contract with the Montana Department of Public Health and Human Services for Maternal Child Health programs, including home visiting. Performance schedule is July 1, 1998 through June 30, 1999. Total compensation is \$164,044.00. The Task Order was returned to the Health Department for further handling.

Professional Services Contracts - The Commissioners signed two Professional Services Contracts for participation in the Driving Under the Influence Enforcement Team. Performance schedule is September 1, 1998 through June 30, 1999.

1. with the Missoula County Sheriff's Department, with compensation up to \$4,000.00; and
 2. with the City of Missoula Police Department, with compensation up to \$2,000.00.
- Funding comes from a portion of driver's license reinstatement fees imposed on convicted impaired drivers. Both Contracts were returned to the Health Department for further signatures and handling.

Memorandums of Agreement - The Commissioners signed seven Memorandums of Agreement:

1. with Missoula Aging Services, to provide planning, coordination, and delivery of Aging Services programs in Missoula County. Value of the Agreement is \$94,900.00. Term of the Agreement is July 1, 1998 through June 30, 1999;
2. with Missoula Food Bank, to purchase basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$20,500.00. Term of the Agreement is July 1, 1998 through June 30, 1999;
3. with the Missoula Child and Family Resource Council, to purchase the services of the Nurturing Program to benefit parents of 0-3 year olds (and their children) who have been referred to the Partnership Project. Value of the Agreement is \$26,117.00. Term of the Agreement is July 1, 1998 through June 30, 1999;
4. with Women's Opportunity and Resource Development, Inc., to purchase basic needs assistance for indigent residents of Missoula County through the Family Basics program. Value of the Agreement is \$10,000.00. Term of the Agreement is July 1, 1998 through June 30, 1999;
5. with the Poverello Center, to purchase basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$40,000.00. Term of the Agreement is July 1, 1998 through June 30, 1999;
6. with Women's Opportunity and Resource Development, Inc., to purchase services to benefit pregnant and parenting teens through the Futures program. Value of the Agreement is \$10,686.00. Term of the Agreement is July 1, 1998 through June 30, 1999;

7. with Extended Family Services, to purchase services for children who are victims of domestic violence, abuse and neglect in Missoula County. Value of the Agreement is \$25,000.00. Term of the Agreement is July 1, 1998 through June 30, 1999.

Other items included:

- 1) The Commissioners awarded the bid for removal and repair of the roof on the Courthouse Annex to Missoula Sheet Metal, in the amount of \$62,785.00. The bid award was returned to Art Garner for further handling.
- 2) The Commissioners awarded the bid for 55 tons CRS-2P Emulsified Asphalt Oil to Idaho Asphalt Supply (the only bidder) in the amount of \$11,506.00.
- 3) The Commissioners approved the sale of 319 West Pine, and the addition of 319 West Pine to the Lambros Realty marketing contract. The request form was returned to Paul Webber, CAO, for further handling.

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

PUBLIC MEETING - August 25, 1998

The Board of County Commissioners convened at 9:00 a.m. to discuss mitigation for Wallace Creek Estates. Present at the meeting were Chairman Barbara Evans, Commissioner Michael Kennedy, Commissioner Fern Hart, and Deputy County Attorney Colleen Dowdall. Also present from the Office of Planning and Grants were Brian Maiorano and Cindy Klette.

Greg Martinsen, Martinsen Surveys, developers representative was present, as was the applicant, Roy Handley. He stated that there was some confusion as to a packet of material that was to be used today. He received a call late yesterday from Cindy Klette stating there was nothing to present to the Commissioners regarding the mitigation. He stated that he had distributed a packet to the Commissioners and Dave Loomis approximately two months ago.

Colleen Dowdall stated there were people present in the audience who would like a copy of the packet also. She also asked if the people present received notice of this meeting from OPG.

The people present stated they had not received anything from OPG.

Greg Martinsen stated he had faxed a list of names to Cindy Klette who said she would contact the parties involved, as it was OPG's responsibility. He became aware on Friday of last week that the Wallace Creek Landowners Association people had not been notified so he called them to confirm that the meeting would be taking place today.

Chairman Evans stated that she had requested that Cindy Klette from OPG come over to participate in this meeting.

Colleen Dowdall stated she had spoken with Dave Loomis or Pat Keiley before she left on vacation and one of them said they had contacted the Commissioners office for the names of all the people who had testified previously, as well as those who had testified at the Planning Board so they could send letters out to everyone and to adjoining landowners. The reason the decision was made to do that was because when we imposed the general conditions of providing mitigation, people in the audience said: "So you're just going to decide this now and we won't know what you are deciding." One of the Commissioners said they would be notified. She believed that was what needed to be done, which OPG said they would undertake.

Chairman Evans stated she had asked David Loomis to assess the material given to us. He told her they met the conditions that were required, and asked him to put it in writing. Rather than waste everyone's time today, she wanted Greg Martinsen to go over the mitigations asked for and how they have been met. At least there will be something on the record that indicates what has been done and how he has met them. The Commissioners will check with Mr. Loomis as to why nothing in writing was received.

Commissioner Kennedy stated that when a subdivision requires mitigation, that mitigation would be approved only by the County Commissioners.

Chairman Evans stated the Board needed a recommendation from OPG which is what she asked for.

Colleen Dowdall stated the Planning Office had believed in past instances that they had been left out of the loop for mitigation proposals. These were concerns that OPG had raised and she believed they wanted an opportunity to evaluate whether the mitigations met their concerns. This is why she had asked Greg Martinsen to initiate this process through the Planning Office, so they would have that opportunity. She is not a position to tell the Commissioners if the stream restoration information met the conditions that OPG had raised as issues. She can go through each of the conditions that involve mitigations and recall for the Board why it was asked for, possibly Brian Maiorano could shed some light on that as well.

Commissioner Hart stated she would have copies made which would take a few minutes.

Chairman Evans apologized to the public for the dysfunctionality they were witness to and stated she wished she knew how to fix it.

Colleen Dowdall suggested that Greg Martinsen go through the conditions that required mitigation.

Greg Martinsen stated that some of the conditions were combined together because they were inter-related.

Colleen Dowdall stated it may be necessary to go through these condition by condition. This was one of those subdivision where there were many conditions closely related. There were four different conditions with waivers of

right to protest and it was Greg Martinsen's proposal to satisfy all of those conditions with one statement on the face of the plat. This one condition would satisfy the mitigation of Conditions 1, 8, 10 and 15.

Chairman Evans stated these four conditions would be put together and would appear on the face of the plat. The combined condition would read: "Acceptance of a deed for a lot within this subdivision constitutes the assent of the lot owners to waive the right to protest a future RSID/SID for improvements to the Frontage Road, Wallace Creek Road, Common Drive, Handley Loop and Neighbor Way, including but not limited to drainage, paving, dust abatement, road surfacing and widening, pedestrian facilities, a community sewer and/or community water system, the maintenance of a park or parks in the Clinton area, defined as the Clinton School District, on an equal basis with other properties in the area and the inclusion of the property within the subdivision into the Missoula Urban Transportation District based on benefit and may be used in lieu of 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 depicted herein."

Colleen Dowdall asked Greg Martinsen to address Condition 2 where it was asked for a one foot wide no access strip on the face of the plat on all of the lots on Wallace Creek Road, based upon his discussions with the Montana Department of Transportation.

Greg Martinsen stated they suggested wording that would say: "The applicant shall place a one foot wide no access strip on the face of the plat, along all lots which front on Wallace Creek Road, eliminating access to Wallace Creek Road from these lots with the following exceptions. The applicant shall show 40 foot wide individual driveway accesses for Lots 10, 11, 14 and 36 and 80 foot wide shared driveway accesses for the following lots along Wallace Creek Road: 12 & 13, 34 & 35, 39 & 40, 41 & 42, 59 & 60, 61 & 62. The access between 41 and 42 shall be approved by the County Surveyor for site visibility."

Condition 3 and Condition 4: The last sentence of Condition 3 reads, "Shared driveways for the Frontage Road shall be shown on the following lots: 1 & 2, 3 & 4, 5 & 6, 7 & 8," and Condition 4 reads, "Access to all lots onto the Frontage Road requires approach permits from the Montana Department of Transportation (DOT). Lots 5 through 10 shall require, at a minimum, a 48 inch diameter culvert for the Wallace Creek drainage. The existing approach to Lot 5 shall be removed prior to filing the final plat."

When approach permits were requested from the Montana Department of Transportation (DOT), they recommended and conditioned the granting of the permits on the following:

1. That there be an approach at the south boundary of Lot 1 to serve Lot 1 and the adjoiner to the south;
2. That there be common approaches for Lots 2 & 3, 4 & 5, 6 & 7, 8 & 9; and
3. That Lot 10 have its own individual approach

It was the opinion of the Montana DOT that Lot 10 should have a separate access because of the potential for a traffic conflict between a commercial access and a residential access. The Natural Resources Conservation Service (NRCS) has made a recommendation that the culverts for the accesses crossing Wallace Creek drainage onto Lots 6 through 10 be 72' x 44' corrugated metal arch pipes. It is proposed that these access points and standards satisfy Condition 3 and Condition 4. In addition, the existing approach to Lot 5 shall be removed prior to filing the final plat. The DOT changed the accesses as they were proposed.

Chairman Evans asked Greg Martinsen to tell her which of the conditions we don't have to worry about, as they are now approved.

Colleen Dowdall stated it was not that simple.

Commissioner Hart stated that the DOT has changed this condition.

Greg Martinsen explained where the accesses were to be initially. Basically the DOT wanted the same thing but moved the accesses up a lot and put the access for Lot 10 in a different location as it is intended for neighborhood commercial and did not want a residence to share access with a commercial property. The recommendation from staff was for 48" culverts on Lots 5 through 10, where Wallace Creek comes through. The NRCS said they want a 72' x 44' corrugated metal arch pipe on those lots for the accesses. The accesses as recommended by NRCS will be done if approval is granted.

Condition 5 said: "All roads within the subdivision shall be paved to a width of 24 feet except for Common Drive, up to the access to Lot 17, which may be paved to a width of 14 feet." Since that time, as part of the mitigation efforts to eliminate some of the lots, the lot layout has been changed somewhat, as well as the road layout. Common Drive is now the access to 5 lots and the park and some other property that is not part of this subdivision. There were four or five lots there previously, those have been taken out and have all been made into a park from Common Drive to the east. Because of that the configuration of Common Drive changed. The park has been a point of contention, emergency services asked for vehicular access to the park, and the handicapped should have access as well. It is felt that Common Drive is needed to provide adequate access to the park for the elderly, handicapped persons, people who are delivering large quantities of recreational facilities, maintenance and development equipment, etc. It is not logical that adequate access not be provided to the park. It is proposed that Condition 5 be satisfied with "a road paved to a width of 24 feet."

Condition 6 stated: "Wallace Creek Road shall be paved by the applicant to a width of 24 feet from its intersection with the Frontage Road to the end of Lot 64." Due to the realignment of lots, the farthest lot east is now Lot 62. The applicant wants to develop the infrastructure and sales of the parcels in a phased basis, not file the plat on a phased basis, just do the development itself and the improvements on a phased basis. It is asked to satisfy Condition 6 to allow for paving and improving of Wallace Creek Road in phases that coincide with the various proposed stages of development. More specifically, the applicant intends Lots 10 through 19 be put up for sale as soon as this plat is filed, and Lots 20 through 37 be sold in a second phase, and Lots 38 through 62 be the last to be developed. With this development schedule in mind, it is proposed for the following schedule to satisfy Condition 6 to be included in the

subdivision improvements guaranty agreement. The language is as follows: "Wallace Creek Road shall be paved by the applicant to a width of 24 feet from its intersection with the Frontage Road to the end of Lot 62, according to the following schedule, but in any case the applicant shall not be required to pave any portion of Wallace Creek Road sooner than 2 years from the date of filing of the final plat of Wallace Creek Addition. Upon the development of Lots 10 through 19 the applicant shall be required to pave Wallace Creek Road from the Frontage Road to the easterly boundary line of Lot 18, upon the development of Lots 20 through 37, the applicant shall be required to pave Wallace Creek Road from the easterly boundary line of Lot 18 to the easterly boundary line of Neighbor Way, and upon the development of Lots 38 through 62, the applicant shall be required to pave Wallace Creek Road from the easterly boundary line of Neighbor Way to the end of Lot 62."

Commissioner Kennedy stated that 2 years from the filing of the plat is when paving begins according to the proposal. It was his inference that at each stage there could be lot development without any paving. Was that the intent?

Greg Martinsen stated there could be a possibility of some development.

Commissioner Kennedy did not really know what "upon development" of the other stages meant. Did that mean when it was built out?

Greg Martinsen stated it meant when the block of lots went up for sale.

Colleen Dowdall reminded the Commissioners that every subdivision has 2 years within which to install their public improvements.

Commissioner Kennedy stated he understood that but thought the wording needed to change somewhat as "upon development" might infer that meant fully developed instead of up for sale.

Greg Martinsen stated he and Colleen could work out some appropriate wording that would be acceptable.

Colleen Dowdall stated the wording would have to be in the subdivision improvements agreement for when it would occur and the Commissioners would have a chance to review the agreement and either sign or not sign it.

Greg Martinsen stated the intent was understood, it just needed to be put into language that conveys the intent.

Commissioner Hart asked if there should be a condition that stated when 51% of the lots have been sold or built on then road improvements should be installed.

Colleen Dowdall stated that is something that had been done in the past, she felt it could be memorialized even better in the subdivision improvements agreement so that it is tied to some overt act, most likely it will be the fact that there will be a guarantee that will have a schedule which will be secured by collateral so that if the roads are not installed, there would be a means of doing that. When this has been done in the past, it was required that there be an update on what the cost will be because it is so far in the future, so that the improvements guarantee is adequate.

Greg Martinsen stated Condition 7 required that all woodstoves installed in this subdivision shall be low emission and limited to 4.1 grams of emissions per hour. They did not have a problem with that and it was added into the covenants.

Colleen Dowdall stated there was currently a provision that the covenants cannot be changed at all without the approval of the Commissioners and that would be amended so it only applied to the woodstove provision.

Greg Martinsen stated that was correct for Condition 7. On Condition 9, it stated: "The applicant shall mitigate the impact of the subdivision on the Clinton Elementary School District #32, the impact on the subdivision and on Wallace Creek Road of the drainage from Wallace Creek, the impact from sheet flooding from the hillside onto the developed portion of the subdivision. Further, the developer shall mitigate the presence of the overhead 161 kv power lines within the subdivision by establishing a building setback line. All mitigations are subject to approval by the Commissioners." The impact on Clinton Elementary School District #32 has been discussed and they have reached an Agreement and Resolution for Voluntary Impact Payment. Mr. Handley has agreed to pay the school district \$26,000 under terms agreed to. It is asked that the Commissioners acknowledge that this satisfies the request for mitigation regarding Clinton Elementary School District.

The impact of Wallace Creek has been mitigated by the Wallace Creek Channel Restoration Plan that was done by the Natural Resources and Conservation Service in Bozeman at the request of the Missoula office. With regards to the question of sheet flooding onto portions of this subdivision, it is felt that this issue has been addressed by the Wallace Creek Channel Restoration Plan. It is the consensus of those who witnessed the shallow (<0.3") waters on these portions of the property that it was water that had been diverted from the channel of Wallace Creek or overflows from Wallace Creek. This would be reasonable since no one has witnessed sheet flooding from the adjacent hillside. The water out there is from Wallace Creek and not the hillside. Sheet flooding off the hillside doesn't happen like that. The coarse grained and open soils structure and vegetation on those sites are not the type that would allow sheet flooding or heavy runoff to occur. The hillside is virtually identical to ones like Mount Jumbo and Mount Sentinel which don't lend themselves to sheet flooding. What may have prompted this discussion was things like the South Hills where there is sheet flooding, which is a completely different situation. There should not be a problem with sheet flooding at this subdivision.

Commissioner Kennedy asked who else Greg had consulted?

Greg Martinsen stated he had spoken with Gordon Sorenson and other engineers.

Commissioner Kennedy stated the technical conclusion was really his conclusion.

Greg Martinsen stated that was correct but it was well based on information received. Regarding the 161 kv power lines, there is information provided. A brochure entitled "Possible Health Effects of Exposure to Residential Electrical and Magnetic Fields," that says in part, "...the current body of evidence does not show that exposure to these fields presents a human-health hazard." The only concern they could find is that a zone for construction maintenance and general safety should be present. Representatives of Montana Power Company have been contacted in regards to the power lines and they have stated the width of the existing right of way easements was created with these safety concerns in mind and that there is no need for any additional "building setback line" or additional width required for this electrical line. It is felt all this information mitigates the concerns for Condition 9.

Commissioner Kennedy stated the right of way for the power line predated the more recent concern about electromagnetic fields. His inference is that the reference has to do with construction and physical maintenance of the line, not electromagnetic fields. Was that correct?

Greg Martinsen stated that was correct, the current body of evidence says there is no problem with electromagnetic fields.

Commissioner Kennedy said it doesn't say there is no problem, they cannot find the evidence.

Greg Martinsen stated that on Condition 11 it includes numerous other provisions, A through H. Some of those were previously included, those that were not have now been included in the covenants. Section 11 includes provisions A and B, Section 6 includes provision C, Section 14 includes provision D, and Section 13 includes provisions E, F, G and H.

Condition 12 said: "The subdivision shall include the language from the subdivision regulations required for areas located within the Wildlands/Residential Interface." That language was included in Section 16, "Fire Protection Standards" of the covenants.

Condition 13 said: "The applicant shall designate a no-build area on all areas in excess of 25% slope." All those areas have been identified on the face of the plat, in the area of Lots 59 and 60. The no build zones are done in combination with the Riparian Resource Management Zones. All the areas in excess of 25% slope have been identified and have been addressed in the covenants.

Condition 14 said: "The applicant shall designate the area on the plat which is of riparian resource and shall submit a management plan for the area prior to filing of the final plat." That is the area that has been designated as a 100 year flood plain by the NRCS following the Wallace Creek Channel Restoration Plan. The wording has been written into Section 22 of the covenants of Wallace Creek Estates as to the management plan for the riparian zone.

Chairman Evans asked if this came directly from the County regulations?

Greg Martinsen stated that was correct, with even more additions.

Condition 16 said: "The applicant shall show compliance with the primary Travel Corridor Standards with language in the covenants requiring the installation of 2 inch trees on each lot." That was revised and they have place wording in the covenants that comes from the Travel Corridor Standards, however, the Commissioners granted a variance from the Primary Travel Corridor Standards for Lots 1 through 10. They have complied with the standards in a manner is a little different than what the standards require, because staff asked them to proceed along those lines. The difference is instead of planting trees all along the edge of the road, there is the option of placing trees around the building, but still planting the same number of trees. That is included in Section 17 of the covenants.

Condition 17 said: "The applicant shall install an 8 foot wide compacted gravel hardpack pathway with a 10 foot wide drainage or swale separation along: a) Frontage Road along the east, extending from the southern edge of Lot 1 to the northwestern edge of Lot 10; b) Wallace Creek Road along the south side, extending from the northwestern edge of Lot 10 to the northeastern edge of Lot 62; c) Common Drive along one side, extending from Wallace Creek Road to the southwestern edge of Lot 17; d) Common Court along one side, from Wallace Creek Road to the northwest corner of Lot 29; e) Handley Loop along one side, extending the entire length of the road; and f) Neighbor Way from Wallace Creek Road to the southern edge of either Lot 25 or 51. The pathway plans shall be approved by the State of Montana Highway Department (Frontage Road) and the County Surveyor and OPG (Wallace Creek Road, Common Drive, Common Court, Handley Loop, Neighbor Way) prior to approval of the final plat record set." As Common Court doesn't exist any longer, Section 'd' is not needed and the lot numbers referred to in Section 'f' have changed. The original design for the gravel pathway was intended for the roads within the subdivision since the applicant's intent was not to build this pathway on Wallace Creek Road and on the Frontage Road. In some areas there is not going to be any possible way that design parameters will allow construction of the pathway with a 10 foot wide drainage or swale separation between the existing traveled way and the pathway, most specifically on Wallace Creek Road. The pathway in the areas of the Frontage Road and portions of Wallace Creek Road will not be able to be constructed as was shown on the design for the new pathways. In some places there may be no vertical separation, such as on the Frontage Road, and in others there may be as much as 2 feet or more of vertical separation, such as on portions of Wallace Creek Road. Further, it was our understanding at the first meeting with the County Commissioners that the pathway would not be required on the access easement for the driveway that goes to the property south of Lots 27 and 49, which would be the extension of Neighbor Way, a 30 foot wide easement, not a roadway.

Commissioner Hart asked if the easement to the neighbors house was included?

Greg Martinsen stated it was included and that is why it was called Neighbor Way. It is only a road from Wallace Creek to Handley Loop, from there south its a 30 foot wide easement for their driveway. The project design has changed and that is why Common Court has been eliminated, there is no pathway. Basically, one of the problems in design is Wallace Creek Road has some cuts and fills so to put a 10 foot wide separation between the traveled way on Wallace Creek Road and this pathway is virtually impossible, there is not room enough. In some areas that separation

is going to have to become smaller to fit the design parameters. That will happen as it is designed in each phase as it is constructed. The design cannot be presented conclusively right now.

Commissioner Hart stated the pathway will be along Wallace Creek but the distance from the traveled way is unknown. Would it meander?

Greg Martinsen stated that would be correct. It will fit the 10 foot standards wherever possible but the distance may close up in certain areas.

Commissioner Hart asked how close it would have to be in certain places?

Greg Martinsen stated the minimum would probably be 4 foot, and that would also be in an area where there would also be vertical separation between the roadway and the pathway because of the topography.

Commissioner Hart asked how the bank would be stabilized with the vertical separation?

Greg Martinsen stated it would be designed to an engineered slope design including stabilization to cover the grade of the slope. The applicant proposed the following language to satisfy Condition 17: "That the applicant install an 8 foot wide compacted gravel hardpack pathway with a minimum 5 foot wide separation from the traveled way which incorporates a drainage of swale whenever feasible along: a) Frontage Road, along the east, extending from the southern edge of Lot 1 to the northwestern edge of Lot 10, with portions being constructed on the Wallace Creek Levee and on Lots 5 through 10; b) Wallace Creek Road along the south side, extending from the northwestern edge of Lot 10 to the northeastern edge of Lot 62, with portions being on Lots 10 through 14; c) Common Drive along the easterly side, extending from the pathway on Wallace Creek Road to the cul-de-sac of Common Drive, d) Handley Loop along one side, extending from the pathway on Wallace Creek Road along the entire length of the road, back to the pathway on Wallace Creek Road; and e) Neighbor Way along the easterly side, extending from the pathway on Wallace Creek Road to the pathway on Handley Loop. The pathway plans shall be approved by the State of Montana Highway Department (Frontage Road) the County Surveyor (Wallace Creek Road) and the County Surveyor and OPG (Common Drive, Handley Loop, Neighbor Way) prior to approval of the final plat record set." The NRCS plan calls for a levee to be constructed in the area, to make effective use of the levee it is the proposal to place the pathway on top of the levee which fits in well with the plan. Certain areas along Wallace Creek Road have design problems so it was decided to place some of this pathway on Lots 10 through 14, in an easement on the front edge of those lots, a portion of the lots was sacrificed for an easement for the pathway to make it work better.

Commissioner Kennedy asked about Lot 10 being a mixed use lot, how there would be boulevard separation across that lot, would it require additional easement?

Chairman Evans asked if it would be like a sidewalk in front of a business?

Greg Martinsen stated that would be correct. The design takes into consideration the creek and the road and the pathway. The creek exits the property then goes under the highway. The pathway comes up out on the right of way until it hits the levee, then it gets up on the levee and follows to the drop structure where it crosses back across the stream and out into portions of the right of way, through a corner of Lot 10, then through an easement on Lot 10 through Lot 14, then in the hillside it makes a transition back into the Wallace Creek Roadway. There will be an easement for the pathway.

Commissioner Hart asked how the path works with the culverts?

Greg Martinsen stated that on Lots 8 and 9, for example, the path is back from the culvert area, into the lot further than the culvert.

Commissioner Hart asked to see the same example on Lot 10.

Greg Martinsen stated the pathway came into then exited Lot 10 to the highway right of way, having crossed the stream. The last comment was that the developer is making arrangements with the neighbor for a relocation of common boundary on the easterly end at Lot 62. The neighbors ownership intervened between Wallace Creek Road and the lot and the relocation of common boundary has tipped the line and traded portions so the lot fits the configuration with Wallace Creek Road and makes their ownership more usable. This concludes his comments on Wallace Creek Estates.

Chairman Evans stated that what was needed is a letter from the Planning Office stating they have looked at the mitigation requirements that the Commissioners had placed on the subdivision and from their position, they find mitigations are met or not met. David Loomis had said they have been met but that is needed in writing. The Commissioners also need to know if there is anything outstanding yet that needs to be dealt with and if not, a date and time needs to be set that says so and the subdivision can go ahead based on the conditions required and met.

Commissioner Hart stated she would like to hear from the neighbors, they have worked very closely with this. Her purpose now was to read the report from NRCS, the information on the high voltage line and the Riparian Resource and No Development Zone Management Plan. She complimented Greg Martinsen. This is a major subdivision for the area and she was impressed with the work done by him.

Greg Martinsen thanked Commissioner Hart and added that he had talked with Dave Loomis approximately five weeks ago who indicated that everything was "hunky-dory." When asked what that meant, Dave said he would write a letter. He also thanked Colleen Dowdall for her help with the wording of the conditions and Patty Rector for helping get the meeting put together. He appreciated everyone's help.

Cindy Klette stated that Dave Loomis did review the mitigation proposed by Greg Martinsen and his review was also complimentary. He, on behalf of OPG, recommends approval. She was not aware of anything outstanding in terms of

additional information needed. A letter will be written but for the record she stated that at this time OPG recommends approval. David Loomis was called out of state on a family emergency and could not attend today to make that statement, but that is his recommendation.

Brian Maiorano added that he felt the stream restoration plan was excellent and set a standard for this type of work in a subdivision and was very pleased.

Commissioner Kennedy stated he would need time to review the documents. He asked about the neighbors present in the audience and whether they had seen any of this plan and if they needed time to review it.

Bob Sears, co-chair of the Wallace Creek Landowners Association, stated he had not seen the plan before today but it looked like they had addressed most of the concerns that the Wallace Creek Landowners Association had.

Vicki Voss, another co-chair of the Wallace Creek Landowners Association, stated a lot of things have been addressed, there are some minor questions about scheduling of the pathways. A lot has been taken out and most of the common areas, which involved long discussions, has been changed which is the developer's option. It is a shame that they were not able to refer to those changes. There is a lot of crossing of the creek along Common Drive, she assumed NRCS has addressed how the creek will be crossed. There were a lot of questions about the slopes on Lots 49 through 56 and she assumed NRCS has addressed those as well. Otherwise it looked really good.

Chairman Evans stated one more meeting, within a week, should be scheduled. Greg Martinsen and his people have had a long time to wait on this. Would it be possible to schedule a morning meeting a week from today?

Colleen Dowdall stated it could also be dealt with in Planning Status, if the Commissioner had the week to review and David Loomis/OPG was there, Planning Status is at 9:00 a.m. next Tuesday.

Commissioner Kennedy stated the promise had been made for public involvement and was not sure everyone had been contacted. If that was the case and no one out there has seen the mitigation, it would seem like there needs to be more done than just to say the Commissioners are in a decision making process. Time should be given to these people to review the plan.

Chairman Evans stated there was a hearing on this matter and the hearing had been closed. She asked Colleen Dowdall what the legal requirements were?

Colleen Dowdall stated that the public was informed back then that the public hearing was closed. They expressed a desire to watch and hear the decision made as to whether the mitigation was adequate, what the Board's determination was. There is no additional requirement for public comment and if additional comment is taken it leads to the position of whether the entire public has been allowed to comment or only those who have been supplied with the information by someone other than County government. It opens a great deal of issues.

Commissioner Kennedy asked what the purpose was of advising the public of these actions?

Colleen Dowdall stated that after the public hearing was closed there was much debate and the public got to watch the Commissioners engage in that debate. They watched as the Board imposed conditions which were very specific and at her recommendation those conditions were made more general so there was an additional opportunity to determine whether what OPG was asking for was sound. When those very general conditions were imposed the public questioned if the Board would, in private, do something more specific. The Commissioners stated the public would be informed when they considered the decision. They were not told there would be public comment and the public hearing was closed, but there would be an opportunity for the public to watch the deliberations to completion.

Commissioner Hart stated she remembered it related to mitigation, because that was the big issue.

Colleen Dowdall stated the subdivision had been approved with the conditions of mitigation.

Commissioner Hart stated the mitigations were as important as the conditions. She thought the public was told they had a right to be considered in the mitigation.

Colleen Dowdall stated if that was to be done, the public hearing would have to be reopened, re-notice in the paper, and give everyone in Missoula County an opportunity to address this issue. That has not been done with mitigation in the past. The most notable case was Maloney Ranch where the public heard the mitigation but were not allowed to testify. The applicant made his offer, the Commissioners debated it and voted on it.

Cindy Klette stated that in terms of OPG's approach to involving the public in this particular phase of the final approval, they did not treat it as they would have treated an amendment to a Comp Plan or anything else that would be heard. They didn't attempt to prepare copies and assure their distribution among the neighbors or solicit comment. They did make sure there was a head's up out there that this meeting was occurring and that the public was aware of that. Instructions were left with David to make sure this occurred, names of residents were received from Greg Martinsen. She was not certain what the contact was between OPG staff and the neighborhood. As of Friday of last week, she was assured by David Loomis that the word was out that the meeting was occurring. There was not an attempt on OPG's part to solicit any review or comment.

Commissioner Hart stated that the Board has received a complete proposal about the developers mitigation plan and the public has been allowed to hear the discussion, but the decision will be an administrative one.

Colleen Dowdall stated another way to look at it was that every time the Board signs a final plat, it is being signed assuming all the conditions have been met. That check usually occurs through all the various agencies that sign the plat and the plat goes to OPG, who does not have a legal obligation to sign the plat but they do have the obligation to review it and determine whether all of the conditions the Board imposed have been met. When it comes to mitigation,

that typically is reserved for Board approval and not OPG's review and approval. There is a separate meeting to determine whether the conditions imposed meets the Board's satisfaction. This is a preliminary to final plat approval.

Chairman Evans asked to check if a meeting for next Tuesday was possible. She appreciated the public's participation. It was confirmed that the meeting would be Tuesday, September 1, 1998, at 9:00 a.m., at the regular Planning Status meeting, the Commissioners will conclude this matter.

One of the public attending asked if they could attend this meeting but would have no input.

Colleen Dowdall stated that was correct, the public hearing was closed.

Commissioner Kennedy stated his concern was when the mitigation condition was written, it was in general terms and was the obligation of the developer to come back with the mitigation plans. It seems odd to him that now when the conditions have been refined the public is excluded from participation. The mitigation gets negotiated without public comment between the Commissioners and the developers.

Chairman Evans stated her concern is that there are laws that give the developers and the Commissioners timeline they need to follow. If those timelines are not followed, a subdivision request could go forever and never get concluded. She did not think the law provided for that.

Colleen Dowdall stated it even goes beyond that, the imposition of the condition as written reflects the public comment. It is not required for public comment under the regulations or state law, but watching the Commissioners in action, they listen to the public comment and incorporate them into the conditions. The public comment includes not just the general public but also public agencies and others who comment through the agency review process. Once the developer brings in his mitigation proposal, it is the discretion of the Commissioners to determine whether the proposal has met the concerns of the agencies, OPG, public comment and their concerns. This brings the process full circle, the public has expressed their concerns in many forums and now the Commissioner determine whether this meets those concerns previously expressed.

Commissioner Kennedy agreed with Colleen Dowdall and stated he would go back and review all the testimony that gave rise to the Commissioners imposing the condition of mitigation and use that as a basis for him making a judgment on whether or not the mitigation meets those requirements.

Colleen Dowdall stated Commissioner Kennedy should also look at the agency review.

Vicki Voss asked if she could get a clean set of conditions from the mitigation as they were going to be approved.

Chairman Evans stated Greg Martinsen's document addressed all the conditions.

Commissioner Kennedy stated the Board had written a letter after the original meeting which listed the conditions as approved which was also a part of Greg Martinsen's packet presented today.

Chairman Evans stated the Commissioners would meet next Tuesday at 9:00 a.m. to complete this matter. The Commissioners were then in recess.

WEDNESDAY, AUGUST 26, 1998

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

Audit List -- Commissioners Hart and Kennedy signed the Audit List, dated August 25, 1998, pages 2-30, with a grand total of \$206,251.36. The Audit List was returned to the Accounting Department.

At a departmental meeting with the Office of Planning and Grants, the Commissioners approved and Chairman Evans signed a permit for David Stewart to replace an existing dock on Lindbergh Lake, on property described as Lot 5A of the Diamond L Bar Lakeshore Tracts, per the recommendation of OPG staff. They also approved and Chairman Evans signed a belated permit for Larry Ginnaty to install a dock on Seeley Lake, on property described as the East 1/2 of Lot 21 of Seeley Lake Shore Sites, per the recommendation of OPG staff. The dock was installed in early summer, without a permit.

PUBLIC MEETING - August 26, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, Deputy County Attorney Colleen Dowdall and Clerk and Recorder/Treasurer Vickie Zeier.

Public Comment

None

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$206,251.36. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Request for Annexation into Missoula Rural Fire District (Balsam Root Area West of Lolo)

A petition has been received by the Clerk & Recorder's Office to annex numerous parcels 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 areas to be annexed and a majority of tax-paying freeholders within the areas described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The areas to be annexed are described as follows:

Tract 10-A-2-A and Tract 10-A1-B of Certificate of Survey No. 4524; Tract 5 and Tract 6-B of Certificate of Survey No. 2239; Tract 8-A and Tract 9-A of Certificate of Survey No. 2185; Tract 7-A-2 of Certificate of Survey No. 4329; Tract 6-A-1 and Tract 6-A-2 of Certificate of Survey No. 4654; all located in Section 4, Township 11 North, Range 20 West. Tract 1, 2 and 3 of Certificate of Survey No. 4493; Tract 16C of Certificate of Survey No. 2063; Tract 3 of Certificate of Survey No. 1806; Tract 1, 2 and 3 of Certificate of Survey No. 2257; all located in Section 5, Township 11 North, Range 20 West. Tract 8-B of Certificate of Survey No. 2239 located in Section 33, Township 12 North, Range 20 West. (See petition on file in the Clerk & Recording Office for complete legal descriptions, maps and landowner signatures.)

Commissioner Hart stated there was an approval letter from the Board of Trustee and Bill Lindstrom regarding this annexation.

Chairman Evans stated it had been approved by the Missoula Rural Fire District and they would accept this land into their fire district.

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

Commissioner Kennedy moved that the Board of County Commissioners support the request to annex the described property into the Missoula Rural Fire District. Commissioner Hart seconded the motion.

Commissioner Kennedy stated that being annexed into a fire district doesn't necessarily mean there is an improvement in the safety for the particular area being annexed, it doesn't improve response time. Many times, people are led to believe that just because they are in a fire district, there is some level of protection that is not there in these types of rural locations. It is important that people who live in the area know that the risk is still present, whether or not the annexation is approved. He then called for the question.

Chairman Evans stated that the other side of this issue is that once an area is in the fire district, they at least have the option of the fire department responding to an emergency.

The motion carried on a vote of 3-0.

Family Transfer - Wilson

Colleen Dowdall, Deputy County Attorney, gave the staff report.

This is a consideration of a request to create an additional parcel of land in the NE 1/2, Section 30, Township 14 North, Range 20 West, P.M.M., known as Tract 12 B of COS 4659.

Jeff Wilson has submitted a request to create a one acre parcel and a remainder using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 24.78 acres and is located off Moccasin Lane. It is the remainder of a 35.78 acre parcel that was previously divided by Mr. Wilson using the family transfer exemption. That exemption created an 11 acre parcel transferred to his wife. The applicant proposes transferring one acre to his 16 month old son for an educational trust. However, subsequent correspondence from the applicant's attorney indicates that the parcel would be transferred to Shoni Wilson, the mother, as custodian of the minor child, under the Montana Uniform Gifts to Minors Act.

The history of the parcel is as follows. The parcel was created by use of exemptions to the Montana Subdivision and Platting Act in 1978. The applicant acquired the property in 1994 and has divided it once by the use of the Family Transfer Exemption. According to the most recent information, the family transfer parcel is currently held by Shoni Card, the applicant's wife.

The history of the applicants is the previous family transfer of the parent parcel in 1995.

Chairman Evans stated she was not clear whether Mr. Wilson has already given this person a parcel and was now giving them another parcel for the child.

Colleen Dowdall stated, in essence, this would be a transfer to the child. She said this was typically not done under the Montana Uniform Gifts to Minors Act.

Commissioner Hart asked where this property was located.

Colleen Dowdall stated it was off of Highway 93, west of Deschamps Lane.

Jeff Wilson was present and came forward to answer questions. He stated he wanted to put together some money for his son's education if he so chooses.

Commissioner Hart stated this was the second use of the Family Transfer Exemption for Mr. Wilson.

Jeff Wilson stated he gave property to his wife for her horses. They have done no development on that land. The land given to his son will possibly be rented out and the money will be put into the trust for his son.

Chairman Evans asked if anyone explained why Mr. Wilson was here.

Colleen Dowdall stated Kathy Smith has been working with Mr. Wilson extensively.

Commissioner Hart asked Mr. Wilson if the one acre transfer would be designated for agriculture?

Colleen Dowdall stated on Number 8 of the application, his response was, "Agriculture with tenant - 1 acre for son education trust. Balance of property continued watering of livestock and hay when it rains."

Jeff Wilson stated the land is used for cows and horses. The request is for one acre to be set aside, the rent will all go into the trust.

Chairman Evans asked if there would be trust documents.

Jeff Wilson stated there would be and Wally Condgon was drafting the necessary paperwork.

Colleen Dowdall stated the remainder would be about 23 acres.

Commissioner Kennedy stated that when Family Transfers come before the Board, they have discussion as to whether it is really a trust or a division, which is the reason for some of the questions which the law allows them to ask. His question was that Mr. Wilson has roughly a 25 acre parcel and it will be cut to a roughly 24 acre remainder with 1 acre for his son to generate income. Based on his testimony, he is going to build a house on it then rent the house out. Does he have an intent of selling the house?

Chairman Evans stated that is not what Mr. Wilson said.

Jeff Wilson stated he wanted the one acre isolated with the rest for his livestock.

Chairman Evans asked if Mr. Wilson was wanting to rent the use of this one acre parcel or sell it?

Jeff Wilson stated it would be rented.

Chairman Evans stated when she asked Mr. Wilson if he knew why he was here, the reason for the question was that the purpose of this process was to allow people to give land to their children, or their family members. The Commissioners are required by law to determine whether or not they are using that process to evade the Subdivision Act. If they are using it to evade subdividing the land for sale then generally the Commissioner do not approve the transfer. That is why the Board is asking such invasive questions.

Jeff Wilson stated that however the land was used, the benefit would go to his son Paul.

Chairman Evans asked if he was putting the land in trust or the money from the sale in trust or the money from the rental in trust?

Jeff Wilson stated that whatever happened to the land the money would go to the trust for his son. He understood he was required to make improvements to the land if he choose to sell it.

Chairman Evans asked Wally Condgon if he could answer some of the questions raised.

Wally Condgon stated he did not know all the details. The reason it was suggested to use the Montana Uniform Gifts to Minors Act instead of a trust, is that the gifts act statute is pretty specific about the benefit of the property. The proceeds have to go to the minor child.

Jeff Wilson stated he would like to give an acre of ground that he can use, a rental, a lease option, or sell it outright, the proceeds go to Paul, to the trust for his education. His grandfather did the same for him allowing him to go to Purdue. He would like to do the same for his son.

Chairman Evans asked if this was the standard Certificate of Survey transfer?

Colleen Dowdall stated it is still a family transfer. Typically, the County requires it be done by trust so there is insurance that the property is actually going to the child. The UGMA is an alternative way to accomplish this but it is not relevant except to determine if this evades subdivision review.

Commissioner Kennedy stated Mr. Wilson was witnessing the difficulty with this law which he did not believe in, he felt it was not a good law. This is the second subdivision of this property and it really is a subdivision. What happens is these subdivision become uncontrolled creating a disadvantage for the people who own the land and the future owners. He asked Mr. Wilson why he had not pursued subdivision for this property.

Jeff Wilson stated he needed the land for his cows. There was a renter out there who watches the land.

Commissioner Kennedy stated Mr. Wilson could carve out a single acre by going through the subdivision process. He could get to the same result by using the subdivision process. He asked why he pursued the family transfer rather than subdivision because he felt the subdivision review was for the protection of the property owners. It was a better process. Was there a reason why he would not want to go through the subdivision process for this one acre.

Jeff Wilson stated that this was a good idea to give something to his child. He hoped his son would understand why the money was being deposited and watch it grow. When he son reached 18 or 21 he could use the money at his discretion. He hoped it would be used for college.

Colleen Dowdall stated Commissioner Kennedy was not expressing displeasure with how Mr. Wilson intended to use the property for his son, there are different way to create a parcel and this one is an exemption from subdivision review, as opposed to going through the subdivision review. That the was distinction Commissioner Kennedy was asking about.

Jeff Wilson stated he needed the acreage for his cows.

Chairman Evans stated Mr. Wilson did not need to explain further. Commissioner Hart was ready to make a motion.

Commissioner Hart moved that the Board of County Commissioners approve the request to create a family transfer for the 16 month old son of Jeff Wilson who is proposing to create one parcel and a remainder, the parcel to be one acre in size, and to use the Montana Uniform Gifts to Minors Act. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated Mr. Wilson would receive a letter from the Commissioners approving the request.

Commissioner Hart stated this approval did not assure that any County services would be forthcoming because of this transfer. He would still need to get a septic permit, may not have a road there, etc.

Continuation of Hearing and Decision on Rolling Hills Subdivision (28 lots - Preliminary Plat) off Roller Coaster Road

Chairman Evans stated the public hearing on this matter was still open.

Dave Loomis, OPG, gave the staff report.

This is a continued hearing. The Planning Board had two hearings, the recommendations from the second hearing are the basis of the report. Some of the key issues at the last hearing included the issue of a through road versus cul-de-sacs, along with private or public ownership of the roads. Secondly, the impact of a through road on the woody draw riparian vegetation and the run off from the grading into Lavalley Creek irrigation ditch. Another issue was fire protection, the fire district required certain conditions about wells and storage tanks if the cul-de-sacs were settled on as a method to reduce impacts on other issues like the woody draws. Finally, the impact of this subdivision on Roller Coaster Road, an off site access road which impacts are not solely attributable to this particular subdivision. The Planning Staff has wrestled with the recommendations on this as can be witnessed by the minutes from the Planning Board hearings, about the best method. The Planning Staff recommends the cul-de-sacs, not because cul-de-sacs are liked and not because that is County policy, because it is not, but because there were significant unavoidable and difficult to mitigate impacts from the excessive grading of the through road on the site. The question is if the through road is chosen, can it be mitigated to the extent feasible to mitigate those impacts on both the riparian vegetation and the potential to Lavalley Creek and the irrigation ditch.

Dick Ainsworth, Professional Consultants Inc., developer's representative, was present, as was the applicant, Drake Lemm. As David Loomis said, this has been wrestled with at some length. Following the last hearing, they went back to the drawing board and tried to listen to what was heard at the first hearing and tried to put together a plan that met or resolved some of the concerns. The plan presented today is a pieced together plan that is a combination of the original plan with through roads and the revised plan reviewed on August 12th which had two long cul-de-sacs. The plan presented now goes back to the concept of a through road, most of the testimony indicated a through road was preferred as opposed to the long cul-de-sacs. The big concern of Planning Staff with through roads was crossing those other drainages and the impacts on the riparian area. In the interim he contacted Pat O'Herron for his expertise on riparian area and asked him to review the area and the plans. He presented a letter from Pat who felt these were riparian areas, he said they were functioning marginally and have been abused by overgrazing. Crossing them with roads would cause some impact, however he felt with mitigation, the drainages could be crossed with the roads and in the long term have it be a plus with regards to the impacts on the riparian areas, they could be improved long term over what they are now. With that in mind, they went back to the through road plan, which was the preference of Missoula Rural Fire. With a through road the underground water storage tanks would not be needed which were of some contention at the last meeting. By putting in through roads, they have picked up five lots in the middle of the development which were originally proposed as common area. Lots 1, 2 and 3 have been eliminated which were the ones closest to the firing range and the airport, also a topic of discussion at the last meeting. The owner has no specific plans for the property labeled "Not part of the subdivision," which is zoned light industrial. The net result of the plan presented today is that they are back to the same number of lots originally proposed. This plan will have less traffic onto Roller Coaster Road, a gravel road. The roads in the development will be paved and the developer would like them to be county roads. The people in this subdivision would be more apt to drive through the development and go to Roller Coaster Road on the easterly connecting road, Tinara Drive, rather than going up Rolling Hills Way and drive further on Roller Coaster Road. This plan with the through road has always been thought to have less impact on Roller Coaster Road, thereby creating less dust. The Health Department felt this way also. There are several gains with this particular proposal. Commissioner Kennedy had voiced concern about the 65 decibel level, which has been improved with this revision. The situation with the training facility has also been improved. This also improves the air quality some, it doesn't eliminate the problems however. The soils in general and potential slumping are addressed with an extensive erosion control plan. The parcels would be limited as to lawns which would require watering. The issue with the Comprehensive Plan recommending less vehicular trips cannot be done unless you build in downtown Missoula. There are some things that can be done to reduce trips, but any subdivision outside the immediate urban area will have vehicle trips for school, work and shopping. There are some services near this development and they will be increasing. In summary this plan is the best of the previous two presented and addresses the majority of concerns raised at the meeting two weeks ago. He and Mr. Lemm are available to answer questions.

Chairman Evans asked Dick Ainsworth to address the issue of Trails End Road and the water supply.

Dick Ainsworth stated the wiring has been repaired and there is water in the tank.

Chairman Evans asked if there was a fire up there, Rural Fire would be able to access water to fight the fire?

Dick Ainsworth stated that was correct, there was power and water and was functional. And it has been turned over to the Homeowners Association.

Chairman Evans stated the public hearing was still open and asked for comments.

Susan Doores, who owns the property where Tinara Drive meets Roller Coaster Road, stated her heavy equipment repair business sits where these two roads would meet. She wanted to know if Tinara Drive would be a County road, as they would need access permits if it was. If it is not to be a County road, they would need to know who to work with regarding access. She works in the office at that location which is within the Airport Influence Area, but had no special building requirements to protect from noise. If the windows are open in the office, she is unable to talk on the phone when flights go over, it is very loud. That needs to be known about the area.

Wally Condgon stated he was at the meeting two weeks ago on behalf of the Mastels. The comments made were based on the fact that the OPG proposals in respect to the roadway, the drainage, the woody draws, removal of the internal road and creation of open space were what was thought would be before the Board for approval. The proposal that is now in front of the Commissioners is really the proposal first looked at a month and a half ago. When they met with Dick and came up with the list of things they thought would help mitigate, in terms of setbacks, etc., that design was an integral part of their approval. The Mastels have asked that the Commissioners hold the hearing open for a week so they can go through this proposal in it's current form so they have time to review it. The concerns about the through roads and open space are significantly changed by this proposal. The Mastels have also had a death in the family and that has been their main priority, not this subdivision. The extension would give the Mastels some time to contemplate this new proposal. If the Commissioners wish to proceed today, the Mastels could present a list of concerns but it would not be comprehensive.

Commissioner Hart stated her understanding was that the OPG and Planning Board proposal was before the Board and this new plan is before the Board. If he wants to make a comments, he could comment on all of it.

Wally Condgon stated the comments from the other proposal would stand. There were some concerns about the open space, a larger area was preferred. A significant concern, where they differed from the fire department, was water storage at the site, which was a benefit to everyone in the neighborhood. This proposal gives two ways out, but the other proposal benefited not only the subdivision but everyone in the neighborhood. The Mastels would like the chance to consider this proposal and weigh it against the others.

Drake Lemm stated that the original proposal was very similar to the one presented today and the Mastels had time to review that one. The concerns being raised today were not voiced at that time.

Geanene Mastel stated that the concerns raised by the Mastels were voiced by Mark Zimmerman.

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

Chairman Evans asked about the Tinara Lane access, who owns it and who the Doores would deal with regarding access?

Dick Ainsworth stated the ground actually belongs to the people who own the parcels, it is an easement to cross reserved when the parcels were created. The road will be built within an easement. If it is a County road they would need an approach permit, if it's a private road, as they own the ground it crosses, they could access it wherever they want.

Colleen Dowdall stated that depending upon the language of the easement, they would be able to access the easement in any way that did not interfere with the use of the easement by the person who was granted the easement.

Commissioner Hart stated this was one of the toughest subdivision that the Board has worked on. There are some trade-offs that will have to be made if this subdivision is approved. The loop road has increased the safety for the residents with respect to the fire district and County sheriff. The lots nearest to the training facility have been removed, that is a strong safety issue. What has been lost is the protection of the riparian areas. She has read Pat O'Herron's letter and he puts a hard stewardship on the subdivision with respect to crossing the gullies with the road, she assumed OPG would enforce that. Pat O'Herron also said that grazing was precluded. She would propose that these be private roads, built to County standards. These roads serve just this subdivision, a mostly private area. She also has a concern about drainage, it should stay on the subdivision.

Commissioner Kennedy stated that the review of this subdivision included the six criteria used in the findings and conclusions. He focused on three areas. The first was the effect on local services having to do with public versus private roads. There is continuing pressure to add to the County road system which is virtually bankrupt. Just last week the Board decided to place on the November ballot a measure to add revenue for that purpose. It is hard for him to add to the problem when more taxes are needed. The second criterion is the effect on the environment. This piece of land has been abused from an environmental standpoint. He wondered if the abuse could be halted somewhat by this subdivision, but that would not be known unless and until the subdivision was built. He was also concerned about the loss of open space because of the through roads. He realized there was a big compromise made, on one had you have public safety issues and on the other you have environmental issues. It seems that a choice of one over the other is necessary. This caused him some concerns. He felt there was land in Missoula County that takes an extraordinary amount of work, not the norm, to allow them to be developed. If this land is going to be developed, the work hasn't been put in adequately to satisfy or mitigate those problems, they exist no matter what is decided. He did not want to

see safety compromised or the environment harmed. If the land can be developed there should be a way to address both those concerns. It doesn't come close to protecting the environment if the through road is chosen. It doesn't come close to protecting local services and public health if there is no through road. There are serious problems with meeting the subdivision criteria no matter which alternative is chosen. The third criterion is public health which gave him the greatest concern. There is a memo from the Health Department which talks about the air quality issue with respect to particulate matter generated on Roller Coaster Road. The proposal is not to pave it, which means there will be huge dust clouds created until the road is paved sometime in the future. If this is approved without mitigation for Roller Coaster Road, there will be complaints about the dust clouds in rural Missoula County. At a minimum, the Board has to impose a mitigation requirement that is recommended in the Health Department document to mitigate on a pound for pound basis that problem. One of the means to mitigate the problem is to pave Roller Coaster Road. It is up to the developer to figure out some way to mitigate this problem. Another public health issue is vehicle miles traveled, in the Transportation Plan of 1996 the provision was to reduce by 5% in 5 years and 10% in 10 years vehicle miles traveled. This is an air quality issue, there needs to be a way to mitigate this problem for this subdivision and all subdivision. He felt that if this subdivision was to go forward, there needs to be a condition that requires mitigation in these three areas, air quality, effect on local services and environment. He cannot support this subdivision going to approval without those kinds of mitigation conditions attached.

Commissioner Hart stated she was using the Conditions as presented on August 12th. She will support this proposal but felt the conditions were directed toward the previous proposal. She was supporting the through roads. She asked Bill Lindstrom if there was any request for fire hose money.

Bill Lindstrom stated there was not a request because of the water storage tanks, but with the change to through roads that would be forthcoming.

Chairman Evans stated he would be asking for \$100 per lot, was that correct?

Bill Lindstrom stated that was correct.

Commissioner Hart hoped she had been clear and fair in saying there were not a lot of choices here. She felt the natural area was being sacrificed. She stated she would go through each condition and add the \$100 to the fire district and the private roads maintained by the Homeowners Association. She also wanted a condition that the drainage remain on the subdivision. She asked if the public hearing had been closed and it was answered that it had been. She appreciated the Mastels and regretted that the Board could not protect their water, she felt that was a fundamental thing that was failing to be done. She hoped they would be able to get some kind of a water control district. She felt the development has been moved further back from the Mastels property. She also felt the land should not be grazed, there will be better care of the land with the subdivision.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Article 3-2 (5) of the Missoula County Subdivision Regulations to not provide sidewalk or pedestrian walkways within the subdivision. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Article 3-2 (1) (I) of the Missoula County Subdivision Regulations to allow private roads that serve three or more lots to not meet the easement width or pavement standard.

Chairman Evans asked for clarification on this variance.

Dave Loomis stated that on the left side of the development there is a long private road which will be narrower than County standard.

Commissioner Kennedy asked Bill Lindstrom to respond to this variance.

Bill Lindstrom stated that the fire district could be satisfied with 16 feet of pavement if there are shoulders that would support equipment.

There was discussion between Bill Lindstrom, Commissioner Kennedy, Commissioner Hart, Colleen Dowdall, Dave Loomis and Dick Ainsworth as to whether or not this variance was needed. After checking the Subdivision Regulations it was determined that the variance was needed.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve Rolling Hills Preliminary Plat Subdivision based on the findings of fact, conditions of law, and the conditions that follow, as recommended by staff.

Rolling Hills Subdivision Conditions of Approval:

1. The applicant shall perform dust abatement on the roads through construction of the roads and subdivision grading. The dust abatement method shall be approved by the Health Department prior to final plat record set approval.
2. The applicant shall build Rolling Hills Drive to the intersection of Rolling Hills Court, from the intersection of Roller Coaster Road, and Tinara Court from the intersection of Roller Coaster Road to the driveway serving Lots 3, 4 and 5 to 26 feet in paved surface width, including a designated 5 foot wide on road pedestrian pathway/bicycle lane on one side. The applicant shall build the remaining portion of the internal roads to a county standard width of 24 feet, with no designated pedestrian pathway/bicycle lane. Road plans shall be approved by the County Surveyor prior to final plat record set signoff.

3. The applicant shall provide names for the driveways that provide access to 3 or more lots. Each lot owner shall be responsible for paving the driveway to the homesite, to be approved by OPG at the time of building permit issuance. Driveway (road) names shall be approved by the County Surveyor and Fire District prior to final plat record set approval.
4. 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 assent of the lot owner to waive the right to protest a future RSID/SID for any improvement, including dust abatement, to the portion of Roller Coaster Road from Rolling Hills Drive to Highway 10, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition.”

In addition,

“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 and sewer systems based on benefit, and may be used in lieu of their signatures on an RSID/SID petition. 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.”
5. The applicant shall petition for the subdivision to be included within the Missoula Urban Transportation District, evidence of such petition to be submitted prior to final plat record set approval.
6. The applicant shall amend the subdivision covenants to include language such as, “Due to the sensitive nature of the common areas, including the natural drainage ways, the erosive soils and the riparian vegetation, recreation uses and trails through the common areas shall be limited to low impact trails only, with narrow footpaths following the contours and sidehill along the slopes, avoiding impacts of trails on steep slopes.
- The subdivision covenants shall be amended to state that the Homeowners Association shall maintain the natural drainages and the common areas in their natural state, with no filling or grading except as approved for the recreational trail connecting the two portions of the subdivision.
7. The developer shall contribute \$100.00 per lot to the large diameter hose fund of the Missoula Rural Fire Department prior to plat filing.
8. The applicant shall petition for annexation into the Missoula Rural Fire District.
9. The applicant shall submit a vegetation management retention plan that outlines how the maximum amount of natural vegetation can be preserved for the entire subdivision. The revegetation plan for all disturbed slopes shall include a noxious weed control plan for the common area, the road easements, and the lot areas, that either prohibits or severely limits the use of chemicals, to be approved by the Health Department and Weed Control Board, and incorporated into the covenants prior to final plat record set approval. Plans shall be approved by the Missoula Weed Control Board and OPG prior to final plat record set approval.
10. The applicant shall mitigate the impact that the filling in of the woody draws will have on the natural drainage system and riparian resources by retaining the natural drainage and riparian resource areas to their natural state, to the maximum extent possible. Every effort will be made in preventing siltation of the Grass Valley French Ditch and impacting adjacent properties. Restoration plans shall be approved by OPG prior to final plat record set approval, and implemented within one year of the final plat approval.
11. The applicant shall submit a final drainage plan and erosion control plan using best management practices. The erosion control plan shall address all areas that may experience erosion due to all cuts, fills and road, driveway, and utility improvements with emphasis placed on not allowing siltation and debris from entering the irrigation ditch. The development may not increase by volume or intensity the water that comes onto the land as a result of the development and it may not decrease the quality of the water when it leaves the development. The Missoula County Subdivision Regulations state all surface runoff in addition to that normally present before subdivision shall be retained on site or released from the site in a manner which will not substantially increase the peak runoff normally present before subdivision. Plans shall be approved by the County Surveyor and OPG prior to final plat record set approval.
12. The applicant shall place a building envelope on Lots 5, 6, 12, 13, 14 and 17 through 23. To the extent permitted by other constraints such as drainfield and replacement area locations, steep slopes, etc., the envelopes shall be back from the slope break and steep slopes, and be located toward the access road or driveways.
13. The applicant shall clearly designate on the face of the final plat Lots 1 through 23 only the areas with slopes greater than 25% as unbuildable on the face of the final plat, to be approved by OPG prior to final plat record set approval.
14. The applicant shall amend the subdivision covenants to include the following items regarding predator intrusion and air particulates. The covenants shall be approved by OPG prior to final plat record set approval, filing with the County Clerk and Recorder.
 - A. Pet food shall be stored indoors.
 - B. All portable barbecues shall be cleaned regularly and stored indoors when not in use.
 - C. All garden fencing shall be at least eight feet high and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement.
 - D. Apiaries should be avoided. Prior to their placement on a lot, the Department of Fish, Wildlife and Parks should be contacted to discuss how best to avoid wildlife conflicts.

- E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged.
 - F. Fireplaces shall be restricted. Wood burning stoves shall be restricted to pellet stoves with emissions under 1.0 grams per hour to reduce air particulates.
 - G. The brochure, "Living with Wildlife," shall be distributed to all lot owners.
 - H. No yard lights visible to the south.
 - I. Use only non-reflective glass on south facing walls.
 - J. All structures to be earth-tone colors.
 - K. All pets confined to a fenced yard when not in the house.
15. The applicant shall mitigate the impact that placing a residential subdivision near the Missoula County Sheriff's Department Field Training Facility has on both the residents of the subdivision and the County's Training Facility by contributing 50% of the cost of fencing that portion of the Facility that is common to the subdivision ownership, and the installation of signage on the site that provides notification of the Missoula County Sheriff's Department Field Training Facility. The County Sheriff's Office shall determine the contribution, which will be held in an identified account until such time as the County provides their share of the cost and the fence is constructed. The County Sheriff's Office shall approve the signage and location prior to final plat record set approval.

Fencing - Grass Valley French Irrigation Ditch:

16. The applicant shall amend the subdivision covenants to require the subdivision homeowner's association to maintain the respective ownership portion of the existing fence on the subdivision's property that buffers the subdivision from the Grass Valley French Irrigation Ditch, if requested by the ditch company. Language shall be approved by OPG prior to final plat record set approval.
17. The Rolling Hills Subdivision covenants shall be amended to include the following language:
- a. The Rolling Hills common area will remain as permanent open space with no further subdivision and no motorized vehicles allowed.
 - b. Agricultural practices in adjacent and nearby agricultural areas may have impacts on this subdivision such as noise, lights, smells, etc. Language shall be approved by OPG prior to final plat record set approval.
18. All the roads in the subdivision and leading to the subdivision, from Roller Coaster Road, be private roads and maintained by the Homeowners Association.

Commissioner Kennedy offered an amendment for an additional condition which would require mitigation of the air quality issue, pound for pound, of particulate matters generated as a result of the traffic in the subdivision.

Commissioner Hart stated she would not do more than the conditions as stated above.

Commissioner Kennedy stated he would be unable to second the motion.

Chairman Evans seconded the motion. She stated that she supported most of the inclusions of Commissioner Hart, she did not support making these private roads, not because the concept does not have some merit, but because it is not the policy of the Board of County Commissioners, and she did not believe in changing the policy in the middle of the process. She did support this motion however. She was pleased that Lots 1 through 3 have been deleted and that there is a through road. That provides more safety for the residents. She was grateful to Pat O'Herron for his riparian recommendations and would be pleased that whatever plan proposed that it take into account the kinds of things he has said.

Commissioner Hart stated that Mark Zimmerman had done an excellent job in his comments about this subdivision.

Commissioner Kennedy stated he listened to the testimony carefully. He was disappointed that the air quality issue has been taken lightly, it has created an enormous problem in the valley for years. He is disappointed that the development interest does not recognize that and offer to mitigate the problem. He is disappointed in the Commission that they have decided to look the other way with respect to air quality issues in Missoula County when it has been demonstrated to be so serious. He is also disappointed because the regulations support it and believed the findings of fact also support that mitigation requirement. As a result of this decision, if it passes, a dust cloud on Roller Coaster Road can be expected for a long time, an SID will not be forthcoming. The adjacent property owners are not inclined to support such an SID. This subdivision will create up to 750,000 more miles driven every year to generate 92% more pollution than necessary. This is a severe disappointment and severe blow to the work that has been done in the Missoula valley.

Chairman Evans stated she has lived in Missoula County, in Missoula, for over 50 years. The air quality is better now than she remembered as a child, the County has gone a long way toward improving the air quality. There are some folks who would like to make it difficult if not impossible for residents to drive their cars, which she opposed. She did not intend to ride her bike in the winter. She did not expect everyone who builds a home to ride a bicycle. There are things that can be done to improve the air quality, and that is constantly being worked at. The riparian regulations are one thing that have been done to improve the environment. There is land sensitive zoning in Miller Creek. It isn't as though this Commission doesn't care about the environment, because they do. There is a different perspective on it.

Chairman Evans then called for the question on Rolling Hills Subdivision. The motion carried on a vote of 2-1 (Commissioner Kennedy opposed).

Request for Variance (Terry Hanson) Zoning District #31 - Carlton Creek Road - (Planning & Zoning Commission)

Chairman Evans stated the Commissioners would adjourn as the Board of County Commissioners and reconvene as the Planning & Zoning Commission, which includes the Clerk & Recorder/Treasurer and the County Surveyor, who is out of town, and the three County Commissioners. They are now convened as the Planning & Zoning Commission. The issue before the Commission is a variance by Terry Hanson in Zoning District 31.

Brian Maiorano, Office of Planning and Grants, gave the staff report.

Terry Hanson, 20390 East Carlton Creek Road, is requesting three variances. The property is in Zoning District #31, which is a citizen initiated zone, created by petition to the Board of County Commissioners in 1971. The basics of that zone was to allow only one single family residence on a minimum lot size of 4.5 acres. It was also meant to prohibit commercial use.

The three requests for variance are: 1) to vary from the minimum lot size requirement for a single family residence; 2) to allow a variance for the home occupation permit; and 3) to vary from more than one residence on the property. Mr. Hanson has been in violation of three standards of the zoning district for many years. He has created a 3.2 acre lot in a 4.5 acre minimum zone in 1987 through an agricultural exemption; operated a business since 1980 in a zone that does not allow commercial activity, and has rented at least two apartments since the early 1990's in a zone that allows only one single family residence per lot.

In 1987 Mr. Hanson split a 10 acre parcel into two parcels, one of 3.2 acres and the other of 6.8 acres. That was done through a COS process and put the 6.8 acres, which has no development, into an agricultural exemption. The 3.2 acre lot that was created did have the residence on it at the time, and a guest cabin, and several other accessory units. That was created under State law and was by State law not subject to zoning requirements.

Mr. Hanson is requesting the variance to use the 3.2 acres that he still owns as a residence. He had subsequently sold the 6.8 acre parcel, in part to obtain a septic easement on an adjacent property. The Planning Office recommends approval of the variance for the 3.2 acre lot size, as the original zoning petition was to limit the number of septic tanks in the area to protect ground water quality. If at some point in the future the 6.8 acre parcel is developed and look at the two cumulatively, there will be two houses on 10 acres which is less than the minimum density. There is also a guest cabin on the property that is not used for a permanent dwelling and is not rented. That unit is not being considered in calculating density.

The second request is to have a home occupation permit. In 1977, the Commissioners created a home occupation amendment to certain citizen initiated zones to allow two types of home occupations, standard and special exception, which requires explicit approval from the Commissioners. The special exception variance is being requested. Mr. Hanson's business, which consists of sewing vinyl covers for the front of automobiles for protections for bugs and rocks, etc., has been operating since 1980. It meets most of the conditions of the special exception, except for the size of shop. The regulations require the shop be smaller than the dwelling and on Mr. Hanson's property that is not the case, which is the variance being asked for. OPG recommends approval of the variance, with conditions, because the shop is relatively unobtrusive, well designed and fits in with the character of the neighborhood. OPG is also recommending approval of the home occupation permit itself.

Finally, Mr. Hanson is requesting a variance to have more than one residence on the 3.2 acre parcel. The zoning district was created to allow only one single family residence per 4.5 acres. Mr. Hanson has rented two apartments in the shop, one upstairs and one in the back, since the early 1990's. This was done on a septic system that was not approved by the Health Department and was in violation of zoning. The guest cabin on the property has not been rented, but is used by Mr. Hanson's father for occasional visits. OPG believes it is against public interest to have additional dwelling units on the property. Mr. Hanson, when purchasing the property, knew or should have known that only one single family residence was permitted on the property. The OPG recommendation is denial of the variance for additional dwelling units on the property.

Mr. Hanson has submitted the signatures of a number of his immediate neighbors stating they are not opposed to having the home occupation or the multi family use on the property. However, this was a citizen initiated zone created by the residents who live there and if multi family use is desired, the citizens should petition the Commissioners to change the zone.

C.J. Tornabene, representing Mr. Hanson, stated he has known and been Mr. Hanson's counsel for years. He bought this property in 1977 and went on to build the shop in 1986, based upon his belief that he was following the law. He got a zoning compliance permit from someone at the County (the original was presented). That permit, he understood, allowed him to go ahead and build a shop and have his business, that it was outside the floodzone, and he used the permit to obtain financing. In November of 1986, the Health Department said he could not do that and shut down his business, which cost him a fair amount of money. He thought the Health Department would find the permit in their files which they did not and keep the business shut down. In 1994, Mr. Hanson found the permit, based on that he felt he was back in compliance with the law. He put in the two apartments and began to rent them out. During that time Mr. Hanson did some other things that contribute to hardship. He has three children, two of which are his sister's children, that he has raised. He is putting one through college. Mr. Hanson is depending upon the money from these rentals to help his income so he can put the children through college. Mr. Hanson has been the children's anchor all these years, in addition to running his business and taking care of his home. When he found out he was not in compliance with the septic permit, he began working with the Health Department to get this cleared up. So far, it has been determined that he is not in the flood plain (a FEMA letter was presented), and the septic system has passed the ground water test. He is trying to comply with the law. Mr. Hanson put together a statement and spoke with his neighbors, 47 of 55 neighbors agreed with his being allowed to continue doing what he has been doing all these years, to have his business and two rentals (the signed statement from the neighbors was presented). Mr. Hanson does not have any problems with the position of the Planning Board on the first two variances and is agreeable to the conditions asked for. However, the third variance is important to him as a source of income and he currently has renters. To make them move will create a hardship to them and Mr. Hanson, and do not present a problem to his neighbors as a general rule. It appears that Mr. Hanson does have a hardship, he needs the income. He asked that all three of the variances be approved.

Chairman Evans stated the Zoning Compliance Permit was not dated as to the year, but did have Orin Olsgaard's signature, who has been with the County for a number of years. There is nothing on the permit that would allow rentals, and she wondered why Mr. Hanson took the permit as approval for rentals.

C.J. Tornabene stated that when the Health Department shut him down the first time, he closed the shop because he could not show that he was not in the floodplain. He understood that was the reason he was not allowed to continue with his business. In 1994, when he found this document, he figured he had proof that he was in compliance and therefore would be allowed to open his business. He did not realize there was more to it than this, and as his business was smaller, he converted some of the space to the two rentals.

Chairman Evans asked for public comment.

Tom Alexander stated his property adjoins Mr. Hanson's property. There is a high ground water problem in the area and in the past 18 months there have been four women in the area die of cancer, probably provoked by the environment. He did not have a problem with Mr. Hanson's home business but the way he went about doing all of this was wrong. He cannot accept the concentration of the number of people with the rentals on Mr. Hanson's property, rentals are not acceptable in the area. He felt this would affect the ground water situation. He felt the rentals were as wrong "as two left shoes."

John Mortensen, 4100 Leo Hanson Road, which is about 1 mile north of Mr. Hanson's property, stated he agreed with Mr. Alexander. The home business was not a problem, however the sewage was. If the Commission gives Mr. Hanson a variance for the rentals, then others in the area could do the same. This is a rural area and multi-family use is not in character with the area.

Steve Neilan, 3800 East Carlton Creek Road, about 1/4 mile from the Hanson property, stated he, as the others who have spoken today, does not have a problem with the home business but did have a problem with the multi-family units. People chose to live out there because of the low density of population. There are also health concerns with the sewage and high ground water. Mr. Hanson's business has not created any problems nor have the tenants, but it may set a precedent for others in the area.

Doug Kikkert, Environmental Health Specialist for Missoula City/County Health Department, stated the property in question was divided through an exemption from zoning review in 1987. Density for septic systems in this area is 1 per acre. He became involved with the property in 1986 during the review of the division exemption. On his site visit, it was clear there was a sewer system installed illegally to the barn. There has been numerous correspondence with the Board of Health and Mr. Hanson regarding this matter. The same building was hooked to the same system that the Health Department disconnected in 1986. Since the Health Department notice of violation in December 1997, Mr. Hanson has been ordered to remove the sewer system and discontinue use. There have been revisions of that order. Some of the environmental issues have been resolved since 1997, the floodplain has been designated and shown, and it has also passed ground water testing. Two days ago the Health Board issued an amended order of correction giving more time for Mr. Hanson to complete the process of approvals.

Commissioner Hart asked Doug Kikkert if he thought the State Health Department will lift the sanitary restrictions because there is more than one acre for three dwellings.

Doug Kikkert stated during the state review it was noted the guest house will have to be upgraded and will be considered a dwelling under the sanitation rule, then there would have to be a request for deviation for acreage. They also consider the surrounding property's use.

Mary Ellen Depee stated she lived across the street from Mr. Hanson. If he should be allowed to have these apartments, the Commissioners would have to grant a variance to the zoning, so somebody else could ask for a variance as well. She signed Terry's petition but the more she thought about it, she does not mind the business and does not mind the house on 3.2 acres, but she did not like the apartments. The ground water is so close to the surface and the extra apartments would make a difference.

Terry Hanson stated that when he originally bought this land in 1977, he really hadn't changed anything except he built the shop. When he built the shop in 1986, he used the paper from Mr. Olsgaard as to whether he was in the floodplain as he was obtaining a loan. He also stated at the time that he was going to have a business and that he was putting an apartment upstairs. That one apartment was known right from the start. If he had known he was in the floodplain and it was going to violate any zoning he never would have done it. It was built because of Mr. Olsgaard's sign off on the permit. He realized now that he is in violation and he is trying to correct the situation. He went around and asked his neighbors, they knew he was in violations, he explained his situation and was not hiding anything. He asked Brian Maiorano if he had 51% of the people with him, did that constitute a variance. He asked Tim Hall the same question and Tim stated that if 51% of the people agreed with him, he should be able to get a zoning variance.

Chairman Evans stated that was a philosophical point of view, not a legal opinion.

Terry Hanson asked if the number of people in favor of his situation had any bearing on the Commission's decision.

Chairman Evans stated the Commission will take into account everything that the public has said and make their decision.

Terry Hanson stated that Mr. Kikkert knew what was happening with the sewer and there was no way he would pollute any ground water.

C.J. Tornabene stated that from Mr. Kikkert's and the audience's comments, the biggest problem is the fear of water pollution. Mr. Hanson is working on that with the Health Department. He will not be out of compliance with the 1 per acre density requirement. The other general attitude is that people don't want the rentals. It seems to be overlooked

that the rentals have been there for a long time and have not been a problem. He felt this situation had been blown out of proportion. As far as the fear that if the Commission gives Mr. Hanson a variance, then everyone else gets a variance, that is not how the system works. He did not see any reason not to allow Mr. Hanson to have the rentals, presuming he complies with the Health Department regulations and has an approved sewer. He asked that all three variances be granted.

Commissioner Hart asked if there were currently renters in these apartments.

C.J. Tornabene stated there were currently renters.

Commissioner Kennedy stated the form of Mr. Hanson petition was disturbing in that it does not say what the petition is for. There is a statement by Mr. Hanson and the signatures but it does not say anything about supporting him. He was wondering if there was anyone else in the audience besides Mrs. Depee who had signed the petition.

Brent Peterson stated he lived directly across the road from Mr. Hanson and had signed the petition. Mr. Hanson asked him to look over the paperwork and stated he was in violation of the zoning. Mr. Hanson wanted to know if he had any reservations about the filing for these variances. Mr. Hanson asked him to sign the petition and that he agreed there was no problem, that he was not causing the neighbors problems by having his business or rentals.

Commissioner Kennedy asked Mr. Peterson if he believed his signature was lending support to all four variances?

Brent Peterson stated that was correct.

Commissioner Kennedy stated this was a citizen initiated zoning district, would Mr. Peterson, as a resident, be in favor of changing the zoning to allow this kind of use?

Brent Peterson said no.

Commissioner Kennedy asked him why?

Brent Peterson stated it was an old neighborhood, between 20 and 30 years old, with sewer systems that old as well. The current sewer system is one of the reasons. Mr. Hanson's sewer system is being upgraded and would not be a problem for multi-family use.

Commissioner Kennedy asked counsel if the variance was granted, did it run with the land?

Colleen Dowdall stated that the variance runs with the land.

Commissioner Kennedy asked if a variance could be granted to run with the ownership?

Colleen Dowdall stated that would be impossible to enforce because the transfer of property is not monitored in the zoning office. It is granting a variance as to the use of that piece of real property.

Chairman Evans stated she thought the neighbors would notify someone if the ownership changed.

Commissioner Hart stated the property has been in violation for 15 years and the neighbors haven't said anything.

Commissioner Kennedy stated Mr. Peterson signed the petition based on his observation of what has happened on the property, was that correct?

Brent Peterson stated that was correct.

Commissioner Kennedy asked if Mr. Hanson sold the property tomorrow to an unknown party, how would he feel about allowing the unknown party to conduct that now illegal activity on the property?

Brent Peterson stated it would not be a distraction at all.

Commissioner Kennedy asked if Mr. Peterson was not concerned if this forever remained rental property?

Brent Peterson stated the septic would be so much better it would not be a problem and the 6.8 acres is undevelopable.

There being no further comment, Chairman Evans closed the public hearing.

Commissioner Hart stated a letter had been received from Lindy and Henry Rottmar in opposition to the multi-family use, she had a phone call from George Meisner in opposition and a letter from Tony Neumayer in opposition also.

Vicki Zeier asked if Mr. Hanson was denied the variance, could he gather a petition to present to the Board to change the zoning as it now read?

Colleen Dowdall stated a request to change the zoning could be brought before the Board. As this is a citizen initiated district, a petition may not be required, but that is a possibility.

Chairman Evans stated the differentiation would be whether or not the folks would approve changing the zoning that would allow apartments in every dwelling versus a variance that would apartments in one dwelling.

Commissioner Kennedy moved that the Planning and Zoning Commission support the recommendation of the Office of Planning and Grants to approve the request to vary from the minimum lot size requirement, to approve the request

for a variance for home occupation permit to allow a larger shop, and to approve the request for a home occupation permit with conditions. Commissioner Hart seconded the motion. The motion carried on a vote of 4-0.

Commissioner Hart moved that the Planning and Zoning Commission support the recommendation of the Office of Planning and Grants to deny the request to vary from the prohibition of multi-family use and more than one dwelling per lot for Terry Hanson of 20390 East Carlton Creek Road, based on the staff report, the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion.

Commissioner Kennedy stated this was one of those difficulties faced when there is a regulation that applies to people after the time that the regulation was thought to be a good idea. Back when this was initiated, everyone felt comfortable it would protect their quality of life. Now, because time has passed and conditions have changed, people feel slightly different about it. He was sympathetic for Mr. Hanson and understood his position and supported his children and his need for income. Even though 47 of the 55 people signed the petition, it still is a citizen initiated district which concerned him and he would support the motion.

Chairman Evans called the question. The motion passed on a vote of 4-0.

Chairman Evans stated she shared Commissioner Kennedy's concerns. She never likes to turn down someone's request, especially if it is part of their livelihood. At the same time zoning should be relied upon and felt she could not vote differently. As there was no further business to come before the Planning and Zoning Commission, the meeting was adjourned.

The meeting of the Board of County Commissioners was reconvened.

Commissioner Hart moved that the Board of County Commissioners adopt the recommendation of the Planning and Zoning Commission based on the recommendation from staff, to approve the request to vary from the minimum lot size requirement, to approve the request for a variance for home occupation permit to allow a larger shop, to approve the request for a home occupation permit with conditions, and to deny the request to vary from the prohibition of multi-family use and more than one dwelling per lot. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Moua Lane Subdivision (4 lot Residential) South 3rd West

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicant, Pao Moua, is requesting approval to divide a 4.23 acre parcel into 4 lots approximately 1 acre in size. The property is located on South 3rd Street West, east of Clements Road. The property is legally described as East 3/5 Lot 34 and West 88 feet of Lot 35, Dinsmore's Orchard Homes No. 5, SW 1/4 Section 24, T13N, R20W.

One single family residence is currently located in the southern portion of the property. The property is also currently used for small scale agricultural production. Surrounding land uses are primarily single family residential and duplexes.

The property is zoned C-RR2, Residential, not to exceed two dwelling units per acre. The 1990 Missoula Urban Comprehensive Plan designates Suburban Residential land use with a density of 2 dwelling units per acre.

Staff has recommended the developer include a 50 foot no build area through the center of the property to encourage home sites that would allow future splits, should further development occur, this is noted as Condition 4 in the staff report. There is an irrigation ditch running along the south side of South 3rd Street West and during the agency review period the Missoula Irrigation District requested that the applicant provide irrigation ditch access to every lot.

The proposed access to the property is from South 3rd Street West to Moua Lane. Moua Lane currently exists as a 12 foot paved driveway which ends in a turnaround at the existing house. The applicant proposes to place the driveway within a 30 foot easement and to install an additional 6 feet of gravel along the east side of the drive. The applicant has requested variances from easement width, road width and paving requirements, as well as for pedestrian walkway requirements.

The lots will be served by individual wells and septic systems.

Staff is recommending a 20 foot paved road be installed on Moua Lane and that a temporary pedestrian walkway be installed along South 3rd West. Captain Baker of the Police Department felt the name Moua Lane was sufficiently different from a similarly named street nearby to not cause confusion.

Staff is recommending approval of the subdivision based on the findings of fact in the staff report and subject to the conditions noted in the staff report. OPG is recommending denial of the variance request to not provide sidewalks or pedestrian walkways in the subdivision. OPG is also recommending denial of the variance request for Moua Lane to vary from a 24 foot paved road width to a 12 foot paved and 6 foot gravel road width. OPG is recommending approval of the variance request for Moua Lane to vary from a 54 foot road easement width to a 30 foot road easement width. There are 6 conditions noted in the staff report.

Ron Ewart, Eli and Associates, developer's representative, was present, as was the applicant Pao Moua. Mr. Moua lives with his family in the existing home on proposed Lot 4. The home is accessed by a paved drive 12 feet in width. There is a level 6 foot shoulder area along the east side of the lane that has gravel on it, along the west side in most places there is a 2 foot graveled shoulder. The lane would be covered by a 30 foot wide private access and public utility easement along the east property line extending to the south line. The variance requested to the 54 easement width is because up to 4 homes will access easement at this time. If the adjacent lot to the east is later subdivided, those lots might use the road also and might be required at that time to widen the road along the east and to dedicate additional easement. Mr. Moua's proposal is to use the existing 12 foot paved lane to access the 4 homes and include

6 feet of gravel width along the west side and 2 feet of gravel width along the east side, for a 20 foot total driving width and clearance. The road fits the rural character of the area, is wide enough to accommodate emergency vehicles and the gravel shoulders are usable. The variance for the pedestrian walkway is requested as the need for a sidewalk along South 3rd West is apparent but the small portion that would be done with this subdivision would not make a significant improvement. South 3rd Street West needs a comprehensive walkway plan and all the lots of Moua Lane are waiving the right to protest an RSID/SID to any improvements on South 3rd West including pedestrian walkways. He requested that variance requests 1 and 2 be approved instead of denied as staff recommended.

Chairman Evans asked for public comment. There being none, the comment section was closed.

Pao Moua stated he planned the development for 4 lots but would keep two lots for himself and sell only two lots.

Commissioner Hart asked if the lots would be where the gardens are located, would the vegetable gardens go away?

Pao Moua stated each lot owner could put in a garden if they wished.

Nancy Heil stated the property is located within the air stagnation zone so the new road, which was previously the driveway, would require paving.

Chairman Evans asked if there was a specific width requirement or just a paving requirement.

Nancy Heil stated the requirement was that the road be paved and the road width would need to be sufficient for emergency vehicles, generally 20 feet, which was OPG's recommendation.

Bill Lindstrom, Missoula Rural Fire, stated the Uniform Fire Code requires a 20 foot road width serving this many dwellings, but it only requires an all weather surface, ranging from gravel to pavement.

Commissioner Hart moved that the Board of County Commissioners deny the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, and deny the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Moua Lane to vary from a 24 foot paved road width to a 12 foot paved and 6 foot gravel road width, and approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Moua Lane to vary from a 54 foot road easement width to a 30 foot easement. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Moua Lane Summary Subdivision based on the findings of fact in the staff report and subject to the conditions of the staff report, as written.

Commissioner Kennedy would like to reconsider the width on Condition 2, because there were only the potential 4 lots. He offered an amendment to Commissioner Hart's motion to change the minimum width of 20 feet to 16 feet, with 4 feet to be allowed in gravel.

Commissioner Hart stated two fire trucks could pass each other because of the gravel shoulders.

Nancy Heil wanted to know if there was something specific in the health code that addresses road width.

Colleen Dowdall stated the health code did not address width, they require paving within the air stagnation zone.

Commissioner Kennedy stated the shoulder did not need to be gravel, but enough to support a fire truck, and it could be planted in grass as was common in rural areas. There was no reason grass could not be planted up to the edge of the pavement and still allow a 20 foot surface width. His suggestion was to have a 16 foot wide pavement with the 4 foot shoulders planted in grass.

Commissioner Hart stated she accepted the amendment to Condition 2 that Moua Lane be paved to a minimum width of 16 feet with 4 foot shoulders planted in grass to support fire equipment. The rest of Condition 2 remained unchanged.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Moua Lane Conditions of Approval

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to South 3rd Street West, 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."

2. Moua Lane shall be paved to a minimum width of 16 feet with 4 foot shoulders planted in grass to support fire equipment. The turnaround at the end of Moua Lane shall be designed to provide adequate room for emergency vehicles to turn around. The final design shall be approved by the Missoula Rural Fire District and County Surveyor prior to plat filing. Road improvement plans shall be approved by the County Surveyor prior to plat filing.
3. A 5 foot asphalt pedestrian walkway shall be installed along South Third Street West between the road surface and the irrigation ditch. Plans shall be approved by the County Surveyor prior to plat filing.

4. The plat shall include a 50 foot wide no-build strip running north to south through the central portion of the property to allow the possibility of future lot splits.
5. 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 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.”
6. 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 plat filing.

Northgate Development Park (Preliminary Plat) 8 Lots - Near Expressway

David Loomis, Office of Planning and Grants, gave the staff report.

This is a request from C and C Land, LLC, represented by Professional Consultants, Inc., for approval of Northgate Development Park, an 8-lot preliminary plat subdivision on approximately 32.9 acres and a zone change to rezone proposed Lot 8 from CA-3 (Residential) to C-11 (Light Industrial). The remaining portion of the proposed subdivision is zoned C-11 (Light Industrial) within Missoula County. The proposed subdivision is located on property on the northwest side of the Missoula area, between Expressway and Interstate 90. The subdivision will front the newly constructed Expressway and lie west of Westview Village Mobile Home Park. To the southeast is the City limits and a recently approved City approved industrial park called Expressway and to the northwest and adjacent to this is the County's Industrial Park. The property is legally described as Lot 2A of Green Acres Addition, Lots 1A and 2A, located in the NW 1/4 and SW 1/4 of Section 6, T13N, R19W, and the NE 1/4 and the SE 1/4 of Section 1, T13N, R20W, P.M.M., Missoula County.

The existing land proposed for subdivision is currently used for agricultural purposes (alfalfa production). Adjacent land uses to the north include residential, to the south include industrial, to the east include residential and to the west include industrial.

External access to the proposed subdivision is from Expressway and the proposed Majestic Drive. Expressway is a county maintained road that is 41 feet in paved surface width within an 80 foot wide public road easement. Majestic Drive is a proposed county maintained road that is 24 feet in paved surface width within a 60 foot public road easement.

The subdivision calls for hookup to the existing City of Missoula Public wastewater treatment plant and to the existing public Mountain Water Company.

The subdivision calls for an 8 foot wide boulevard style pathway, asphalt or rolled aggregate base, along the north side of Expressway and the west side of Majestic Way, to be installed through a future approved RSID.

Of the 8 lots, 4 access from an internal road, Majestic Drive, Lots 6, 7 and 8 have the potential to also access from Wheeler Drive in the future, but are proposing shared driveways to Expressway. Lot 1 is adjacent to the existing Westview Park. Majestic Drive is proposed as 24 foot in a 60 foot right of way. The regulations require because this is an industrial subdivision to serve those kinds of uses, 80 foot right of way and 44 foot paving. The city engineer felt 80 foot right of way and 40 foot paving was adequate. Expressway was just improved to approximately 40 feet but to a rural section with no curb and gutter.

Wheeler Drive is the east/west road that is within 60 foot right of way, it is not improved. Majestic Drive is the cul-de-sac that serves the internal part of the subdivision. It is recommended by both the city engineer and Planning Staff that an easement be continued up for future access to Wheeler Drive.

Staff wanted to focus on review of Conditions 1, 2, 3 and 5. Condition 1 has to do with building Majestic Drive to an urban type standard with a 40 foot roadway and “L-Type” curbs and sidewalks leading to Expressway for future access.

Condition 2 is an 80 foot public road easement from the end of Majestic Drive up to Wheeler Drive, connecting those two for future access, but an easement only at this time.

Condition 3 is placing a 1 foot no access strip along Wheeler Drive except where the road comes out.

Condition 5 has to do with pedestrian facilities along Expressway. Toward the city side is Expressway Development Park, the city required concrete sidewalks, boulevard, all the regulations in terms of the type of pedestrian access, as they would be urban type uses and would connect soon. The County did require pedestrian facilities in the County's Industrial Park, but phased in with different standards in different places. Sometime concrete sidewalks and other times a pedestrian path to be determined. In the industrial park there was the opportunity for later initiating RSID's to expand and formalize the roads and additional sidewalks. Condition 5 is consistent with the intent of what the county did in its development.

There are other conditions with the proposal but they are not at issue with the developer or applicant. Staff is asking the Board to approve the rezoning of Lot 8, to consider the variances, and approve the subdivision with conditions.

Chairman Evans asked for public comment.

Dick Ainsworth, Professional Consultants Inc., was present representing C and C Land, the owners and developers of this property. Both Kirby Christian and Scott Cooney were also present. The vast majority of this property is in the County, with a small portion within 200 to 300 feet of the City. The differences with staff on this proposal have to do with the level of improvements that they are suggesting be provided. This property is in the County and not any different than the County's Development Park that abuts it on the west, and asking the developer to put more urban type improvements in the property than the County is putting in their own property is not reasonable. There is no problem waiving rights of protest for SID to put improvements in at some point in the future, but at this point in time it is not realistic to require that level of improvements.

On Condition 1, which deals with Majestic Drive, the short cul-de-sac, it was originally proposed at 24 feet, and they do not have any problem with the 40 foot paved width. The objection is to the curb and gutter on both sides with a 5 foot concrete sidewalk in a boulevard, that seems excessive for the area and goes beyond what has typically been required in the County's development park. Their request is pave the road to 40 feet and strike the rest of the Condition. Expressway at some point in time will have curbs and gutters but at this point it has a drainage swale down both side and they would propose to build Majestic Drive the same way.

On Condition 2, the developer proposes a 60 foot right of way for Majestic Drive, with the extension easement granted at 60 feet as well. This development does not intend to use Wheeler Drive for access and is not proposing any improvements. They would propose changing the easement to 60 feet from 80 feet and there is no benefit in the improvements to Wheeler Road at this time.

Commissioner Kennedy asked about the 1 foot no access strip, so access would be denied to this subdivision?

Dick Ainsworth stated that was correct, they had no problem with that. The only change proposed in Condition 3 would be to change the 80 foot width to 60 feet. There is no problem with Condition 4.

Condition 5 deals with pedestrian improvements on Expressway. In the County's development park the pedestrian facilities along Expressway are a pathway. The waiver of the protest should be open ended. There are no problems with Conditions 6, 7, 8 and 9. On Condition 10, it should be noted that the street light is illumination, not a traffic signal light. There are no problems with Conditions 11, 12 and 13.

Condition 14 deals with street trees. In the County's Development Park, street trees are required every 100 feet, staff originally suggested every 30 feet for this development and the Planning Board changed it to 50 feet. He felt that if the County's requirement was for every 100 feet, that should work for this development. Condition 15 is fine. Condition 16 talks about the drainage retention area which is not a problem. The only area that drains through the culvert is presently under Expressway, there is no off site drainage coming onto this property. There is not a problem with this condition.

Chairman Evans stated she has asked Michael Sehestedt to check the avigation easement wording that currently exists. She would like to know that any updated wording to the avigation easement would be acceptable to the developer.

Dick Ainsworth stated that would be acceptable as long as the wording was not excessive.

Kirby Christian, one of the developers, gave a brief history of the ownership of the property. Initially some residential development was proposed for the property with low income housing which was not successful. The industrial concept was then proposed. From a policy standpoint, it was felt everyone was working together, providing easements the County needed. The approach to this development was to compliment the County's Development Park. The requirements of the County's property then should be reasonable for this proposal, which is how it was planned. To require the level of development that staff has asked at this time for this project is excessive. It was felt the development was planned to meet the standards of today.

There being no further comment, Chairman Evans closed the public hearing.

Commissioner Hart moved that the Board of County Commissioners approve the request for rezoning of Lot 8, Northgate Development Park from C-A3 (Residential) to C-11 (Light Industrial), based on the findings of fact and conclusions of law, Planning Board approval and staff report.

Commissioner Kennedy stated he had trouble with that portion, on that side of Expressway and in that location, the zone change at this time is inappropriate and he could not second the motion.

Commissioner Hart stated she did not understand Commissioner Kennedy's objection.

Commissioner Kennedy stated the area is all zoned C-A3, the commercial and industrial area is on the south side of Expressway, not the north side of Expressway.

Chairman Evans stated the County's development park takes up both side of Expressway.

Commissioner Kennedy stated it was right on the edge of the big reserve area.

Dick Ainsworth stated the piece for rezoning was Lot 8 only, that abuts the County's industrial property, known as Reserve Area B.

Commissioner Hart stated that area is being looked at for affordable housing.

Chairman Evans seconded Commissioner Hart's motion.

Commissioner Hart stated the Reserve Area B is zoned for light industrial and would have to be rezoned for residential use.

Commissioner Kennedy stated he agreed with the subdivision and thought it was a good one. At the same, just because Lot 8 is contiguous, doesn't mean it should be zoned the same. Wheeler Drive clearly is a differentiation between the uses. It is not appropriate to change the zoning on Lot 8, it gave him some problems.

Commissioner Hart asked what the zone was north from Wheeler Road.

Dave Loomis stated it was C-A3, low density residential.

Commissioner Hart asked where the proposal was from JTL?

Dave Loomis stated it was northeast of the corner of this subdivision and they are asking for a special zoning district.

Colleen Dowdall stated the adjacent zoning of the surrounding areas was located on Page 9 of the report.

David Loomis stated the zoning in the development park north of Expressway is community commercial. The uses allowed did not include residential.

Colleen Dowdall stated a discussion was heard about the development park and whether residential should be a permitted use within the district.

Commissioner Hart stated Lot 8 is close to the C-RR3 zoning and JTL was expecting a rezoning.

Dave Loomis stated that was correct.

Kirby Christian stated Lot 8 was a parcel that they traded the County for, for a road easement. That was land that got left out when the development park was zoned. That is why the zoning needs to be changed. It isn't the intent to do something completely inconsistent with the development park. They could amend the zoning request to state that whatever use is allowed now on adjoining property, zone Lot 8 the same. They was no specific plan for Lot 8. A C-A3 residential zone is not what they wanted to use the land for.

Chairman Evans stated if there was inclusionary zoning that would work, but at this point it is unknown what the zoning will be on Reserve Area B.

Kirby Christian stated he did not want the land to remain C-A3, if at all possible.

Commissioner Hart withdrew her motion on the rezoning request for Lot 8.

Kirby Christian stated the parity of his trade should be considered, he traded light industrial land for a farm, which was not how it was represented. It was represented that the County was going to do a light industrial development park and that there would be a zoning change accompanying that. They thought they were trading light industrially zoned land for something other than farm land. He did not think they traded 3 acres of prime industrial land for 3 acres of farm.

Commissioner Kennedy wondered if there was a way the zoning question on Lot 8 could be postponed. The rest of the subdivision is something that can be worked with. He understood what Kirby was saying, but wanted to wait on Lot 8 until it can be investigated further.

Colleen Dowdall wanted it postponed for a date certain so it would not have to be renoticed.

Chairman Evans asked that the developer request the Board to delay the decision on Lot 8 rezoning for two weeks.

Dick Ainsworth asked the Board to postpone the zoning decision on Lot 8 for two weeks, to September 9, 1998.

Chairman Evans hoped the motion would not require more of this proposal than the County is requiring of themselves.

Commissioner Hart stated she checked with Orin Olsgaard and the County was going to curb the cul-de-sacs and install sidewalks. She also checked about the tree requirement, which is every 100 feet, but it is also required for a certain amount of trees to be planted on site, which is different.

Colleen Dowdall stated that was part of the covenants, not the subdivision approval.

Commissioner Hart wondered if that was the covenants or the design standards.

Colleen Dowdall stated the design standards are an element of the covenants. She could not recall the landscaping standards for the development park.

Commissioner Hart moved that the Board of County Commissioners deny the variance request from Article 3-2, Missoula County Subdivision Regulations, to reduce the required Majestic Drive public road easement from 80 to 60 feet. Commissioner Kennedy seconded the motion. The motion carried on a vote of 2-1 (Chairman Evans opposed).

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Article 3-2, Missoula County Subdivision Regulations, to reduce the required Majestic Drive paved surface width from 44 to 40 feet. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Article 3-2, Missoula County Subdivision Regulations, to reduce the required Wheeler Drive public road easement from 80 to 60 feet. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Article 3-2, Missoula County Subdivision Regulations, to not pave Wheeler Drive to a paved surface width of 44 feet. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners deny the variance request from Article 3-2(5), Missoula County Subdivision Regulations, to not include sidewalk or pedestrian facilities in the subdivision. Commissioner Kennedy seconded the motion. The motion carried on a vote of 2-1 (Chairman Evans opposed).

Chairman Evans stated the reason she opposed the denial of the variance was that she would prefer an SID so it could be done later.

Commissioner Hart moved that the Board of County Commissioners approve Northgate Development Park Preliminary Plat with the following conditions:

Northgate Development Park Conditions of Approval

Roads/Pedestrian Facilities:

1. The applicant shall build Majestic Drive to an industrial county paved width of 40 feet, back of curb to back of curb ("L-Type"), including a 5 foot wide concrete sidewalk with a 10 foot wide boulevard on both sides of the street.
2. The applicant shall designate an 80 foot wide public road easement, extending from the end of the Majestic Drive cul-de-sac bulb to Wheeler Drive, to be approved by the County Surveyor prior to final plat record set signoff. The applicant shall build this section of Majestic Drive to an industrial county road standard of 40 feet, back of curb to back of curb ("L-Type"), including a 5 foot wide concrete sidewalk with a 10 foot wide boulevard on both sides of Majestic Drive at the time that the connecting/abutting portion of Wheeler Road is built and paved. If Wheeler Road is not built and paved within the public improvements time period, the applicant shall waive the right to protest a RSID/SID for improvements to Wheeler Drive including pedestrian facilities, based on benefit.
3. The applicant shall place a 1-foot no access strip on the face of the final plat along the southerly portion of Wheeler Drive, except for the 80 foot wide Majestic Drive road easement intersection with Wheeler Drive, to be removed at the time when Majestic Drive is improved, paved, and connected to Wheeler Drive and Wheeler Drive is improved and paved, to be approved by the County Surveyor prior to final plat record set approval.
4. The applicant or fronting lot owner(s) shall waive the right to protest a future RSID/SID, based on benefit, to install pedestrian facilities on the south side of Wheeler Drive.
5. The applicant shall install pedestrian facilities on the north side of Expressway. Plans shall be approved by the County Surveyor prior to final plat record set signoff. The applicant or fronting lot owners shall waive the right to protest a future RSID/SID, based on benefit for any future road and pedestrian improvements. 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.
6. 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 assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to Wheeler Drive, for the portion of the road that is within or adjacent to the subdivision, based on benefit, 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 depicted herein."
7. The applicant shall locate the driveway approach for Lot 8 a distance of 50 feet back from Expressway or less, as required by the County Surveyor. Approach permits shall be approved by the County Surveyor through building permit issuance.
8. The applicant shall develop a dust abatement plan and provide dust abatement to all roads adjacent to and within the Northgate Development Park Subdivision, during and through construction of the subdivision. The dust abatement plan shall be approved by the Health Department and incorporated into the subdivision covenants prior to final plat record set signoff.
9. The applicant shall petition for the subdivision to be included within the Missoula Urban Transportation District (MUTD), with petition to either be accepted or rejected by Mountain Line prior to final plat record set approval.
10. The developer shall place a street light (not a traffic signal) at the intersection of Expressway and Majestic Drive. Plans shall be approved by the City Engineer prior to final plat approval.

Utilities (Fire):

11. The Missoula Rural Fire District shall approve the subdivision's water supply for fire protection purposes. The District shall approve the plans prior to final plat record set signoff.

Natural Environment (Drainage, Erosion Control, Vegetation/Revegetation, Weed Control, Refuse Removal)

12. The applicant shall submit a vegetation management retention plan that outlines how the maximum amount of natural vegetation can be preserved for the entire subdivision. The applicant shall submit a revegetation plan for all disturbed slopes and revegetate all disturbed slopes. The applicant shall submit a noxious weed control plan for the road easement areas, to be approved by the Weed Control Board and Health Department and incorporated into the

subdivision covenants prior to final plat record set approval. Plans shall be approved by OPG prior to final plat record set approval.

Airport:

13. The applicant shall grant an aviation easement to the Missoula International Airport for the subdivision and the easement shall be recorded at the Office of the Missoula county Clerk and Recorder prior to final plat record set approval.

Covenants (Boulevard Landscaping, Boulevard and Sidewalk Maintenance):

14. The subdivision covenants shall be amended to include the following:

"Each lot owner within the Northgate Development Park Subdivision who owns a lot that abuts Expressway, Majestic Drive or Wheeler Road shall install grass landscaping and deciduous boulevard trees, minimum 2" diameter at planting, spaced every 50 feet, on center, within the abutting 10 foot wide boulevard area(s). The lot owners shall install the boulevard improvements through building permit issuance, with an exception being if the abutting road is not improved with pedestrian walkways or curb, gutter and sidewalk, in which the boulevard improvements shall be triggered when the road improvements occur. After the improvements occur, the lot owner shall maintain the improvements, including boulevard landscaping and pedestrian facilities. The lot owner shall maintain the boulevard landscaping in a healthy state and shall immediately replace any landscaping that dies."

Language shall be approved by OPG prior to final plat approval. Any amendment of this covenant shall be approved by the County Commissioners.

Chairman Evans explained that what Commissioner Hart has been saying is that while our regulations don't say the very same things that we are requiring this development do, that is exactly what will be done in the County's subdivision.

Dick Ainsworth stated that the conditions of approval for the County's subdivision are much less than what is being required of this development.

Commissioner Kennedy stated the conditions needed to be changed.

Chairman Evans stated it was not that easy, the entire process needed to be done to change them.

Commissioner Hart asked which subdivision?

Dick Ainsworth stated the Missoula Development Authority. The Board gave preliminary approval to the County's subdivision with a set of conditions for improvements that are substantially less.

Commissioner Hart stated she had spoken with Orin Olsgaard who said on the cul-de-sacs in the County's subdivision there will be sidewalks.

Dick Ainsworth stated that was not in the conditions of approval for the subdivision. He had a copy of the approved plan which showed which streets have sidewalks and which do not, which he stated in his presentation.

Commissioner Hart stated she understood that, but the County was not putting in the entire subdivision right now.

Dick Ainsworth stated he knew that.

Colleen Dowdall stated this developer will be required to do that under this approval.

Dick Ainsworth stated they would need to, but the Board's approval of the Development Authority in October, 1996, has, for example, along Expressway, a pathway that may be pavement and it may be crushed gravel.

Commissioner Hart stated that may also be done on this development. That is what this says.

Colleen Dowdall added that it was along Expressway.

Commissioner Hart stated there was no difference there.

Dick Ainsworth stated that most of the cul-de-sac streets in the Development Authority do not have sidewalks. But on Majestic Drive it was approved to have boulevard sidewalks, curb and gutter on both sides. That is more than on the bulk of the cul-de-sacs and short streets in the Development Authority.

Commissioner Hart stated she wanted to be fair. She has design review.

Dick Ainsworth stated he had the same design review from Orin Olsgaard and that was the position they were presenting.

Chairman Evans stated that what would be less confusing but would require a delay would be to have this proposal with the conditions as written and the requirements for the Development Authority side by side so they may compare and see that what is being asked of this development is different than what is being required of the County.

Dick Ainsworth stated he thought the presentation was clear.

Commissioner Kennedy stated that Commissioner Hart was two conditions away from completing her motion, let her continue and see what the outcome would be.

Chairman Evans stated she preferred the Board be fair.

Commissioner Kennedy stated Commissioner Hart was in the middle of a motion.

Commissioner Hart stated she could try to make this fair.

Dick Ainsworth stated they did not want to have a sub par subdivision.

Commissioner Hart stated the issues were really about Majestic Drive curb, gutter, boulevard and sidewalks.

Dick Ainsworth stated that was correct.

Commissioner Hart stated she would delay, but she would not work with the issues today, she did not have the resources necessary. As the review of the conditions was not completed, her motion to approve the subdivision died.

David Loomis stated the rezoning portion of the hearing had been continued for two weeks, so the matters should be brought back together at that time.

Chairman Evans asked if that would be acceptable to the developers.

Kirby Christian stated the Board did not ask them about the rezoning, so they did not need to ask him about this postponement.

Chairman Evans stated the rezoning questions was asked.

Dick Ainsworth stated Kirby Christian meant the 60 days on the subdivision ran out about a week ago.

Kirby Christian stated he would do whatever accommodated the Board.

Chairman Evans stated that as the zoning was put off for two weeks, that within that time frame the conditions of the two subdivision be compared and presented so as to determine what was being required of each. She asked the developer to officially ask for a two week delay.

Dick Ainsworth stated the delay was so asked for.

Commissioner Hart asked if Dick Ainsworth had a problem with lighting?

Dick Ainsworth stated he did not.

There being no further business to come before the Board, the Commissioners were in recess at 5:45 p.m.

THURSDAY, AUGUST 27, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office August 27 and 28.

ADMINISTRATIVE MEETING

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

Agreement - The Commissioners signed an Agreement for Provision of Professional Security Services between the Missoula County Sheriff's Department and the Frenchtown School District, for provision of security at school functions for the 1998/99 school year as requested. Compensation shall be \$15.00 per work hour, plus 33.48% of the total for work performed by regular deputies, and 12.90% of the total for work performed by reserve deputies.

Memorandums of Agreement - The Commissioners signed four Memorandums of Agreement:

1. with Missoula Youth Homes, for purchase of shelter care services through the Attention Home for troubled children in Missoula County. Value of the Agreement is \$30,450.00. Term of the Agreement is from July 1, 1998 through June 30, 1999;
2. with the Western Montana Mental Health Center, for purchase of mental health crisis response and stabilization services for the residents of Missoula County through the Crisis Response Team and Stephens House. Value of the Agreement is \$140,000.00. Term of the Agreement is from July 1, 1998 through June 30, 1999;
3. with Community Care, Inc., for purchase of alcohol and other substance abuse prevention services for youth in Missoula County. Value of the Agreement is \$22,422.00. Term of the Agreement is from July 1, 1998 through June 30, 1999;
4. with the Western Montana Mental Health Center, for purchase of interim nonmedical detoxification and supportive housing services for adult homeless chemically dependent residents of the SHARE House. Value of the Agreement is \$30,000.00. Term of the Agreement is from October 1, 1998 through January 2, 1999.

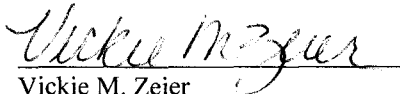
Other items included:

- 1) The Commissioners approved purchase of a cordless microphone for Room 201, with a cost of \$693.00, from Morgenroth Music Center.

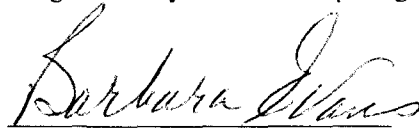
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, AUGUST 28, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. In the afternoon, Commissioners Evans and Hart participated in the Ribbon Cutting Ceremony and Grand Opening festivities for the Airport Interchange.



Vickie M. Zeier
Clerk & Recorder



Barbara Evans, Chairman
Board of County Commissioners

MONDAY, AUGUST 31, 1998

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

Quitclaim Deed - The Commissioners signed a Quitclaim Deed to R. Wade Honey, Adrienne Honey, Lowell R. Honey, and Mary Dell Honey for property described as the S 5' of Lots 7 through 10, Block B, 20' vac alley -- CP Higgins. This deed is being recorded to cancel the tax deed recorded in Book 522 micro page 1440. The Quitclaim Deed was returned to Vickie Zeier, Clerk and Recorder, for further handling.

TUESDAY, SEPTEMBER 1, 1998

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 - The Commissioners signed Resolution No. 98-066, for annexation to the Missoula Rural Fire District parcels of land located in Missoula County and described as follows:

Tract 10-A-2-A and Tract 10-A1-B of Certificate of Survey No. 4524; Tract 5 and Tract 6-B of Certificate of Survey No. 2239; Tract 8-A and Tract 9-A of Certificate of Survey No. 2185; Tract 7-A-2 of Certificate of Survey No. 4329; Tract 6-A-1 and Tract 6-A-2 of Certificate of Survey No. 4654; all located in Section 4, Township 11 North, Range 20 West. Tract 1, 2 and 3 of Certificate of Survey No. 4493; Tract 16C of Certificate of Survey No. 2063; Tract 3 of Certificate of Survey No. 1806; Tract 1, 2 and 3 of Certificate of Survey No. 2257; all located in Section 5, Township 11 North, Range 20 West. Tract 8-B of Certificate of Survey No. 2239 located in Section 33, Township 12 North, Range 20 West. (See petition on file in the Clerk & Recording Office for complete legal descriptions, maps and landowner signatures.)

Memorandums of Agreement - The Commissioners signed three Memorandums of Agreement:

1. with the YWCA to purchase comprehensive services for victims of domestic violence in Missoula County through support of the Jesuit Volunteer Program. Value of the Agreement is \$15,995.00. Term of the Agreement is July 1, 1998 through June 30, 1999. (This is County match for the program funded by DPHHS.)
2. with Friends to Youth to purchase counseling and education services for non-SED youth and their families. Value of the Agreement is \$12,000.00. Term of the Agreement is July 1, 1998 through June 30, 1999.
3. with the YWCA to purchase comprehensive services for victims of domestic violence in Missoula County, through the Missoula County Domestic Violence Program funded by DPHHS. Value of the Agreement is \$7,438.00. Term of the Agreement is July 1, 1998 through September 30, 1998.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Confederated Salish and Kootenai Tribes regarding cooperative land use regulation and planning. Term of the Agreement is five years, commencing with the execution of this Agreement. The Agreement was returned to Zoe Mohesky in OPG for further signatures and handling.

Other items included:

- 1) The Commissioners and Zoe Mohesky, OPG, discussed a request to change a street name in Seeley Lake from Larch Lane to Hemlock Drive in Block 1 and Block 2, Clark Addition #1; and they also discussed the possibility of acquiring museum land in Seeley Lake.

Wallace Creek Mitigations
Final Meeting, Tuesday, September 1, 1998
Board of County Commissioners Administrative Meeting

Present: Chairman Barbara Evans; Commissioner Michael Kennedy; Commissioner Fern Hart; Deputy County Attorney Colleen Dowdall; Greg Martinsen, Martinsen Surveys; Roy Handley, Applicant; Dave Loomis, Office of Planning and Grants; Vicki Voss, Wallace Creek Landowners Association

Commissioner Kennedy: In terms of Condition 1, there are some changes that were made subsequent to the approval of the subdivision in the plat which require addressing some of the names and language of Condition 1. It needs to be acknowledged.

Commissioner Hart: So we accept that on Condition 1.

Commissioner Kennedy: Right. On Condition 2 there is a big question for me and I went back and looked at my notes and I, for the life of me, can't remember why we did what we did but I need to have some understanding of it. The second condition placed a 1 foot no access strip on the face of the plat for all lots which face Wallace Creek Road, eliminating access to Wallace Creek Road for those lots and I don't remember why we did that, because the new plan requests a change from that and access to a lot of lots off of Wallace Creek Road.

Greg Martinsen: You have to go on to Condition 3 which states which lots will have shared access onto Wallace Creek Road.

Dave Loomis: So taken in combination...

Commissioner Hart: So 2 and 3 would allow access the way the Highway Department allows it and the 1 foot no access strip would be where there is no driveway.

Commissioner Kennedy: It is just poorly written is all I'm saying, you read one without the other, you can't get there. And also on Condition 3 those lots have to be changed.

Commissioner Hart: And do we accept the change based on the Highway Department recommendation.

Commissioner Kennedy: While I have something to do with Wallace Creek Road, it had to do with the frontage road I think

Greg Martinsen: Yes, the Highway Department only does the frontage road.

Commissioner Hart: Excuse me, my mistake.

Commissioner Kennedy: That would be Lots 1 through 10.

Greg Martinsen: That's why I kind of tried to combine Conditions 2 and 3 in my letter.

Commissioner Hart: So, back again then it makes sense, there should be a 1 foot no access strip on Lots 1 through 10.

Greg Martinsen: It's on the face of the plat.

Commissioner Hart: And so that means that folks can't access from those lots onto Wallace Creek Road.

Commissioner Kennedy: Well, it actually doesn't mean that because Condition 3 shows how in fact they can access. That's where the conflict arose. It's just written poorly.

Commissioner Hart: Well, it doesn't show 1 through 10, does it?

Commissioner Kennedy: No, we are only talking about 11 through 62 now. Condition 2 and 3 only affect Lots 11 through 62.

Chairman Evans: And is this one of the ones you have congregated together Greg, these 2 conditions?

Greg Martinsen: Yes, I attempted to. Basically, if we take all of them together, 2 and 3, there is a 1 foot wide no access strip all the way along the frontage road and all along Wallace Creek Road, except for where the combined accesses have been designated. And the Highway Department changed them all from Lot 1 through 10, they changed the locations and we went with their recommendations.

Chairman Evans: Right, every other one is how they did it different, every other ones then we originally had.

Greg Martinsen: Correct, they just had to do it differently.

Chairman Evans: Well, that's all right.

Greg Martinsen: Then going up through above on Wallace Creek Road, because of the change in lot numbers and so forth, I necessarily had to change the numbering system and that's on Page 3 of my letter to you.

Colleen Dowdall: So what your new Condition 2 is, is a combination of 2 and 3, because the way it was approved before was that you had a to put a 1 foot no access strip but then you also had to show driveways on Wallace Creek Road. So, by combining them we are acknowledging that there are driveways with access, as long as it's shared access, but the rest of it will have a 1 foot no access strip which will eliminate future accesses that haven't been approved in this process.

Greg Martinsen: And we don't have a problem with that, none whatsoever.

Commissioner Hart: Do you Michael?

Commissioner Kennedy: Nope

Commissioner Hart: So we accept the developers recommendation to combine Conditions 2 and 3.

Dave Loomis: We'll share responsibility. The awkward wording led to this discussion. I think the developers proposal straightens it all back out.

Commissioner Hart: Are we to Condition 4?

Colleen Dowdall: Do you want to vote on these as a whole?

Commissioner Kennedy: Well, I think we ought to keep continuing until we have a disagreement. That would be my view.

Greg Martinsen: It shouldn't take long.

Commissioner Hart: So Condition 4, is that the right lot number for 5 that should be removed from the approach.

Greg Martinsen: Yeah.

Commissioner Hart: So, there's not ... do you have a problem.

Greg Martinsen: On Page 3 again of my letter, we changed Condition 3 and 4 and going over it, we had to add some stuff in from NRCS on culvert recommendations. So, I think the last time we all agreed on that, basically all we did was change the size of the culvert recommendation to NRCS's recommendation and we've agreed all along that the existing approach to Lot 5 should go out.

Commissioner Hart: So, we've really gotten now, through Condition 4. Condition 5, is there a problem with 5.

Greg Martinsen: Condition 5, we asked that it be changed to read something like "24 foot wide for Common Drive" because Common Drive now accesses five lots and the park and the remainder portion of the Handley ownership. And we designed Common Drive to extend all the way across there so there is vehicular mobile access to the park for all the reasons we discussed.

Commissioner Kennedy: So Common Drive then gets extended from 14 to 24 feet, is what you're saying.

Greg Martinsen: Yes, correct.

Roy Handley: You said neck it down here, we just kept it at 24 feet.

Chairman Evans: And we made this decision last week.

Commissioner Kennedy: Let's just go through it. I just want to ask a question about that. Is there any access to the balance of the land beyond that cul-de-sac is there any proposed access, or is it just the cul-de-sac there, what happens at the end of the cul-de-sac.

Roy Handley: Here's a road coming off to access this lot.

Commissioner Kennedy: No, I'm talking about the mountain.

Greg Martinsen: There's just probably a logging road.

Dave Loomis: That's where the existing driveway...

Greg Martinsen: Yeah, the logging road comes out somewhere...

Commissioner Hart: But that is not for the homeowners development or for public, it isn't, it comes down there for the park use, right?

Dave Loomis: And future access if one...

Greg Martinsen: This is for the park, this area, this lot and this one, basically, and this one, this one and that one, I guess.

Commissioner Kennedy: Okay, so are you saying that Common Drive does not provide landowner access to the balance of the mountain?

Greg Martinsen: Yeah, it does, yes. This comes right to here and this is the remainder portion here, approximately. Something like that.

Commissioner Hart: But it's private.

Commissioner Kennedy: No it isn't, it's part of the subdivision.

Commissioner Hart: No, no.

Commissioner Kennedy: What part of it is?

Greg Martinsen: Are you talking the road or the property?

Commissioner Hart: I'm talking about that.....

Greg Martinsen: One of you is talking two different things here.

Commissioner Hart: I'm talking about the property which was the whole hill.

Greg Martinsen: That's private.

Commissioner Hart: That's private.

Commissioner Kennedy: But it's still part of the subdivision.

Colleen Dowdall: No, they took it out.

Commissioner Hart: No, it is a separate remainder.

Commissioner Kennedy: If you look at this, we acted on the subdivision, we did not take it out. I'm sorry, that's not what happened. We acted on the proposal that was presented and the proposal that was presented was including the mountain.

Colleen Dowdall: I think what you acted on was then a subsequent proposal as a result of some of the issues that were raised. You brought in another plat that took the mountain out. Isn't that right?

Commissioner Kennedy: Oh no, we need to go back and look at those minutes again, because we acted on the original proposal that came in.

Commissioner Hart: Michael, my memory is that the landowner took that out, you'll have to help me to figure how you have a different point of view. I remember that coming down, I truly don't think I've gotten the minutes. I don't know how the minutes reflected it.

Commissioner Kennedy: Well, I need to see them, that's not at all what I

Commissioner Hart: So, do you have the minutes from the first meeting.

Chairman Evans: You know, I really, really do not want to sit here and begin at Day 1.

Commissioner Hart: Barbara, maybe you should go and do something different.

Chairman Evans: The point I'm getting at folks, is we have approved this subdivision, the only thing

Commissioner Hart: We're not sure what we've approved.

Chairman Evans: The only thing left for us to deal with are the things that required mitigation. Those are the things that David has identified and that we were to deal with today. And to go back to Day 1 and start over I think is

Commissioner Kennedy: Well, you don't have sit through it....

Chairman Evans: I know, but if I don't but I'd like us to move along.

Commissioner Hart: Well, I think we ... let me think how we can move along....

Colleen Dowdall: Well, I think that in reading these minutes, it appears that what we are doing now is what we did last week, we started through them and Greg explained each one, and I don't, I see we were at Condition 7.

Chairman Evans: And we made changes to that which said final plat of Wallace Creek Addition instead of Wallace Creek Road, we did that last week. At the very end of it we changed Lot 64 to Lot 62. We dealt with this stuff already.

Commissioner Hart: I would still like to just move through it, because what I know will happen is that we'll have a question that comes between staff and our records. I feel that, just like the question that Michael had, you know. I don't how he'd respond to staff, our office, if they had that question.

Colleen Dowdall: I could review from the minutes. What it appears to me is that we got all the way through all of the conditions and that Commissioner Evans said that we needed a letter from the Planning Office stating that they looked at the mitigation requirements that the Commissioners had placed on the subdivision and from their position they find the mitigations are met or not met. And then Commissioner Hart states she would like to hear from the neighbors, they have worked very closely with this. Her purpose was to read the report from NRCS, the information on the high voltage line, and the riparian resource and no development zone management plan. She complemented Greg Martinsen, this is a major subdivision for the area, and she was impressed with the work done. Greg Martinsen said he appreciated all of the help. Cindy Klette said that David Loomis did review the mitigation proposal and his review was also complimentary and OPG recommended approval. Brian added his recommendation for approval. Then Commissioner Kennedy stated he would need time to review the documents. He asked about the neighbors present in the audience and whether they had seen any of this plan and that they needed time to review it. Bob Sears said he had not seen the plan but it looked like they had addressed most of the concerns. Vicki Voss said they had addressed a lot of concerns, there were minor questions and she listed some of those. Chairman Evans stated one more meeting within a week should be scheduled. Greg Martinsen and his people have had a long time to wait on this. So we scheduled it for 9:00 today. Commissioner Kennedy stated the promise had been made for public involvement and was not sure everyone had been contacted. If this was the case, and no one out there had seen the mitigation, there needed to be an opportunity to do that. We went through a discussion of public hearing or not. So it appears to me that the reason we had another meeting was so that we could determine for, we could hear public participation, and that Commissioner Kennedy again stated his concern was when the mitigation condition was written, it was in general terms and it was the obligation of the developer to come back with mitigation plans. So I think we did the review and now we need to answer your questions and get your approval.

Commissioner Hart: Okay, I'm going start down from here, and I'm going to say that Number 4 is okay and that the culvert change is okay with NRCS and that 5 is okay, and I think we've done this a favor, but I'm still going to do it. And 6, 7, 8 and 9, those are typical.

Dave Loomis: Not 9, 9 is a drainage area.

Chairman Evans: So, on Number 6, Fern, just for the record, the first paragraph, Lot 64 needs to be changed to Lot 62.

Commissioner Hart: Yeah, right.

Chairman Evans: In the underlined paragraph, it should be saying 2 years from the date of filing of the final plat of Wallace Creek Addition, not Wallace Creek Road. And at the very end the number 64, again, changes to 62.

Colleen Dowdall: So, Fern are you saying the proposed changes are okay.

Commissioner Hart: I am. And I hope that I still have agreement.

Chairman Evans: You have agreement.

Commissioner Hart: I thought we had it, I'm coming just to be sure and all of the covenants I thought we were clear on. And down through 12. I'm trying, I'm really trying to be sure that what was in the first conditions and covered with the suggestions the developer had. And the no build access is mentioned in David's comments, so we'll deal with those in just a minute. The riparian management plan OPG will approve. Park District in the Missoula area waiver of protest. The primary travel corridor and I remember that agreement too. And the gravel hardpack we talked about.

Chairman Evans: Fern, I'm lost, where are we.

Commissioner Hart: I'm going just to be sure...

Chairman Evans: Okay, but I just need to know what page we're on.

Commissioner Hart: I'm on ... see, you're following me with Greg and that's good, and I'm on the original conditions.

Chairman Evans: Okay.

Commissioner Hart: So, I'm now down to, I've come through 17 and those include the particular to maintain the lot number which I hope the ... will get us the right numbers. Am I not right on that?

Greg Martinsen: The letter, Condition 17, on Page 8 of my letter should clarify that.

Commissioner Hart: And Barbara's on that.

Chairman Evans: So what number are you on then.

Commissioner Hart: I want to be really, really sure that what we agreed to get ... So, now I think that we can move to David's comments.

Commissioner Kennedy: Well, let's look at 17 for just a moment. I think Greg had a pretty good modification to that because he

Commissioner Hart: Now, this is Condition 17?

Commissioner Kennedy: ... articulated a concern about the available right of way to construct all of that infrastructure within. And one was that the separation between the pathway and the roadway could not be as originally conditioned.

Chairman Evans: Right, he did.

Commissioner Kennedy: And, but he did say, but I don't remember seeing it in his letter, that there still would be a minimum separation of 5 feet, I believe that's what he said.

Greg Martinsen: Last page of my letter, yeah.

Commissioner Hart: What page is that?

Commissioner Kennedy: So, mostly it will be as we originally conditioned, in some very narrow places closed to Lot 10 and 12, it will be reduced to no less than 5 feet, that's my understanding.

Greg Martinsen: In some places along Wallace Creek Road.

Commissioner Kennedy: Where are those places Greg, I didn't understand that.

Greg Martinsen: Well, the little narrow ridge, let's see, I guess where's the road bends. Where's the narrow spot.

Vicki Voss: Probably about 42, 41.

Greg Martinsen: No, along through right in here there's some spots.

Commissioner Hart: That will be what, closer than 5 feet?

Commissioner Kennedy: No, closer than 10.

Commissioner Hart: So it will be okay.

Commissioner Kennedy: A minimum of 5 feet.

Greg Martinsen: Yeah, a minimum of 5 feet.

Commissioner Hart: I recall you saying that.

Greg Martinsen: In through this area, and a little bit right in here, and possibly a little right in here.

Commissioner Hart: So, then can't we say we've gotten through all of the original conditions as well as Barbara's been following on the developer's condition. Can we then look at what we've gotten from David? Now, was the impact of sheet flooding in our original condition ...

Greg Martinsen: Yes.

Commissioner Hart: And that was, I know, that was the part of his file. I'll tell you Michael that I accepted the explanation from the developer on that. It seemed reasonable, that hill is forested. So, for my part, I would say that we can eliminate that.

Commissioner Kennedy: You could do that, I don't agree with that. I think those areas from, those Lots 1 through 10, are going to be in a lower area since you have two things in front of you, one you've got obviously the mountain on the east and on the one side you're going have the newly constructed dike there and for Lots 6 through 10, and all of those lots will in fact be lower than all of the surrounding ground. There is no escape route for any drainage that comes off of that mountain. There is none.

Commissioner Hart: There is a culvert ...

Commissioner Kennedy: No.

Commissioner Hart: ... that goes under the ...

Commissioner Kennedy: There isn't. The culvert is for the creek.

Commissioner Hart: Oh, so you're saying...

Commissioner Kennedy: What's happened is, they've built, they are going to build a dike that actually prevents the creek from entering this property, but the dike also will prevent any drainage coming off the mountain from going anywhere. The only place that it can go is into the area where the subdivision is.

Chairman Evans: Greg, you have your hand up. And would you finish signing names and pass that around please.

Commissioner Kennedy: I want to draw this so they can understand what it is. If I'm mistaken, then you need to point it out.

Greg Martinsen: On Page 5 of my letter, about half way down, it says the impact of Wallace Creek has been mitigated. The water that was in there, that came from Wallace Creek, it did not come from the mountainside. There is not sheet flooding on that mountainside.

Commissioner Kennedy: Well, you did say that, I appreciate you saying that. Other than you just making that statement, how do you know that that's so.

Roy Handley: As far as the water running across the field you mean. Well, I know it's so because I'm the one that put the plug in the creek. I'm the one that spilled it out into the field.

Commissioner Kennedy: I don't doubt that there's some water that came from the creek. I won't doubt that for a moment. I witnessed it...

Commissioner Hart: So, was there no water then as you dam the creek up a ways.

Roy Handley: I put a plug in the creek to dump that gravel out, that is sitting out there. And that's where the water that everybody saw running right across here was coming from. I put a plug in the creek somewhere about here. I took my backhoe in there and put a big-old plug in. Now, the new creek channel with the design is going to move it clear over here, to basically where the water was flowing. This will all be excavated, this will be the lowest point now, after it's built. So, I guess, I'm kinda with Greg, I don't think there's ever going to be a sheet flooding problem, but this way it's dealt with because this is the lowest point, it will run in there, if there is ever any. This side, it's never occurred since I've been there, you know I'm not going to say it never will, but that's one of those, nobody saw it I guess, and I guess if you get 60 feet of snow maybe.

Greg Martinsen: Okay, Commissioner Kennedy is concerned about the sheet flooding off this here.

Commissioner Hart: That's right.

Greg Martinsen: There has never been sheet flooding.

Commissioner Kennedy: How do you know Greg?

Chairman Evans: How do you know there has?

Greg Martinsen: Ask anybody that's been there. Anybody that lives there. That mountainside, the soil structure is very coarse and porous, it's not typical of that kind of mountainside....

Commissioner Kennedy: I read your report, I appreciate what you say, you're drawing a professional opinion, I just want you to know that about what's happening there. We're relying on your professional opinion.

Greg Martinsen: Other than this one instance where Roy blocked off the old channel of Wallace Creek up here and water came around and ran down in here some. Other than that, have you ever seen water laying out here, coming off this mountain?

Roy Handley: I've never seen water coming off the mountainside in a sheet.

Greg Martinsen: I don't think anybody has.

Commissioner Hart: Michael, I'm going to accept.

Commissioner Kennedy: Go ahead ...

Commissioner Hart: You know, and you can say ...

Commissioner Kennedy: Before you leave, I want to point out

Vicki Voss: We have a property owner that's been in the area for 25 years. If you want to get his opinion, it's Frank Stolp.

Chairman Evans: I do. Ordinarily this is not an open meeting, it's the Commissioners, but since the issue has been raised, I'd like to hear what you have to say.

Frank Stolp: Oh, I agree, there is no runoff over there. The ground is too porous. I've never seen flooding.

Chairman Evans: Okay, and I'm going to spell your name as S T O L P. Thank you. For our minutes here. Thank you, I'm glad to have your input. Did you hear what he said Fern? He's a 25 year resident there and there is no runoff from the mountain.

Commissioner Hart: The sheet flooding from the mountain will be taken from, out of, the mitigation issue.

Dave Loomis: Our response was, where it says originally identify the potential problem that the design of the channel accommodated, if there was any water, that channel would accept and take care of it.

Commissioner Hart: Okay, so it is mitigated.

Dave Loomis: It's mitigated.

Commissioner Hart: And so that will come from staff to our office.

Dave Loomis: That right.

Commissioner Hart: Okay, I appreciate that. So, Condition 13, designate no build area on all areas in excess of 25% slope, don't they do that?

Greg Martinsen: We do.

Dave Loomis: This is all purpose designation of the steep slopes and riparian areas are both identified by pattern at a note.

Commissioner Hart: Okay, then that is accomplished, that's what I'm hearing. The proposal from NRC, I actually read that and I do have a few questions, if you don't mind. You know what my questions are, they're so I understand. Can I just go through my questions a little bit here.

Chairman Evans: Please do.

Commissioner Hart: This, I think maybe in the covenants, is it, am I reading the covenants, I am now. Just tell me the following uses are expressly permitted in the riparian and protected zones, underground utilities, water wells. Do you allow water wells in a riparian area?

Greg Martinsen: Sure.

Commissioner Hart: Sure?

Dave Loomis: It's not as something in the regulation, so we don't, you know, say no to one developed in riparian grounds, as a matter of fact that's often the place where they do locate them.

Commissioner Hart: Okay, that's news to me.

Dave Loomis: We don't regulate where they go.

Commissioner Hart: As I was looking at this, pool-riffle, I think I understand but I want to know.

Greg Martinsen: That portion of Joe's letter was a little confusing unless you get into it in detail. What their design showed was what we've attempted to show here, and these rock riffles are designed to make a more or less attempt at a natural drop structure so the channel can come down and instead of making a real fast move down, which would start a head cut, those rock riffles are in there to make that ...

Chairman Evans: Series of walks...

Greg Martinsen: Walks. Kind of.

Chairman Evans: I have actually built several of those.

Greg Martinsen: We'd like to hire you.

Commissioner Hart: And it will be a rock base?

Greg Martinsen: Yeah.

Commissioner Hart: And they've got certain sizes, I guess?

Greg Martinsen: Yes.

Commissioner Hart: Okay.

Dave Loomis: The theory that the size of the rock can't be made by the energy of the water.

Greg Martinsen: Right.

Commissioner Hart: I did have some interest in, it's current capacity is for a two year flood, and that when you follow NRC it should a 100 year.

Greg Martinsen: Yes, that's what this channel is intended to...what we have is two separate cross-sections, essentially, on the channel. This one, from here to there, is this cross-section here, which creates a 100-year like floodplain, so to speak. With the straight segments, the channel of the creek itself, when it is flowing, would flow in this center portion.

Commissioner Hart: But when it floods, spreads out.

Greg Martinsen: Right.

Commissioner Hart: And you've got planting which will hold this down.

Greg Martinsen: And then the lower portion, from here on down, gets designed this way, with that deeper channel.

Commissioner Hart: Yeah, higher sides.

Greg Martinsen: The whole channel is a little deeper so there's not a whole bunch of width and it has the same thing in the floodplain area, with the planting and so forth and so on. And down where, every place that shows a rock riffle here, then these are the rocks that are in there. And it's essentially the armor, the stream bed, with larger size angular rock. The problem with the, most of the rock in these kind of stream beds is that it's rounded and small and as soon as you get a little velocity, it starts rolling, and that rock bumps that rock and they all start rolling along and pretty soon Roy has to dig them out. And so this is larger, more angular rock that the velocity of the stream beds can't affect, or the stream itself, it can't pick that rock up and get it to roll.

Commissioner Hart: I think we've explained the channel design. I like the notion of a meanderer, to keep it as natural as we can, but I realize as you get down here, it's pretty restricted. Am I not understanding it properly.

Greg Martinsen: That's the reason for the rock riffle, is to decelerate the stream, so to speak.

Dave Loomis: But remember also, the more linear length you have, Fern, the lower the rate. The more linear length you have in there, keeps the stream from slowing down, accomplishes that effect.

Commissioner Hart: You know, the hard part for me is to understand how you get down to emptying at the last, when it goes under the highway. I can't picture it. I've been up there and, so you've got it meandering where you have the width, and then you're confining it, and you've got the little riffles cause it's dropping, and then you get all the way down and what happens now.

Greg Martinsen: When it gets to here? Right in here, there is what they call a drop structure.

Commissioner Hart: Tell me what ...

Greg Martinsen: That's a concrete structure that was built when the highway was built.

Chairman Evans: Like a sump?

Greg Martinsen: No, if we're standing here and you're looking at the side of it, the stream comes along up here, hits this concrete structure and drops straight down, it's a concrete waterfall.

Chairman Evans: Thank you, I like that, it's easier to understand.

Greg Martinsen: Okay, it's a manmade concrete waterfall.

Commissioner Hart: And it goes in there, and then it goes...

Greg Martinsen: Then it comes down through here, it makes a real dramatic drop there, 4 feet. So there's not a whole bunch of drop between there and the culvert.

Commissioner Hart: Then, when it has made its drop, is it still on the surface of those, of that frontage road. Is it still on the frontage road? In other words, does the land drop like that. Then the frontage road is low? I don't understand.

Dave Loomis: In order to keep the water really slow and about the same level instead of stream bed tipped along the frontage road, that's how I'm guessing the highway engineers kept it slow, so the highway is maybe dropping a couple of feet, then you drop it down again, and it keeps it really slow until it reaches the culvert under the road. All the energy has been dissipated by the time it reaches the frontage road, it kinds of move along slow. The only issue left was when you get a lot of water coming in and the need for the dike so it doesn't back up into the land. That's the only remaining issue.

Commissioner Hart: Show me.

Greg Martinsen: Here's the frontage road, this is kind of a cross section through that area. This being the frontage road, then it drops off into the right of way, then there's the stream bed, then the right of way and then this dike that they asked us to build and then the culverts would be like that coming underneath the frontage road.

Chairman Evans: And is this one of the DNRC's recommendations.

Greg Martinsen: Yes.

Commissioner Hart: Now wait, so it goes under the frontage road to the other side?

Roy Handley: Of the, towards Clinton. It goes underneath the freeway, underneath the frontage road, then it runs back down towards the exit at Clinton and dumps into the Clinton irrigation ditch. That was the letoff for all of the streams on that side of the freeway, they pretty much plumbed them all into the Clinton ditch.

Greg Martinsen: And also as a safety factor, there's been an overflow design up in here. There's an overflow design in here where they used to be an irrigation ditch. It went underneath Wallace Creek Road. And it's designed to come down here and follow down in a more or less old channel it had before and then cross under here. Just as a safety relief. NRCS wasn't even going to do that, Roy suggested that and they said if you want to be that careful, yeah.

Commissioner Hart: So you've got another culvert up there going under the road?

Greg Martinsen: Under Wallace Creek, there is one now, but it's more of a safety feature to guarantee that if there's ever the 150 year event, if this water gets too high it's going to go underneath this road and run back this way.

Commissioner Hart: So show me once again where the dike is?

Greg Martinsen: The little purple line. Probably easiest, honestly, to see on here. This is the dike, here's the culvert right here, the dike starts right there, goes all the way up to right in here. The green lines are the dike. Here's the culvert, there's the stream coming up here and there's the drop structure.

Commissioner Hart: And there's a footpath.

Greg Martinsen: Yeah, footpath on top of the dike, and the footpath crosses right at the drop structure, goes around here. Then the stream, right in here, is where that culvert is that's the ...

Commissioner Hart: Okay, the exit. Now, the footpath crosses at the dike, at the drop structure. There's a path?

Greg Martinsen: With this bridge. There's a bridge designed for the crossing right there, here's the stream coming down, hits the drop structure, drops down...

Commissioner Hart: And the footpath goes on a little bridge right over it.

Greg Martinsen: Yes.

Chairman Evans: Do you have more questions, Fern?

Commissioner Hart: I think I'm about finished Barbara.

Commissioner Kennedy: What's the schedule for that work, Greg, what's the schedule for the reconstruction of the creek.

Greg Martinsen: Maybe this afternoon.

Commissioner Kennedy: I want to know when it's going to be started.

Roy Handley: It will be started tomorrow if that is, if this is done.

Commissioner Kennedy: Okay, and then will it be completed.

Roy Handley: Within, I'm going to say, three to four weeks after starting of the project.

Commissioner Kennedy: Okay.

Greg Martinsen: It will all be done when the stream is dry, the stream's been dry for a month now.

Roy Handley: It's dry right now.

Commissioner Kennedy: But you're expecting that it'll start tomorrow and the work will continue until it's concluded. Is that what you're saying?

Greg Martinsen: Right.

Commissioner Kennedy: So all of the work, including the dike and the re-channelization, all of it, will be ready for all the subsequent development.

Roy Handley: Yeah.

Commissioner Hart: I've got one more thing. It says on Page 3, and boy I don't remember how I got there, so I've got to think what Page it is, and I think it's in your comments. And it is the applicant shall show 40 foot wide individual driveways accesses, isn't that a wide driveway?

Colleen Dowdall: But they're shared, aren't they.

Commissioner Hart: No.

Colleen Dowdall: That's not the shared driveway.

Commissioner Hart: I think, for Lot 10, 11, 14, 36 ... and an 80 foot wide shared driveway. I don't think we need ... 40 foot wide for a single driveway and 80 foot for shared.

Chairman Evans: They're going to be driving tanks in there.

Greg Martinsen: By the time you get done with what the Highway Department wants, that's going to take approximately 40 feet. By the time you get a pipe in there.

Colleen Dowdall: So this is on the frontage road? No, it's on Wallace Creek, then.

Greg Martinsen: All this instance and space.

Commissioner Hart: Because there are culverts there?

Greg Martinsen: Yeah, if you've got a culvert sitting in here and you got, there's certain place where there's a lot of elevation and the driveway is sitting up on top, 16 foot wide and to come to a reasonable outslope, a 2 to 1 slope, you'll have to be, in some cases, 40 foot wide, or 40 foot long at that culvert. That's what we're trying to ...

Commissioner Hart: Are these driveways all over the creek or the irrigation ditch? Then why do you need the culvert?

Greg Martinsen: They're crossing here, yes, the wording was collectively and when you had to follow through with that collective wording, so to prepare for the situations where we have that instance happening, we had to go with the maximum.

Roy Handley: You have to put a culvert in when all crossing to relieve road runoff, you know, if I just put it in without putting a culvert in, I'm just blocking up the road ditch basically.

Commissioner Hart: You're right, but I tell you, 80 feet is our maximum right of way for a street.

Roy Handley: Cut it back to a maximum of say ...

Commissioner Hart: You know, I just ... Michael?

Commissioner Kennedy: Oh, I agree, I think it's excessive.

Commissioner Hart: I just don't know, maybe there's a reason.

Roy Handley: Want to cut it back to 50, for the shared ones.

Chairman Evans: Let me ask you, how wide do you think they need to be, if you as the designer of the subdivision taking all things into account, decide that's the width you need for a driveway. No one's imposing it on you, then I think you ought to be able to have the driveways the width you want them.

Commissioner Hart: Are these paved?

Commissioner Kennedy: 20 feet off the pavement.

Roy Handley: 20 feet off the pavement, yeah.

Greg Martinsen: There will be a 20 foot apron.

Commissioner Hart: Apron. And the apron will be 80 feet wide.

Commissioner Kennedy: No, the right of way will be 80 feet, the easement will be 80 feet wide, the width of the roadway will be whatever they need it in order to ...

Greg Martinsen: 14 to 16 foot wide.

Chairman Evans: Then why would you want to give us right of way to 80 feet?

Commissioner Kennedy: It's not going to give right of way, all it is, is an opening ...

Roy Handley: It's an opening in that no access strip, basically, that's 40 feet wide or 80 feet wide.

Commissioner Hart: I don't know what to think about that condition, you know that. And I'm certainly not initiated, but ...

Roy Handley: I guess we put the maximum in so if there's one case where we do have to make a 40 footer and it's 30 foot, it's already, 40 foot is done.

Commissioner Hart: Would it be proper to say that the surveyor, with approach permit authority, can advise based on the topography, or something.

Greg Martinsen: They have to get an approach permit anyway, so it's kind of a moot point, they're going to tell us what to put in there. If you'd prefer they cut that, that 80 be changed to 60 with 30 foot each side, we can do that. It's whatever you want. But the surveyor's office, through their approach permit process, is going to tell us what to do there anyway, in each instance.

Chairman Evans: And it's my perception this has nothing to do with mitigation, that we have, we've approved everything except mitigation and we're now in mitigation.

Commissioner Hart: I move that the Board of County Commissioner specify that for single driveway they be 30 feet wide and for shared, 60 feet wide, unless there is an unusual condition which the surveyor would approve a wider driveway.

Chairman Evans: Is there a second.

Commissioner Kennedy: Those are just access points, correct. They're not the width of the driveway.

Commissioner Hart: But it says driveway.

Colleen Dowdall: It says showing driveway accesses.

Commissioner Hart: Accesses, fine, driveway accesses. Change that to be width of the driveway accesses, from Lot 30 to Lot 60, unless the surveyor advises another size.

Chairman Evans: Did I hear a second.

Commissioner Kennedy: Yes.

Chairman Evans: All those in favor say Aye.

Commissioner Kennedy: Aye

Commissioner Hart: Aye

Chairman Evans: Aye. The motion carries.

Commissioner Hart: I can say I certainly, I approve and find it very interesting, NRCS approval on the drainage. That's good work done there. We already have the school mitigation and the fire district mitigation, and do I have something else to consider, David, on your list.

Dave Loomis: No, you don't.

Colleen Dowdall: Have you, by motion, approved the mitigation for the school, and the ...

Commissioner Hart: I don't know, but we can just put all that together. Now, on the kilovolt line, my only last question, Barbara, have you put no built on any of these Lots, 1 through 6.

Greg Martinsen: They can't build in that easement.

Commissioner Hart: So, that is the only condition is that they can't build in the easement. 4, I don't know how they can, is there enough room in 4?

Greg Martinsen: The people at Montana Power told me ... oh, to build?

Commissioner Hart: Yes.

Greg Martinsen: Oh yes.

Commissioner Hart: How big are these lots, give me the ...

Roy Handley: 6.82 on that one, 6.64 on that, these are 6.6 acre parcels.

Greg Martinsen: This is 300 feet from here to here, and Montana Power has told me that if they desire, those people can site a drain field underneath those lines in that easement.

Commissioner Hart: I read your comments.

Greg Martinsen: They don't have a problem with that.

Commissioner Hart: I think what I had a problem with I've figured out. Michael, do you have something to say?

Commissioner Kennedy: A couple questions. I pointed out to Colleen what my belief is on what we acted on with before us, and I can be certainly corrected by you all, but when this proposal came to us as a 205 acre subdivision and we finally acted on it after the second meeting, it was, there was a motion to eliminate Lots 16 through... On the plat that you're looking at now, there is no Lot 16.

Colleen Dowdall: It's right up here because ... as a part of their proposal to satisfy your requirements, all of the lots on this side of subdivision....

Commissioner Kennedy: Well, I disagree, I think there is no reason to have had the motion if we were acting on the substitute plat, that's not at all what I remember. We would not have needed that motion.

Chairman Evans: She didn't mean it doesn't change.

Commissioner Hart: Well, do we need a motion to indicate that ... the Wallace Creek Estates Preliminary Plat be accepted.

Commissioner Kennedy: If you look at the trail of this project, those who come after us will look at what got presented and approved by the Planning Commission, what got recommended to us, what was before us and in that trail you will always find a 205 acre subdivision, you won't find in that trail anywhere, on those minutes, where it changed from that 205 acre subdivision, even the last motion is elimination of one of those lots in that 205 acre subdivision. All I'm saying is that people will read that and not understand that the whole subdivision, in its overall area and character, changed, because I don't think it did change.

Chairman Evans: Then I would ask that the clarification be in the minutes to illustrate what we did.

Commissioner Hart: I think that that, I would support that Michael, I don't have ...

Commissioner Kennedy: The record doesn't show that, I just want you to know that.

Commissioner Hart: I'll tell you, that's one of my concerns is our records don't show the whole lot a lot of the time.

Commissioner Kennedy: The next issue has to do, or the last issue has to do with the staging of the subdivision, which of course wasn't part of the original and it proposed now.

Commissioner Hart: And that's part of David's, isn't it?

Commissioner Kennedy: And the concern about the staging has to do with not only the paving of the subdivision, when it's going to happen, which Greg explained last time that the paving will happen prior to any development in subsequent stages. My concern is also dust control during construction from beginning to end.

Commissioner Hart: It's always there. It is a part of every subdivision.

Commissioner Kennedy: I think there is an added concern here though when you stage because there is a definite change in the overall schedule that is a new condition, because before when you approved the conditions, the developer had two years from filing the plat to get the paving completed. Now he has an unlimited time and there is a condition there, there is a dust issue that didn't exist in the original approval and somehow that was not adequately developed in the paving proposal in my mind.

Greg Martinsen: I would say that as each portion is paved, there's nothing changed on the portion that are unpaved, they are not receiving any more use by the subdivision.

Commissioner Kennedy: There's no activity on the subsequent stages at all, they won't be any equipment out there, there won't be any access to Wallace Creek Road, the only access will be on the particular phase that you're working on, is that correct?

Chairman Evans: Other than the normal traffic that would be there anyway.

Commissioner Kennedy: No, there's nothing there now, it's undeveloped.

Chairman Evans: Then there's nothing to worry about.

Commissioner Kennedy: Is that correct?

Greg Martinsen: Are you talking about Wallace Creek Road or ...

Commissioner Kennedy: I'm talking about the whole subdivision. If the first stage goes up to Common Court, so what you're asserting is, is that within the subdivision there will be no activity whatsoever, at all, until that plat is filed, is that what you're asserting?

Greg Martinsen: The whole plat is going to be filed at once.

Commissioner Kennedy: I'm talking about the stage.

Chairman Evans: But the development will be phased.

Greg Martinsen: The plat will all be filed at one time, however, the infrastructure and development of portions of it will be done at different times. Before any of these lots, 10 through 19, are offered for sale, before they're used, built on or anything, Wallace Creek Road will be paved to end of Lot 18 and Common Drive will be paved.

Commissioner Kennedy: I understand that. My question has to do with activity on the balance of the subdivision prior to the time that you begin the stage in the balance of the subdivision.

Colleen Dowdall: Maybe you need to explain activity.

Greg Martinsen: The next stage to be done would be from this point up to this point. There'll be no use, there may be some preliminary rough construction done on Handley Loop and Neighbor Way, but there will be no traffic on it, there'll be no use on it. It may be roughed in.

Chairman Evans: And the paving shouldn't be required until you're ready to open the subdivision.

Greg Martinsen: And when we get up to opening up these lots, through Lot 37, at that point in time Wallace Creek Road will be paved, Neighbor Way, and this portion of Handley Loop.

Commissioner Kennedy: Well, you've already acknowledged the concerns that I have and that is that when you have construction out there you are going to generate dust and whether or not you have staged construction, you will have dust if you have activity and what you've just said is that you're going to do rough in work on Handley Loop and my suggestion is you're probably going to be working on Wallace Creek Road as well, just for access.

Chairman Evans: So let's put in the rules that if you do that, you will provide dust abatement.

Greg Martinsen: Yeah.

Colleen Dowdall: Isn't it in the conditions?

Greg Martinsen: It's already there.

Colleen Dowdall: We will have an improvements agreement also, Michael, that will recite all this so that they will have, provide security for the installation of the public improvements. The internal roads are going to be County dedicated, is that right?

Greg Martinsen: Yes.

Commissioner Hart: Did you say yes?

Greg Martinsen: Yes.

Commissioner Hart: You know, I want to tell you that I'm going to examine every one of the subdivision suits that come in for a justification that they be county roads and if they need to have some connection, I believe they do. When you get a subdivision that results, as did Rolling Hills, right straight back into them, and these are roads where nobody is going on, if you're connecting in and out and I think those will use all this way.

Chairman Evans: Okay, Fern.

Commissioner Hart: I need to find for Michael the dust abatement. In Number 1, Michael, of the Wallace Creek conditions. Oh, excuse me.

Greg Martinsen: In the Health Department's letter, I believe it was, they pointed out that any time you do any of this stuff, part of the regulations is that you have to take care of dust abatement or whatever.

Colleen Dowdall: Which is the first subdivision in four years that we haven't had it in.

Commissioner Hart: I know it and I when I look at that first one ...

Colleen Dowdall: I think it's probably inadvertently.

David Loomis: I think when it started out as a whole subdivision is going to be paved. Now that it's become a phased subdivision, the issue of dust abatement internally has come to the foreground.

Commissioner Hart: Okay, let's just then have a motion, and I'll make it, that ...

Colleen Dowdall: You want me to tell you wording we usually use.

Commissioner Hart: I wish you would and give us a number for it, probably, it needs to be 18 and Colleen is going to word this.

Colleen Dowdall: Typically, what we require is that the applicant provide dust abatement on all roads during the period of construction.

Chairman Evans: Okay, is there a second?

Commissioner Kennedy: The only problem I have with that is that the period of construction that is associated with the paving, all kinds of work goes on and you don't have approval of the subdivision.

Colleen Dowdall: During the period of construction, typically, what we have tried to accomplish is, we started doing this when Rossignol was building out his subdivision, because he had a subdivision approved, he had his plat filed, but the rules don't require that he pave the access road for two years. So he was building houses, remember this, all the dust complaints you received four years ago. And it wasn't Rossignol, it was Rangitsch.

Commissioner Hart: There, but I tell you we got all the sauce.

Colleen Dowdall: So after that we started requiring that if you aren't going to pave the road for that two year period that you have permission to not pave it during, that you provide dust abatement during construction of the subdivision. So in the future, anyone in that two year period, between plat filing and subsequent paving, has to provide dust abatement.

Commissioner Kennedy: So in this case that could be several years.

Colleen Dowdall: Yeah, it could.

Greg Martinsen: But that's not to be construed as abating the dust on Wallace Creek Road.

Commissioner Kennedy: Well, I guess my point is that if you're going to be working on Handley Loop to rough in that construction prior to the time that work is staged, and you're accessing Wallace Creek Road, in my mind it does, because you are going to be creating a dust storm on Wallace Creek Road.

Greg Martinsen: If we're on Wallace Creek Road during construction.

Colleen Dowdall: Right, up to your access point.

Greg Martinsen: But if we're not doing any construction.

Colleen Dowdall: Right.

Greg Martinsen: Okay, I just don't want to be responsible for dust control for 6 years.

Commissioner Hart: Well, we tried.

Greg Martinsen: Well, I know you were.

Chairman Evans: Okay, I think what we need is a motion to find that the mitigation offers or suggestions have met the subdivision requirement with the additional condition that you just put on. Is that?

Commissioner Hart: I want to say that included in that mitigation is the mitigation for the Clinton school, for the fire district, for the Wallace Creek drainage, and that there will be no build zones under the 151 kilovolt power lines, they may be drainage fields. That ought to do it, don't you think that's what, that's what I think you ought to do.

Chairman Evans: And that the sheet flooding is not a concern. Is that everything in the motion, then. Greg?

Greg Martinsen: Can I ask for one more thing? In view of the fact that this is eight months since we last had preliminary approval and we're generally given a year from preliminary approval...

Chairman Evans: That preliminary approval begins today.

Colleen Dowdall: No

Greg Martinsen: If I could ask that?

Chairman Evans: No?

Colleen Dowdall: Yeah, he can, he would have to extend his preliminary plat approval for another year from today.

Chairman Evans: And I have no problem with that.

Commissioner Hart: I don't think he could have begun.

Colleen Dowdall: No, he couldn't have.

Chairman Evans: He couldn't have. We'd have hung him.

Commissioner Hart: The beginning of the time for the permit of approval would be September 1, 1998.

Chairman Evans: Is there a second to the motion?

Commissioner Kennedy: I can't second it because I don't think it's the right subdivision that we're voting on. No I can't.

Chairman Evans: I'll second the motion. All those in favor say Aye.

Commissioner Hart: Aye.

Chairman Evans: Aye. Those opposed.

Commissioner Kennedy: No.

Commissioner Hart: Now, do we need to do something about the minutes to indicate that there have been three submittals.

Chairman Evans: We'll have Colleen work with Patty to see to it that what the minutes say is what we've determined here.

Colleen Dowdall: It may be that this tape has been erased, I hope it hasn't.

Commissioner Hart: I appreciate everybody's patience. It's learning for us, and we will work with you and we want to make it possible to have a good development out there.

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

WEDNESDAY, SEPTEMBER 2, 1998

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

Audit List -- The Commissioners signed the Audit List, dated September 1, 1998, pages 3-36, with a grand total of \$145,069.03. The Audit 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 Odlin, and for Justice Court 2, Michael Jaworsky, both for the month of August, 1998. She also examined, approved, and ordered filed the Report of the Clerk of the District Court, Kathleen Breuer, for the month of August, 1998.

PUBLIC MEETING - September 2, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Deputy County Attorney Colleen Dowdall and County Surveyor Horace Brown. Commissioner Hart was ill.

Public Comment

None

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$145,069.03. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Bid Award - Gas and Diesel Fuel for Seeley/Swan (Road Department)

Horace Brown gave the report. This is fuel for performing FY '99 roadway maintenance in the Seeley-Swan areas. This is a split bid, part to one company for the Swan area and part to another company for the Seeley area.

Cenex bid on item 2 in the amount of \$1,034, item 4 in the amount of \$779 and item 6 in the amount of \$724. Rovero's bid on item 1 in the amount of \$6,195, item 2 in the amount of \$1,239, item 3 in the amount of \$4,395, item 4 in the amount of \$879, item 5 in the amount of \$3,745 and item 6 in the amount of \$749.

It is the recommendation of the Road Department to award items 2, 4 and 6 to Cenex for the Swan area in the amount of \$2,537; and items 1, 3 and 5 to Rovero's for the Seeley area in the amount of \$14,335, for a total of \$16,872, as they are the lowest bids and have been budgeted for.

Commissioner Kennedy moved that the Board of County Commissioners award the bid for Gasoline & Diesel Fuel to Cenex for items 2, 4 and 6 for the Swan area in the amount of \$2,537; and Rovero's for items 1, 3 and 5 for the Seeley area in the amount of \$14,335, for a total of \$16,872, as they are the lowest bids. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Bid Award - Asphaltic Concrete Mix (Road Department)

Horace Brown gave the report. This bid is for paving the yard at the new county shop complex and performing FY '99 roadway maintenance. Part of this material will also be used for patching.

JTL bid on item 1 in the amount of \$80,800 and item 2 in the amount of \$1,100, for a total of \$81,900. Jensen Paving bid on item 1 in the amount of \$101,000 and item 2 in the amount of \$1,100, for a total of \$102,100.

It is the recommendation of the Road Department to award the bid to JTL in the amount of \$81,900, as it is the low bid and has been budgeted for.

Commissioner Kennedy moved that the Board of County Commissioners award the bid for Asphaltic Plant Mix to JTL Group Inc., in the amount of \$81,900 as it is the lowest bid. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Lowe's Trailer Court (Summary Plat - 4 Units) Clinton

Nancy Heil, Office of Planning and Grants, presented the staff report.

The applicant, Ed Lowe, is requesting approval of a 4 unit mobile home court on a 7.26 acre parcel in Clinton. The property is located north of Interstate 90 along the frontage road, approximately 1/2 mile west of the Clinton interchange. The property is legally described as Tract F-3, COS 3252, NE 1/4, Section 22, Township 12 North, Range 17 West.

The parcel is long and narrow, with approximately 130 feet of frontage along the Interstate 90 frontage road. The parcel extends back 2,050 feet to the northeast. The 2 acres nearest the highway are relatively level. The proposed mobile home court is located on approximately one acre nearest the highway frontage road. The remaining acre on the level portion of the property is used for heavy equipment storage. The remaining 5 acres of the property are located on a steep hillside.

One mobile home is currently located on the subject property, Tract F-3. This mobile home will be removed and replaced by 4 units as shown on the site plan. A set of proposed park rules is included with the application, per Subdivision Regulations Article 3-10, which addresses Mobile Home Park standards. The site plan meets the setback and space and bulk requirements of the Regulations. Landscaping and parking requirements are also addressed.

Tract F-3 includes septic easements that serve Tracts F-2 and F-1 to the west. The applicants own and live on Tract F-2, the adjacent parcel to the west. A wrecking yard is also located on Tract F-2.

The property is accessed from the highway frontage road to a private road. The frontage road is designated a Primary Travel Corridor.

The property is unzoned. The 1975 Comprehensive Plan designates suburban residential land use with a density of 2 dwelling units per acre.

Chairman Evans asked if there was a developer's representative present.

Nancy Heil stated that the applicant, Ed Lowe, was present and would answer any questions the Commissioners may have.

Chairman Evans asked for public comment. There being none, the public comment was closed.

Commissioner Kennedy moved that the Board of County Commissioners deny the variance request from Section 3-2 of the Missoula County Subdivision Regulations for the private road to vary from the required 24 foot paved width to a 15 foot graveled width and approve the variance to a 20 foot graveled width; and approve the variance request from Section 3-2(5) 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. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Commissioner Kennedy moved that the Board of County Commissioners approve Lowe's Court Subdivision for Lease or Rent, 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.

Lowe's Trailer Court Conditions of Approval

1. The private road serving the mobile home court shall be named. The road shall be constructed to a 20 foot width with a turnaround adequate for emergency vehicles. The final design shall be approved by the County Surveyor and Clinton Rural Fire District prior to plan filing.
2. The lot owner shall file a document of record with Missoula County waiving the right to protest installation of pedestrian walkways on Secondary Highway 210 (Frontage Road) based on benefit, which may be used in lieu of 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. Such document shall be filed prior to final plan filing.
3. The lot owner shall file a document of record with Missoula County waiving 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. Such document shall be filed prior to plan filing.
4. The lot owner shall contribute \$100.00 per new dwelling unit to the Clinton Rural Fire Department prior to plan filing.
5. The final plan shall show the location of 2 parking spaces per mobile home lot. The final plan or an attachment shall include a landscaping plan in accordance with the requirements of Mobile Home Court Standards and Primary Travel Corridor standards, subject to OPG approval.
6. The lot owner shall file a development agreement, subject to County Attorney approval, that states that the Mobile Home Park Standards and Primary Travel Corridor Standards in the Missoula County Subdivision Standards shall be met. The development agreement shall be filed prior to final plan filing.

Rick & Lisa's (Agard) Subdivision for Lease/Rent (Duplex and Mobile Home) Clinton

Nancy Heil, Office of Planning and Grants, presented the staff report.

The applicants, Rick and Lisa Agard, are requesting approval to add a duplex and mobile home to a 1.6 acre parcel in Clinton. The property is located in the former railroad right-of-way at the end of 5th Street.

The property is legally described (Book 484, Page 534) as within the SE 1/4 Section 27, Township 12 North, Range 17 West and including the 125 foot railroad right-of-way extending between the northerly line of 5th Street and the northerly line of 7th Street, except for a portion of the 125 foot right-of-way extending between the centerline of 6th Street and the southerly line produced westerly of Lot 2, Block 11, of the East Clinton Plat. The applicants have stated that they also own this excepted area. A retracement survey filed as COS 4773 described the southern 0.7 acres portion of the parcel, which was subsequently sold. The remaining parcel is 1.6 acres in size.

The property is currently vacant. The applicants own and live on parcels adjacent to the subject property. The property is accessed via 5th Street. A private driveway will serve the dwelling units.

Individual wells and septic systems are proposed. The applicants will be required to provide evidence to the Health Department that the septic drainfields can be located more than 100 feet away from the floodplain.

The property is unzoned. The 1975 Comprehensive Plan designates Parks and Open Space land use. This land use, however, was applied to insure public use along the railroad right of way and since the right of way is now privately owned and no longer used for the railroad, this land use designation is no longer valid. The former right of way has developed into residential use. The adjacent area is designated suburban residential with a maximum density of 2 dwelling units per acre.

The Office of Planning and Grants recommends approval of the Rick and Lisa's Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the conditions in the staff report.

The Office of Planning and Grants recommends approval of the variance request from Section 3-2 of the Missoula County Subdivision Regulations for 5th Street to vary from the required 24 foot width based on the findings of fact set forth in the staff report.

Commissioner Kennedy stated that the variance recommended is to the existing condition of the 5th Street.

Nancy Heil stated that was correct. The applicants were present and would come forward to answer questions.

Chairman Evans asked for public comment. There being none, the public comment section was closed.

Commissioner Kennedy moved that the Board of County Commissioners approve the variance request from Section 3-2 of the Missoula County Subdivision Regulations for 5th Street to vary from the required 24 foot width to the existing condition 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 Kennedy moved that the Board of County Commissioners approve Rick and Lisa's Subdivision for Lease or Rent on a 1.6 acre parcel in Clinton, 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.

Rick & Lisa's Subdivision Conditions of Approval

1. The lot owner shall provide evidence that the 1.6 acre parcel described in the application is within the applicant's ownership prior to plan filing.
2. The lot owner shall file a document of record with Missoula County waiving the right to protest improvements to 5th Street, including installation of pedestrian walkways, based on benefit, which may be used in lieu of 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. Such document shall be filed prior to final plan filing.
3. The lot owner shall file a document of record prior to plan filing waiving 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.
4. A development agreement shall be filed, subject to County Attorney approval, that states that the new driveway shall meet the requirements of Missoula County Subdivision Regulations and the Clinton Rural Fire District. The development agreement shall be filed prior to plan filing.
5. The lot owner shall contribute \$100.00 per new dwelling unit to the Clinton Rural Fire Department prior to plan filing.
6. The lot owner shall file a document of record with Missoula County assenting to the creation of an RSID for the maintenance of a park or parks in the Clinton area, defined as the Clinton school district, on an equal basis with other properties in the area. Such document shall be filed prior to final plan filing.

JTL Group - Special District Rezoning Request (West of Reserve Street between Interstate 90 and Westview Park)

Jennie Dixon, Office of Planning and Grants, gave the staff report.

This is a re-zoning request from C-RR3 and C-RR3/MH residential districts to a special district called the JTL Special District. The subject property consists of approximately 86 acres situated between Interstate 90 and Westview Park Mobile Home Court and the Phillips gravel pit, west of Reserve Street. JTL Group, Inc., is proposing the creation of a

special zoning district (Section 6.05 - JTL Special District: Natural Resource Recovery and Processing) to allow for phased sand and gravel extraction and processing on this property.

The property is zoned for residential use in the county, at a maximum of four dwelling units per acre, with a quarter of the property zoned for mobile homes. Montana statutes pertaining to local government land use regulations preclude a local government from adopting an ordinance, resolution or rule preventing the complete use, development, or recovery of any mineral, forest or agricultural resources, by the owner of the land, except that with respect to the mining of sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area that is zoned residential. If the land is zoned residential, the complete use, development or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site located within an area zoned residential is subject to zoning regulations adopted pursuant to Title 76, Chapter 2, MCA.

Chapter five of the Missoula County Zoning Resolution provides for the establishment of special districts in order to promote proper and rational development of the community. Missoula County recognizes that certain types of complex, special uses may be better served by the creation of a special zoning district tailored to meet specified needs, problems, and qualities of the development.

The Phillips pit is located southeast of the property, with about 1000 feet of common boundary. JTL Group, Inc., leases 86 acres of the Phillips property for gravel extraction purposes, and there is about ten years left on this lease. According to the applicant, some mining activity on the Wheeler site would occur after two years (once preliminary improvements are complete) and full-scale operation at the Wheeler site would not be underway for at least six to ten years, while the current mining operation at the Phillips pit is phased out. There is a crusher and an asphalt batch plant at the Phillips pit. An asphalt batch plant is an industrial facility used for the production of asphalt and asphalt products. It also typically includes facilities for the administration or management of the business, stockpiling of bulk materials used in the productions process or finished products manufactured on the premises, and the storage and maintenance of required equipment, but does not include the retail sale of finished asphalt products.

Nick Kaufman, WGM Group, developer's representative, was present, as were Joe Long and Alrick Hale from JTL Group. The agency comments were favorable with conditions which are reflected in the staff report. The Office and Planning and Grants and the Planning Board have recommended approval unanimously. There was one letter of concern from Mr. Lewis, who owns Westview Park, however he has withdrawn his concern and now gives support to the rezoning. There was a community meeting with residents of Westview Park and others and their concerns raised at that meeting have been met. Site cleanup is an important issue. Zoning requires a performance bond for both the mining issues and the cleanup. Access had been proposed out Wheeler Drive to Expressway. The agency comments reflected the preference of access out Michael Road on the east to Reserve Street. JTL has been working to pursue the option of using Michael Road as the primary access. They would also like to have the option to use Wheeler Road as well. They encourage the Board to adopt the Resolution of Intention to Rezone Property with the conditions recommended.

Commissioner Kennedy stated that after looking at the site it was necessary to add Condition 13, which they were aware of, a waiver of an RSID for improvements of Wheeler Road which goes beyond what JTL has proposed for the subdivision. Did the developer have any comments?

Nick Kaufman stated Jennie Dixon had reviewed the language yesterday and they had no problems with it.

Chairman Evans opened the public hearing.

Dick Williams stated he owned property on Reserve Street directly east of this area. He wanted to speak in favor of the project, it is the highest and best use for this property. There is already a gravel pit directly east of this area on Michael Road. He owns a restaurant in the area and has had no problems or dust with the current gravel pit.

Commissioner Kennedy asked Dick Williams if he had any comments or preference about the way in and out of the area, either Wheeler Drive or Michael Road?

Dick Williams stated he had no preference, neither way created a problem.

George Lewis, owner of Westview Mobile Home Park, stated he has worked together with the Wheelers and JTL, on behalf of the 1,200 people who live there. They have come together with a good landscaping plan and exiting out Wheeler Drive combined with the new Interstate exit makes it very versatile for the trucks to go either way. He preferred to see the traffic exit that way than increase traffic on Reserve St.

Chairman Evans told Mr. Lewis she was pleased he had withdrawn his protest. She has always wanted the residents in Westview to have another exit and she hoped this would provide that exit.

Bill Larson, owner of Motel 6, stated he was in favor of the project. JTL is a very reputable company and there won't be any problems.

Jerry Ballas, 204 South Avenue East, stated he was in favor of this as it was an opportunity to clean up an eyesore along I-90. It will improve the entrance to the city along the Interstate.

Cheryl Davidson, a 22 year resident of Westview Park, stated she did not see anything wrong with having the project there.

There being no further comment, Chairman Evans closed the public hearing.

Commissioner Kennedy stated this presents a significant project for Missoula, it will change the character of that part of the city and the community in general. That is an important statement in view of the lack of negative comment. He

appreciated all the efforts JTL has done in order to get to this point, including all the public meeting. There were few problems and those were all resolved. It is a pleasure to have a project that happens this way, all the problems are mitigated prior to the Board's decision.

Commissioner Kennedy moved that the property described as a portion of the north half of Section 6, Township 13 North, Range 19 West, Principal Meridian, Montana, located between Interstate 90 and Westview Park, known as the "Wheeler Site" and more particularly described by a Metes and Bounds description shown in the application packet appendix, be rezoned from "C-RR3" (Residential) and "C-RR3/MH" (Residential/Mobile Home) to the JTL Special District, as shown in attachment A and subject to the recommended conditions. Chairman Evans seconded the motion.

Chairman Evans asked if this was a notification of intention to rezone and if so, what is the time frame before it is adopted.

Michael Sehestedt stated this would be adopting notice of intention to rezone, it would need to be published twice and for a period of 30 days following first publication there would be an opportunity to file protests. 40% protest of affected property owners would be sufficient to defeat the rezoning.

Jennie Dixon wanted to be clear about the conditions.

Commissioner Kennedy stated it did include all 13 conditions.

Chairman Evans called the question. The motion carried on a vote of 2-0.

JTL Special District Conditions of Approval

1. If legal access can be acquired from the site to Michael Road, the primary access for the operation shall be via Michael Road, and the secondary access shall be via Wheeler Drive, subject to review and approval by the City Engineer and the State Department of Transportation. If Michael Road access is acquired, the phasing for sand and gravel extraction shall occur east to west, instead of west to east as proposed, and a new phasing plan shall be presented to and approved by OPG, prior to issuance of a Zoning Compliance Permit.
2. Wheeler Drive shall be improved for the proposed use, to a standard approved by the County Surveyor, prior to issuance of a Zoning Compliance Permit.
3. The Michael Road access, if acquired, shall be improved for the proposed use to a standard approved by the City Engineer and the Health Department, prior to issuance of a Zoning Compliance Permit.
4. The developer shall prepare a written plan for disposal and storage of all waste material and other stored materials on the site in compliance with the Missoula City-County Health Code Solid Waste Management Regulations, the Missoula Community Decay Ordinance, and the Missoula Municipal Code Garbage regulations, to be reviewed and approved by the Health Department, within 30 days of rezoning approval. The plan shall include a time frame for completing the site clean-up no later than two years after rezoning approval. No Zoning Compliance Permit shall be issued until the site clean-up has been completed. The developer shall post a performance bond to guarantee the site clean-up to be completed no later than two years after rezoning approval.
5. The developer shall prepare a written lighting plan to be reviewed and approved by OPG, prior to issuance of a Zoning Compliance Permit. The plan shall show that the height of all light fixtures, including those on resource processing equipment, is below the height of the lowest berm adjacent to the site. All lighting shall be shielded so that all light falls within the property boundary.
6. A berm shall be constructed and landscaping shall be installed along the entire length of the property adjacent to Interstate 90, consistent with the landscape plan presented by the applicant. This berm shall remain after gravel resource recovery is complete.
7. A berm shall be constructed and landscaping shall be installed along the north side of Wheeler Drive between Wilkie Street and Expressway, consistent with the landscape plan for Wheeler Drive between Wilkie and White Street presented by the applicant. This berm may remain after completion of the gravel resource recovery.
8. The berm and landscaping on the south boundary of the site shall continue west to directly adjacent to the well house as a means to buffer this intersection from truck traffic impacts. The berm on the south boundary of the site may remain, depending on the state reclamation plan.
9. The minimum size of shrub at planting is five-gallon, and minimum size of deciduous and evergreen tree at planting is eight feet (8') tall.
10. The developer shall post a performance bond to guarantee the construction of berms and installation of all landscaping, to be completed no later than two years after rezoning approval, as required by this special district. Plans shall be reviewed and approved by OPG.
11. Consistent with the DEQ permitting process, the developer shall provide a phased reclamation and bonding plan as part of the local permitting process to mitigate particulate and control erosion in areas where mining phases are complete.
12. Section 6.05 THE JTL SPECIAL DISTRICT: NATURAL RESOURCE RECOVERY AND PROCESSING shall apply as shown in Attachment A.
13. The property owner(s) shall file a document of record with Missoula County waiving the right to protest a future RSID/SID for improvements to Wheeler Drive from Expressway to the end of the county road until the intersection

with Wilkie Street, based on benefit, which may be used in lieu of 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 depicted herein. Such document shall be filed prior to issuance of a Zoning Compliance Permit.

SECTION 6.05 - JTL SPECIAL DISTRICT: NATURAL RESOURCE RECOVERY AND PROCESSING

A. Intent

This zoning district classification is intended to allow for sand and gravel extraction and processing on the "Wheeler Site" located south of Interstate 90 and west of Grant Creek. This district recognizes the importance of providing sand and gravel and their byproducts to the community at a location close to the urban area.

This district provides for performance standards to mitigate potentially negative impacts to adjoining property. This district is not intended for open storage of any permanently inoperative junk vehicles or equipment, nor is dumping of any kind permitted except for storing of materials associated with sand and gravel processing and recycling.

B. Space and Bulk Requirements

Minimum Lot Area - None

Minimum Required Yard for Structures, Equipment and Storage*

- Front, Side, and Rear Setbacks 100 ft.

- * In addition, resource processing equipment such as screening plants, crushers, concrete and asphalt batch plants shall be located no closer than 500 feet from any existing residential zoning district.

Maximum Building Height - 35 feet, except for mineral processing equipment.

C. General Standards

1. See Supplementary Regulations - Chapter III
2. Phasing

This district contains a three-phase operational plan, with a projected lifetime of the gravel extraction operation of fifty years. Unless otherwise specified in these district regulations or in conditions of rezoning approval, this district does not set specific time frames for allowed uses and activities. All other time frames specified within the phasing plan are projections and not required to be followed.

Preliminary Site Improvements shall occur prior to issuance of a Zoning Compliance Permit. These improvements include site clean-up, landscaping, buffering, fencing and road construction.

Phases 1, 2 and 3 are depicted in the attached maps. If Michael Road access is acquired (per condition of rezoning), the phasing for sand and gravel extraction shall occur east to west, instead of west to east as proposed, and a new phasing plan shall be presented to and approved by OPG, prior to issuance of a Zoning Compliance Permit.

3. Landscaping and Buffering

All landscaping and buffering shall be completed prior to commencement of gravel resource recovery or processing and no later than two years after rezoning. Posting of a performance bond is required to guarantee the construction of berms and installation of all landscaping, to be completed no later than two years after rezoning approval. The use of the site for any purpose other than agriculture shall require screening and buffering from residential districts and public roadways.

The preliminary site improvements plan and conditions of rezoning contain specifications and locations for landscaping and buffering, including berms, planting of trees and shrubs, and seeding of native grasses, lawn and wildflowers. The plan contains provisions for the maintenance of the screening and buffering.

4. Air Quality

Haul roads from the site to the public right-of-way shall be paved. Public rights-of-way from the site to the nearest paved arterial shall be paved.

Operations within the property shall meet the requirements of the MCCHD.

5. Hours of Operation

Hours of operation for processing of material shall be limited to the hours between 7:00 a.m. and 6:00 p.m.

D. Permitted Uses

Sand and gravel extraction.

Facilities for the complete storage, processing and manufacture of sand and gravel products, such as screening, crushing, concrete and asphalt batch plants, including all structures or buildings needed to pursue such activities.

Concrete products manufacturing and storage.

Storing asphalt and concrete for recycling.

Recycling concrete and asphalt.

Agriculture, including any and all structures or buildings needed to pursue such activities.

Business office and shops associated with the primary use of the property.

Accessory building and uses.

There being no further business to come before the Board, the Commissioners were in recess at 1:57 p.m.

THURSDAY, SEPTEMBER 3, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Hart was out of the office all day due to illness.

Plat - The Commissioners signed the plat for Anderson Addition, a subdivision located in the NE1/4 of Section 4, T12N R19W, PMM, a total area of 16.24 acres, with the owners of record being G. Clark and Nancy Anderson.

ADMINISTRATIVE MEETING

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

Contract - The Commissioners signed a Contract with Norm Jones Contracting for asphalt milling work on paved alleys where City sewer is to be installed. Term of the Contract is September 30, 1998 through January 30, 1999. Compensation is estimated at \$17,000.00

Memorandums of Agreement - The Commissioners signed five Memorandums of Agreement:

1. with the Seeley Lake Community Council, to purchase services to advance and promote the interests and welfare of the residents of the Seeley Lake community. Term of the Agreement is July 1, 1998 through June 30, 1999. Value of the Agreement is \$1,700.00.
2. with Child Care Resources, to provide recruitment, training, and support for child care providers that serve Missoula's working families. Term of the Agreement is July 1, 1998 through June 30, 1999. Value of the Agreement is \$51,000.00.
3. with the Missoula YWCA, to purchase basic needs assistance for indigent residents of Missoula County through the YWCA Transitional Housing Program. Term of the Agreement is July 1, 1998 through June 30, 1999. Value of the Agreement is \$8,370.00.
4. with Child Care Resources, to purchase services to benefit Partnership to Strengthen Family Project families seeking respite care. Term of the Agreement is July 1, 1998 through June 30, 1999. Value of the Agreement is \$9,500.00.
5. with the Missoula YWCA, to purchase basic needs assistance for indigent residents of Missoula County through the Vocational Services Program. Term of the Agreement is July 1, 1998 through June 30, 1999. Value of the Agreement is \$10,808.00.

Resolution - The Commissioners signed Resolution No. 98-067, a resolution of intent to rezone property described as a portion of the N1/2 of Section 6, T13N R19W, PMM, located between I-90 and Westview Park, known as the "Wheeler Site."

First Modification - Chairman Evans signed the First Modification to a Contract between the Missoula City/County Health Department and the Montana Department of Public Health and Human Services to provide coordination of infant/child mortality review teams throughout the state. Term of the Contract is July 1, 1998 through September 30, 1998. Sum for services must not exceed \$27,500.00.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Missoula City/County Health Department to purchase services to benefit parents of 0-3 year olds (and their children) who are at risk of child abuse and neglect - neighborhood nurse home visiting services. Term of the Agreement is July 1, 1998 through June 30, 1999. Value of the Agreement is \$64,000.00. The Agreement was returned to the Health Department for further signatures and handling.

First Modification - Chairman Evans signed the First Modification to a Contract between the Missoula City/County Health Department and the Montana Children's Trust Fund Board to fund a social worker two days a week to work intensively with parents who are developmentally delayed. Maximum sum for services is \$15,000.00. The Contract was forwarded to the Montana Children's Trust Fund in Helena.

Task Order - Chairman Evans signed a Task Order to the Missoula County Master Contract with the Montana Department of Health and Human Services to conduct Tuberculosis prevention work. Performance schedule is July 1, 1998 through June 30, 1999. Maximum total amount payable under this task order is \$10,000.00. The Task Order was returned to the Health Department for further handling.

Contract - The Commissioners signed a Contract with Missoula Sheet Metal for removal and repair of the roof on the Courthouse Annex. Contractor shall complete all work within 90 days of date of Notice to Proceed. Compensation shall be \$62,785.00. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Extension - The Commissioners approved a one year extension for final plat submittal for Mountain Sheep Vista Subdivision, making the new filing deadline August 27, 1999, with a letter to Charles S. Johnson III.

Other items included:

- 1) The Commissioners approved a request and Chairman Evans signed a permit to build a floating dock on Lindbergh Lake, on property described as Lot 1 of the Lindbergh Lake Tracts.
- 2) The Commissioners deferred a resolution and rate study for the Lolo Development Fee, because they felt a meeting with the engineer was necessary first.
- 3) The Commissioners gave preliminary approval of sale of lots 1, 2, and 3 of Block 8, Missoula Development Park, to Sun Mountain Sports for \$250,000.00.

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

FRIDAY, SEPTEMBER 4, 1998

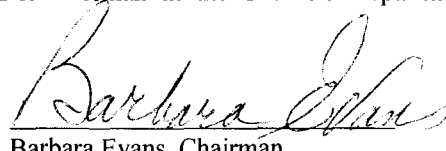
The Board of County Commissioners met in regular session; a quorum of members was present in the afternoon. Commissioner Evans was out of the office until noon, and Commissioner Hart took a day of vacation.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Ivan Chinikaylo as principal for Warrant #050075 issued 7/16/98 on the Missoula County MCPS Bilingual Ed./Business Dept. Fund in the amount of \$72.20 now unable to be found.

Resolution - The Commissioners signed Resolution No. 98-068, an emergency proclamation because of hazardous fire conditions throughout Missoula County.

Amendment - The Commissioners signed Amendment Number 3 to a Cooperative Agreement with the Lolo National Forest, amending the Agreement to include reimbursement for fire suppression related services provided by the Sheriff's Department. The Amendment was returned to Don Morgan in the Sheriff's Department for further signatures and handling.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, SEPTEMBER 7, 1998

The Courthouse was closed for the Labor Day holiday.

TUESDAY, SEPTEMBER 8, 1998

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:

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Montana CASA to purchase services related to providing court appointed direct volunteers to provide advocacy services for children aged birth to 18 who are neglected, abused, and abandoned. Duration of the Agreement is from July 1, 1998 through June 30, 1999. Value of the Agreement is \$5,000.00.

Resolution - The Commissioners signed Resolution No. 98-070, a Budget Amendment for the Office of Planning and Grants, for the CMAQ funded Missoula Transportation Demand Management Program, in the amount of \$48,745.00.

Resolution - The Commissioners signed Resolution No. 98-069, a Budget Amendment for District Court, for purchase of computers, in the amount of \$25,000.00.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Chem-Safe Services of Kittitas, WA, to provide waste collection, transportation and disposal services associated with the Health Department's hazardous waste collection event to be held on September 17-19, 1998. Compensation for various services is noted in the Contract. The Contract was returned to the Health Department for further signatures and handling.

Counter Offer - The Commissioners accepted and signed a Counter Offer with WORD for the property at 300-306 West Broadway, in the amount of \$300,000.00. The documents were returned to Paul Webber, CAO.

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

WEDNESDAY, SEPTEMBER 9, 1998

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

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated September 8, 1998, pages 2-48, with a grand total of \$245,472.24. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Jim Carlson as principal for Warrant #333843 issued 8/12/98 on the Missoula County 2270 Fund in the amount of \$154.36 now unable to be found.

PUBLIC MEETING - September 9, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, Deputy County Attorney Colleen Dowdall, Clerk & Recorder Vickie Zeier and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$245,472.24. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Law Enforcement Federal Block Grant (Sheriff's Department)

Sheriff Doug Chase gave the report. Today is the day set for a public hearing for the 1998-1999 Federal Block Grant. Monies from this grant are used for overtime, equipment and training as required by Federal law. This year the department has designated \$55,000 of the total \$66,668 to overtime in order to keep sheriff's presence in the County school systems and for a higher presence in bedroom communities and the outer areas of the County for the purpose of continuing community policing concept and providing additional measures of security to those living outside the city limits. The remaining \$11,668 will be spent in the patrol division to upgrade equipment in patrol cars. Items such as two way radios that are over 10 years old, light bars, consoles, gun locks, etc., will be replaced due to their age and higher maintenance costs. This public hearing is a requirement by Federal law to be held prior to the money being awarded. He would answer any questions the Commissioners may have.

Chairman Evans asked for public comments. There being none, the public hearing was closed.

Commissioner Hart moved that the Board of County Commissioners approve the third year for a Federal Block Grant, and appropriate the \$66,668 for the purposes stated. Commissioner Kennedy seconded. The motion carried on a vote of 3-0.

Proposed Amendments to Missoula County Animal Ordinance

Paula Nelson, Supervisor, Missoula County Animal Control, gave the report. The Missoula County Dog Ordinance has been reviewed for the first time in five years and have made some amendment suggestions. Some are language changes, others are significant. The classification of kennel licenses has changed significantly.

Chairman Evans asked if there was anyone in the audience who wanted to speak regarding the ordinance changes. No one indicated their interest in testifying. She then asked counsel if each of the changes needed to be read into the record or were copies available for public inspection sufficient?

Michael Sehestedt stated that having copies available was sufficient. He noted that as this was an amendment of ordinances this needed to be treated as a first reading, schedule a second reading and then adopt the changes.

Chairman Evans asked if the other Commissioners wanted all 11 pages read into the record?

Commissioner Kennedy stated it was not necessary.

Commissioner Hart stated she would like to have the changes in the fees in the record.

Paula Nelson stated that this was the first of two hearing, the other scheduled for September 23, 1998. Some of the more substantial changes are listed below: (underlines indicate new language, strikeouts indicate deleted language):

Section 1: Definitions

B. Class I Kennel: means a home or facility (i.e. commercial establishment) where more than five (5) dogs but no more than twenty (20) dogs over the age of four (4) months are owned, kept or maintained as pets, working dogs, are for sale, or are used for sporting or commercial purposes. Veterinary hospitals and boarding kennels are to be excluded from this definition and are not required to purchase a Class I license.

C. Class II Kennel: means a home or facility (i.e. commercial establishment) where more than twenty (20) dogs over the age of four (4) months are owned, kept, or maintained as pets, working dogs, are for sale, or are used for sporting or commercial purposes. Veterinary hospitals and boarding kennels are to be excluded from this definition and are not required to purchase a Class II license.

D. Boarding Kennel: means a facility where dogs are brought for short term boarding and said animals are not owned by the kennel. Boarding kennels are required to keep accurate records of all animals entering and leaving the facility. Records to include, but not limited to, proof of current rabies vaccination on all animals at the facility. Veterinary hospitals are excluded from this definition and are not required to purchase a Boarding Kennel license.

Section 3: Dog Licensing

P. Fees: Payment of a license fee shall be made to the Missoula County Treasurer or to the Animal Control personnel at the City-County Animal Shelter, according to the following schedule:

1. Altered dogs - 1 year.....	\$12.00	\$15.00
2. Unaltered dogs - 1 year.....	\$24.00	\$25.00
3. Altered dogs - 2 years	\$15.00	\$20.00
4. Unaltered dogs - 2 years	\$30.00	\$40.00
5. Class I Kennel License - 1 year.....	\$25.00	\$50.00
6. Class II Kennel License - 1 year	\$45.00	\$100.00
7. Boarding Kennel License - 1 year.....	\$25.00	
8. Late Fee	\$5.00	
9. Transfer Fee	\$3.00	\$5.00
10. Duplicate Fee	\$3.00	\$5.00

Partial year licenses may be purchased on a prorated, quarterly basis according to the fee schedule attached hereto and by this reference made a part thereof. Prorated licenses can be obtained at the County Treasurer’s Office or at the Animal Control Shelter.

Section 5: Impoundment

D. The owner or temporary owner of any impounded ~~dog~~ animal may redeem the animal by paying the assessed fee (dogs and canines only), plus Ten Dollars(\$10.00) for the first twenty four (24) hour period or any portion thereof and Five Dollars (\$5.00) for each subsequent twenty-four (24) hour period or portion thereof that the dog is kept at the shelter. Further, an unvaccinated dog, cat or ferret shall not be released until the owner or temporary owner purchases a rabies inoculation certificate; in addition, a dog may not be released to its owner or temporary owner until the kennel impoundment fee established herein is paid in full.

The kennel impoundment fees shall be as follows:

Within any 12 Month Period	Licensed Dog		Unlicensed Dog	
1st Impoundment	\$20.00	\$20.00	\$35.00	\$40.00
2nd Impoundment	\$35.00	\$40.00	\$60.00	\$80.00
3rd Impoundment	\$60.00	\$65.00	\$85.00	\$90.00
4th Impoundment	\$85.00	\$90.00	\$110.00	\$115.00
5th Impoundment	\$110.00	\$115.00	\$135.00	\$140.00

Paula Nelson stated these increased charges should help offset the administrative fee that are incurred and the computer generated renewal notices.

Chairman Evans stated that most seem to be minimal increases but asked for explanation of the substantial increase in Class II Kennel License?

Paula Nelson stated that under the old definition of a Class II Kennel you could have 6 to 12 dogs. The new definitions of a Class II Kennel has increased to 20 or more dogs, and it was felt the increase was necessary for proper enforcement. She also read into the record the proposed substitute amendments:

1. Page 8, Section 6: Rabies Control, paragraph A, first sentence:

It is unlawful for any person to keep, harbor, maintain, sell, adopt out, or give away any dog, cat, ferret over four months of age, or any other animal that has a rabies vaccine approved for its species, unless such animal has been vaccinated against rabies by a licensed veterinarian.
2. Page 9, Section 6: Rabies Control, paragraph D:

If an animal dies during the quarantine period for any reason whatsoever, the Animal Control Officer shall have the head of the animal sent to a diagnostics laboratory for rabies testing.
3. Page 8, Section 5: Impoundment, paragraph H:

H. If an owner of an impounded animal comes forward but refuses to reclaim his/her animal, the owner shall be required to pay a \$25.00 surrender fee for an animal in lieu of paying impoundment and daily care fees, and shall also sign a release agreement to allow animal control to offer the animal for adoption or euthanize the animal prior to the prescribed time limit. This fee may be waived by Animal Control if they determine it is in the best interest of the animal.

Michael Sehestedt asked how these fees compared to the fees charged by the city?

Paula Nelson stated they were exactly the same and reflect the recent amendments to the city ordinance, except for the Kennel licenses, as kennels are not permitted in the city.

Michael Sehestedt asked what species there is an approved rabies vaccine for, for example, bovine, horses, etc.? If there are, the Substitute Amendment #1 is compelling every beef producer to have their entire herd vaccinated, which caused him some concern. This may cause a problem that was unintended.

Paula Nelson stated her understanding was that the only approved vaccines at this time are for dogs, cats and ferrets.

Michael Sehestedt suggested the definition should be then limited to dogs, cats and ferrets to limit misinterpretation. The paragraph should strike the words "or any other animal."

Paula Nelson stated she would make that change for the next public hearing.

Commissioner Kennedy stated that perhaps some research was needed, because as an owner of horses, they are vaccinated against rabies. He was not sure the rabies vaccine was exclusive to the three animals listed.

Paula Nelson stated she would research the question prior to the next public hearing.

Chairman Evans asked for public comments. There being none, the hearing will be continued until September 23, 1998.

Decision on Northgate Development Park (Preliminary Plat) 8-lots - Near Expressway (Continued from August 26, 1998)

Dave Loomis, Office of Planning and Grants, presented the update. This is final action on Northgate Development Park. Staff has prepared a comparison of road and pedestrian standards for this project, the adjacent County Development Park, regulations and staff recommendations. The two main concerns are the right of way for Majestic Drive and the pedestrian facilities. In the County Development Park, some of the smaller roads have both 60' and 80' right of ways. For Northgate, the applicant has proposed no pedestrian facilities, staff is recommending pathways much like what will be at the County Development Park.

Commissioner Hart asked Colleen Dowdall about landscaping and the number of trees, which would be determined when the lot owners get a building permit. What zone would that be?

Colleen Dowdall stated that for the land that is currently zoned as industrial, in order to get zoning compliance, in order to build that structure, they would look at the landscaping standards.

Commissioner Hart stated that would not be the same as for the special zone in the County Development Park, it would be another zone.

Colleen Dowdall stated that was correct. She needed to refer to the zoning regulations to be specific. She would look it up while the discussion continued.

Dick Ainsworth, Professional Consultants, Inc., was present representing C and C Land, Kirby Christian was also present. At the previous hearing, most of their concerns dealt with what was thought to be inconsistencies between what the staff and Planning Board were asking them to do in the way of improvements as opposed to what the County was doing in their adjacent development. He had spoken with Orin Olsgaard on several occasions and had copies of the preliminary plat and supporting documents for the County Development Park and it was based on that information that they were disputing what the County was requiring of themselves. As it turns out, they misled themselves as to what the County's requirements were. The preliminary approval doesn't require numerous improvements that in fact the County is going to put in. They were reading the preliminary approval which did not say an item was required but the County was indeed doing the improvement. Sidewalks on internal streets was one example. The County is telling prospective buyers that these improvements will be made. The misunderstanding was that improvements were not in writing in the preliminary approval but the improvements would be done. What the Planning Board recommended to the Commissioners for this subdivision was relatively close to the requirements for the County's Development Park. Their argument from two weeks ago that this subdivision is being required to do more than the County is, is not true, but they thought it was at the time. There are still a few area of concern. The internal road Majestic Drive and the easement to continue it through to Wheeler Drive was not a problem, the right of way distance was in question however. It was proposed to be 60 feet. The roads in the Development Park are a mixture, some 60 feet and some 80 feet. They still feel 60 feet of right of way is appropriate. With regard to pedestrian improvements on Majestic Drive, they do not feel those should be required now, they would not object to waiving their right to protest an SID at some point in the future. Majestic Drive would be paved to a 40 feet, about the same as Expressway, with approximately 8 feet stripped off for pedestrians. It seems that if 8 feet on Expressway is sufficient the same should be true of Majestic Drive for now. As those properties are developed, some might require more pedestrian facilities but until they are developed and known, they should not be required to put them in now. They do not object to waiving their right to protest an SID on this.

Commissioner Hart stated that the conditions at the Development Park are changing as the County is adapting to the market.

Kirby Christian stated that Dick expressed their position adequately. They had met with Orin and discussed some of the issues from the last meeting which gave them a better understanding for how the Development Park is occurring. One area they would like the Commissioners to consider today is the width of pavement and pedestrian facilities on Majestic Drive being similar to Expressway and as need arises they would waive their right to protest an SID. A private developer is put at a disadvantage because of the County's own tax increment district. The amount of improvements that the County approved on their preliminary plat should be adequate for them at this time. There are not sidewalks everywhere in the County's development now and requiring them to put in sidewalks now puts them at a disadvantage. His suggestion was 40 feet of paving and adequate pedestrian facilities that are the same as Expressway

and waive the right to protest SIDs in the future. The other issue is trees, the County's requirement is one tree per 100 feet and Northgate's requirement is one tree per 50 feet.

Commissioner Hart stated that a buyer in Northgate would be bound by the landscaping requirements of that zone, and the zoning in the Development Park was not the same as Northgate.

Kirby Christian stated the other issue left open was the rezoning of Lot 8. Orin confirmed their understanding that at the time of the swap it was generally understood that this lot would be light industrial.

Chairman Evans asked if there was anyone in the audience who would like to speak about this proposal. There being none, the discussion on Northgate continued.

Colleen Dowdall stated there were two places where landscaping was addressed in the County Zoning Resolutions. One is called the General Requirements in Section 3.05. The first requirement is that a landscape plan be submitted indicating the location and type of vegetation, whether it is natural or man made materials and also a list of the names, sizes and methods of planting for natural vegetation. It should show the irrigation system, any other landscaping elements such as benches, walks, plaza and lighting, and a description of maintenance plans for the landscaped area. It is also required that all non residential uses adjacent to or directly across the street from a residential district shall provide a visual buffer 5 feet wide along the perimeter of lots lines adjacent to residential areas, planned under an approved overall development plan, residential districts, or existing residential areas. It is also required that non residential uses shall landscape the front 5 feet of the required front yard adjacent to streets exclusive of driveways and such landscaping which include suitable street trees spaced not more than 50 feet apart. The General Requirements also state that visual buffers or screens shall not be less than 5 feet in height unless the zoning officer authorizes a reduction to improve site distances along streets. It also says that a visual buffer may consist of planting, walls, fences or combinations thereof with an opacity of at least 75%. There are also standards that are not General Standards for the light industrial uses and industrial uses which also require a perimeter buffer strip 10 feet wide adjacent to all non industrial areas. It requires that industrial areas be functionally separated from any existing or planned public or residential areas. It requires that industrial activities producing glare shall be conducted so that direct or indirect light from the source shall not cause illumination in excess of 5 foot candles when measured in the residential district and it should be directed inward to the industrial use. It also states that ingress and egress points on arterials or collectors shall not be less than 200 feet apart or within 200 feet of a public street intersection. Specifically, light industrial standards require that all of the business of a light industry be conducted within enclosed buildings or screened areas. Outdoor storage shall be so effectively screened by a wall, fence or planting that materials are not visible from a public way and it has maximum noise levels.

Commissioner Hart asked if the Corridor Standards applied?

Colleen Dowdall stated the Corridor Standards are in the Subdivision Regulations only, Expressway was not included as it did not exist and specific streets were listed which can be amended.

Commissioner Hart stated there were good mitigations between light industry and residential, but she understood it was planned or existing residential. In this case, neither of those apply.

Colleen Dowdall stated that was correct, however, if at the time an owner got their building permit, because these standards are imposed at issuance, if the adjoining land had been zoned or proposed for residential, then the buffering requirements would be triggered.

Commissioner Kennedy stated that at the last meeting there were several actions taken and it needs to be decided what to do with those actions, a process question of whether the Board starts over or corrects what was previously done.

Colleen Dowdall stated that if the Board wants to reconsider granting a variance, whoever made the motion and voted could make a motion to change the variance today.

Commissioner Kennedy stated the first variance was regarding the 80 foot versus 60 foot right of way and he would like to have some discussion about the width of Majestic Drive. There is merit in the developers arguments. He pointed out that if there is an expectation that someday there will be 10 foot wide boulevards and 5 foot wide sidewalks and a 40 foot wide street, that adds up to 70 feet. With the variance to 60 feet, this simply won't fit. This needs to be resolved. He questioned whether the character of Majestic Drive is such that it needs to be any particular width. If Wheeler Drive is going to be built someday to an 80 foot right of way, perhaps Majestic Drive could be considered a different class of street and the overall pavement width need not be 44 or 40 feet, something less than that in order to accommodate a narrower right of way with boulevards and sidewalks. An example would be a 28 foot wide pavement, 10 foot boulevards and 5 foot sidewalks, that totals 58 feet which would fit within the 60 foot right of way. It would only work if it was decided on for a narrower paved width. He asked what Horace Brown and the developer thought about the suggestion.

Kirby Christian stated he did not want to stand in the way of good planning, from the standpoint of Majestic Drive. He would be willing to go 70 or 80 feet if that is what the long term width needs to be. He feels very strongly that the improvement level that is being required is in excess of what is needed. He would like the Commissioners to consider the 40 feet with the 2 foot, 8 foot, or if the asphalt walkway is not acceptable, then the 28 foot paved road with a little broader improvements along the side is preferable. His preference would be 40 feet of asphalt, no curbs, no sidewalks at this point, until there is an understanding of the total improvement. If that requires an 80 foot right of way, he could live with that.

Commissioner Hart stated that area would probably be an area where very large trucks would be turning around, and perhaps access four of the lots off Majestic.

Chairman Evans asked of the developer that they have been asked to give right of way for Majestic Drive all the way to Wheeler Drive. Suppose instead of asking for right of way, the Board asked for 28 feet of paving all the way to Wheeler?

Colleen Dowdall stated her concern would be, because Wheeler is in poor shape, that would require that Wheeler be improved at this point, which is not contemplated.

Kirby Christian stated that, given the status of the JTL transaction, they would agree to pave Majestic through if the improvement to Wheeler were not required. It was his understanding that if the JTL transaction goes through, they will be doing the improvements to Wheeler. At that point it would make sense to tie the roads together.

Commissioner Kennedy stated he understood that Kirby Christian would not object to an 80 foot right of way, which is what had been previously decided. The issue remains if there is a requirement for boulevards and sidewalks on Majestic Drive.

Chairman Evans stated she would like to see the right of way 60 feet with the road through to Wheeler Drive so trucks did not have to turn around. She felt 80 feet in the middle of this subdivision was excessive.

Horace Brown stated he would like to see Majestic go all the way through. That would take care of problems with trucks turning around. Wheeler will probably get upgraded in the future. He was not sure sidewalks were needed on Majestic, this is an industrial type use. There would not be a lot of foot traffic in the area. A 28 foot street would be large enough to accommodate trucks.

Chairman Evans stated that a 28 foot road with the waiver of right to protest an SID for sidewalks at a later date gives a through road with no turnaround. She believed Wheeler will be improved by JTL and this makes more sense than to require an 80 foot right of way on a cul-de-sac that serves four lots.

Commissioner Hart stated she would be willing to withdraw her motion but would like to hear a motion she could support.

Commissioner Kennedy stated discussion was needed about the right of way on Wheeler being 80 feet. That would require 10 feet of additional right of way from this subdivision. This would require a waiver from the developer and an additional 10 feet of right of way.

Kirby Christian stated he purchased the 60 feet from Wheeler to donate to the County as part of the first trade agreement he made. If there needs to be additional right of way due to the JTL project, the Wheeler's should be asked to donate the 20 feet off of their land. Some alternatives would be increasing the size of parcel 8 or consider talking to the Wheeler family at a later date.

Chairman Evans stated that Kirby Christian had purchased 60 feet of right of way and if an 80 foot right of way is desired, there is only 20 feet needed from the adjoining property, which would not include taking 10 more feet from this developer.

Colleen Dowdall stated that was correct.

Commissioner Kennedy asked Colleen Dowdall when the Wheeler property is proposed for development, can that additional 20 feet of right of way be required during the approval process.

Colleen Dowdall stated that could be required. It would depend on the land use for the area and would leave this option open.

Commissioner Kennedy asked Horace Brown where the center line of the traveled way would be?

Horace Brown stated the 80 foot right of way required for industrial use would have the road centered on the 80 feet. If any improvements are done now, it would be centered on the 60 foot right of way.

Commissioner Kennedy stated that JTL had been approved but no requirement was imposed for the right of way for Wheeler, if 80 feet is needed, where will it come from.

Horace Brown stated 80 feet is not necessarily needed, if it is required and the improvements are built on the 60 foot right of way, the road would probably not be centered on the 80 feet at a later time. That does not mean 80 is required.

Colleen Dowdall stated she understood that the JTL proposal would not be using Wheeler immediately, they would start from the other end and use the road the Phillips pit uses for access.

Commissioner Hart asked if Wheeler Road was the best access to exit Westview Park?

Colleen Dowdall stated Wheeler Road is blocked at Westview Park so the access is not used. It would be up to the owner of Westview to decide if the roadway was to be developed for use when Wheeler Drive is improved.

Chairman Evans stated he intended to do that and had withdrawn his protest of the JTL proposal.

Commissioner Hart stated she would not support asking for another 10 feet from this developer. She asked to hear a motion.

Commissioner Kennedy recapped the first two variances from the previous meeting. The first was to leave the right of way at 80 feet and the second was to reduce the pavement from 44 to 40 feet. Condition 2 required back to back L-Type curb and gutter, 5 foot sidewalks and 10 foot boulevard, which went with the 80 right of way, which was the reason for the denial. He would suggest the narrower right of way to still include sidewalks and boulevards as he explained, with a 28 foot pavement. His motion would be to construct Majestic Way to a 28 foot paved width with full curb and gutter, two 10 foot boulevards and two 5 foot sidewalks, that is consistent with what is wanted in the Development Park and with other developments in the area. If that is attractive, he would accept the variance reducing the Majestic Drive easement from 80 to 60 feet, but only if that is attractive.

Commissioner Hart stated that was leaving Majestic Drive a cul-de-sac.

Commissioner Kennedy stated that was correct. The easement still has to be granted all the way to Wheeler because ultimately it will be built and the developer has asked to eliminate the no access strip.

Chairman Evans asked counsel if the chair could submit an alternate motion.

Colleen Dowdall asked if the motion had been seconded.

Commissioner Hart stated the process would be to re-vote on the denial of the variance then after voting, if the variance is approved, then Commissioner Kennedy's motion would be reflected in Condition 2 or 3.

Chairman Evans stated an alternate motion would be that the Board vote on the variance request decreasing right of way from 80 feet to 60 feet. When that is determined, the alternate motion would be that the Board ask the developer to put a 28 foot paved road clear through from Expressway to Wheeler, with right of ways stripped for walking the same as in the Development Park.

Colleen Dowdall stated when the Conditions of Approval came up, Chairman Evans' suggestion could be included then by modifying the appropriate condition. Currently the easement is all that is being asked for, if it is to be paved and improved, that can be included in the conditions.

Commissioner Kennedy said he could support such a motion if the sidewalks and boulevards were included.

Chairman Evans stated she would be willing to make those a waiver of right to protest at a future time.

Commissioner Kennedy stated that with an 80 foot right of way, the protest is great, with a 28 foot pavement it would introduce safety conflicts.

Kirby Christian suggested staying with the 80 foot right of way with a 40 foot paved surface all the way through, then there would be enough pedestrian facilities on site, it would not be to the level proposed with sidewalks, curbs and gutter, but it would be an option.

Commissioner Kennedy stated that would be with a waiver.

Kirby Christian stated that was correct, with a waiver.

Commissioner Hart asked if this was all the way through to Wheeler?

Kirby Christian stated he would do that.

Commissioner Kennedy stated that the motion and vote on Variance 1 and Variance 2 from the previous meeting stands.

Horace Brown asked if the width of the pavement should be stated?

Commissioner Hart stated that would be done in the conditions, they were working on the variances.

Commissioner Kennedy asked counsel about Variance 3, the reduction of the right of way on Wheeler Drive, was it needed?

Colleen Dowdall stated that if Majestic Drive will be constructed to connect to Wheeler, it has been made a road to serve the subdivision, so the variance would be needed.

Commissioner Kennedy stated that the motion and vote on Variance 3 from the previous meeting stands.

Commissioner Hart stated that on Variance 4 there was a condition that follows, which should allow Variance 4 to stand.

Commissioner Kennedy stated that the motion and vote on Variance 4 from the previous meeting stands.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Article 3-2(5) of the Missoula County Subdivision Regulations to not include sidewalks in the subdivision, based on the findings of fact and conclusions of law in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Kennedy stated the scope of the pedestrian facilities would be covered in the conditions.

Commissioner Kennedy stated he believed Kirby Christian was agreeable to go along with any compatible zone that existed.

Kirby Christian stated that it was intended that the zones would be compatible, the Development Park was going to be light industrial and his development would be light industrial. He did not want this lot to be zoned residential.

Commissioner Kennedy wondered if it would be worth considering not taking action on the zoning now and sorting out the zoning question and come to some solution.

Colleen Dowdall stated she would like the question considered today, not as to the result, but as to whether it needed to go back through Planning Board and have the issue re-noticed. There is an application in front of the Commissioners that should be acted upon today.

Chairman Evans told Kirby Christian there was a proposal for affordable housing adjacent to Lot 8. The Board cannot ask him, with industrial zoning, to put up barriers if it gets zoned for housing, but he could offer the barrier requirements if he is granted the light industrial zoning.

Kirby Christian stated that would be a requirement.

Commissioner Hart stated that if the light industrial was granted and then residential was granted adjacent before the land was developed, he would be required to put in the barriers necessary.

Kirby Christian asked what the time frame was?

Commissioner Hart stated she did not know the time frame.

Kirby Christian stated he would like to sell the property and then the Board was not dealing with him. But, as long as he owns it and it is zoned light industrial, the idea of the barrier requirements would be known as well as looking at other uses for the land. He did not want this to stay a "farm."

Commissioner Kennedy asked Colleen Dowdall if going back to the Planning Board would be true only if there was a request for a different type of zoning?

Colleen Dowdall stated she would need to look at the regulations to determine that. Right now, Lot 8 is zoned residential and if the Board denied the request, the land would still be zoned residential.

Commissioner Kennedy asked what if they withdrew their request which has gone through Planning, all the questions were sorted out and it is agreed to be light industrial anyway, it should not have to go back to Planning Board.

Colleen Dowdall stated if the developer withdrew the request it would have to go back to Planning Board. If the Board continued the consideration of Lot 8 it would not. There would be an approved subdivision with one lot residential and the rest light industrial, the current zoning would stand while the platting occurs.

Chairman Evans stated she preferred to give the developer the requested zoning with the condition that if affordable housing adjoins the property, that common courtesy buffering would be required of the developer or whoever purchases the land.

Kirby Christian stated that if the land was sold and a business was put on the land immediately, they would not have to provide the buffering. He understood Chairman Evans was asking him to make buffering a condition regardless of the zoning regulations. He would do that if the request was reasonable. He would also be willing to have further discussions with the Commissioners after the adjacent land zoning is settled.

Commissioner Hart moved that the Board of County Commissioners approve the rezoning for Lot 8, Northgate Development Park, from C-A3 (Residential) to C-11 (Light Industrial), based on the findings of fact and conclusions of law in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Northgate Development Park, based on the following conditions.

1. The applicant shall build Majestic Drive to an industrial county paved width of 40 feet from Expressway to Wheeler Drive.

Chairman Evans asked that each condition be moved, seconded and voted on.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Kennedy moved that the Board of County Commissioners approve Condition 2 of Northgate Development Park as listed below.

2. The applicant shall designate an 80 foot wide public road easement, extending from Expressway to Wheeler Drive to be approved by the County Surveyor prior to final plat record set signoff. The applicant shall waive the right to protest an RSID/SID based on benefit for improvements to Wheeler Drive and Majestic Drive including two 10 foot wide boulevards on both sides of Majestic Drive and two 5 foot wide concrete sidewalks on Majestic Drive.

Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve Condition 3 of Northgate Development Park as listed below.

3. The applicant shall place a 1-foot no access strip on the face of the final plat along the southerly portion of Wheeler Drive, except for the 80 foot wide Majestic Drive road easement intersection with Wheeler Drive, to be approved by the County Surveyor prior to final plat record set approval.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve Condition 4 of Northgate Development Park as listed below.

4. The applicant shall install pedestrian facilities on the north side of Expressway. Plans shall be approved by the County Surveyor prior to final plat record set signoff. The applicant or fronting lot owners shall waive the right to protest a future RSID/SID, based on benefit for any future road or pedestrian improvements. 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.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve Conditions 5 through 11 of Northgate Development Park as listed below.

5. The applicant shall locate the driveway approach for Lot 8 a distance of 50 feet back from Expressway or less, as required by the County Surveyor. Approach permits shall be approved by the County Surveyor through building permit issuance.
6. The applicant shall develop a dust abatement plan and provide dust abatement to all roads adjacent to and within the Northgate Development Park Subdivision, during and through construction of the subdivision. The dust abatement plan shall be approved by the Health Department and incorporated into the subdivision covenants prior to final plat record set signoff.
7. The applicant shall petition for the subdivision to be included within the Missoula Urban Transportation District (MUTD), with petition to either be accepted or rejected by Mountain Line prior to final plat record set approval.
8. The developer shall place a street light (not a traffic signal) at the intersection of Expressway and Majestic Drive. Plans shall be approved by the City Engineer prior to final plat approval.

Utilities (Fire):

9. The Missoula Rural Fire District shall approve the subdivision's water supply for fire protection purposes. The District shall approve the plans prior to final plat record set signoff.

Natural Environment (Drainage, Erosion Control, Vegetation/Revegetation, Weed Control, Refuse Removal):

10. The applicant shall submit a vegetation management retention plan that outlines how the maximum amount of natural vegetation can be preserved for the entire subdivision. The applicant shall submit a revegetation plan for all disturbed slopes and revegetate all disturbed slopes. The applicant shall submit a noxious weed control plan for the road easement areas, to be approved by the Weed Control Board and Health Department and incorporated into the subdivision covenants prior to final plat record set approval. Plans shall be approved by OPG prior to final plat record set approval.

Airport:

11. The applicant shall grant an aviation easement to the Missoula International Airport for the subdivision and the easement shall be recorded at the Office of the Missoula County Clerk and Recorder prior to final plat record set approval.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve Condition 12 and Condition 13 for Northgate Development Park as listed below.

Lighting:

12. If external lighting is proposed by the owner of Lot 1 of the Northgate Development Park Subdivision, a lighting plan shall be presented to the zoning officer for approval through building permit issuance that includes the following elements:
 - a. Exterior lighting shall be limited to external lighting of signs and safety and security lighting only. Exterior sign and building lighting shall be designed with shielding so that all direct light falls either upon the surface of the structure to be illuminated or within the property boundary.
 - b. All driving and parking area lighting and walkway lighting shall be shielded or recessed so that direct glare and reflections are contained within the boundaries of the property.
 - c. Light poles shall be no greater than 30 feet. Lighting fixtures shall be reduced in height to accomplish the specific objective and shall be directed downward and away from adjoining properties and public rights of way.
 - d. No lighting shall blink, flash or be of unusually high intensity in order to avoid excessive lighting.
13. The applicant shall clearly designate on the face of the final plat any drainage retention area on Lot 4 as a no-build area, as required and approved by the County Surveyor prior to final plat record set signoff.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Pine Ridge Estates (Preliminary Plat - 9 lots) Seeley Lake Area

Dave Loomis, Office of Planning and Grants, gave the staff report.

The applicants, Emery and Lorraine Johnson, represented by Eli and Associates, are requesting approval for Pineridge Estates, a 9-lot preliminary plat subdivision on 18.10 acres. The property is unzoned. The proposed subdivision is

located south of Seeley Lake on Daisy Lane. The property is legally described as the NE 1/4 of Section 10, T16N, R15W, P.M.M., Missoula County.

The proposed subdivision property is unzoned. The 1989 Seeley Lake Comprehensive Plan is the comprehensive plan that guides development in this area. The proposed subdivision is not located within a designated Activity Center.

The property is bounded on the north by vacant timbered land, on the south by the Clearwater River and single-family residential land use, and on the east and west by single family residential land use. Highway 83 is located approximately 1/2 mile to the north of the proposed subdivision.

The proposed subdivision calls for external, off-site access from one point along Montana State Highway 83, at the intersection with Daisy Lane. All 9 proposed lots will access off of Daisy Lane, an extension of an existing private road that is approximately 20-24 feet in gravel surface width within a 60 foot wide private access and public utility easement. There is an existing house on proposed Lot 2 with a driveway in a different alignment which would be abandoned.

The proposal calls for one common area located along the west property boundary, connecting Daisy Lane to the Clearwater River. This common area serves to provide river access to the subdivision.

Water and sewer will be provided by individual private wells and individual private septic/drainfield systems.

The Clearwater River is a significant natural resource. Five lots front on the river. The riparian area and a no build zone limit development to the top of the slope, at least 250 feet from the river. Secondary access has been identified, staff is asking that the end of the cul-de-sac be increased to 60 feet for potential road connection.

The applicant has offered an alternative to paving of Daisy Lane, including dust abatement of all of Daisy Lane, out to Highway 83. There is an on-site portion of approximately 600 feet and an off-site portion of approximately 1/2 mile. Planning Staff recommended paving of the on-site portion and dust abatement on the off-site portion of Daisy Lane, combining two potential solutions.

Ron Ewart, Eli and Associates, developer's representative, was present, as was Emery Johnson. Mr. Johnson lives adjacent to this property and has been working on this project a long time. His goal is to create something that is nice in a semi rural environment yet close to community services. The Clearwater River and views of the Swan Range are significant amenities. An irrigation system is being planned throughout the subdivision. The Clearwater River and riparian areas are being protected as well as possible with a wide no build zone. There is a 50 foot pedestrian easement along the river and forms a loop back around to the common area. The subdivision will be protected by covenants to address riparian resource areas and wildlife and vegetation management. There will be a Homeowners Association to maintain the roads and common area and an architectural control committee. The properties adjacent, such as the Double Arrow Ranch and Estate Lease Lots are similar in size. The Double Arrow does not want Peacemaker Place to become a through road, but an emergency exit through an unlocked gate does not pose a problem to them. Most all the roads in this area are gravel and Emery Johnson has proposed to construct the on-site portion of Daisy Lane to County gravel road standards of 24 feet. He has already improved the off-site portion of Daisy Lane. Emery Johnson plans to use the best type of dust abatement using magnesium chloride and have all of Daisy Lane remain gravel. The Homeowners Association would be responsible for more dust abatement as needed and will maintain and snowplow all of the road. They are requesting a change in Condition 1 of the approval to keep Daisy Lane gravel and maintained as stated and remove Condition 14, which is similar. He did not believe it made sense to pave only a short section of roadway within the subdivision and have 1/2 mile of road to Highway 83 remain gravel, they have proposed a mechanism to get the on-site portion paved in the future and minimize dust through good abatement techniques. At Planning Staff the applicant proposed to take care of all of Daisy Lane in lieu of paving the on-site portion, however, the conditions include paving the on-site portion as well as maintaining the off-site portion. This was not the anticipated result of their suggestion. He felt this is a good subdivision with a lot of controls to make it a good place to live and respect the natural environment.

Chairman Evans asked for public comment.

Evelyn Kearns stated she owned the property that Daisy Lane goes through to get to this subdivision. She is not opposed to the subdivision but had some questions regarding the road. She does not use Daisy Lane even though it goes through her land, however, there is a private easement and they will maintain the road. She wanted to know what happens later when these lots are built out and the owners want the road paved, does she have one vote because she is one person or does she have votes equal to her ownership. Would she pay one fee equal to their fees or would she pay more because she owns more land?

Colleen Dowdall stated the Commissioners would have to accept the road as a County road prior to the creation of an RSID. The assessment is based on benefit and if she is not using the road, she could argue that she did not benefit from the paving of the road and not be included in the special district.

Evelyn Kearns asked if she did not win that argument, would she be assessed according to acreage or ownership?

Colleen Dowdall stated it would depend. If there were rentals on the property it may be assessed differently than with one single family dwelling.

Chairman Evans stated there were several types of SIDs, some based on front footage, some based on value of the land, some based on acreage, it would depend.

Evelyn Kearns asked if unaltered, what would happen.

Colleen Dowdall stated it would be based on benefit.

Evelyn Kearns asked about the water and where did it come from. Where will the water come from to feed a new pond and eight new wells. Has a study been done. She was concerned that it might change the water level in the pond on her land.

Chairman Evans told Evelyn Kearns the Commissioners have no say on water issues, the Health Department addresses those questions on behalf of the state.

Evelyn Kearns wanted to be sure that weed control and snow plowing were included in road maintenance in addition to dust abatement.

Emery Johnson stated he and other owners did not want Daisy Lane to be a busy road, they do not want it widened. The request was to spend the money that would be spent in paving and put crushed rock all the way from Highway 83 to the subdivision and the magnesium chloride for dust abatement. It did not make sense to have just the 600 feet on-site paved and it may take many years for the lots to sell. It made more sense to spend money on making the entire road a well maintained gravel one. The magnesium chloride is working well on the Double Arrow.

Evelyn Kearns stated the long straight part of Daisy Lane is entirely on her land, but in the future she did not want ownership based on the center line of the road.

Colleen Dowdall stated Daisy Lane is a private road and the center line rule applies to a County road, and not in all cases. If the roadway is crossing an ownership and it is owned on both sides of the road, the ownership would not change as a result of the roadway. This is a private easement and she still owns all the ground underneath it.

Ron Ewart stated in response to the ground water question, all the existing well logs are pulled and examined for the entire quarter section. The closest four well logs are then included in the submittal. There has been no problem with draw down on any of the logs examined. No problem is perceived with the ground water, the development would not proceed if there was evidence of a problem.

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

Commissioner Hart stated Conditions 13 and 14 were added by the Planning Staff and the report showing all 14 conditions was the one the Board would be working from. The only question she had was regarding the on-site paving and elimination of maintenance of the access road or to use magnesium chloride on the entire road, both on-site and off-site. Her inclination was to pave internally, this was a fairly dense subdivision and the others areas will probably develop similarly.

Chairman Evans said: "I have one additional question and that is on Executive Summary variance request number 2, I would like Colleen or David to speak to me about regulations to reduce the required width of off-site portion of Daisy Lane from 24 feet to between 20 and 24 feet. How can we require anything in an off-site portion of a road?"

Dave Loomis said: "We can't. If I may elaborate just for a second, given when this report was developed and I didn't pay close attention to the language of the variances, you're correct, you don't need to deal with that issue."

Chairman Evans said: "I don't want things in our staff reports that are based on things that we can't legally do. Now to the other ..."

Dave Loomis said: "Could you hold that thought. Off-site standards."

Nancy Heil said: "My understanding was that for off-site roads, Page 33 of the regs, Section 3-10: 'Roads not contained within the boundaries of the subdivision are subject to certain requirements. If they are not wholly within the subdivision or uniquely attributable or are less than 500 feet in length, then they are not subject to the paving requirements, but the other right of way and width requirements do apply.' Colleen, correct me if I'm wrong."

Colleen Dowdall said: "That is correct."

Chairman Evans said: "So our subdivision regulations require a developer or an applicant to do something on a road he doesn't own?"

Colleen Dowdall said: "The reason for that is the state law that requires that physical and legal access be provided to the subdivision. And in our subdivision regulations we define what we believed physical access to be and set standards for that. And that is so that people don't buy property without, for instance, buying this property in the summertime and then finding out that you need 4-wheel drive to get to it in the wintertime. So physical access would not have been achieved. The legislature made that change way back in 1993."

Chairman Evans said: "I guess I missed it. Okay, David?"

Dave Loomis said: "Sorry for my first error in there, Rolling Hills is an example of an off-site that needed to meet standards and was uniquely attributable to that subdivision."

Chairman Evans stated she much prefers to have the entire expanse of the road taken care of with magnesium chloride to reduce the dust for both the Tree, the folks who live there and to provide a hard surface for the entire distance which has been offered by the developer. A waiver of a right to protest an SID if and when they upgrade the rest of the road gives the best of all possible worlds. It gives no dust from now until whenever and provides for paving later when its needed.

Commissioner Hart stated it was a private road and would stay a private road.

Commissioner Kennedy stated the difficulty of entering into a development agreement to take responsibility for dust abatement is fraught with problems. One, how can it be assured that it will be done; two, who decides when it is needed; and three, what are the standards. The Board will not be there enforcing any of that. There are other examples of where this has been tried and nothing seems to work, the only thing the Board knows that does work is pavement. Unless he was assured dust abatement would work over the long term, when all were dead and buried, he can't support gravel roads.

Chairman Evans stated when she was dead and buried, she would not care.

Commissioner Kennedy stated he cared.

Commissioner Hart read the response from the City/County Health Department: "The Department will not support a variance of the subdivision regulations for paving the internal roads." She stated she believed there was a regulation that stated the internal roads have to be paved.

Colleen Dowdall stated there was one in the subdivision regulations and the Health Department requires, inside the air stagnation zone, that all roads be paved. They are expressing the preference that the County impose the standard, but they do not have a regulation that covers it.

Ron Ewart stated that the Health Department would always rather see paving as opposed to not paving. He met with some people from Air Quality and they really wanted to see dust abatement applied to the whole road. They were excited at Emery Johnson's plan. As far as how this method would be controlled, in his alternate condition it states it has to be in the covenants and in the Homeowners Association documents and that language cannot be changed without the approval of the governing body. They will have an architectural control committee that goes through time who will make sure all of these things are taken care of. The plans have to be approved by the Health Department. He was confident that the maintenance would be done.

Commissioner Kennedy stated he understood what Ron Ewart was saying but not all covenants are given much attention at all by a lot of subdivisions. Just because it is in the covenants, doesn't mean that any person will exercise their right as a homeowner within that association to force that work to be done. Unless there is a way to make sure it is done as it is needed, every 2 to 3 years, then it just doesn't mean much, where the paving does.

Chairman Evans asked Colleen if there was any way to perpetuate the guarantees that are being offered, a comment on the face of the plat or something that guarantees it will be done.

Colleen Dowdall stated the best way, on a private road, is to do it in the covenants and to require that it not be changed without the permission of the Commissioners. There is even in the regulations the authority to enforce certain covenants if desired. That is something the Commissioners have been reluctant to undertake, but this may be a case where that option is used.

Ron Ewart asked if a development agreement and a statement on the plat would help.

Colleen Dowdall stated her preference was not to put a statement on the plat having to do with something like this. Covenants are essentially the same as a development agreement, it would be a matter of whether the Commissioners wished to include this as one that they wanted to not have changed without their permission and whether they wanted to have the ability to enforce only that particular covenant.

Chairman Evans stated she understood what was being said in regards to the paving but she felt it was "penny wise and pound foolish" that there will be dust on the longer portion of the road, when there could be the entire road with no dust.

Commissioner Kennedy agreed with Chairman Evans if, in fact, it would be done. He was not convinced that it would get done. He is more convinced that if paving is required, people who build homes here would not like ruts in the road and will improve it anyway. He supports the paving.

Dave Loomis stated that if the Commissioners wanted to go with dust abatement, the Commissioners may want to specify in a document approved by the Health Department, as to when and how the abatement gets done.

Commissioner Hart asked who would then enforce the agreement.

Dave Loomis stated it would be the Commissioners.

Commissioner Hart stated she could anticipate lots of negative phone calls from the Seeley Lake folks. She was going to move that the internal road be paved.

Commissioner Hart moved that the Board of County Commissioners recommend denial of the Pineridge Preliminary Plat Subdivision variance request from Article 3-2 of the Missoula County Subdivision Regulations to not require the on-site portion of Daisy Lane to be paved, based on the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 2-1 (Chairman Evans opposed).

Commissioner Hart moved that the Board of County Commissioners recommend approval of the Pineridge Estates Preliminary Plat Subdivision variance request from Article 3-2 of the Missoula County Subdivision Regulations to reduce the off-site portion of Daisy Lane required road surface width from 24 feet to between 20 and 24 feet, based on the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners recommend approval of the Pineridge Estates Preliminary Plat Subdivision variance request from Article 3-3(1)(e) of the Missoula County Subdivision Regulations

to exceed the 3:1 length to width ratio for Lots 3, 4 and 5 based on the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners recommend approval of the Pineridge Estates Preliminary Plat Subdivision variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations to exceed the required maximum cul-de-sac road length by approximately 1/2 mile or 2,640 feet for Daisy Lane based on the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 2-1 (Commissioner Kennedy opposed).

Commissioner Hart moved that the Board of County Commissioners recommend approval of the Pineridge Estates Preliminary Plat Subdivision variance request from Article 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalk or pedestrian walkways in the subdivision, based on the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners recommend approval of the Pineridge Estates Preliminary Plat Subdivision, 9 lots on 18.10 acres, based on the findings of fact and conclusions of law with these conditions:

Roads:

1. The applicant shall pave the on-site portion of Daisy Lane extending to the end of the cul-de-sac bulb to a paved surface width of 24 feet.

Water, Sewer:

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 assent of the lot owner to waive the right to protest a future RSID/SID for public water and sewer systems based on benefit, and may be used in lieu of their signatures on an RSID/SID petition. 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.”

Fire:

3. The Seeley Lake Rural Fire District shall approve the subdivision's water supply for fire protection purposes. The applicant shall designate the subdivision homeowners association as the party responsible for the operation and maintenance of the dry hydrant and incorporate this information into the subdivision covenants. The District shall approve the water supply plans and subdivision covenant language for operation and maintenance responsibility prior to final plat record set signoff.
4. In the event the property is not located within the Seeley Lake Rural Fire District, the applicant shall petition for annexation into the Seeley Lake Rural Fire District.

Vegetation Retention:

5. The applicant or his/her successor shall provide a vegetation management retention plan that outlines how the maximum amount of natural vegetation can be preserved for the entire subdivision. Plans shall be approved by OPG prior to final plat record set approval.

Erosion Control, Weed Control:

6. The applicant shall develop an erosion control plan, using best management practices, for all areas that may experience erosion due to all cuts, fills and road, driveway, and utility improvements. The plan shall address erosion and drainage control during and after road construction, with emphasis placed on not allowing siltation and debris from entering the river. The applicant shall develop a revegetation plan for all disturbed slopes and revegetate all disturbed slopes. Erosion and revegetation plans shall be approved by OPG prior to final plat record set approval.

The applicant shall develop a noxious weed control plan, to be approved by the Missoula County Weed Control Board and incorporated into the covenants prior to final plat record set approval. Plans shall be approved by OPG prior to final plat record set approval.

Slope:

7. The plat shall clearly designate areas with slopes greater than 25% as unbuildable, to be approved by OPG prior to final plat record set approval.

Riparian / Area Management Plan:

8. OPG shall approve the Pineridge Estates Preliminary Plat Subdivision Riparian Area Resource Management Plan prior to final plat record set approval.

Covenants (Amendments):

9. The applicant shall place a statement in the covenants that states that the covenants that relate to subdivision regulations cannot be amended without approval by the governing body.

Other:

10. The applicant shall amend the subdivision application, including plat, by replacing all references to the cul-de-sac measurement using the word "diameter" with the word "radius." Language shall be approved by the Seeley Lake Rural Fire District prior to final plat record set approval.
11. The applicant shall amend the subdivision covenants to require either the applicant or homeowners association to be responsible for the snow plowing of the fire hydrant to keep it in an "open" state and ready for operation. Language shall be approved by the Seeley Lake Rural Fire District prior to final plat record set approval.
12. The applicant shall dedicate a 60 foot wide private access and public utility easement extending from the end of the Daisy Lane cul-de-sac bulb to the east property line on the face of the final plat.
13. The applicant shall file with the Missoula County Clerk and Recorder a property owner agreement stating that the Pineridge Estates Subdivision shall have emergency access to the dry hydrant and pond located on Parcel B-1-A, Certificate of Survey 4837, to be recorded with the plat prior to final plat record set signoff.
14. The applicant shall amend the subdivision covenants to require the Pineridge Estates Subdivision owners to provide dust abatement, road maintenance, snow removal, and weed control on the off-site portion of Daisy Lane, that portion of Daisy Lane extending from Highway 83 to the on-site portion of Daisy Lane, until an agreement can be reached with other Daisy Lane abutting lot owners or the abutting Daisy Lane lots are subdivided and are required through the subdivision process to contribute to the above mentioned Daisy Lane road maintenance, language to be approved by OPG prior to final plat record set signoff.

Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Colleen Dowdall said: "That's the one that would require that he provide dust abatement for the entire road."

Commissioner Hart said: "He is the only user, except for the leasehold up there, and they may not, they may be able to come in from... Where does the fellow who has the lease come in? He doesn't even come in there."

Colleen Dowdall said: "It just exceeds requirements of our regulations for off-site roads, I thought we had that clear."

Commissioner Hart said: "So then you want to eliminate 14 because it's a problem."

Colleen Dowdall said: "You have already acted and that is fine with me. I made a face."

Chairman Evans said: "I also make a face because I don't care to exceed our own regulations, we end up in court when we do that, I think it's a mistake. I would ask that we delete Number 14."

Commissioner Hart said: "I'm not going to support it, we did something similar with the Haffner subdivision."

Chairman Evans said: "I have a real problem with this."

Commissioner Hart said: "You should."

Chairman Evans said: "Yeah, because I'm the one that's going to end up testifying in court."

Chairman Evans told Evelyn Kearns that she would receive a copy of the letter of approval to Mr. Johnson.

Equine Estates (5 lots) Target Range

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicant, John Diddel, is requesting approval to divide a 4.96 acre parcel into 5 lots approximately 0.9-1.13 acres in size. The property is located on North Avenue, between 35th and 36th Avenues. It is legally described as Lot 9, US Government Subdivision #1, SE 1/4 Section 25, T13N, R20W.

The property is zone C-RR2, Residential, not to exceed two dwelling units per acre. The property is currently vacant. Surrounding land uses are single family residential to the west, south, and east. The Missoula Equestrian Park, a portion of the Tower Street Park Complex is located directly north of the property.

Access to the property is provided via North Avenue, 35th Avenue, 36th Avenue, and an alley to the south. The applicant has requested a variance from the requirement to provide pedestrian walkways.

The lots will be served by individual wells and septic systems. The applicant has applied to the Department of Environmental Quality for a deviation from the minimum lot size standard and is working with the Health Department on an acceptable drainfield design.

Ron Ewart, Eli & Associates, developer's representative, was present, as was the applicant John Diddel. This property is located across from the Equestrian Park. All of the south side of North Avenue is developed, and North Avenue dead-ends just past 38th. There is a paved alley along the south that could potentially access the lots. The property is zoned 2 per acre. He has spoken with John Diddel about doing a 50 foot no build zone down the middle of the lots to allow for future splits and he was agreeable to the idea. The only problem was with Condition 3 for pedestrian walkways. North Avenue is already built out on the south side and there will not be other subdivision come in and put in a connecting walkway. This will be a walkway that will go from 36th Avenue to 35th Avenue and it would not go any further. It would make more sense to do an RSID for the entire length of North Avenue at a later date. The waiver of right to protest is included in the conditions.

Chairman Evans asked for public comment. There being none the public comment section was closed.

Nancy Heil wanted to clarify staff's recommendation on the walkway was based on the fact that Big Sky High School is to the east and the unimproved portion of North Avenue is also used by pedestrians and bicycles as a connection to Maclay's Bridge.

Commissioner Kennedy moved that the Board of County Commissioners deny the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to no provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact set forth in the staff report. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Commissioner Kennedy moved that the Board of County Commissioners approve the Equine Estates Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to North Avenue, 35th Avenue and 36th Avenue, including installation of pedestrian walkways, sidewalks, 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."

2. The final plat shall include a no access strip along North Avenue for Lots 1 and 5.
3. A 5 foot asphalt pedestrian walkway shall be installed along North Avenue. Plans shall be approved by the County Surveyor prior to plat filing.
4. 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 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."

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 plat filing.

There being no further business to come before the Board, the Commissioners were in recess at 4:00 p.m.

THURSDAY, SEPTEMBER 10, 1998

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

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Sheriff, Doug Chase, for the month ending August 31, 1998.

ADMINISTRATIVE MEETING

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

Right-of-Way Agreements - The Commissioners signed two Right-of-Way Agreements in order to install a culvert in the irrigation ditch and straighten Blue Mountain Road, one with Helen Hayes Orendain and Andrea D. Orendain, and one with George Knapp.

Amended Professional Services Contract - The Commissioners signed an Amended Professional Services Contract with James Ouellette, DDS, to provide dental services for patients of Partnership Health Center. Performance schedule is July 1, 1998 through June 30, 1999. Compensation shall be a maximum of \$7,500.00.

Amended Professional Services Contract - The Commissioners signed an Amended Professional Services Contract with Kimberly Grenager to provide dental hygienist services for patients of Partnership Health Center. Performance schedule is July 1, 1998 through June 30, 1999. Compensation shall be a maximum of \$5,000.00.

Professional Services Contract - The Commissioners signed a Professional Services Contract with the Psychology Department at the University of Montana to continue having a graduate student intern at Partnership Health Center. Performance schedule is July 1, 1998 through June 30, 1999. Compensation shall be a maximum of \$5,600.00. The Contract was returned to the Health Department for further signatures and handling.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Partnership Health Center to provide basic needs assistance for indigent residents of Missoula County (primary medical, dental, pharmaceutical, mental health services, and case management). Duration of the Agreement is from July 1, 1998 through June 30, 1999. Value of the Agreement is \$192,821.00.

Cooperative Fire Control Agreement - The Commissioners signed a Cooperative Fire Control Agreement with the Montana Department of Natural Resources and Conservation to draft and update a wildland fire management plan. Unless terminated, the Agreement is in effect beginning July 1 of each year. The Agreement was returned to Paul May of DNRC for further signatures and handling.

Cooperative Equipment Agreement - The Commissioners signed a Cooperative Equipment Agreement with the Montana Department of Natural Resources and Conservation, Division of Forestry, to provide additional equipment for fire control. Unless terminated, this Agreement is effective for an indefinite period. The Agreement was returned to Paul May for further signatures and handling.

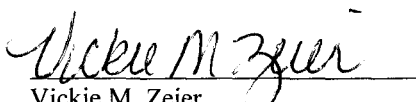
Contract Modifications - Chairman Evans signed the First and Second Modifications of a Contract between the Missoula County Partnership to Strengthen Families and the Montana Department of Public Health and Human Services for Crisis Care Nursery services. Term of the Contract is from October 1, 1998 through September 30, 1999. The Modifications move \$2,643.00 from last year's contract into this year's contract. Both Modifications were returned to Peggy Seel in OPG for further handling.

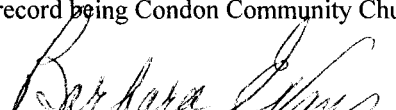
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, SEPTEMBER 11, 1998

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

Plat and Development Agreement - The Commissioners signed the plat and Development Agreement for Condon Community Church Subdivision, a subdivision plat located in the SW1/4 of Section 7, T20N R16W, PMM, Missoula County, a net and gross area of 11.4 acres with the owner of record being Condon Community Church.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, SEPTEMBER 14, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Hart was in Helena attending a MACo Transportation Committee/Department of Transportation meeting.

Payroll Transmittal Sheets - The Commissioners signed four Payroll Transmittal sheets:

1. for Pay Period 15, with a total Missoula County payroll of \$638,851.29;
2. for Pay Period 15-2 (clothing allowance- Sheriff/Jail), with a total Missoula County payroll of \$47,605.50;
3. for Pay Period 16, with a total Missoula County payroll of \$627,657.88;
4. for Pay Period 17, with a total Missoula County payroll of \$639,815.62.

TUESDAY, SEPTEMBER 15, 1998

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:

Memorandums of Agreement - Chairman Evans signed two Memorandums of Agreement between the Missoula County Park Board and the Seeley Lake Elementary School District:

1. to provide up to \$1,500.00 in matching funds to install softball backstops;

2. to provide up to \$2,000.00 in matching funds for completion of the ballfield area with concrete walks and dugouts.

Both Agreements were returned to Gwen Sebestin in the Projects Office for further handling.

Memorandums of Agreement - The Commissioners signed two Memorandums of Agreement:

1. with the Psychology Department of the University of Montana, for evaluation services for the CS Porter Project. Duration of the Agreement is ten months, commencing on July 1, 1998. Value of the Agreement is \$10,000.00.
2. with the Western Montana Mental Health Center, to purchase alcohol and other substance abuse prevention, intervention, and treatment services through Turning Point. Duration of the Agreement is from July 1, 1998 through June 30, 1999. Value of the Agreement is \$100,729.00.

Both Agreements were returned to Peggy Seel in OPG for further handling.

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

WEDNESDAY, SEPTEMBER 16, 1998

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

Audit List -- The Commissioners signed the Audit List, dated September 15, 1998, pages 2-36, with a grand total of \$966,403.57. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Montana School Services Foundation as principal for Warrant #21871 issued 6/30/98 on the Missoula County General Fund in the amount of \$186.42 now unable to be found.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Montana School Services Foundation as principal for Warrant #21948 issued 6/30/98 on the Missoula County General Fund in the amount of \$38.23 now unable to be found.

PUBLIC MEETING - September 16, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, Deputy County Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall.

Public Comment

None.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$966,403.57. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Beth's Subdivision for Lease / Rent (3 dwelling units) Potomac

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicants, Elizabeth and Marshall Cromwell, are requesting approval to add 2 dwelling units to a 55.5 acre parcel where one dwelling unit currently exists. The property is located on Swanson Lane in Potomac and is legally described as Tract 1, COS 3537, Section Township 13 North, Range 15 West.

The property is unzoned. The 1975 Comprehensive Plan designates Parks and Open Space land use. Approximately 24 acres of the property are currently under agricultural cultivation. Land uses in the vicinity are agricultural and residential on lots varying from 2 to over 200 acres.

There is one dwelling unit currently on the property, consisting of a one room living space and attached 2 car garage. The applicants propose to add a main house for their use and another house for family and guests. The existing dwelling would be used primarily as a weaving studio.

Access is provided via a driveway exiting from Swanson Lane. The driveway is approximately 1000 feet long and 12 feet wide.

The existing dwelling and main house will share the existing septic system. The additional guest house will be served by a new septic system.

The Office of Planning and Grants recommends approval of Beth's Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the conditions in the staff report.

The Office of Planning and Grants recommends approval of the variance request from Section 3-2 of the Missoula County Subdivision Regulations for Swanson Lane to vary from the required 24 foot width to a 22 foot width, and approval of the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations for the driveway serving the dwelling units to vary from road design standards, based on the findings of fact set forth in the staff report.

Beth Cromwell, the applicant, was present and would answer any questions the Commissioners may have.

Commissioner Kennedy asked Nancy Heil if the variance for Swanson Lane required improvements to 22 feet or if that was the existing condition of the road?

Nancy Heil stated that was the existing road width.

Commissioner Kennedy stated there needed to be consistency in presentation as to whether improvements to the road are required or if the variance is being requested to the existing condition.

Commissioner Hart stated she would like to add a condition to this proposal after conversation with the County attorney regarding the response from Darryl Mariucci of the Greenough Potomac FSA Fire Department, who wants a 30' by 30' turnaround, which the applicant was aware of.

Commissioner Hart moved that the Board of County Commissioners add Condition #5 to Beth's Subdivision for Lease or Rent: "The Greenough Potomac Service District be sent a notice of the subdivision and plans to construct additional structures on the property. That fee district is per structure." This helps the Fire District keep a record of what structures are in the area.

Commissioner Kennedy seconded the motion. He asked Beth Cromwell if she was currently paying that fee?

Beth Cromwell stated she was currently paying the fee for the one dwelling.

Nancy Heil asked if this was separate from the watertender fee?

Commissioner Hart stated it was the same, it is a fee for protection of structures on an annual basis, not a district, it is a fee for service which is unique in the area. This fire service area does not tax the land the way Missoula Rural does, they ask residents to pay a fee per year.

Nancy Heil asked if this would be in addition to the one time \$100 per new dwelling unit fee?

Commissioner Hart stated that was correct, this is a way to let the district know a structure exists and where that structure is located.

Chairman Evans called the question on Commissioner Hart's motion of the additional condition. The motion carried on a vote of 3-0.

Chairman Evans asked for public comment. There being none, the public comment section was closed.

Commissioner Kennedy moved that the Board of County Commissioners approve the variance request from Section 3-2 of the Missoula County Subdivision Regulations for Swanson Lane to vary from the required 24 foot width to the existing 22 foot width of Swanson Lane, and approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations for the driveway serving the dwelling units to vary from road design standards, based on the findings of fact set forth in the staff report. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Commissioner Kennedy moved that the Board of County Commissioners approve Beth's Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the conditions in the staff report and the additional condition added by separate motion. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

1. The lot owner shall file a document of record with Missoula County waiving the right to protest improvements to Swanson Lane, including installation of pedestrian walkways, based on benefit, which may be used in lieu of 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. Such document shall be filed prior to final plan filing.
2. The lot owner shall file a document of record prior to plan filing waiving 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.
3. The lot owner shall provide written documentation that the Greenough Potomac Rural Fire District approves the access plan prior to plan filing.
4. The lot owner shall contribute \$100.00 per new dwelling unit to the Greenough Potomac Rural Fire District prior to plan filing.
5. The Greenough Potomac Fire Service Area shall be sent a notice of the subdivision and plans to construct additional structures on the property, prior to plan filing. The fee for the FSA is on a per structure, per year, basis.

Chairman Evans told Beth Cromwell she would receive a letter from the Commissioners stating the approval of the subdivision and the associated conditions.

Security Acres (4-lot subdivision) Frenchtown

Brian Maiorano, Office of Planning and Grants, gave the staff report.

The applicant, Maxine Lane, is requesting approval to divide a 22.61 acre parcel into 4 lots; lot sizes will be 3.9 acres, 4.2 acres, 4.6 acres, and 9.9 acres. The property is located off of Western Farms Road near Pulp Mill Road. The property is legally described as Tract 13 of COS 1595, Section 19, T14N, R20W.

The area is south of Pulp Mill Road and east of Western Farms Road. One single family residence is currently located in the southern portion of the property. The property has recently been used for small scale agricultural production. Surrounding land uses are large lot residential and large tract agricultural. O'Keefe Creek bisects the property within a deep gully, and several intermittent streams flow through the area.

The 1975 Missoula County Comprehensive Plan designates the area as Open and Resource land, with a recommended density of 1 dwelling per 40 acres. Surrounding properties, created through the COS process since 1975, range in size from 5 to 20 acres, with one agricultural tract of 140 acres.

The proposed access to the property is from Western Farms Road to Security Lane. Security Lane currently exists as a 15 foot unpaved driveway which ends at the existing home. The applicant proposes to upgrade Security Lane to an 18 foot graveled surface within a 60 foot easement, terminating in a 35' radius cul-de-sac. The proposed driveway is 15 feet wide and 357 feet long. The applicant has requested variances from road width, paving and sidewalk requirements, and lot length-to-width requirements. The applicant proposes to run O'Keefe Creek through a 48" culvert and achieve an 8% road grade to reach the northern two lots.

The lots will be served by individual wells and septic systems. There is a strong riparian management plan for the area and the overall density for the area will be 1 dwelling per 5-1/2 acres.

The Office of Planning and Grants recommends approval of the Security Acres Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

The Office of Planning and Grants recommends approval of the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, approval of the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Security Lane to vary from a 24 foot paved road width to an 18 foot gravel road width, and approval of the variance request from Section 3-3(E) of the Missoula County Subdivision Regulations for lot 4 to have a greater than 3:1 length to width ratio, based on the findings of fact set forth in the staff report.

Commissioner Hart asked Brian Maiorano where the culvert was located?

Brian Maiorano stated the culvert would be just north of the cul-de-sac bulb of Security Lane and would be approximately 70 feet long, which is approaching the maximum distance for a culvert.

John Kellogg, Professional Consultants Inc., developer's representative, was present, as was the applicant, Maxine Lane. Maxine Lane has taken good care of the property, she has a concern for the creek bottom, the riparian area, and has carefully grazed the area with sheep to reduce knapweed. The riparian plan was supported strongly by her. She would like to do this subdivision in a way that will have the least impact on the property. The subdivision has been supported by the adjacent Western Farms Homeowners Association. There is minimal visual impact from Pulp Mill Road and the surrounding area. The density of 1 dwelling per 5-1/2 acres is consistent with adjacent properties. The creek crossing site was carefully chosen by Maxine Lane as it is where the creek bottom is at its narrowest point and will have minimal impact on the riparian area. FWP has no information about this stretch of O'Keefe Creek as they felt there was no potential fishery value. Commissioner Kennedy had requested a written estimate for a bridge as opposed to a culvert (the bid was presented). A bridge design was not done so the estimate of \$35,000 makes a lot of assumptions and does not include site work or installation of the bridge. One of Western Farms Homeowners Association main concerns was whether other property owners in Western Farms could subdivide their property smaller, it was noted that there was an agreement and an amendment to the covenants that prohibited more re-division on all but three of the remaining lots. Their second concern was the road going into this subdivision and whether they should accept the road within their maintenance program, which they agreed to do. He had a question in regard to Condition 6, a consent for an RSID for parks. The goal of that condition is worthwhile, however, this is a minor subdivision and does not require park dedication, which seemed a bit of a stretch. Otherwise, there is no serious opposition to any of the conditions.

Chairman Evans asked for public comment.

Charles Deschamps stated he was there to give moral support to Maxine Lane for this subdivision and supported her on this proposal.

There being no further comment, the public comment section was closed.

Commissioner Hart asked about the overlap of the steep slopes and riparian area?

John Kellogg stated the two overlapped in a number of places, the highest points on the property are to the north and east, with the lower portions to the south.

Commissioner Kennedy asked John Kellogg if the culvert under the Interstate was a plate or a culvert?

John Kellogg stated he did not know for sure but had been told it was a culvert.

Brian Maiorano stated the culvert size was the same as what is used on Butler Creek, which has similar flows. Several of the small streams in the county, in the lower stretches, are going intermittent is due to disturbances up above, a lot of gravel has washed down.

Chairman Evans stated the staff had a clarification of their report.

Dave Loomis said: "At the request of Commissioner Evans, you'll note on Condition 6 we cite Regulations Article 4-1(12) and really that citation is only for preliminaries and not for summaries in terms of the parks requirement. What

this really, this Condition came out of as we discussed at Planning Status prior decision or two, strictly a policy decision by the Board of County Commissioners to ask for this. And so it would be okay to strike the Regulation citation and just put Staff Recommendation in there as where this citation is from."

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, based on the findings of fact. Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Security Lane to vary from a 24 foot paved road width to an 18 foot gravel road width. Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-3(E) of the Missoula County Subdivision Regulations for lot 4 to have a greater than 3:1 length to width ratio. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve Security Acres Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

Chairman Evans said: "Before you second that, I'd like to make a comment, please. And that is that Condition 6 is not part of our subdivision regulations. We do not have a regulation that calls for a waiver of a right to protest inclusion in an SID for maintenance of a park or parks. If we wish to do that, I suggest we put them in our regulations so the people know about them in advance, rather than asking them to do something that is not part of our subdivision. I will support your motion if you will delete that condition from your recommendation."

Commissioner Hart stated she would not delete that condition. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

1. The driveway shall be designed to provide adequate room for emergency vehicles to turn around. The final design shall be approved by the Frenchtown Rural Fire District and County Surveyor prior to plat filing.
2. The road name must be approved by the County Surveyor before final plat approval.
3. 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 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."

4. The developer shall contribute \$100.00 per new lot to the Frenchtown Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing.
5. The developer shall mitigate impacts to O'Keefe Creek and its riparian habitat by submitting a riparian management plan to OPG prior to final plat approval. The management plan shall address items such as protection of the existing vegetation, replacement of disturbed vegetation, and minimizing erosion in O'Keefe Creek.
6. The following statement shall appear on the plat and in each instrument of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes the assent of the owner to the creation of an RSID/SID for the maintenance of a park or parks in the Frenchtown-Huson area, defined as the Frenchtown school district, on an equal basis with other properties in the area."

Chairman Evans said: "I support your subdivision, Maxine, but I do not support putting conditions on you that are not part of our subdivision regulations. I would also ask you why, with regards to naming your road, you didn't name it Maxine Lane?"

Maxine Lane stated she did not know why she didn't name it that. At this point it will probably end up being Huff and Puff, that was the name of her sheep ranch.

Commissioner Hart stated for the record that a letter had been received from Scott Waldron, Frenchtown Rural Fire District, saying they had no additional requirements for Security Acres.

Chairman Evans stated Maxine Lane would receive a letter of approval with the conditions and other information necessary.

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

THURSDAY, SEPTEMBER 17, 1998

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Kennedy left in the forenoon to attend a Human Resource Council Board meeting in Superior.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Thomas R. Carter dba Technical Contracting, for operation of the El-Mar Estates and New Meadows sewer and water system. Compensation

shall be \$57,430.00 for the period beginning September 16, 1998 and ending September 15, 1999. Contract automatically renews yearly unless renegotiated by one or both parties. The Agreement was returned to Paul Webber, CAO, for further signature and handling.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Missoula Indian Center for alcohol and other substance abuse treatment services for prioritized populations in Missoula County. Value of the Agreement is \$12,356.00. Duration of the Agreement is July 1, 1998 through June 30, 1999.

Resolution - The Commissioners signed Resolution No. 98-071, a resolution concerning the natural resource damage claim for the Milltown Reservoir site.

Letters - The Commissioners signed letters to James Cox, Harold and Arlene Braun, Dr. John Arias, and H. James and Earlene Cusker, waiving the low income requirement to allow completion of conservation easements for their property, and to use grant funds prior to expiration. The letters were returned to Tim Hall in OPG for further handling.

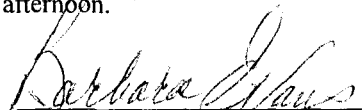
DUI Services Agreement - The Commissioners signed a DUI Services Agreement between the Missoula City-County Health Department and the Highway Patrol Division, Department of Justice, State of Montana to perform overtime DUI enforcement activity in Missoula County. Performance schedule is September 1, 1998 through June 30, 1999. Compensation shall be up to \$4,000.00. The Agreement was returned to the Health Department for further signatures and handling.

Letter - The Commissioners signed a letter to the Data and Statistics Bureau, Montana Department of Transportation, certifying the rural road mileage in Missoula County as 1527.166 miles. The letter was returned to the Surveyor's Office for further handling.

FRIDAY, SEPTEMBER 18, 1998

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


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, SEPTEMBER 21, 1998

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

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Doua Yang as principal for Warrant #50607 issued 7/29/98 on the Missoula County Misc. Fund in the amount of \$100.00 now unable to be found.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Gao Youa Yang as principal for Warrant #50608 issued 7/29/98 on the Missoula County Misc. Fund in the amount of \$100.00 now unable to be found.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Choua Yang as principal for Warrant #50606 issued 7/29/98 on the Missoula County Misc. Fund in the amount of \$100.00 now unable to be found.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Edith Baker as principal for Warrant #100707 issued 6/30/98 on the Missoula County School - Trans. Fund in the amount of \$152.80 now unable to be found.

TUESDAY, SEPTEMBER 22, 1998

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Hart attended a Health Board hearing on the Environmental Smoke Ordinance held at the City Council Chambers.

ADMINISTRATIVE MEETING

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

Contract - Chairman Evans signed a Contract between the Yellowstone City-County Health Department - Deering Clinic and the Missoula City-County Health Department - Partnership Clinic for the provision of early intervention services for HIV positive clients. YCCHD - DC shall provide \$15,000.00 to Partnership Clinic. Term of the Contract is July 1, 1997 through June 30, 1999. One original was mailed to Yellowstone County, and one was returned to the Health Department.

Other items included:

- 1) The Commissioners discussed the Lolo Facility Plan and regionalization issues with Dan Harmon of HDR Engineering. A regional option for RSID 901 is to be considered, and reviewed again in a couple weeks.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$282,363.74. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans returned to the meeting and took her place as Chairman.

Recognition Award Presented by Sheriff Doug Chase to George and Rae Ludemann

Sheriff Doug Chase stated that George and Rae Ludemann were being recognized for their years of service to Hellgate High School athletes and students in general. George was the equipment manager. Rae, George's partner in life, was at his side much of the time. George's interaction with the youth is legend and earned him the title of "Mr. Mom." Other Ludemann family members present included their son Martin and his wife Nancy, their daughter Karen and her husband Michael, and their daughter Robin. Sheriff Chase read a letter dated May 14, 1998:

"Dear George and Rae: It is a special moment in our lives, as it should be. 13 years of long days and weekends virtually riddled with the expectation that 'Mother George' would be there, and of course his partner in life nearby, has now come to close. We suppose that it is a double edge sword in that you'll miss the kids and your cohorts at work, and yet you now have quality time together, as it should be. Rae and George, we have marveled at you. We know that you've worked around many health problems and we readily recognize George's being in amongst the youth was a benefit to all. Unfortunately, both of you and all of us will never be able to get the true measure of your gifts to the youth. We know that you were at times a parent, probably a teacher of academics, and certainly, with life and all that goes with it. In all likelihood you heard confessions that like a priest you kept only in your heart and mind. I suspect the laundry room was a makeshift real confessional. We know you counseled many a teen struggling life's expectations, seeking and needed good common sense advice and even more importantly you were a person that would listen. Rae, you are the partner in George's life who more than once bore a portion of George's load in turn and shared your wisdom and perspective. So many times it is the silent sentinels in life who make the most impact on our lives and community. However, in reality George struggled with the image of silent. Especially when he thought Hellgate needed an extra team player just to keep things on an even keel on the playing field. And more than once did a referee get assisted with their duties. George is a parent of three children all graduates of Hellgate High School. I can testify as to how much you meant to each of them. But also literally the hundreds and even thousands of lives you have touched. Each of our children thought the world of their male mentor called 'Mom.' You were the equipment manager extraordinaire. In your job description the final line stated: 'And all other duties as assigned.' Accompanied by you and Rae's hearts of lion, you accomplished those tasks and brought new meaning to that sentence. So you are special and we thank you. You deserve the best. You stand out from the rest. You are George and Rae Ludemann."

Sheriff Chase presented George and Rae with a Certificate of Appreciation from the Missoula County Sheriff's Department.

George Ludemann stated that Sheriff Chase was the one who gave him the nickname "Mother." He appreciated the honor and loved what he did at Hellgate High School and it was hard for him to retire.

Continuation of Hearing and Decision on Proposed Amendments to Missoula County Animal Ordinance

Paula Nelson, Animal Control Supervisor, stated this was a continuation of the hearing and discussion on the proposed amendments for the County Animal Ordinance. At the last discussion there were some items brought up that required changes. On Substitute amendment #1, Page 8, Section 6: Rabies Control, paragraph A, first sentence, it should read: It is unlawful for any person to keep, harbor, maintain, sell, adopt out, or give away any dog, cat or ferret over four months of age, unless such animal has been vaccinated against rabies by a licensed veterinarian. The change was to remove the phrase "or any other animal..." which brought in contention the possibility of livestock. It could also be worded as "or any other animal, excluding livestock."

Michael Sehestedt stated the language should be retained with the animals listed. If other rabies vaccines are approved for other species in the future, the language could be amended later.

Paula Nelson stated there was another change raised by public comment on Page 1, Section F. The section should read:

- F. Animal Bite: means a laceration, bruise or puncture inflicted by the teeth of an animal.

Paula Nelson stated that bites by bats, cats, etc., are also investigated. Those were the only changes from the last meeting.

Commissioner Hart stated there were some questions from the public presented to the office. One question was in regard to the Class I Kennel license, stating "more than five (5) dogs but no more than twenty (20). The question related to the situation of having a Class I license but for a period of time having only 2 dogs, would the 2 dogs need to be licensed separately.

Paula Nelson stated this could happen when people were breeding their animals. If the animals were under four months of age, it would not matter, however, if there were adult animals coming in and out of the facility, it would be looked at on an individual basis.

Commissioner Hart stated another public comment related to Page 4, Section H, regarding AKC and CKC licensed dog shows, should UKC (United Kennel Club) be added?

Paula Nelson stated that could be added, but it was implied and the different groups would be recognized.

Commissioner Hart stated another concern was on Page 5, Section L, Number 2, regarding dogs participating in dog shows or contests, would that include hunting and/or working dogs?

Paula Nelson stated that if these were dogs brought into Missoula County for hunting or working livestock on a temporary basis, under 30 days, they would be exempt. If the dogs were here for a significant length of time they would require licensing.

Chairman Evans stated the last concern was on Page 6, Section 5: Impoundment, Section A, Number 2, regarding dogs running at large to also include cats. She felt the County could not legislate for cats.

Paula Nelson stated that was correct. The changes in the Ordinance from dog to animal were only in accordance with rabies control.

Michael Sehestedt stated the legislature has only designated authority for dogs.

Chairman Evans stated this was a continuation of the public hearing on this issue and asked for public comment. There being none, the public hearing was closed.

Commissioner Kennedy stated he had a question on Page 10, Paragraph G, regarding the destruction of animals, referring to only dogs, cats or ferrets, what about a rabid animal other than a dog, cat or ferret, such as a bat or skunk or livestock.

Paula Nelson stated livestock would be covered under the livestock codes. The terminology in this referred to unvaccinated, and the County does not have a definition for wildlife. A section could be added that if there was a bat or skunk (or any animal that could possibly have rabies) exposure, the Animal Control Program can have the animal euthanized humanely and tested.

Commissioner Kennedy asked if "dogs, cats or ferrets" could be substituted with "animals?"

Paula Nelson stated that could be done.

Commissioner Hart asked if that would violate dogs only by ordinance?

Michael Sehestedt stated only dogs running at large could be dealt with by the ordinance. There is broader authority under the Health Officer to deal with rabies issues. In terms of rabies control, the wording could be extended beyond dogs.

Commissioner Kennedy suggested changing only the language on Page 10, Paragraph G from "dogs, cats or ferrets" to "animals."

Paula Nelson stated that change would be made.

Chairman Evans asked if Page 10, Number 1 should also be changed?

Paula Nelson stated that paragraph related to unvaccinated dogs, cats or ferrets having contact with a rabid animal and should not be changed.

Commissioner Kennedy moved that the Board of County Commissioners support the amendments to the Missoula County Animal Ordinance dated July 28, 1998, as adjusted. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Hearing - Petition to Change Road Name - Seeley Lake (Larch Lane to Hemlock Drive or Gold Larch Drive)

This is a petition to adopt a resolution to change the name of a street in Seeley Lake from Larch Lane to Hemlock Drive in Block 1 and Block 2, Clark Addition #1. Clark Addition #1 was platted in the early 1960's. The road servicing this subdivision was given the name Larch Lane. This subdivision is north of the "town" of Seeley Lake. A second Larch Lane is located in Seeley Lake east of Highway 83, running east and west between School Lane and Locust/Airport Roads. Duplicate road names in the same area causes confusion for area residents as well as emergency responders.

A petition requesting the change in street name was signed by a majority of the property owners within Clark Addition #1. The residents, emergency responders and the Water District support the name change. Jim White, Fire Chief, Seeley Lake Rural Fire District and Paul Torok, General Manager, Seeley Lake - Missoula County Water District have written letters supporting the name change to Hemlock Lane. The Surveyors Office does not anticipate any problems with the change to Hemlock which is a continuation of the street name that currently connects (accesses) Larch Lane in Clark Addition #1.

A legal notice of the hearing was placed in the *Seeley Swan Pathfinder* on September 10, 1998. Affected property owners and service providers were also sent a copy of the legal notice.

Al Foucar, an affected resident, was present and explained they were trying to remedy a problem that was missed in 1963 when this development was put in. In 1995, when the 911 program was added, the problem was discovered. The residents were told they lived on Larch Lane but had always thought the street was Hemlock Drive. This petition is to remedy the conflict in case of emergency. An alternative name of Gold Larch Drive was suggested but the resident would prefer Hemlock Drive, as it is an extension of that street that already exists in this 12 lot development. The petition has been signed by all but one lot owner who is out of town. Both the Seeley Lake Fire Department and the Water Department currently use Hemlock for these properties, as does the County for plowing purposes. Al Foucar stated Don Jenni and Al Grant were present and supported the change.

Chairman Evans asked for public comment for or against this petition. There being none, the public hearing was closed.

Commissioner Hart asked if this had been advertised, and could a motion be made today or did a Commissioner need to do a site inspection?

Michael Sehestedt stated it had been advertised, the Commissioners could make a motion today and a site inspection was not necessary.

Commissioner Kennedy asked if the North and South identifiers of Larch Lane could be removed at this time also.

Michael Sehestedt stated that request had not been noticed. His assumption was that the "South" on Larch Lane in town would eventually fade anyway.

Commissioner Hart moved that the Board of County Commissioners change the name of a street in Seeley Lake from Larch Lane to Hemlock Drive in Block 1 and Block 2, Clark Addition #1. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing - Petition to Establish Rumble Creek Road as a County Road (Condon Area)

This is a petition to establish "The portions of Rumble Creek Road located in Sections 7, 8, the south half of Section 4, the south half of Section 5, and the north half of Section 9, Township 20 North, Range 16 West, P.M.M., Missoula County, Montana."

The reasons for the request are as follows:

1. Rumble Creek Road provides the sole source of physical access to many parcels of land in the Rumble Creek drainage. The owners of these parcels currently do not have legal access to their property. The establishment of Rumble Creek Road as a county road would provide the owners of these parcels with legal access to their property.
2. Rumble Creek Road is an important source of physical access to public land in the Swan Range, and in particular is the main source of physical access to the trails leading to the Rumble Lakes, Holland Peak and surrounding areas. The general public does not currently have a right of legal access along Rumble Creek Road. The establishment of Rumble Creek Road as a county road would provide the general public with legal access to public land in the Rumble Creek area.
3. The establishment of Rumble Creek Road as a county road would prevent the development of access disputes between buyers of land, sellers of land, title companies, the general public and other parties.
4. The establishment of Rumble Creek Road as a county road would officially confirm the public nature of the road, portions of which may already be a prescriptive County road as a result of public use and County maintenance over many decades.

The following land owners have been notified:

NANCY E BROWER
LUCILLE C TUTWILER
SAMUEL M CHAPPELL III
12 OFFICE PARK CIRCLE STE 215
BIRMINGHAM AL 35223-2521

RICK & RHONDA WYANT
3275 AIRPORT RD
KALISPELL MT 59901

FRED A TIMLICK
2701 HELENA FLATS RD
KALISPELL MT 59901

PERCY W BROWER JR, TRUSTEE
3305 DELL RD
BIRMINGHAM AL 35223

MICHAEL & JANCIECE SLOMINSKI
1515 MADDUX DR
REDWOOD CITY CA 94061

JAMES D & JAMIE M FORBES
PO BOX 1085
CLWEISTON FL 33440

DOLORES M BURCH
896 LUCKYS LN
CONDON MT 59826

ELK CREEK HOLDINGS LLC
PO BOX 806
SEELEY LAKE MT 59868

LEWIS DEWHURST COX JR
520 PALM SPRINGS BLVD
#810
INDIAN HARBOR BEACH FL
32937

ROBIN/LAURIE ELLENWOOD
1209 5TH ST E
POLSON MT 598860

LAWRENCE L CASEBOLT II
THERESE L CASEBOLT
118 BUCK CREEK RD
CONDON MT 59826

STAN/LAURA SLOMINSKI
ROUTE 1 BOX 935
CLINTON MT 59825

RICHARD & DAWN BISHOP
938 RUMBLE CREEK RD
CONDON MT 59826

ROBERT L FORD
PO BOX 1293
CONDON MT 59826

HENRY A & HAZEL M DRENTH
254 DIAMOND RD
SUPERIOR MT 59872

ROBERT B & DONNA C AMO
PO BOX 125
POTTERSVILLE NJ 07979

MARIANNE JUDGE
PO BOX 1352
CONDON MT 59826

KEN & KAY ROBERTS
PO BOX 1041
CONDON MT 59826

DONALD R & MARITA E KIRCHOFER
HC 31 BOX 2495
SEELEY LAKE MT 59868

JEFFREY R & NORMA L MASON
PO BOX 1067
CONDON MT 59826

PASCAL VANNIEUWENHUYSE
C/O HOLLAND LAKE LODGE
STAR ROUTE BOX 2083
CONDON MT 59826

KENNETH L & BARBARA D ROSEDAHL
22204 82ND AVE E
SPANAWAY WA 98387-5309

RICHARD L & ALIS DEMERS ARROWOOD
TRUSTEES OF THE ARROWOOD FAMILY TRUST
PO BOX 1240
GLEN ELLEN CA 95442

EXCHANGE BANK CUSTODIAN FOR
THE RICHARD W ABBEY IRA
1105 N DUTTON AVE STE A
SANTA ROSA CA 95401

ROBERT J & MARIANNE STEFCZAK
PO BOX 575
SEELEY LAKE MT 59868

PAUL D & JENIFER D TARVIN
332 BISHOPSBRIDGE DR
CINCINNATI OH 45255

DAVID T & CAROLINE S BERNER
STAR ROUTE BOX 2530
CONDON MT 59826

MARY E PHILLIPS
4702 RUMBLE CREEK RD
CONDON MT 59826

KAREN ANN BRODIE TABISH
700 HIGHLAND PARK DR
MISSOULA MT 59803

JAN EVERETT BRODIE
108 SIMONS DR
MISSOULA MT 59803

UNITED STATES OF AMERICA
C/O FOREST SUPERVISOR
USFS FLATHEAD NATIONAL FOREST
1935 3RD AVE E
KALISPELL MT 59901

ROBERT/ JOANN HOSTETLER
PO BOX 1243
CONDON MT 59826

WM/JOLYNN MAHAFFEY
HC 31 BOX 351
CONDON MT 59826

LAURENCE L CASEBOLT SR
VICTORIA A CASEBOLT
HCR 31 BOX 2525
CONDON MT 59826

EVE E FREEMAN
4212 224TH ST E #B
SPANAWAY WA 98387

JANET LYN WILKINS
PO BOX 1236
CONDON MT 59826

ALEX/L JEAN ANTHONY
PO BOX 1124
CONDON MT 59826

JON MARK JOHNSON
JUDY A SWARTZ
PO BOX 1102
CONDON MT 59826

DANIEL KLIK
27142 LORRAINE
WARREN MI 48093

MAX & ELDA GREENOUGH
HC 31 BOX 795
CONDON MT 59826

GLACIER LANDS LLC
C/O KEVIN WETHERELL
PO BOX 806
SEELEY LAKE MT 59868

EXCHANGE BANK
CUSTODIAN FOR
THE MARY J ABBEY IRA
1105 N DUTTON AVE STE A
SANTA ROSA CA 95401

DAVID T BERNER
4433 RUMBLE CREEK RD
SWAN VALLEY MT 59826

PETER D KLEIN
72 PINE GROVE AVE
SOMERSET NJ 08873

JEFFREY HENRY BRODIE
8058 DANIEL PL NW
SILVERDALE WA 98383

KIM BRODIE DAMROW
53 CLOVERVIEW
HELENA MT 59601

CAROLYN/KEN FARMER
TRUSTEES OF THE
C.I. FARMER TRUST
7310 SHADWELL LN
PROSPECT KY 40059

PLUM CREEK TIMBER CO LP
999 3RD AVE STE 2300
SEATTLE WA 98104

Peter Dayton, Worden, Thane & Haines, P.C., was present to explain the petition to declare Rumble Creek Road a County road. Rumble Creek Road is off Highway 83 approximately a mile from Condon. The road is on private land

and goes into Forest Service Land leading to the Cooney Lookout. "The history of the road is as follows: The road has been maintained by the County since about 1940, between 83 and about this point there (pointing to where the road turns north), in this one mile east-west section here, this half mile here, in the southeast corner of Section 5, is a deeded County road north of a section line. It's only 40 feet wide, though, it's a deeded strip 40 feet wide rather than 60. I said 30 in the petition, that is wrong, it is actually 40 feet wide. It's not deeded on the south side of the section line. This roughly half mile up to this curve here, there's an easement on this to the County. So this portion of the road is already a public road. In this half mile...."

Commissioner Kennedy asked Peter Dayton to show again the limit of County maintenance.

Peter Dayton: "I believe it's right where this road branches off over here."

Commissioner Kennedy asked Horace Brown if that was correct?

Horace Brown stated that was correct.

Peter Dayton: "In this last half mile here, I also need to make a correction to the statements I made in the petition, there is a recorded easement dating from, I think, 1947, an easement granted to the Forest Service over this half mile, but as it turns out when it was granted there were two owners of the property and only one of them signed the easement. Both some of the landowners in this area and the Forest Service did point out that there may be some defects in this Forest Service easement. In an effort to try to handle the whole Rumble Creek Road, I should say I'm representing people that own the land in generally this area here (pointing to the area south and west of the road). In an effort to deal with the whole situation there, I filed a petition to get the whole road all the way up to the Forest Service land here declared a county road. And it seems to me that you can divide the problems of the road into three sections. First you have the first mile and a half, right up to this point here where you hit the south side of Section 5, which, this has been maintained by the County since 1940. In fact, I should explain, one reason we're filing this petition is everyone thought for many, many years that this was a County road. They didn't realize that a petition had never been filed to get it declared a County road and in the last couple of years, especially the last 6 months, as more and more title companies are focusing more carefully on title issues, they started realizing, oops, this is not a public road. People living in this whole area out here don't have legal access, consequently. So, in an effort to cure the problem, we filed the petition. With respect to this first mile and a half of the road, I think it's pretty clearly a prescriptive County road because the County's been maintaining it for many, many years. It's been treated as a public road, there's just never been a petition filed. And so, I think that should be fairly straight forward, I don't think anyone really objects to having this declared a County road. This is already a County road here ... (negative audience response) oh, well, okay, I stand corrected."

Chairman Evans informed the audience they would be given an opportunity to speak and should refrain from shouting questions.

Peter Dayton: "And then, this is already a County road here, up to this curve, and then with respect to this last section here, I've gotten letters from several land owners that live out there at the end who do object to this being declared a public road. My concern there is as a recreationist. This is a trailhead right here which leads to the whole Rumble Lakes, Holland Peak, Buck Peak, that whole really attractive area in the Missions. I just climbed Holland Peak two weekends ago. And this is the way you get to it. And if, what they're saying I believe, is that there's no Forest Service easement on there and it's not a public road, consequently they have the right to gate that off. And if fact when you drive up there, there is a "No Trespassing/No Hunting" sign or red painted tree roughly every 20 yards, I think, along this whole section. So, my concern is, I think that you, as County Commissioners, ought to be providing access to the public to all this public land back there by declaring this section a County road as well. As I said, I think it can be divided into three sections, the last half mile, which isn't a County road now by any argument, this section which has deeded or easement, and this section which is only prescriptive. Are there any questions?"

Horace Brown stated the County has maintained this road for more than five years so there are rights to the road. The reason it is maintained only to the turnaround is there is nobody that lives beyond that. The first 3/4 of a mile there is no right of way, only prescription. If there was right of way, it could probably be improved beyond what it is now. This is a narrow road for the first 3/4 of a mile. The road was rebuilt where the easement was obtained, so it is a lot wider and straighter.

Colleen Dowdall clarified that if it is right of way by prescription, then the County does claim they have right of way, it just is not deeded or granted, but obtained by prescription. There are ways to perfect that, to have it on record, and granting this petition would be one way of recognizing that.

Commissioner Hart asked if the County had right of way by prescription, what did that do for legal access?

Colleen Dowdall stated if all agree it is a prescriptive easement, yes there is access, but the title companies do have problems insuring that it is a County road access because there has been no court action to determine ownership or right of way, there is nothing on public record, it is just the right claimed by use.

Chairman Evans stated this was a public hearing. Before inviting the public to speak, she asked what this petition would change in regard to the status of the road. She did not understand why there was so much animosity toward the petition when the County was already maintaining the road.

Colleen Dowdall stated that from reading the file, the issue was when the County has a right of way by prescription, even if the County is maintaining the road, a title company is unlikely to insure access. If there is not legal access, it seriously affects the value of the property.

Mary Phillips stated she lives on Rumble Creek Road and was opposed to these changes. She had a list of other residents of Rumble Creek Road who are also opposed. She knew of several people who had written to the County Commissioners and would like some recognition of the feelings expressed in the letters.

Commissioner Hart stated she had read all the letters and appreciated the time involved to express their concerns. An acknowledgment of receipt of these letters was not sent, that does not mean they have not been read.

Chairman Evans stated Mary Phillips should express her reasons now to be part of the permanent record.

Commissioner Kennedy stated he too has read all the letters and visited the site.

Mary Phillips stated the County has never maintained the last loop of the road, it has been maintained by the residents. She presented to the Commissioners the list of signatures of other residents opposed to this action.

Peter Dayton suggested that when people make objections, they indicate whether they are objecting to the declaration of the entire road as a County road, or only some portion, such as the last half mile.

Chairman Evans asked those who testify to answer that question.

Commissioner Hart asked Mary Phillips if she had objections to making the entire road a County Road or is the objection about the part of the road the County has not maintained.

Mary Phillips stated her main objection is for the area not County maintained but she knew there were others on the lower portion of the road who also objected as strongly as she did.

Jabet Wheeler stated she and her husband are owners and residents on Rumble Creek. She had several questions about the petition. She said she fundamentally opposed making Rumble Creek Road a County road, the entire road.

Commissioner Hart stated her questions needed to be answered but rather than having dialogue, she should state her questions and they will be answered after the public comments.

Jabet Wheeler stated her initial concern was that the petition was mailed to an incorrect name, listing her as Janet Wilkins. She noticed there were only three property owner segments that are petitioning for the road, the other 42 property owners are not. The three that are petitioning are not doing so for access to the wilderness areas as was mentioned, they intend to subdivide the property and want clear title for resale value. The current residents like the road as it is, it has some traffic to the trailhead which is not opposed. She asked why she and the others opposed should sacrifice the rural area and lack of traffic so that others can profit by subdividing pristine area. Her second questions involved the 42 property owners listed on the petition and how many actually support this petition. Her next question was that some of these 42 owners have access to their property off other roads such as Buck Creek Road and Highway 83. Another question was if this became a County road, what ramifications does that have to the people who currently own property, an increase in taxes, maintenance, financial obligation. What happens to the property that they paid for when it is deeded to the County for right of way, are they compensated in any way.

Mary Ann Judge stated she is one of the newest and smallest property owners on the road. She echoed the previous speaker. She presented a copy of the letter she wrote to Mr. Dayton with her questions about the petition. She also presented a letter to the Commissioners with her concerns. She felt the public access was not the main issue, it had more to do with subdividing the land. When she purchased her property in April, there were no questions from the title company regarding access. She lives very close to the road and has built a new garage and did not want to lose it or any of her property to County right of way.

James Wheeler stated there is access to the wilderness lands as evidenced by the number of hunters he sees each year. There is plenty of room to park and camp and the road is in good shape except in the middle of winter.

Robert L. Ford stated he is a landowner on Rumble Creek Road and is against the granting of the petition. He did not fully understand what was being requested when he first received the petition. Since counsel has explained the petition and stated he made a few mistakes, he is even more confused. He felt that due to the mistakes and changes, the petition should be considered null and void. He would like to be able to put gates up to all entrances to Montana and tried to put a gate on Rumble Creek from Highway 83 when he first moved there, but it was objected to. He would like the area to remain a rural area and is opposed to additional development in the area, which he felt would happen if this petition was granted. This will bring in more people, more traffic and more dust and create a safety issue, possibly bringing in more crime. He would like the road left alone, it was known it was not a County road when property was purchased.

Elda Greenough stated one of her major concerns was that the road divided her property and if additional right of way was given to the County, the small portion of her property would be unusable. Her other concern was ingress and egress, if more developments came into the area, it would create another long road with one way in and one way out, which the County has too many of already.

Peter Dayton answered the question that 21 landowners signed the petition, they main reason for support is legal access to their property. The concern that the road was not a County road was a recent development, so people who purchased their property some time ago may not have experienced this. However, they will find that if they try to sell or refinance, there will be an exception due to lack of access and that will reduce the value of their property. Those that support this petition want to make sure they have legal access to their property. He clarified that if this road was declared a County road it did mean they would be any changes to the road. He mentioned that the two major landowners he represents were talking about granting conservation easements and were not planning development.

Margaret Gerbig stated her mother-in-law owned property just off Rumble Creek Road. She agreed with Mr. Ford, any changes in the original petition should make it null and void and allow the people who signed the original to re-evaluate the situation.

Max Greenough stated he did not know the landowners Mr. Dayton was representing, he has never seen them. The road has been there forever and everyone is happy and the County doesn't need to spend the money to improve it. He would like to know who the 21 landowners were who signed the petition.

Commissioner Hart asked Peter Dayton to list the 21 landowners.

Peter Dayton began to read the list of names, including the Arrowwood Family Trust.

Chairman Evans stopped Mr. Dayton and suggested she give her packet with the names in it to Jabet Wheeler.

Peter Dayton said they may be a few additional signatures that were recently received that were not included in the packet.

Chairman Evans gave the list of questions from Mary Ann Judge to Mr. Dayton for his response.

Robert L. Ford stated that due to the errors made in the original petition, it should be redrawn and resubmitted after the conservation easements were granted, which might have a favorable effect on the response to the petition.

Colleen Dowdall addressed whether the errors in the petition required it to be resubmitted. The errors were not significant and would not be used by the Commissioners to make their determination. There are a number of landowners from out of state that do not qualify for the 10 signatures necessary, but there were 11 classified as resident freeholders.

Commissioner Hart asked Colleen Dowdall who could sign the petition?

Colleen Dowdall stated it did not have to be people who live on Rumble Creek Road, the statute requires that it be 10 resident freeholders within the road district, which is Missoula County. It did not have to be anyone who lives on the road. A number of people who own property on the road have signed whose signatures do not count toward the 10 required but they do indicate they have consented to the creation of the County road. She wanted to make clear to the Commissioners that the County does claim a right of way from the Highway at least to the end of the maintenance, perhaps further, by prescription. Regardless of how the Commissioner act today, the County will act as if it is a County road for that section. Research in recent years on what is a County road by use or by some legal document has been better and title companies are being more careful about granting access unless the right of way is certain. If the petition is not granted today, it could still be established that it is a county road by filing a lawsuit and having a judge declare right of way by use. She believed there was right of way by use and this action would clear everyone's title. She also made it clear that the County did not own the road, it is a right of way and no matter what action is taken the County will only have an easement and this would not take from anyone what they have not already given the County through the prescriptive process. Before the Commissioners can act on this issue, a site inspection must be completed with the County Surveyor. If a right of way were declared and someone lost money because of this statute the County is required to pay damages. The owner would have to establish that their property value was being decreased as a result of clearing the title problem. She also felt that the value of the conservation easement will be greater if the right of way is established prior to its granting.

Commissioner Kennedy stated that as Colleen Dowdall pointed out, the Commissioners cannot make a decision today, there needs to be a site visit. He suggested that analysis of the legal issues, the merits and demerits of the Road Department and input from the Office of Planning and Grants be completed along with the site visit before the Commissioners convene again to decide this issue.

Chairman Evans stated that was a good suggestion. She stated that the petition requests that this be established as a County road and that it be a 60 foot right of way. This does not mean the road will be changed if the petition is granted, she did not believe it would happen and the County did not have the money for the project anyway.

Elda Greenough stated that the road at the present is 40 feet and will be widened to 60 feet, would the landowners still be paying taxes on the land that would be taken away from them.

Colleen Dowdall stated the 60 feet is right of way only, not road width, and did not feel the tax situation would change because it is known that the land is encumbered by a County road and also served by a County road.

Peter Dayton stated there were several questions regarding public access issues, such as which owners and which pieces of property don't have legal access and how would the petition solve the access problem. Except for the people who have access by some other route, no one has legal right of record for access. Many of these people have not had any disputes yet, but may have in the future if they want to sell or refinance the property. The current landowners on the last section of road have allowed recreational access to the wilderness areas but at any time they could close that road because there is no right of public access along the road.

James Wheeler stated none of the signers of the petition live on Rumble Creek Road, they live out of state.

Commissioner Hart stated they did not have to by State law.

Chairman Evans stated she would like to know what the changes in road maintenance would be if the petition were granted and how that would affect landowners. She stated the Board would reconvene to make the decision on this petition on Wednesday, October 14, 1998, giving time for a site visit and answers to some of the issues involved.

Colleen Dowdall stated she would re-check the signatures to determine if they were resident freeholders of Missoula County.

Commissioner Hart would also like research into the Forest Service access question on the last part of the road before the next meeting as well.

Chairman Evans asked Horace Brown to respond to #7 of the petition: "We request that the Board of County Commissioners direct the Missoula County Surveyor's Office to prepare a map which shows the exact location of Rumble Creek Road, for recording in the Missoula County records as provided for in M.C.A. Section 7-14-2606."

Bob Sewell, First American Title, stated that in working with Peter Dayton on the last few transactions they may have opened the issue of legal access and insurability on Rumble Creek Road. As far as title companies are concerned, they will insure a legal route of access, not a specific route, but a legal ability to get access, which may affect the value of the property. Prescriptive routes are not insured for access. A map of the road showing access would not meet their needs, it is the "of record" access, a court action or deed, that is necessary.

Chairman Evans asked Horace Brown to set a time with at least one of the Commissioners to do a site inspection.

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

Consideration Of: Katie Ellen Acres (2 lot subdivision) Conifer Drive - Lower Six Mile Area

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

The applicants, Bradley R. and Katie E. Nelson, are requesting approval to divide a 14.68 acre parcel into 2 lots. Lot 1 will be a 5.00 acre lot and Lot 2 will be a 9.68 acre lot. The property is located 5 miles northwest of Huson in the lower Six Mile area, at the northeast corner of Conifer and Thompson Drives. The property is legally described as the SW 1/4 Section 11, T15N, R22W. One single family residence is currently located on the west end of the property on what is proposed as Lot 1. There is a proposed homesite at the east end of the property on the proposed Lot 2. Surrounding land uses are single family residential on lots sizes ranging from 5 acres to 30 acres.

The property is forested with Ponderosa Pine and Douglas Fir. There is a seasonal creek that crosses the northwest corner of proposed Lot 1 and a spring area on the north boundary of proposed Lot 2. The majority of the property is level except for a bench slope at the east end of the property. This is a bench with a 10 - 15% slope, the top of which is where the proposed Lot 2 homesite will be located.

The existing access to the subdivision is from Six Mile Road to Conifer Drive. A driveway accesses the existing home on the property along the southern property line. The proposal is to access the homesite on Lot 2 with a new driveway along the northern boundary of Lot 1. This driveway has been partially constructed, and the homesite cleared. The trees cut for the driveway and homesite are being dried for use in the new home construction. The new lot will be served by an individual well and septic system.

The Office of Planning and Grants recommends approval of the Katie Ellen Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

The Office of Planning and Grants recommends approval of the variance request from Section 3-2(5) 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.

The Office of Planning and Grants recommends approval of the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Conifer Drive to vary from a 24 foot graveled road width to a 20 foot gravel road width.

Ron Ewart, Eli & Associates, developer's representative, was present, as was the applicant Brad Nelson. Brad and Katie Nelson live in the existing home on the property and wish to build their own home on the property. In the process of getting permits for the new home, they decided to go through the subdivision process. Most of the lots in the adjacent area are between 5 and 10 acres. Forest Service land is adjacent to the north and state land is adjacent to the east. Conifer Drive is a private road at this point which is in good shape and the fire department feels the access is adequate. They agree with all the conditions as presented in the staff report.

Chairman Evans asked for public comment. There being none, the public comment section was closed.

Commissioner Hart stated this was a private road with easements.

Colleen Dowdall stated that access can be by a private road and the applicant is required to establish that there is legal access by the roadway to the property. The easement is also for a utility easement.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, and to approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Conifer Drive to vary from a 24 foot graveled road width to the existing 20 foot gravel road width, based on the finding of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Katie Ellen Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

1. 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 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), and staff recommendation.*

2. The developer shall contribute \$100.00 per new lot to the Frenchtown Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District recommendation.*
3. The proposed driveway approach shall be developed to County drainage standards, including installation of appropriate culverts, and subject to approval of the County Surveyor. *Subdivision Regulations Article 3-4(B) and staff recommendation.*
4. The proposed 30 foot access easement across Lot 1 shall also be designated as a private utility easement on the plat. *Subdivision Regulations Article 3-6 and staff recommendation.*
5. A road maintenance agreement for Conifer Drive adjacent to the subdivision shall be developed, subject to County Attorney approval, prior to plat filing. *Subdivision Regulations Article 3-2(1) and staff recommendation.*
6. The covenants shall be amended to include a driveway maintenance agreement for the proposed driveway on Lot 1. *Subdivision Regulations Article 3-2(6) and staff recommendation.*
7. Article 13 of the proposed covenants shall be amended to state that the section on riparian standards may not be modified without written permission from the governing body. *Subdivision Regulations Article 3-13 and staff recommendation.*

Consideration Of: Van Ostrand Subdivision, Lot 2 (4 lots) Off Mormon Creek Road - Lolo

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicant, Thomas Mercer, is requesting approval to divide a 4.43 acre parcel into 4 lots approximately 1.11 acres in size. The property is located on Mormon Creek Road in Lolo. The property is legally described as Lot 2 of Van Ostrand Subdivision, SE 1/4 Section 34, T12N, R20W.

There are currently 2 mobile homes, a barn, and some outbuildings on the property. Surrounding land uses are primarily single family residential. The property is unzoned. The 1978 Lolo Land Use Plan designates residential land use with a density of 2 dwelling units per acre.

The property is accessed from Mormon Creek Road and Onyx Drive, both of which are County maintained. The applicant has requested variances from road width and pedestrian walkway requirements. The lots will be served by individual wells and septic systems.

According to the Lewis and Clark Trail Heritage Foundation, the property is located adjacent to the Lewis and Clark Traveler's Rest encampment site. The Foundation has requested that an archeological survey be performed to determine what cultural resources might be present on the property. The applicant is willing to allow such a survey, if performed in a timely manner.

Members of the Lolo community have also expressed an interest in preserving the existing barn, which is one of the original dairy barns on the Van Ostrand Ranch and has historic significance. The applicant has no immediate plans to remove the barn, but is willing to discuss plans for the barn with the community.

In addition, letters have been received from the State Historic Preservation Office of the Montana Historical Society, and the National Park Service stating the significance of the Lolo Trail and Traveler's Rest.

The Office of Planning and Grants recommends approval of the Van Ostrand Lot 2 Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

The Office of Planning and Grants recommends approval of the variance request from Section 3-2(5) 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.

The Office of Planning and Grants recommends approval of variance request from Section 3-2 of the Missoula County Subdivision Regulations for Onyx Drive to vary from the required 24 foot width to the existing condition, based on the findings of fact set forth in the staff report.

Ron Ewart, Eli & Associates, developer's representative, was present, as was Kevin Mytty from Shelter West, representing the property owner. The land in this area is fairly level and has an irrigation ditch. There are two homes on the property now and this subdivision would net two additional homes. To the south are 1 acre lots and to the west is a mobile home park. The barn on the property is in good condition needed only minor repair and there are no plans for the barn at the present time. The developer has been speaking with the folks from the Traveler's Rest Lewis and Clark Foundation and have let them know they are willing to allow an archaeological assessment, one was scheduled for a few weeks ago. He would like to proceed with this subdivision as proposed while working with the historic aspects of the site.

Chairman Evans asked for public comments.

Maggie Kartes stated that Mrs. Esther Jennings lives on proposed Lot 1 of the Van Ostrand subdivision. There are several issues that she wanted brought to the Commissioners attention. Mrs. Jennings is 79 and not in good health. Esther Jennings borrowed \$5,000 and loaned it to her son Duane Scheeler on June 28, 1977. Mrs. Jennings made payments of \$200 per month until Duane relocated to California, approximately February, 1983. At that time Duane

created the warranty deed to his mother. Within one month of relocating to California, Duane asked his mother to return the property into his name for a period of no more than one year. Mrs. Jennings acted in good faith and did as her son requested, and on March 30, 1983, created a warranty deed to her son. But five days prior, Duane had already given another warranty deed and sold the property to Capital Resources, on March 25, 1983, so in fact this deed was voidable having been done prior to him actually having the property in his name. Capital Resources is a Nevada corporation that belongs to Mr. Mercer who is now trying to do this subdivision. Duane assumed that Mr. Mercer, due to their personal and professional relationship, was acting in a manner consistent with his welfare. Under this basic law, a real estate contract is voidable as Mr. Mercer used undue influence, taking unfair advantage of a person by reason of a dominant position based on a relationship of trust and confidence. Mr. Mercer allowed Duane to live in his home, Duane confided in and was assisted by Mr. Mercer for financial and emotional problems. Duane was diagnosed as manic depressive and Mr. Mercer knowingly entered into a real estate contract with Duane and admitted to it in writing on December 8, 1989. Duane also drank and was classified as an intoxicated person. It's illegal to enter into any type of contract, real estate or not, with a person who is either mentally incompetent or intoxicated. Under the guidelines for adverse possession, Mrs. Jennings has openly and continuously occupied the property since 1977, surpassing the 20 year statute. Courts have upheld that living on it, building on it, farming and maintaining structures are enough to constitute possession. For these reasons Mrs. Jennings requests that the Board put off any decisions for the new zoning until this matter is either resolved by a meeting of the minds with her and Mr. Mercer, or a court ruling. At this time Mrs. Jennings is willing to negotiate a portion of the property and is also ready to send a letter of demand and notify the California Bar Association and Montana Real Estate Commission. She will not have any problem with the historical society coming out to do their surveys.

Chairman Evans asked if Ms. Kartes was speaking as an appointed representative?

Maggie Kartes stated she was not a lawyer but a friend of Mrs. Jennings.

Louis Scheeler, brother of Duane Scheeler, stated he watched Duane deteriorate over the years. When Duane came home to see his mother he would always want money and was always drunk. His mother has maintained the property since she has lived there.

Nancy Maxson, President of the Lolo-based Traveler's Rest Chapter of the Lewis and Clark Trail Heritage Foundation, stated her organization encourages local interest in the Lewis and Clark expedition and related topics. The concerns expressed related to two subdivisions before the Board today, Van Ostrand and the next one on the agenda, Duke and Duchess Trailer Court. Both deal with parcels of land in Lolo. These two parcels are part of Lewis and Clark's Traveler's Rest campsite where the expedition camped from September 9-11, 1805 and June 30-July 3, 1806. Traveler's Rest is one of a dozen national historic landmarks in Montana. They do not want to see this landmark turned into a trailer park. In 1996 an aerial infrared photography survey was done revealing anomalies reminiscent of teepee rings on both parcels, determining that an archaeological survey was needed. They are asking for a mitigation level data recovery effort to recover any information on the sites before development begins, consisting of a metal detector sweep, a magnetometry sweep, interpretation of data and excavation of any important findings. Dan Hall, an archaeologist, is willing to donate his time to the project. It was hoped that the landowners will donate to the recovery effort. If the Board does not stop the subdivisions, it is asked that they be delayed until funding can be arranged for the study.

Maggie Kartes stated the paper trail for the warranty deeds are in Book 187, Page 109 through 112, IT6495 and she also had correspondence between Mrs. Jennings and Mr. Mercer if the Board needed this information.

Colleen Dowdall clarified that Mrs. Jennings lives on proposed Lot 2C.

There being no further comments, Chairman Evans closed the public comment section.

Chairman Evans asked Colleen Dowdall how the Board could consider the subdivision when there is a question of whether or not the applicant even owns the land?

Colleen Dowdall stated before the plat is filed, it is required that a title policy be issued that shows ownership of the parcel. If there is ownership dispute, this is not the forum in which to resolve that dispute. An action would have to be brought in District Court to resolve the matter.

Chairman Evans did not want to commit staff or Board time to consider a subdivision for someone who may not own the land.

Colleen Dowdall stated that she and staff had no idea there was such a claim or controversy. Regardless of the claim, ownership is not considered until signing of the plat.

Chairman Evans also asked Colleen Dowdall about the request to stop or delay the subdivision by the Traveler's Rest people. Was there a legal reason to do that?

Colleen Dowdall stated she believed the Board did not have any legal authority to stop the subdivision based upon the presence of cultural resources. Regulations and state statutes have not supported the protection of cultural resources in the past. On another subdivision an attempt at negotiation for access without delay to the applicant was requested. Ron Ewart has stated that the owner of this development was willing to allow the surveys to occur. She also stated the Board was required to act within the statutory period.

Chairman Evans asked what the deadline for the subdivision was?

Nancy Heil stated the deadline was today, September 23, 1998.

Commissioner Hart stated she remembered in State law, cultural interests could be considered.

Colleen Dowdall stated the statute did not give the Board authority, and as this is a summary subdivision, it does not go through environmental and community assessment.

Commissioner Hart stated that she believed this subdivision in question was not on the actual site of Traveler's Rest, but adjacent to it.

Nancy Heil stated the original letter from the Traveler's Rest Chapter referred to it as adjacent. In the letter received from the Park Service, it implies the subdivision is on the land in question. The exact location of the site has not yet been determined, but this subdivision is in an area of 95% confidence.

Nancy Maxson stated adjacent referred to the Deschamps property as the heart of the site, and these two plots are adjacent to the Deschamps property.

Nancy Heil stated that staff was not aware of the potential dispute of ownership until today. The State Historic Preservation Office also wanted to point out, "This instance reveals the importance of giving cultural and historic sites due consideration in your planning process. We would suggest Missoula County's county plan should be reviewed and strengthened in regard to the issue of historic preservation." They also pointed out there are no Federal or State laws which offer protection to these sites.

Kevin Mytty, Shelter West, representing the owner, stated he was not aware of the ownership dispute. He agreed with Colleen Dowdall that the preliminary plat could be granted, but before a final plat could be filed, all the title issues would need to be resolved. With regard to the Traveler's Rest site, he asked if they were granted preliminary approval with a condition to allow the research to be done, how long would the research take.

Nancy Maxson stated that before a survey could be done, an application must be submitted to the National Parks Service, and funding needs to be secured, but she hoped the work could be completed by the end of October.

Kevin Mytty stated that currently there is a house belonging to Mrs. Jennings and a trailer on the property. His other question is if it was discovered that this property has significant historical value, what options does the owner have at that point if a preliminary plat has already been approved, how would he proceed?

Nancy Maxson stated if significant artifacts were discovered, she was not sure how to proceed, it may need to be referred to the State Historic Preservation Office.

Commissioner Hart stated if the developer's representative would allow some time, it may be discovered that there is nothing of significance on the site.

Chairman Evans stated before the final plat is filed there will be some time involved because of the ownership question. She would prefer to act on the subdivision as it exists because the law doesn't give the Board the right to do anything else, including the historic significance and the ownership issues.

Kevin Mytty stated the property is currently being impacted and the approval would not affect it significantly. His client would be willing to look at options if there was historic significance at the site.

Colleen Dowdall stated the Board could act on it if they wished and the property owner and the Traveler's Rest people could come to some agreement, or the developer could ask for a delay. There is very little to compel the landowner to act.

Commissioner Kennedy asked Kevin Mytty if time was of the essence to get approval today, was there a development time schedule.

Kevin Mytty stated there were no time limits at this point. He would be willing to postpone or table the decision until some further information is gathered, considering the time involved to study the site.

Commissioner Kennedy stated Kevin Mytty could yield to a time certain and it could be re-evaluated at that time.

Kevin Mytty stated that would be acceptable, another 30 days would be reasonable.

Commissioner Hart stated the ownership issue was important information for the Board to know but they could not act upon it. It was a matter for the civil courts.

Kevin Mytty requested that they table the Board's consideration for another 30 days, to October 21, 1998.

Chairman Evans stated the request did not require a motion but stated for the record that the Board postponed any action on this until October 21, 1998.

Consideration Of: Duke & Duchess Mobile Home Park (4 units) Off Jade Lane - Lolo

Chairman Evans stated the same situation exists on this property as with the Van Ostrand Subdivision and asked if the developer's representative would be asking for a delay or wanted to proceed.

Tim Wolfe, Territorial Engineering and Surveying, Inc., developer's representative, was present, but the owner, Frank Miller Jr., was not. He stated the owner was willing to allow the historic investigation but had been put off for 30 days already due to scheduling. The owner is under a time constraint and wanted this up and occupied before the weather closed in.

Nancy Heil stated that this site already has an approved lifting of sanitary restrictions from the state as this subdivision had been approved previously. She asked if the new drainfields were already in.

Tim Wolfe stated that half of them were already in. The area to be disturbed was small and it would be hard to delay.

Nancy Maxson stated that part of this parcel was in the floodplain, but the infrared study showed the area of possible significance was in the upper area of the property.

Nancy Heil stated there is one existing trailer and one existing drainfield, with one more drainfield and three trailers to be added.

Commissioner Kennedy stated time is of the essence on this property, and asked Nancy Maxson if two weeks would allow time for the historic survey.

Nancy Maxson stated a metal detector sweep could be conducted inside of two weeks, but 30 days would be more desirable.

Commissioner Kennedy stated two weeks could make a lot of difference to the owner with the colder weather approaching.

Nancy Maxson stated the metal detector and magnetometry sweeps could be done in one weekend.

Nancy Heil suggested having an archaeologist on hand when the drainfield was being dug, would that allow for checking of artifacts, if the landowner were willing. Only if a burial site was discovered, would it require that the project be halted.

Chairman Evans thought that was a great suggestion if it was possible.

Tim Wolfe stated he was willing to work with the historic preservation as long as it did not hold up progress on the property.

Commissioner Kennedy ask if he was sure about the schedule of activity for the property.

Tim Wolfe stated he was sure the owner would like to begin immediately.

Nancy Heil stated that legally, since he has an additional septic approval, he would be allowed to excavate at any time.

Colleen Dowdall stated that would be correct. This subdivision was approved once before and the sanitary restrictions were lifted, but it could not be occupied until the Board acted on this request.

Commissioner Hart stated the Board knew that the owner could dig and that he is on a deadline.

Chairman Evans suggested a motion of approval contingent upon having someone on site to evaluate the historic aspects as long as it did not delay the owner.

Colleen Dowdall stated that would be acting in excess of the authority of the subdivision regulations.

Nancy Maxson stated if there was permission to go on the property and do their sweeps within the next two weeks, it would be great.

Nancy Heil asked if the Board would like her to present the staff report. She stated that all the uses on this property would occur outside the floodplain. The Office of Planning and Grants recommends approval of the Duke and Duchess Trailer Court Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the conditions in the staff report. The Office of Planning and Grants recommends approval of variance request from Section 3-2 of the Missoula County Subdivision Regulations for Jade Lane to vary from the required 24 foot width to the existing condition, based on the findings of fact set forth in the staff report. The Office of Planning and Grants recommends approve the variance request from Sections 3-2 and 3-10 of the Missoula County Subdivision Regulations for Farrow Lane to vary from the paving requirement beyond the northernmost mobile home park lot. The Office of Planning and Grants recommends approval of the variance request from Section 3-2(5) 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. The original subdivision was approved in 1995 and there were two extension granted. The final extension expired in August, 1996.

Tim Wolfe stated there were no problems with the staff report and they would work with the historic preservation people as much as possible as long as it did not delay things. There will be minimal soil disturbance.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2 of the Missoula County Subdivision Regulation for Jade Lane to vary from the required 24 foot width to the existing condition, approve the variance request from Sections 3-2 and 3-10 of the Missoula County Subdivision Regulations for Farrow Lane to vary from the paving requirements beyond the northernmost mobile home park lot, and approve the variance request from Section 3-2(5) 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 Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Duke and Duchess Trailer Court 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 Kennedy seconded the motion. The motion carried on a vote of 3-0.

1. The lot owner shall file a document of record with Missoula County waiving the right to protest improvements to Jade Lane, including installation of pedestrian walkways or bikeways, based on benefit, which may be used in lieu of

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. Such document shall be filed prior to final plan filing. *Subdivision Regulations Article 3-2(5) and staff recommendation.*

2. The lot owner shall file a document of record with Missoula County waiving 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. Such document shall be filed prior to final plan filing. *Subdivision Regulations Article 3-7(2) and staff recommendation.*
3. The lot owner shall contribute \$100.00 per new dwelling unit to the Missoula Rural Fire Department prior to plan filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire Department recommendation.*
4. The final plan shall show the location of the emergency vehicle turnaround on Farrow Lane, subject to the approval of the Missoula Rural Fire District. *Subdivision Regulations Article 3-2, 3-1(1)(F) and staff recommendation.*
5. The final plan or an attachment shall show the vegetative coverage of all unpaved areas. The plan shall indicate what types of trees shall be used in the landscape buffer around the perimeter of the mobile home park. *Subdivision Regulations Article 3-10(9) and staff recommendation.*
6. A riparian resource management plan shall be developed for the project. The plan shall describe the riparian area, proposed access to or through the area, proposed low-impact uses of the area, planned restoration of the area with native species, planned mitigation from all proposed uses, and planned buffer to mitigate development adjacent to areas of riparian resource. The site plan or an attachment shall delineate the boundaries of the riparian resource area. The plan shall be approved by OPG prior to final plan filing for the mobile home park. *Subdivision Regulations Article 3-13 and staff recommendation.*
7. The park rules shall be amended to include the riparian resource management plan, "Living with Wildlife" recommendations, and the prohibition on storing hazardous materials in the floodplain. The amended park rules shall be reviewed and approved by OPG prior to plan filing. *Subdivision Regulations Article 3-13, 3-1(1)(B), 4-1(12)A and staff recommendation.*
8. The final plan shall include a recreation area totaling one-ninth of the mobile home park area in a location to be approved by OPG. *Subdivision Regulations 3-10(12) and staff recommendation.*

Chairman Evans stated that although it was out of her authority to do so, she asked the developer to work with the historic preservation people to solve the investigation of the site.

Other Business

Dave Loomis stated he wanted to respond to the memo from Commissioner Evans, to correct the record and offer apology if he misled the Commission by providing somewhat erroneous information to the question as to a regulation citation on Security Acres. He obscured the real issue of the adequacy of the finding and conclusion in support of Condition #6 of Security Acres. Commissioner Evans was correct in stating that the subdivision regulations do not allow the County to require park land or in lieu money from minor subdivision, if that section was cited, it would have been an error. However, the citation really was to the section in the regulations that allows mitigation for identified impacts. The findings and conclusions in that report cited a need for park improvements resulting in the recommendation of Condition #6, the waiver of right to protest future RSID for parks and maintenance. He apologized to the Commission in general and Commissioner Evans in particular, for any confusion created by the unclear response to the question. He should have directed attention to the findings and conclusions on that point. Staff felt that on that the Board may have wanted to discuss or challenge both the adequacy of the findings and conclusions, and the condition, and he should have directed the Board to that point.

Chairman Evans stated that using that citation, which is a mitigation citation, is erroneous information because there was nothing in the findings that required mitigation. She felt that the citation should have said it was an unadopted policy of the Board of County Commissioners for the waiver of the right to protest RSID's for parks. That would have been honest and true. To say that Section 4-1-12 was the citation that called for the waiver was inaccurate and when she asked Dave Loomis to correct it, she would have appreciated him saying she was correct, that particular citation did not apply. He should have said it was included as a staff recommendation based on the unadopted policy of the Board of County Commissioners, that would have been honest. The whole point of having citations at the end of conditions was so the Commissioners would know whether it was county regulations, state law, or staff recommendation, so a determination could be made if a condition has the justification of law. She wanted to make sure the citations were accurate.

Colleen Dowdall stated she had an additional and related concern. She was uncomfortable with the adequacy of the findings in that staff report with regard to an impact. The findings do recite the need for park maintenance, or improvements in that area, but it does not recite the impact of this particular minor subdivision, which has been determined by State law to not require a park dedication. The County is on slippery ground when this is required on minor subdivisions. A discussion on the issue is ongoing with the Attorney's Office and OPG staff. She also stated that she remembered when Chairman Evans asked that these citations be included and in 1997 the Montana Legislation made it law that all conditions be justified.

Chairman Evans stated that Dave Loomis wanted to make these comments at the beginning of today's meeting. She did not feel it would be appropriate to apologize or explain when the public was present and asked him to wait until the end of the meeting to discuss this issue privately.

Commissioner Kennedy stated that Colleen Dowdall's statement that the County was on slippery ground was just short of saying what was done was illegal. Could she comment on that statement?

Colleen Dowdall stated the way she characterized it was if it were challenged, could it be defended. Illegal implies that the Board knowing violated the law, she did not like to characterized it that way. It would be very difficult to defend with the current findings because there is not a specific finding with regard to Security Acres and the impacts on parks in the area.

Commissioner Kennedy stated the condition itself was not at issue, but the finding did not justify the condition.

Colleen Dowdall stated that specific findings to that subdivision have to be made when it isn't in the regulations particularly.

Commissioner Kennedy stated that if there is a finding to mitigate a particular problem that this can be used whether there is an established written policy or not.

Colleen Dowdall stated she agreed that the statute does allow the County to require the developer to mitigate an impact.

Chairman Evans stated that her major concern was that the citation under a condition be accurate and in this case it was not, nor was the correction or explanation.

Dave Loomis stated he came here to explain, not argue. He felt that citation was the perfect citation in this case. It was totally appropriate for the Commissioners to disagree with staff's findings and conditions. He wanted to state that he had done a poor job of explaining. Chairman Evans statement about the citation on parks not being required was correct. When he said that staff stands by the condition but the reference could be deleted, it was inappropriate and misleading. Regarding other "unwritten" policies, discussions have been ongoing and OPG needs to work with the Board on these issues, including this particular park issue and others, such as private versus public roads in subdivisions. These are gray areas and need further discussion.

Commissioner Hart encouraged Dave Loomis to do more work regarding interpretations.

There being no further business to come before the Board, the Commissioners were in recess at 4:30 p.m.

THURSDAY, SEPTEMBER 24, 1998

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. In the evening, Commissioners Evans and Hart attended the Annual Chamber Banquet held at the U. Center Ballroom.

ADMINISTRATIVE MEETING

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

Agreement - The Commissioners signed an Agreement for Provision of Professional Security Services between the Missoula County Sheriff's Department and Seeley/Swan High School. Term of the Agreement is the 1998/1999 school year. Cost of the Agreement is \$15 per hour plus 33.48% of the total for work performed by regular deputies and 12.90% for work performed by reserve deputies.

Agreement - The Commissioners signed a General Agreement with Stephen Nelson for use of Reyko, the trained canine, for duties in the Sheriff's Department. Terms of the lease agreement will be reviewed at the end of each fiscal year by both parties, and the Agreement may be terminated at any time after giving 90 days written notice.

Amendment to Memorandum of Agreement - The Commissioners signed an Amendment to the Memorandum of Agreement with Child Care Resources, amending the value of the Agreement to \$32,355.00. Duration of the Agreement is October 1, 1997 through September 30, 1998.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the YWCA to purchase group facilitation services for students at CS Porter Middle School. Value of the Agreement is \$16,036.00. Duration of the Agreement is July 1, 1998 through June 30, 1999, and is contingent upon receipt of Interagency Coordinating Council Grant Funds by Missoula County.

Contract - The Commissioners signed a Pathology Services Provider Contract with Pathology Consultants of Western Montana to provide breast and cervical cancer screening services for the Montana Breast and Cervical Health Program in Missoula County. Duration of the Contract is July 1, 1998 through June 30, 1999. Amended reimbursement rates are set forth in Exhibit A of the Contract.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Professional Consultants, Inc. to provide landscaping and engineering services for Tower Street Park. Performance schedule is August 10, 1998 through May 20, 1999. Compensation for services is \$12,570.00.

Other items included:

- 1) The Commissioners approved (on a vote of 3-0) the Missoula Planning Policy Committee Bylaws as amended and recommended for approval on September 1, 1998 by PPC.

- 2) The Commissioners approved an Option Agreement with Wesmont Builders, with changes, for purchase of Reserve Parcel B in the Missoula Development Park. The Agreement was returned to Scott Hollenbeck for Wesmont's concurrence or rejection.

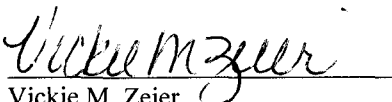
The minutes of the Administrative Meeting are on file in the Commissioners Office.

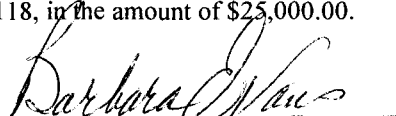
FRIDAY, SEPTEMBER 25, 1998

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

Plat and Development Agreement - The Commissioners signed the plat and development agreement for Boyd Acres, a subdivision located in the SW1/4 of Section 8, T13N R20W, PMM, Missoula County, a total of 11.1 acres gross and net, with the owners of record being Randy and Jamie Boyd.

Resolution - The Commissioners signed Resolution No. 98-072, a Budget Amendment for equipment and supplies for completion of microwave radio towers at Condon and Point 118, in the amount of \$25,000.00.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, SEPTEMBER 28, 1998

The Board of County Commissioners did not meet in regular session, as they were all attending the MACo Annual Conference held at the Colonial Inn in Helena.

TUESDAY, SEPTEMBER 29, 1998

The Board of County Commissioners did not meet in regular session, as they were all attending the MACo Annual Conference held at the Colonial Inn in Helena.

WEDNESDAY, SEPTEMBER 30, 1998

The Board of County Commissioners did not meet in regular session, as they were all attending the MACo Annual Conference held at the Colonial Inn in Helena.

The Weekly Public Meeting scheduled for September 30 was canceled as the Commissioners were all out of town.

THURSDAY, OCTOBER 1, 1998

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

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated September 29, 1998, pages 2-38, with a grand total of \$693,964.35. The Audit List was returned to the Accounting Department.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Reports for Justice Court 1, John Odlin, and Justice Court 2, Michael Jaworsky, for the month ending September 30, 1998.

ADMINISTRATIVE MEETING

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

Budget Transfer - The Commissioners signed a Budget Transfer for the Commissioners Office, for purchase of a cordless microphone for weekly public meetings. \$693.00 was transferred from Office Supplies to Capital Technical Equipment.

Certificate of Survey - The Commissioners signed a Certificate of Survey for the Kemp Agricultural Exemption and Boundary Relocation approved at the December 3, 1997 public meeting.

Request for Advance or Reimbursement - Chairman Evans signed a Request for Advance or Reimbursement from the Bureau of Land Management in the amount of \$131,226.58. The Request was returned to BLM.

CDBG Documents - The Commissioners signed documents related to the recently awarded Nutritional Laboratories, Inc. CDBG grant: a letter designating Cindy Wulfekuhle as Environmental Certifying Officer, Drawdown Signature Certification Form, Designation of Depository for Direct Deposit of CDBG funds, and three copies of the contract. Contract takes effect on August 3, 1998 and shall be completed no later than August 3, 2000. Award amount is \$260,000.00. The documents were returned to Cindy Wulfekuhle in OPG for further signatures and handling.

Revocable License for Non-Federal Use of Real Property - The Commissioners signed a Revocable License for Non-Federal Use of Real Property for 459 square feet of detention cell space for juveniles, office space, and 2 outdoor parking spaces at the Russell Smith Courthouse Building at 201 East Broadway for the Missoula Youth Court. The License was returned to Judge Larson's office for further handling.

Resolutions - The Commissioners signed five resolutions:

1. Resolution No. 98-073, a resolution supporting Referendum 98-3, Parks for All, and urging the people of Missoula County to vote in favor of the Referendum.
2. Resolution No. 98-074, a resolution annexing Orchard Park Phases 1 and 2 to RSID 901 in Lolo.
3. Resolution No. 98-075, a Budget Amendment for the Sheriff's Department in the amount of \$11,979.00 to purchase video cameras for patrol cars.
4. Resolution No. 98-076, a resolution changing a road name in Clark Addition No. 1 in Seeley Lake from Larch to Hemlock.
5. Resolution No. 98-077, a resolution to adopt an amended policy for Administrative Fees for ongoing Rural Special Improvement Districts. The resolution replaces Policy 95-C, dated July 17, 1995.

Other items included:

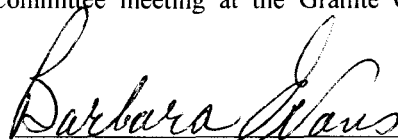
- 1) Commissioners Hart and Evans approved a counter offer for a portion of the Mullan Road site at the rate of \$1.65/ft. for all land on the Bench. Commissioner Kennedy opposed.
- 2) The Commissioners accepted an offer and signed an Agreement to Purchase Real Estate with Sun Mountain Sports to purchase Lots 1-3, Block 8 for \$250,000.00 as per the recommendation of the Missoula Development Authority. Closing date is October 15, 1998. They also signed a Supplemental Agreement granting a price rebate \$12,500.00 based on taxes paid on the lots and improvements for taxes levied for 1998, 1999 and 2000.
- 3) The Commissioners approved a request from the Clerk of District Court office for hiring another full-time employee.

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

FRIDAY, OCTOBER 2, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy attended an Upper Clark Fork Basin Steering Committee meeting at the Granite County Museum in Philipsburg.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, OCTOBER 5, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office October 5 and 6.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming MS Board of Plumbers as principal for Warrant #C05026 issued 7/22/98 on the Missoula County MCPS Elementary A/P Fund in the amount of \$75.00 now unable to be found.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of September, 1998.

Contract - Chairman Evans signed a Domestic Violence Contract between the Montana Department of Public Health and Human Services and the Missoula County Domestic Violence Program, to provide services to victims of domestic violence. Performance schedule is from October 1, 1998 through September 30, 1999. Compensation shall not exceed \$31,316.00. The Contract was returned to Leslie McClintock in OPG for further handling.

Community Rating System Annual Recertification - Chairman Evans signed a Community Rating System Annual Recertification for implementation of floodplain management activities. The Recertification form was returned to Brian Maiorano in OPG for further handling.

TUESDAY, OCTOBER 6, 1998

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

Audit List -- Commissioners Evans and Hart signed the Audit List, dated October 5, 1998, pages 2-37, with a grand total of \$1,080,851.37. The Audit List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 98-078, a resolution to rezone property from C-RR3 and C-RR3/MH to the JTL Special District, subject to conditions. The property is described as a portion of the N1/2 of Section 6, T13N, R19W, PMM, located between I-90 and Westview Park, known as the Wheeler Site.

Memorandums of Agreement - The Commissioners signed two Memorandums of Agreement:

1. with the Human Resource Council, Supplemental Security Income Transition Program, to purchase basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$188,455.00. Term of the Agreement is July 1, 1998 through June 30, 1999.
2. with the Child and Family Resource Council, to purchase parent education services for families of CS Porter Middle School. Value of the Agreement is \$5,892.00. Term of the Agreement is July 1, 1998 through June 30, 1999.

Contract - Chairman Evans signed a Contract between the Montana Department of Public Health and Human Services and the Missoula County Partnership to Strengthen Families for the Crisis Nursery Project. Compensation shall be up to \$28,106.00. Term of the Contract is September 30, 1998 through September 29, 1999. The Contract was returned to Peggy Seel in OPG for further handling.

Agreement - The Commissioners signed an Agreement with Missoula Correctional Services for architectural services and water utility tie-in for MCS' lease site. Compensation shall be \$43,533.48. The Agreement was returned to Mike Sehestedt, County Attorney, for further signatures and handling.

Lease - The Commissioners signed a Lease with Missoula Correctional Services for property adjacent to the County's regional jail facility on Mullan Road. Term of the Lease is 10 years, beginning October 15, 1998, with an option to renew for two additional 10 year terms. Rental cost is \$175,000.00 for the initial two terms of the Lease. The Lease was returned to Mike Sehestedt, County Attorney, for further signatures and handling.

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

WEDNESDAY, OCTOBER 7, 1998

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

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Bob Eustance as principal for Warrant #51769 issued 8/28/98 on the Missoula County MCPS High School Payroll Fund in the amount of \$589.26 now unable to be found.

The Commissioners authorized Hal Luttschwager, Risk Manager, to settle claims against Missoula County up to \$50,000.00.

PUBLIC MEETING - October 7, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, County Surveyor Horace Brown and Clerk & Recorder/Treasurer Vickie Zeier.

Public Comment

Ron Ewart, 5201 Skyview, stated that his wife had a baby girl on Tuesday, October 6, 1998. Her name is Kayleigh.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$1,080,851.37. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Bid Award - Restrooms at Larchmont Golf Course

Bill Galiher, Manager of Larchmont Golf Course, gave the report.

Bids were requested to build a bathroom on the golf course. Currently they are using porta-pottys.

Bids were opened at 10:00 a.m. on September 28, 1998, with Culver Hill being the only bidder. The amount of the bid was \$23,789. This project was originally bid in May, 1998, with Culver Hill being the only bidder. Their bid at that time was in the amount of \$22,895. It was recommended at that time to reject that bid since it was the only bid received, and the cost was over the budgeted amount. It was planned to advertise for bids again in the fall.

Since only one bid was received and the cost is accelerating, the staff and Larchmont Board of Directors recommend the bid be accepted. Also, it would be more desirable to have the construction done in the fall rather than next spring.

The budgeted amount for this project is \$14,580. Larchmont realized a savings of \$4,679 over the amount budgeted on several pieces of equipment purchased in 1998 and would like to apply those savings to this project. The balance of \$4,530 would come out of the Capital Reserve Account. This account was established to cover unexpected costs not included in the budget, and currently has a balance of \$30,700.

Commissioner Hart asked if the restroom would be handicap accessible.

Bill Galiher stated it would be handicap accessible.

Commissioner Kennedy stated the bid was approximately 40% over the estimated amount, how was the estimate arrived at?

Bill Galiher stated the main cost used was the sewer hookup.

Commissioner Hart moved that the Board of County Commissioners award the bid for the construction of the restrooms at Larchmont Golf Course to Culver Hill Construction in the amount of \$23,789, based on their recommendation and the extra revenue realized from equipment purchases in 1998. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Bid Award - CMAQ Paving in the Rattlesnake Area (Road Department)

Horace Brown, County Surveyor, gave the report.

This is a request to award a CMAQ contract for the paving of streets and alleys in East Missoula, Upper Rattlesnake and Fort Missoula. The project will pave streets and alleys in the area. The cost to the County will be just above 13%, the state will pay the balance of the contract.

On Monday, September 30, 1998, at 10:00 a.m., the bids were opened with the following results: Jensen Paving Co. in the amount of \$568,120.58; Keeney Construction Co. Inc. in the amount of \$698,490.24; and JTL Group Inc. in the amount of \$971,000.00.

The Road Department recommends the Board of County Commissioners award the bid to Jensen Paving Co. in the amount of \$568,120.58. The State has also approved awarding the bid to Jensen Paving Co.

Commissioner Hart asked if this program would begin this fall or in the spring of 1999?

Horace Brown stated some of it may be done this fall but the majority of the work would be done in 1999.

Chairman Evans asked which streets and alleys would be paved?

Horace Brown stated he did not have specific names of streets as the list was long, but it did include Woods Gulch and Wild Cat Road.

Commissioner Kennedy asked if there was an estimate for this project?

Horace Brown stated the engineers estimate was \$674,440.

Commissioner Hart understood that some of the roads included had decided to use millings.

Horace Brown stated discussion was continuing as to the type of paving and if millings were used it would be included in a change order to this contract.

Commissioner Kennedy asked about the difference in hot mix bids between Jensen and Keeney, was the contract understood correctly?

Horace Brown stated Jensen did understand the contract and they make their own mix, thereby saving them some money.

Commissioner Hart moved that the Board of County Commissioners award the CMAQ Contract for the paving of the streets and alleys in East Missoula, the Upper Rattlesnake and Fort Missoula to Jensen Paving Co. in the amount of \$568,120.58, based on the recommendation of the County Surveyor. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing - Revocation of Agricultural Exemption & Boundary Relocation (Hanson)

Kathy Smith, Paralegal, County Attorney's Office, gave the staff report.

This is a consideration of a request to revoke the agricultural covenant currently existing on Tract 1, COS 3451 and relocate the boundary between Tracts 1 and 2, COS 3451 located in Section 25, T11N, R20W, for James H. and Arleaetha Miller and Terrace L. and Evelyne M. Hanson.

Terry Hanson has submitted a request to revoke an agricultural covenant which currently exists on Tract 1 of COS 3451 and relocate the boundary between Tracts 1 and 2 of COS 3451 to create two approximately 5 acre parcels. The current parcels are located off Carlton Creek Road south of Lolo. Mr. Hanson has indicated he is purchasing the agricultural parcel from Mr. and Mrs. Miller and wishes to relocate the boundary between the two to accommodate the two existing residences.

The history of the parcel is as follows: Mr. Hanson purchased the original 10 acre parcel in April 1977. In April 1987, COS 3451 was filed creating Tract 1 as an agricultural parcel and Tract 2 as the remainder. Tract 1 of COS 3451 was then transferred to Mr. and Mrs. Miller in May 1987. Mr. Hanson quitclaimed half interest in Tract 2 of COS 3451 to Evelyne M. Hanson in February 1996. The Exemption Affidavit submitted by Mr. Hanson in this matter states he will be transferring one of the proposed parcels back to Mr. Miller.

According to the records kept by the Missoula County Surveyor, the applicant has used the exemption to the Subdivision and Platting Act as set forth above.

Terry Hanson stated the agriculture use for the pasture will remain the same after this matter is concluded, he wanted to get the property into two parcels to accommodate the two homesites on 5 acre parcels and have a septic system installed. The boundary relocation was necessary to finish the septic system.

Commissioner Hart stated she had heard the request for the septic through the Health Board, and the existing shop contained apartments which were denied in a zoning hearing.

Terry Hanson stated the renters have moved out and the building was now empty. By lifting the agricultural exemption and doing the boundary relocation, there will be two dwellings, one on each 5 acre parcel. Zoning District 31 requires a minimum lot size of 4.5 acres.

Commissioner Hart asked Terry Hanson if he was giving some of this land back to Mr. Miller.

Terry Hanson stated he first owned the entire 10 acres, then sold part of it to Mr. Miller with the provision that Mr. Hanson could buy the land back at any time, as it was a long-term lease for Mr. Miller's cows. He stated he wanted to do a boundary relocation which required the lifting of the agricultural exemption. He did not want to subdivide, by buying this land back, he will have two parcels with a house on each one. There will be no rentals.

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

Commissioner Hart moved that the Board of County Commissioners approve the request to revoke the agricultural covenant currently existing on Tract 1, COS 3451, and relocate the boundary between Tracts 1 and 2, COS 3451, at the request of James H. and Arleaetha Miller and Terrance L. and Evelyne M. Hanson, in that it does not appear to be an attempt to evade the subdivision act. Commissioner Kennedy seconded the motion.

Commissioner Kennedy asked if the original covenant created the parcel?

Colleen Dowdall stated she was not sure if that was the case, or if there was a boundary relocation.

Terry Hanson stated when it was subdivided it was mainly for pasture purposes, there were no buildings on Mr. Miller's parcel. He divided the 10 acres with 7 acres to Mr. Miller and 3 acres to himself.

Colleen Dowdall stated she remembered that was done to provide adequate ground for septic.

Terry Hanson stated that was correct, there was a sewer easement purchased at that time.

Colleen Dowdall stated when Mr. Hanson created the parcel, he was exempt from lifting sanitary restrictions, but now that has to be done for the agricultural parcel.

Terry Hanson stated that was correct and had been taken care of and approved through the Health Department.

Commissioner Kennedy called for the question. The motion carried on a vote of 3-0.

Hearing - Family Transfer (Keller)

Kathy Smith, Paralegal, County Attorney's Office, gave the staff report.

This is a consideration of a request to create a parcel using the family transfer exemption for Tract 49 of COS 351 located in Section 13, T15N, R22W, for Jeffrey D. and Susan G. Keller.

Jeffrey D. Keller has submitted a request to create a parcel and remainder using the family transfer exemption to the Montana Subdivision and Platting Act. The parcel is 12.38 acres in size and located off Wambli Lane in the Six Mile area. Mr. Keller wishes to create two parcels of approximately 7 acres and 5.3 acres, one of which will be transferred to this parents, David L. and Betty J. Keller.

The history of the parcel is as follows: The parcel was created in June 1974 creating 55 parcels greater than 10 acres in size. Mr. and Mrs. Keller purchased Tract 49 in June 1992.

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

Jeff Keller was present and came forward to answer questions.

Commissioner Hart stated the Family Transfer process allows for subdivision of land without review and the Board needs to determine if this is a legitimate transfer or an attempt to evade subdivision review. She asked Jeff Keller if his parents planned to live on the property?

Jeff Keller stated that was their hope.

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

Commissioner Hart moved that the Board of County Commissioners approve the request to create a parcel using the family transfer exemption for Tract 49 of COS 351, located in Section 13, T15N, R22W, for Jeffrey D. and Susan G. Keller, with the intention of the transfer to Mr. Keller's parents, David L. and Betty J. Keller, in that it does not appear to be an attempt to evade the Subdivision Law. Commissioner Kennedy seconded the motion. The motion passed on a vote of 3-0.

Chairman Evans told Mr. Keller he would receive an approval letter from the Commissioners but this did not guarantee the lifting of sanitary restrictions, roads, school buses, etc.

Continuation of Hearing and Decision - Orchard Park Phase III - Preliminary Plat (Lolo)

Dave Loomis, Office of Planning and Grants, gave the staff report.

This is a continued hearing of Phase III of Orchard Park Subdivision in Lolo.

Shelter West, Inc., is requesting approval for Orchard Park Phase III, an 8-lot preliminary plat subdivision on 13.05 acres on the Bitterroot River in Lolo. The property is currently vacant. The property is legally described as the N 1/2 of Section 35, the NW 1/4 of Section 36, T12N, R20W, Principal Meridian, Missoula County, Montana.

Legal notification is required and has been provided in the form of notification letters to adjacent property owners through certified mail, a legal ad in the newspaper running two consecutive weeks with the first run at least 15 days prior to the Planning Board public hearing, and a notice of hearing poster placed adjacent to the subject property proposed for subdivision. The Board of County Commissioners first hearing was on July 15, 1998. At that time the Board closed the public hearing and continued the decision to July 29, 1998. At the July 29, 1998 hearing, the Board voted to re-open the public hearing, took testimony and continued the hearing to October 7, 1998, with the agreement of the applicant and other parties of interest, with the express intent by the Board for the neighbors questions and concerns to be addressed by the applicant.

The proposed subdivision is located within the boundaries of the 1978 Lolo Land Use Comprehensive Plan. The Plan designated the western most portions of proposed Lots 1, 2 and possibly 3, as Residential, maximum density of 6 dwelling units per acre. All the other portions of the proposed lots adjacent to the river were designated as Parks and Open Space.

Adjacent land uses to the north, south and west include large lot residential and some limited agriculture. To the east is the Bitterroot River, including a sensitive wetland and riparian area along the southerly one-third of the property.

External access to Phase III is from the existing easterly-most portion of Farm Lane. Farm Lane is an existing County maintained road that is 24 feet in paved surface width within a 60 foot wide public right of way from Highway 93 South to approximately 50 feet to the west of the railroad crossing. From that point to the west of the railroad crossing to where Farm Lane ends at proposed Phase III of the subdivision, Farm Lane is approximately 24 feet in gravel surface width within a 60 foot wide public road easement.

No common area is proposed in the revised submittal, the applicant will satisfy the parkland dedication requirement through a cash in lieu fee donation. Phase III calls for water and sewer to be provided by individual private wells and individual private septic/drainfield systems. Although no sidewalks are proposed, the applicant has revised the submittal to provide for a 20 foot wide public non-motorized access easement connecting the 30 foot by 1,250 foot long common area from Phase II, north to the corner of Farm Lane and the proposed River Park Drive, satisfying the requirement for pedestrian facilities. No variances are requested nor required for this phase.

The applicant shall designate a building envelope for each lot on the Phase III final plat where the building structure (including any decks or porches, etc.) is setback a minimum of 150 feet from the waters edge of the Bitterroot Rive, and developed lawns and fences are setback a minimum of 100 feet from the waters edge of the Bitterroot River.

The applicant shall submit a vegetation management and retention plan that outlines how the maximum amount of natural vegetation can be preserved and enhanced within the no improvement zone for Phase III, with emphasis on the riparian areas along the river. In addition, the applicant shall develop an erosion control plan, utilizing best management practices, in consultation with the Natural Resources Conservation Service and the Montana Fish, Wildlife and Parks, with emphasis on preventing surface flow runoff directly into the river or wetland.

Nick Kaufman, WGM Group, Inc., developers representative for Shelter West and the Murphy Family, was present, as was Kevin Mytty from Shelter West. He stated he agreed with the conditions presented in the staff report and requested the Commissioners approve the subdivision based on the recommendation of staff.

Chairman Evans stated this was a continuation of the public hearing and asked for further public testimony.

SuzAnne Miller, 5375 Terry Lane, Lolo, MT, stated she was the first of a group of Lolo residents to speak in opposition to Orchard Park Phase III. She encouraged the Commissioners to deny the petition. She presented a "Findings of Fact" document prepared by this group to the Commissioners. She said each member would address the Commission on a different objection, but all the objections were shared by the entire group. Her topic was the Comprehensive Plan. In March of last year she approached OPG about subdividing her land, 13 acres south of proposed Phase III. At that time they were told this fell within the Open Space aspect of the Comp Plan. Upon further investigation, it was discovered that others in the same general area had also been denied subdivision based on the same Open Space designation. She accepted the Open Space designation and was actually delighted that the citizens of the community had the foresight to realize and protect river property and enforce that particular regulation. She was dismayed that after the Planning Board meeting in July, when it was recommended unanimously to deny Phase III, there was a reinterpretation of the Lolo Plan. It was her understanding there is a process to amend the Lolo Land Use Plan which was not adhered to. She felt the citizens were not informed of events that transpired between Planning Board and Commissioners meeting. None of the residents were notified there was a reinterpretation of the Lolo Land Use Plan. While it may not be true, it seems that the large developer is given special consideration, especially based on the response she and others received regarding subdivision in this area. If there is development in the area, it has to be consistent with the desires of the whole community. The community has spoken clearly its need for and desire to retain the Bitterroot river corridor as undeveloped as possible.

Peggy Chilcote, Chairman of the Lolo Community Council, stated the Council wanted the Commissioners to know why the citizens of Lolo requested to work on the amendment process for the Lolo Land Use Plan. Citizens felt the existing plan was outdated and did not reflect the needs of the area. Community members are trying to preserve the natural things that make Lolo. The community has a vision of what they want Lolo to be, by the comments heard regarding Phase III, moderate to high density along the currently eroding river bank is not what the community would like to see and is not what the 1978 Lolo Land Use Plan would allow. In the 1996 Missoula County Growth Management Themes Document, the city and county pledged to work always in cooperation with fellow Missoula city and county citizens and to address the challenges of growth and change with the following goals in mind. To be a healthy community, two goals must be achieved, to protect our critical land and natural resources and enhance human resources. In the Land Use Plan, it states it is intended as a supplement to the adopted urban area plan "A Policy Guide for Urban Growth." The underlying philosophies are the same, but the citizens goals and objectives differ reflecting the special circumstances of the Lolo community. This is a general land use plan, meant to be an indication of an optimal land use pattern for the Lolo area. The lines separating one land from another should not be considered definite, there is room for interpretation and flexibility. Keeping this in mind, Phase III should be compared to property that is similar, bordering the river, not property to the west. The Lolo Land Use Plan also points out the residential designation of six units per acre is made for the remaining land which lies north of Lolo Creek, except any land which lies within an area restricted because of land capabilities. The land recommended for six units per acre also lies within an area serviceable by a community sewer and water system. Phase III will have individual wells and septic, which is not desirable by the river. The citizens of Lolo would also like to remind the Commissioners of the Planning Board's recommendation that Phase III be denied. If development is allowed, staff's first recommendation of three homes should be considered, with all other portions designated as Parks and Open Space.

Diana Mitchell, Lolo Community Council, had a letter from the Council to the Commissioners which she read. "Dear Missoula County Commissioners: The overall intent of the Lolo Land Use Plan is clear. Those areas subject to interpretation were deliberately left that way, open, to allow for modifications as the community's needs and wants changed. The community has spoken, and clearly. They do not want any deviation from the plan as it affects Phase III of the Orchard Park Subdevelopment. For 20 years the people of Lolo have been under the impression that our land use plan is a safeguard. Were we mistaken? We felt secure that our desires for our town couldn't be undermined. Modifying the plan sends the signal that our plan has no teeth and that we are not to be taken seriously. We love our town and are not willing to risk our assets to line the pockets of a developer. At what point, when are the communities and adjacent neighbors wishes adhered too. After the degradation occurs is not the time to say, 'Oops, we made a mistake.' We are asking for your support. Now is the time to take a stand and back the community of Lolo. The people of Lolo are asking you, the County Commissioners, to adhere to the Lolo Land Use Plan as written."

Sterling Miller stated he lived in Lolo 2 lots south of the proposed development. He opposed and urged the Commissioners to not approve Orchard Park Phase III. His reasons for this opposition included the inconsistency with the Comprehensive Plan which has been in place for 20 years. The proposal has a much higher density than adjacent lands along the river. The developer is comparing it with housing densities to the west, rather than along the river, which is not an appropriate comparison. There is an appropriate process to follow if the Land Use plan was developed in error, including input and adoption through the public process, not behind closed doors where the people affected are excluded. There is an ongoing process to amend the plan and if the parks and open space designations which have been in place for 20 years are going to be amended, it should be part of the public process with the community affected. The developers argument for ignoring the plan exploits some ambiguities in the plan relative to where lines should be drawn and feels these ambiguities should be resolved in the community's favor. He maintained any

ambiguities should be resolved in favor of the existing plan, pending a public process to resolve those ambiguities. This subdevelopment, if approved, will affect far more than local residents, including everyone who uses the river. His house cannot be seen by floaters on the river as it is protected by trees and a wide riparian corridor. If this subdivision is approved, even with the setbacks, it will affect everyone who floats down the river. More than 20 years ago on the east side of the river, Rodeo Ranchettes was put in and had a tremendous impact on the character of the experience for anyone who floats the river. This subdivision would do the same on the left side of the river, adding additional deterioration to the scenic value of the river. There will also be contamination of the river by chemicals. The importance of the wildlife corridor was his main discussion item. He has been a professional wildlife biologist for 30 years. It is obvious to him, as well as Fish, Wildlife and Parks, that construction of houses in this area would represent a significant impediment to wildlife movement, compounding the problem pasture land already represents. There is no cover for wildlife moving along the west side of the river. If eight houses were added it would become an impossible barrier for most wildlife. The science of wildlife management in the last several years has focused on riparian corridors. The Lolo Comprehensive Plan was far sighted in its recognition the area along the river should be designated as park land and open space. If the planning process were reopened, it would come out far stronger to preserve and protect this as park land and open space as the science has improved over the past 20 years. He encouraged the Commissioners to disapprove this subdivision plan and follow the wishes of the community, and to see the benefits to the users of the Bitterroot River. The fact that there has already been deterioration of that experience does not justify continuing it.

Don Bedunah, 11385 Allomont in Lolo, stated his area to stress today was water quality. He is a professor at the University of Montana dealing with restoration ecology. He has spoken with many experts regarding water quality and has looked at the maps of the Lolo Comprehensive Plan, and it all states there are large concerns about water quality and degradation in the area. He is opposed to Phase III for the reasons stated by the previous speakers and also because of the degradation that would be seen in water quality and the river bank. The addition of at least 8 septic systems this close to the river bank in very coarse soil will likely cause it to move rapidly toward the river. In speaking with Dr. William Woessner, a hydrogeologist at the University of Montana, he stated there would be little time for the nitrates to break down before they get into the river, which is undesirable. Also, the more homes the more use of lawn chemicals, etc., which would also have the potential to decrease water quality. More development will also increase impervious surfaces leading to further runoff of materials into the river. The Commissioners should have letters stating these facts and the opposition to this subdivision. The maps used in the development of the Lolo Comprehensive Plan places the area into the most sensitive for septic systems and for development. As a restoration ecologist, he knew what the influence of this development will be on the river bank itself. In time, further degradation will be seen and there will likely be a move to rip rap the banks. If rip rap had been in place during the floods two years ago, the sandbagging south down the river would have never held. He did not feel Phase III complied with the Lolo Comprehensive Plan, which the citizens have relied on for 20 years. A very low density of home, 1 home per 5 acres, would be more in line with the Comp Plan. The Lolo Comprehensive Plan tells the community to protect their waterways, scenic open space and wildlife. He is requesting the Commissioners to deny the building of these 8 homes referred to as Phase III. The developer has been permitted 47 homes in Phases I and II and there has been very little open space granted to Lolo. The developer has told him that this is just business, it's not personal, but it is very personal to him. He loves these rivers and has floated almost every river in Montana. He has chosen to live here partially because of the open space. He is certain there is more than adequate reason for a court to defend denial of this subdivision. After spending considerable time and resources to fight this development, he is prepared to continue the fight.

Maureen "Mo" Gary, 11385 Allomont, north of the proposed subdivision, stated she knows and loves this river, and watches the wildlife use the area every day. She agreed with what previous speakers had said and would not reiterate those comments. She believes in community and wondered what she would tell her children if this subdivision is approved. There is a plan in place in Lolo and there is also a process to amend that plan if necessary. She wants her children to be concerned citizens and know there is recourse for a perceived wrong. At a meeting with the developers (Nick and Kevin) last week, they mentioned a "takings" issue. She felt she had a "takings" issue as they were already allowed 47 homes in Phases I and II and could build two homes by the river, this was a "takings" from the community. The community had worked hard and spent years in developing the Lolo Comprehensive Plan. She is behind the other speakers and is opposed to Orchard Park Phase III.

Phil O'Connell, a lawyer in town, stated he had been working with Sterling and SuzAnne Miller, Don Beduna and Mo Gary on this and encouraged them to speak for themselves today, as they can express themselves much better than he could for them. He did sum up a few of the things they said. The fundamental issue is Orchard Park Phase III is not in compliance with the Lolo Comprehensive Plan. The plan calls for this land to be parks and open space. This land is directly adjacent to the river, it is not adjacent to heavily developed land. SuzAnne, Sterling, Don and Mo have voiced their concerns about how this development will adversely affect wildlife, water quality, scenic viewshed and recreational experience, and other landowners up and down the river. He felt it was inevitable that rip rap would be put in on this stretch of river. When comprehensive planning is done these are some of the criteria that are looked at to decide how land is to be used. The people in Lolo, the Planning Office and the Commissioners did an analysis 20 years ago and decided this land should best be saved as open space. The Planning Board earlier this year recognized that fact and recommended denial of this subdivision, then something happened and the plan was reinterpreted. He has not heard how it came to pass that the County Attorney's Office and the Office of Planning and Grants decided that they needed to reinterpret the plan that had been clearly stated and consistent in the last 20 years ago. His best understanding was that people looked at soil studies that were done at the time of the Comp Plan and based on these studies, this land was not properly designated as open space. Open space is not designated simply on soil studies, it takes into consideration a lot of different factors. This is riparian land and important to the community, that was one of the reasons it was designated open space. It is part of an important viewshed. This is land adjacent to the river where individual septic systems will pollute the river. The river bank is also eroding and adding homes will eventually lead to rip rap which will have adverse effects up and down the river. Those are all reasons why this land has been and should be designated open space not suitable to intense development. As many others have said, there is a plan in place which should be followed. Why is time being wasted redoing the plan, investing time and money, if the County Commissioners will not support the Comp Plan? Mo Gary mentioned the "takings" issue. There is talk that if the Board doesn't allow the subdivision, then the County will be sued because this is an improper "taking." That is not true. This is a subdivision that involved three phases which came in as a single proposal with one landowner. The

Board has already approved 47 houses, in an area which is planned for intense residential development, and the developer got the intense density requested. The developer is asking the Board to break the Comprehensive Plan for this property along the river. Planning Staff is recommending the Board ignore the Comprehensive Plan and allow intense residential development in an inappropriate location. If the Board denies this subdivision, there is no "taking." The law is in a state of flux, but says there is no "taking" by planning, zoning or subdivision review, so long as there is a process in which everybody has an opportunity to be heard, which has happened here, so long as there is a rational reason for the designation and so long as the land owner is not stripped of all of his potential uses. Mr. Murphy can continue the existing historical use of this land, agriculture and pasture. No one is saying he cannot continue to do that. Under existing law he has the right to construct two homes on this land, no one is taking that away from him. This community has gone through a very lengthy and detailed planning process to adopt the Comprehensive Plan, based on good science and reason and it has not deprived Mr. Murphy of his right to do reasonable things with his land. As a community, eight big houses are not wanted on the banks of the river, because they are better suited for other places. This land is best suited for open space. He encouraged the Commissioners, on behalf of his clients, to deny the proposed subdivision.

Lynn Broberg, 400 Pattee Canyon Drive, stated he was an assistant professor in the environmental studies program at the University of Montana and has a Ph.D. in biology from the University of Oregon. He wanted to share some observations with respect to wildlife and water quality. Riparian corridors are one of the key habitats for maintaining wildlife in Missoula County. The Bitterroot River as a major river within the county serves a very important role in the maintenance of that habitat. Most birds nest in riparian areas and mammals rely on riparian areas for forage, cover and travel between sites, especially when stressed during winter and spring. A 100 to 150 foot setback will not adequately protect habitat. People, roads and pets will reduce the areas viability as wildlife habitat and may ultimately block movement along the corridor. Other projects that follow will have similar impacts. The cumulative effect of a river corridor lined with homes will be tremendous. Undeveloped green areas are necessary to protect wildlife, which are a large part of why people choose to live here. Think ahead, we had a plan that set forth this area as open space to keep it open to allow wildlife movement along the corridor. If this subdivision is granted there will undoubtedly be other application and the standards the Board sets for this development will set the precedent for development along the river, even in areas designated as open space. Septic systems are not an acceptable way to handle effluence on the site. The proximity to the river and the likely change in course or consequences of flooding of the area makes such waste disposal systems inadequate, it must be conveyed off-site, away from the river. Make this project meet the same standards as you required the last project on the Bitterroot. To maintain water quality, the Board needs to take action here that will set the standard for all future development. Water quality of the Bitterroot will be compromised by buildout of septic systems. Clean water and quality fisheries are two more reasons that this area is attractive to new business and investment in our current economy. It makes no sense to compromise these values. He urged the Board to disapprove or at a minimum modify this project.

Vicki Watson, 509 Daly, stated she is a professor of environmental studies at the University of Montana. There was not a lot she could add to what the others had said, they were eloquent in their sense of betrayal of their planning process, their concern for the loss of open space, scenic quality, wildlife habitat and potential impacts to water quality. She added that the Bitterroot River is one of the largest sources of nitrogen to the Clark Fork, which is a high priority regarding nutrient reduction. The Commissioners have signed on to the Voluntary Nutrient Reduction Plan for the Clark Fork, which includes reducing non point sources of nutrients. An important consideration is stream side development. The potential harm to downstream property owners should also be considered. Given enough time rivers always move their channels and flood, which expensive homes don't like. No matter how many restrictions are written, property owners always end up removing vegetation causing less and less stream side vegetation. This will make the moving bank erode that much faster, eventually using rip rap and bulkheads to protect those expensive homes. That erosive power then gets deflected downstream. It is also necessary to keep in mind that the boundary of the 100 year flood plain is being redrawn as climate cycles are becoming more severe. What used to be considered 100 year floods are happening much more frequently now. Floodplains are being redefined both because of climate changes and upstream developments sending bigger floods downstream. If this area is removed from flood water storage, bigger floods will be sent to people downstream. This establishes the precedent of allowing development along the river corridor. People who developed responsibly outside the floodplain may well find themselves in the newly defined floodplains because of development upstream. Please take all these things into consideration. This is a not a good proposal and she urged the Commissioners to remain in compliance with the Comprehensive Plan.

Todd Schule, 5355 Terry Lane, stated his property abuts Orchard Park Phases I, II and III. He supports his friends and neighbors and the Lolo Community Council. He wanted to speak about the 30 foot common area that runs between Phases I and II and Phase III, which does not have to be there since these two parts were separated. OPG's recommendation was to take the money and walkway and move it to Farm Lane. This walkway doesn't fit in with the historical farm use in the area. It puts an unfair burden on the new homeowners association, it is 2,500 feet of fence to maintain. This strip is also not safe, there is livestock in the area, as well as other hazards including the river, irrigation ponds, an irrigation ditch, high voltage lines, older farm equipment, etc. This is a liability to the current owners causing higher insurance rates. It is also unfair to wildlife. It is also somewhat unfair to those who have maintained and been good stewards to the land for many years. He has offered to buy this land, or propose a land trade, but has not had an answer from the developer. This path belongs on Farm Lane as OPG recommended. His other matter referred to Terry Lane, which everyone has refused to look at, most of the attention has been focused on Farm Lane and Lewis and Clark Drive. Terry Lane is a non-maintained county road which he has maintained for the past 13 years. This is the last opportunity to fix Terry Lane. The number of trips predicted by the developers are in error and this subdivision landlocked this area. The county should take care of this problem now.

Mary Lou Hauck from Salt Lake City stated she was the oldest of the Murphy children and felt really outnumbered today. She would like the Commissioners to approve Phase III. She is also speaking for her sister who lives in Phoenix who could not be here today. They would both like to build a home on this property some day. She was surprised to hear about a Comprehensive Plan that has been around for 20 years, her family knew nothing about it. She was upset that would destroy the plans she has had for 50 years to build on this property. Her family has been pleased with the care and planning that Kevin and Nick have put into this development, they care about the land and wildlife as much as she does. This property has been in her family for 101 years. She had spent many happy days picnicking there as a child with the hope that one day she could build a home there. Her father and grandfather had

always planned for this land to support the children and grandchildren. She and her husband are looking forward to moving back to Montana. This land is her heritage, her home, and they are asking for only 8 lots on 17 acres. In looking back on the river bank last weekend she can't see that eight homes would overpopulate the area or detract from the river view. The bank looks the same as it did 50 years ago. This land is dear to her family and her 85-year-old mother also asked the Commissioners to approve this plan. She asked the Commissioners to not deny them the right to their heritage.

Jim Murphy, Jr., 2929 Third Avenue North, Billings, MT, stated the James P. Murphy of the development company is his father. This is not a mega, multi-national development company, it was a way to supplement his father's income after retirement. The James P. Murphy Development Company is a letterhead, mostly for the development of mining, not necessarily property. The development company is a family partnership consisting of his mother, his two sisters and himself. Something that has been lost here is the whole idea of a Comprehensive Plan which is a lot different than zoning. Zoning requires a lot of notice to landowners. In 1978, his father had no idea that a Comprehensive Plan would change his intended use of this property. For the neighbors to use the Comprehensive Plan as legal zoning is wrong. He is a lawyer and it needs to be explained that the people in the area cannot rely on the Comprehensive Plan as it is not fixed zoning. There are opponents who live both up and down stream who live in the wildlife corridor, some on one acre, which is all they are asking for, and others with only a 50 foot setback. To hold this parcel back for subdivision for his generation and the next has always been his family's plan. During the process of defining this property there were some documents discovered which make it somewhat unique. There are some underlying water and land use documentation which show there could be an error here in interpretation, following a fence line. On behalf of the James P. Murphy Development Company he asked the Commissioners to accept staff's recommendation.

David Houston, 5539 Nightingale Lane, stated that he and his family had the opportunity to float the Bitterroot River this year. He had never seen such a beautiful area and would hate to think it would be spoiled by development. He urged the Commissioners to vote no on this development, it is going to hurt the river. Lolo is a terrific community with a lot of involvement. He again urged the Commissioners to vote no and keep the river the way it is.

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

Commissioner Hart stated she appreciated the seriousness of everyone's comments, they are from the heart, both from the Murphys and the community. She asked everyone to remember that personal judgments do harm to all. She did not feel "lining developers pockets" was a good term. She did not feel that someone should be disqualified who had acreage near the river and moved at a time when they did not have to go through subdivision review. As this is being thought about, give courtesy to one another and stay away from personalizing the other. Deal with this within the parameters of the planning process and honor that process and keep its integrity. The issue is there have been different interpretations of the 1978 Lolo Land Use Plan. The City-County Planning Board heard this proposal with an interpretation of that plan. They sent the Board a recommendation. The Board heard Phase I and II, then looked at Phase III with another interpretation of the plan. She has read all the materials she could find on the plan and it is worthy of interpretation. That interpretation is critical. She trusts and relies on the appointed board to make good recommendations. Her preference is to return this proposal to the Planning Board. She cannot do that without the developers approval, which may not be their wish or the wish of the community. She wants that Board to have the same information to make a decision on Phase III that the Commissioners have. This is a precedent and it is unusual, but it is important land. That is her proposal and includes participation of the deputy county attorney and all of the information generated by them.

Chairman Evans explained to the audience why counsel, Colleen Dowdall, got up and left the meeting so abruptly. Her son was injured in an accident at school and her presence was needed. She did, however, write a statement that she intended to read. Chairman Evans asked Michael Sehestedt to speak on Colleen's behalf. There seems to be some concern about the change of opinion on the reading of the Comprehensive Plan. She felt it fair for the audience to hear from Colleen Dowdall, through Michael Sehestedt, what she had to say.

Michael Sehestedt stated he would summarize her remarks. The argument that the Comp Plan has changed or been ignored, what people have focused on is the drawing that summarizes the provision of the plan. What's important to realize is the Comprehensive Plan is considerable more than that map. The map was drawn to reflect an underlying set of documents and to summarize them. The plan itself specifies that map scale, additional site analysis and consideration of various factors used in formulating the map may be required. Specifically, what happens when the underlying documents are looked at, which are a part of the Lolo Comprehensive Plan, which are incorporated into it by reference, the following is discovered. The slope map is one of the items that imposes restraints. According to the Lolo Comprehensive Plan, this particular piece of property lies in an area of 0 to 14% slope, the least restrictive of the land use designations, used and incorporated within the 1978 Lolo Comprehensive Plan. That's a part of the Comp Plan. Second, floodplain issues. The property is outside the designated floodplain except for the edge of the bank where it falls into the river. The position of the Lolo Comprehensive Plan is that it was floodplain that was to be designated as open and resource, or at least a part of the text indicates that. This property does not fall within that description. Third, hydrology. Soils were considered and this is the soils map referred to earlier. The map indicates the parcel has slight limitation for development. That map is also a part of the Lolo Comprehensive Plan and is to be used in interpreting the land use boundaries. On the issue of wildlife habitat, at the time the Lolo Comprehensive Plan was done in 1978, it indicates that was only slightly affected by components of development in this area. Bear in mind that Comp Plan compliance or non-compliance is not dispositive of subdivision approval. It is one factor and even proposals that comply with the Comprehensive Plan may not otherwise pass muster if they fail to meet the subdivision criteria. But what happened was the issue arose, why was this property shown? And examination of the supporting documents for the 1978 Comprehensive Plan indicates that this parcel was inadvertently included for whatever reason in the drafting of the master map. If anyone wants to examine the underlying documents, they are free to do so. The Comprehensive Plan is not limited to a single sheet of colored paper. There was reference to other developments that were turned down. For the record, Mr. Barrett's subdivision was not turned down but withdrawn. One of the reasons for the withdrawal was that he did not find the building setbacks proposed acceptable. He also believed in the process and he did not know if referral back to the Planning Board for consideration would resolve this issue. It might be an appropriate way out of this impasse and it could lay to rest what the 1978 Comp Plan says. The other thing he stressed is that the Comp Plan is supposed to be a general guideline, it is not an absolute restriction on property use. The

imposition of zoning has substantially more safeguards for the property owners, the right to protest and 40% objection within an area can kill a proposal. The Comp Plan has no such safeguards and because of that it is intended as a matter of law to be a guideline and not an absolute restriction.

Chairman Evans stated she had absolute trust in Colleen Dowdall, she did not make up her determination. Colleen looked at everything that made up the Comp Plan and came to a determination that there was a misinterpretation or mistake made. It needs to be recognized that when the text of the document disagrees with the maps, then common sense should prevail. She did not see anything different about this land than the land north or south of it that currently have homes on them. That does not prove it would be wrong to approve this subdivision. Some legitimate concerns have been raised which can be dealt with. She felt that to use people who float the river as an excuse to deny this subdivision was inappropriate. The people who float the river do not own the property rights, the people who own the land own the property rights. With the good concerns raised, they can be addressed. The Board can, through zoning or covenants, say there will be no rip rap, there must be vegetative cover on the banks, it must be sewered. There are ways to deal with the concerns, but to say, "I've got mine, you can't have yours," doesn't wash with her.

Commissioner Kennedy stated he would support returning this to the Planning Board although that is a decision the Board cannot make, it must come from the developer. Further, given the information presented today and the controversy over the interpretation of the plan, if he had to make the decision today, he would vote in opposition to approve. The overall notion of comprehensive planning is a self regulating process that is a discussion of how the public wants to live out the future, and the future of their children, until they decide they want to change the plan. It should not be reduced to a technical argument as to what the particular words in the plan mean. There are very specific goals of a comprehensive plan that the Board needs to pay attention to. He had a lot of concern as to how this Comprehensive Plan gets interpreted from a technical standpoint. That is one of the reasons he hoped to return the proposal to the Planning Board. He noticed that not always does the one called to make a decision have all the information available to them to make that decision. The document that Michael Sehestedt read from was the first time he had heard this information. It was also the same time the audience heard these comments. That is unacceptable, he needed time to think about the information. That leads to the testimony from the first hearing which came with a negative recommendation from the Planning Board. The testimony was tempered by the fact that the Planning Board voted unanimously to reject it based on non-compliance with the Comprehensive Plan. Subsequently there is this misinterpretation. Had all of that information been available, the testimony at that time would have been different. That is a process problem, if there is any honor in planning, which is a self regulatory process by us and for us, then the Board can't be excluded from that process, even if it is only a perceived exclusion. He hoped that the developer would come forward and make the request for the proposal to go back to Planning Board. Again, based on what he knew now and the route this process has taken from the beginning, he could not approve it.

Chairman Evans stated she had some comments regarding the document Michael Sehestedt read from today. That document was written in the last day or so, based on the comments and contentions made against Deputy County Attorney Colleen Dowdall, which Colleen felt the need to respond to. She finished the document today and did not have time to give it to the Board sooner.

Michael Sehestedt interrupted and stated he did not read anything today, he summarized the document. It was his understanding that this summarized conversations that had been ongoing regarding the interpretation of the map.

Chairman Evans stated the Board hears land use issues all the time, sometimes the approval of those land use requests are more deserving than others. There is a dilemma that exists for the developer and owner if the neighbors oppose the development. If approval is granted, she hoped there would be some sympathy for the next applicant. As to the wildlife issue, she pointed out she lived on Whitaker Drive and had deer in her yard this year. Having homes in the area does not keep the deer out, it might keep some birds of prey out however.

Nick Kaufman, WGM Group, representing Shelter West and Jim Murphy, stated he was an adjunct professor at the University of Montana. Months before this project was submitted to OPG, there were meetings held with the Lolo Community Council. Anytime they have been asked for information, even during the last interim period, it was their understanding that the delay was to provide time to meet and work out any design issues. Information was received today from Mr. Miller that he did not have. Mr. Beduna spoke about letters received by the Board that he also did not have. The information is flowing only one way which is unfortunate, the information needs to be shared so all parties can work together. As he understands the Board's request, this project is to be sent back to Planning Board. He asked if it would be sent back with the current staff recommendation?

Commissioner Hart stated that was a tough question. The current staff recommendation does not have an interpretation of the Comp Plan in it. It doesn't have Comp Plan compliance. Colleen Dowdall does have a Comp Plan compliance report for this meeting however. She did not believe the developer would need to apply and send out for comment. She hoped this suggestion did not cause legal jeopardy, it is different than most. This process troubled her.

Nick Kaufman stated it troubled him also. A lot of what the developer relies on are agency comments and two important agencies were not sent letters because they weren't on the mailing list. Commissioner Hart made a recommendation they send it back to Planning Board and it is only fair they ask what the parameters are. They did not have any problem sending it back to Planning Board with the current staff recommendation. From the very beginning, they have gone to the community, complied with requests for delays and are trying to work with the folks in Lolo. They are also open to the request to send it back to Planning Board. He felt Phil O'Connell had done a good job today, he not only threatened the Board on behalf of his clients, but also on behalf of his client as well. If they are going to threaten the Board with something, please let them represent those threats, because what they have given the Board each time they have asked is delays and cooperation. They would like to develop this property but they need to know what the issues are. Maybe going back to the Planning Board is the place to do that. But, it is a fair question to ask under what parameters, they are willing to go back with the current staff recommendation.

Phil O'Connell stated Sterling and SuzAnne Miller met with Nick Kaufman in an effort to resolve their objections, including wildlife, open space, Comp Plan, septic and river. They offered to compromise on their position in an effort

to settle and there was no response from the developer. Don Beduna and Mo Gary met with Nick Kaufman and the developer and told both of them their concerns were the Comp Plan, open space, wildlife, septic systems and the river and made an offer to compromise. There was no response from the developer. It is not true that the Millers and Mo and Don have failed to try to negotiate a resolution to this with the developer. He had not threatened the Board with litigation, he did not make that threat. He told all of his clients that earlier today, he will not make that threat until they are ready to write a check and retain his services. He is not going to make the threat if he cannot follow through. He never even suggested any litigation in this matter on behalf of his clients. He felt everyone should stick to talking about substantive issues here without personal attacks by anybody on anyone else.

Chairman Evans stated the folks who live in Lolo and were going to visit with the developers need to keep in mind that the law does not allow the neighbors to determine the use of someone else's land. She felt the public needed to keep that in mind.

Commissioner Kennedy stated the question about the parameters that Nick asked on some levels was not an answerable question. Even though there are the issues of surface water quality, the sewers, the erosion, the transportation and the setbacks, those are all things that are acknowledged as big issues, in addition to the wildlife corridor; the overall interpretation of the Comp Plan still is not settled. There is a high level of disagreement in the County between staff and elected officials about what it means. Unless those ambiguities are eliminated, it is impossible to answer the question of parameters properly. In his opinion there is a big Comp Plan issue that needs to get answered. The Board will not answer the question today. The information before him today that allows him to make a decision today says his decision would be negative with respect to the proposal. There may be other things out there he does not know without sorting out the Comp Plan issue to come to a conclusion. This is his reasoning for returning the proposal to the Planning Board. Establishing criteria under which the Planning Board will act he cannot do. It would be unfair to request of the development interest to reapply for this. There is much in the planning staff documents that is adequate as it stands. He stated further that unless the Comprehensive Plan issue is solved, then there is a problem with the way staff report is written for the Planning Board itself. It needs to be sent back and do the very best possible, it is a unique situation which has not happened before. He apologized to the developer for any injuries regarding time, and to the citizens who have been frustrated with the process. Everyone needs to know that the Board is committed to Comprehensive Planning and the goals of it, and committed to support of it by the people it affects the most. The Board does not want to run over the process and that is the main reason to send it back. He hoped that request would come from the development interest.

Commissioner Hart stated she was looking for a definitive method for understanding the Lolo Comp Plan. Whichever way this goes, there will be other subdivisions before there is a final new Comp Plan. Because of all the controversy in interpretation she did not have an anchor, she has honored the plan as she understood it and now is being told she did not understand it well.

Michael Sehestedt suggested if the developers agree to a remand to the Planning Board, their instructions to the Board on remand should be a determination of what their interpretation is of the Comprehensive Plan, specifies for this area. Based on their interpretation, they need to make a recommendation on Phase III. The instructions to the Planning Board should be to conduct a full hearing and discussion and give their determination of what the Comp Plan says for this area. It provides a forum for full disclosure and debate. It will then come back before the Commissioners. Assume Planning Board says this development has Comp Plan compliance, they and this Board will still need to determine the approval of the subdivision. Planning Board is just a part of the process.

Nick Kaufman stated the developer had no problem with the proposal going back to Planning Board.

Peggy Chilcote asked which recommendation would be going back to the Planning Board, the one for three homes or this one for eight homes?

Chairman Evans stated Peggy Chilcote would need to talk with staff.

Commissioner Hart stated it would be a new recommendation.

Peggy Chilcote asked if any testimony from today would be passed on to the Planning Board or did the citizens need to forward what was done today to them?

Commissioner Hart stated they should forward what was done today to the Planning Board. The citizens need to testify before the Planning Board again.

Commissioner Kennedy stated they should not rely on the Commissioners to forward information to the Planning Board.

Dave Loomis stated the Planning Board would consider this a continued hearing, although the legal noticing has been taken care of. They will however, send out general notices for the Planning Board meeting. Looking at the schedule, the earliest date for this would be November 10th. A possible date for the County Commissioners to hear it again would be December 2nd.

Commissioner Hart stated one of the things she hoped to achieve is not the presentation of July 25th, and not the presentation of October 7th, she wanted the Planning Board to have the Comp Plan information to make their judgment on with what the citizens bring to that board. The public needs to discuss their concerns about the Comp Plan and proposal fresh, otherwise the other proposals will be referred to. She wants the Planning Board to be on the same footing as the Commissioners.

Chairman Evans closed the Orchard Park Phase III issue and asked the staff to rehear it with Planning Board and the Commissioners as quickly as possible. She then called a 5 minute recess.

Chairman Evans reconvened the meeting and stated the next item on the agenda was the Dinsmore's Orchard Homes, but the Boyer Subdivision had asked to move up and there are people present for this item. With the consent of the other developers, the Commissioners will hear the Boyer Subdivision next.

Consideration - Boyer Subdivision (5 lots) in Frenchtown

Brian Maiorano, Office of Planning and Grants, gave the staff report.

The applicant, Lisa Boyer, is requesting approval to divide a 7.14 acre parcel into 5 lots; lot sizes range from 1.25 to 1.84 acres. The property is located on Mullan Road one and a half miles west of Frenchtown Elementary. The property is legally described as the Remainder of COS 4818, less Tract M, Section 33, T15N, R21W, Missoula County.

The 1975 Missoula County Comprehensive Plan designates the area as Open and Resource land, with a recommended density of 1 dwelling per 40 acres. The Open and Resource designation in this area was made to protect important agricultural lands, protect the floodplain, and to reserve land for the future where development during the time frame of the plan would be premature and costly.

This property is on the south side of Mullan Road. The north side of Mullan Road is designated at 2 dwelling units per acre in the 1975 Comp Plan and has been built out at approximately 1 dwelling unit per acre because of health and sanitary restrictions. The area south of Mullan Road is designated at 1 dwelling unit per 40 acres, as most of the area is in the Clark Fork River floodplain and prime agricultural land. However, there are some benches south of Mullan Road that sit about 15 feet above the Clark Fork floodplain. This is one of those areas and it is largely separated from adjacent large tract agricultural use.

Also, the 1975 plan stated that in 1975 much land had been divided for residential use but not yet developed in the Frenchtown area. It did not designate new development until the divided area had been built up. 25 years later that land has been built up, including the area right across the street from this proposed site, at 1 unit per acre.

This area is within the Frenchtown Activity Center and the plan states that the residential designation would strengthen the communities and provide a base to support convenience shopping with the idea of building the downtown area of Frenchtown. Based on these facts, this development is in compliance with the Comp Plan.

The property has undergone several recent divisions through the COS exemption process. Prior to 1995, the property was part of a 14 acre parcel. In 1995, a mortgage exemption of 4 acres was used. The location of this exemption, in the middle of the parcel, effectively created three tracts. In 1997, a family transfer was conducted to split 1.55 acres off of the remaining 10 acres. In July 1998 a boundary relocation with an adjacent owner reduced the parcel to its current 7.14 acres. Lisa Boyer still owns the adjacent 4 acre parcel, and has stated that she has no development plans for it.

The property is currently used as a horse pasture. Surrounding land uses include small lot residential and large tract agricultural. The property borders the Clark Fork River floodplain, but sits approximately fifteen feet above the elevation of a 100-year flood.

The proposed access to the property is from Mullan Road to TLC Lane. Mullan Road is a paved, 24' wide County road within a 60' right-of-way. TLC Lane is proposed as a 24' graveled road with a 50' radius turnaround. The applicant has requested variances from paving and sidewalk requirements and lot length-to-width requirements. The lots will be served by individual wells and septic systems.

There was a concern from the applicant's brother, Joe Boyer, who owns the large tract agricultural property south of this proposal, that sits 15 feet below this ground. His concern was regarding his ability to maintain the fence which currently sits at the top of the bench. His access to this fence is from the top of the bench and wanted to be able to repair and maintain the fence in the future. It would be in the mutual interest of the landowners to keep the fence in good repair and an agreement would be reached before final plat approval.

The Office of Planning and Grants recommends approval of the Boyer Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

They staff also recommends the Missoula Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways, subject to Condition 3; deny the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for TLC Lane to vary from paving requirements; and approve the variance request from Section 3-3(E) of the Missoula County Subdivision Regulations for three lots to have a greater than 3:1 length to width ratio, based on the findings of fact set forth in the staff report.

John Kellogg, Professional Consultants, Inc., developers representative, was present, as was Lisa Boyer. In support of the staff's interpretation of the Comp Plan, it is clear the 2 per acre on the opposite side of Mullan Road can extend to this bench before the land drops into the floodplain. Lisa Boyer will work out a fence maintenance plan with Joe Boyer that is acceptable, possibly having a fence at the bottom of the hill to prevent grazing up the side of the hill. They support staff's recommendation with the exception of denying the paving variance. The character of the area is rural, the road proposed is less than 400 feet in length, the concern over dust can be addressed through the road maintenance agreement, and the applicant would pave a 20 foot apron back from Mullan Road in order to avoid carrying of dust and mud onto the roadway. The only other paved roads off Mullan Road are the access to the golf course and access into a major subdivision, making this paved road relatively unusual to the area.

Chairman Evans asked how far outside the air stagnation zone this property was?

John Kellogg stated it was approximately 5 to 7 miles east of the air stagnation zone.

Chairman Evans asked for public comment.

Charles Conklin stated he was employed by Gordon Sorensen Engineering. Joe Boyer had a couple concerns about this subdivision and asked Mr. Conklin to speak on his behalf. The first issue is the fencing issue, it is hard to maintain from the downhill side due to the steepness. The other issue was the three or four lots that face his property. Mr. Boyer is worried from a liability standpoint with livestock and small children. Mr. Boyer wanted to know if there could be a requirement for each lot owner to put up a fence along the back property line.

Jolee Sherry, ReMax Realty, stated she was also representing Lisa Boyer. In regards to the fence, Lisa Boyer currently owns the fence which she installed and maintains. The property is currently rural with horses and there have been no problems with the horses jumping the fence. It is doubtful if this will be an issue for children. A fence to hold children in would not be conducive to the area since this is a rural area. As far as maintaining the fence, Lisa Boyer would add expenses as necessary as it is her fence.

Commissioner Kennedy asked if the fence was on the property line?

Jolee Sherry stated the fence is on the property line. Another thought to head off any problems that Joe Boyer may have is to build a fence at the bottom of the hill.

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

Commissioner Hart stated she would support all of the staff's recommendations and she hoped the sister and brother could work together on the fence issue.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways, subject to Condition 3; that the Board of County Commissioners deny the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for TLC Lane to vary from paving requirements; and that the Board of County Commissioners approve the variance request from Section 3-3(E) of the Missoula County Subdivision Regulations for three lots to have a greater than 3:1 length to width ration, based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion passed on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Boyer Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans pointed out that open range laws in Montana state that it is up to the people who want to keep cattle off their land to fence them out, it is not the requirement of the person who owns the cattle to fence them in.

1. 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 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 recommendation.*

2. The developer shall contribute \$100 per new lot to the Frenchtown Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of final plat filing. *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District 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 assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Mullan 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.*

Consideration - Dinsmore's Orchard Homes No. 5 - Lots 21A and 21B (2 lots) Target Range Area

Dave Loomis, Office of Planning and Grants, gave the staff report.

The applicants, Allen and Dorothy Kuhl, are requesting approval to divide a 2.76 acre parcel into 2 lots, 1.76 and 1 acre in size. This is a 2 lot subdivision of existing Lot 21 in Orchards Homes No. 5. The request is to divide this 2.76 acre parcel and take one acre off the front end of it. The property is located on the north side of South Third Street West, west of Tower Street. The property is legally described as East 190 feet, Lot 21 Dinsmore's Orchard Homes No. 5, SE 1/4 Section 24, T13N, R20W.

One house is currently located on the property. A new dwelling unit would be located south of the existing house toward South Third Street West. The proposed access is from South Third Street West to a private access easement.

Surrounding land uses are primarily single family residential. The property is zoned C-RR1. The 1998 Missoula Urban Comprehensive Plan designates Suburban Residential and Parks and Open Space land use. The property is located south of the Clark Fork River floodplain.

The lots will be served by individual wells and septic systems. There is an existing informal driveway that will be improved and used for both lots so there will be no additional access off South Third Street West. There will be a

waiver of right to protest RSID/SIDs for improvements to South Third Street West, and in addition, staff is recommending during the interim for a 5 foot asphalt pedestrian walkway be installed along South Third Street West.

The Office of Planning and Grants recommends approval of the Dinsmore's Orchard Homes No. 5, Lots 21A & 21B Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

The Office of Planning and Grants recommends denial of the variance request from Section 3-2(5) 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 Hart stated this site looked to be in the floodplain and asked for clarification.

Dave Loomis stated that it is not in the floodplain but looked that way because of the scale of the map.

Ron Ewart, Eli & Associates, developers representative, was present. The applicants, Allen and Dorothy Kuhl, were not present. He stated the property is located out of the floodplain. The additional proposed home would be located closed to South Third Street West on level ground. The developer is in agreement with all the recommended conditions.

Chairman Evans asked for public comment. There being none, the public comment section was closed.

Commissioner Hart moved that the Board of County Commissioners deny the variance request from Section 3-2(5) 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 Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Dinsmore's Orchard Homes No. 5 Lots 21A & 21B Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to South Third Street West, 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 staff recommendation*

2. A 5 foot asphalt pedestrian walkway shall be installed along South Third Street West along the property frontage. Plans shall be approved by the County Surveyor prior to plat filing. *Subdivision Regulations Article 3-2(5) and staff recommendation*
3. A maintenance agreement shall be developed, subject to County Attorney approval, for the private easement serving both lots prior to plat filing. *Subdivision Regulations Article 3-2(6) and staff recommendation*
4. 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 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 staff recommendation*

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 plat filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation*

Hearing - Kahle Lots (2 lots - Second Summary Plat) - West of Missoula - Mullan Road

Dave Loomis, Office of Planning and Grants, gave the staff report.

The applicant, Kim Kahle, is requesting approval to divide a 19.64 acre parcel into 3 lots of 5, 5.7 and 9 acres in size. This is a second summary subdivision. The property is located approximately 7 miles northwest of the City of Missoula.

The property is currently occupied by a single family dwelling, a shop-guest house, two garages, and various small outbuildings. Surrounding uses are generally consistent with the applicant's proposal, being low density residential and agricultural.

The applicant already did a first summary subdivision about three years ago, when only one lot was created. The applicant requested and was granted a variance from the requirement to provide pedestrian walkways for the previous one lot subdivision approved in November of 1995. The applicant was also previously granted variances to the requirement for landscaping along the primary travel corridor, and that a lot should not be divided by a public street (Lot 2).

The lots will be served by individual wells and septic systems. The State Department of Environmental Quality and the Health Department will require compliance with standards for the installation of both wells and septic systems.

Access to two new lots, 2A and 2B, will be from a 54 foot wide private access easement from Mullan Road about 650 feet northwest of the existing driveway to the Kahle's existing house. Proposed Lot 2C is where the existing house, garage, and shop-guest house are presently located.

The Planning Board and the Office of Planning and Grants has recommended approval of the Kahle Lots, Lot 2 Second Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

The Planning Board and the Office of Planning and Grants has also recommended approval of the request to vary from Article 3-3(1)(D)(2) of the Missoula County Subdivision Regulations which requires each lot created to not be divided by a public road; and approval of the variance request to vary from Article 3-2(5) of the Missoula County Subdivision Regulations to require sidewalks or pedestrian pathways in the subdivision, based on the findings of fact in the staff report.

Ron Ewart, Eli & Associates, developers representative, was present. The applicant, Kim Kahle, was not present. The developer had no problems with the report and felt the review done on the proposal was very thorough.

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

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to require sidewalks or pedestrian pathways in the subdivision; and approve the variance request from Section 3-3(1)(D)(2) of the Missoula County Subdivision Regulations which requires each lot created to not be divided by a public road. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Kahle Lots, Lot 2 Second Summary Subdivision, based on the findings of fact and conclusions of law, subject to the recommended conditions in the staff report. Commissioner Kennedy seconded the motion. The motion passed on a vote of 3-0.

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Mullan Road, including installation of pedestrian walkways, sidewalks, 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*

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 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 Articles 3-1(1)(d), 3-7(2) and Health Department 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 plat filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation*
4. Approach permits to Mullan Road are required before any construction. *Surveyors Office recommendation*
5. The developer shall petition for annexation into the Missoula Urban Transportation District prior to filing of the Final Plat. *Subdivision Regulations Article 3-1(1), MUTD recommendation*

There being no further business to come before the Board, the Commissioners were in recess at 4:10 p.m.

THURSDAY, OCTOBER 8, 1998

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:

Professional Services Contract - The Commissioners signed a Professional Services Contract with Community Care, Inc. to subcontract with the Health Department for tobacco education and control services - funded by the Dept. of Health and Human Services. Performance schedule is October 1, 1998 through June 1, 1999. Compensation for services shall be up to \$4,900.00. The Contract was returned to the Health Department for further signatures and handling.

Adult Detention Agreement - Chairman Evans signed an Adult Detention Agreement with Shoshone County, Idaho for housing Missoula County inmates. Missoula County will pay \$45.00 per day for said housing. Either party may terminate the Agreement by giving 30 days written notice. The Agreement was returned to Mike O'Hara in the Sheriff's Department for further signatures and handling.

Position Description - The Commissioners approved a position description for a Missoula County 4-H/Youth Development Extension Agent, funded partly by MSU Extension Service.

Contract Amendment - Chairman Evans signed Amendment Number One to a Contract Agreement between the Missoula City-County Health Department and the University of Montana, Rural Institute on Disabilities, for continued funding of a public health nurse for the HOPE Project. Term of the Agreement is September 30, 1997 through September 29, 1999. Compensation shall not exceed \$50,432.00. The Agreement was forwarded to Joyce Davis at UM for further signature and handling.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Lutheran Social Services to purchase group support for children of divorced or separated families who are attending CS Porter School. Term of the Agreement is July 1, 1998 through June 30, 1999. Value of the Agreement is \$500.00.

Grant Award and Special Conditions Page - Chairman Evans signed a Grant Award and Special Conditions Page for expanding the Flagship Project into Rattlesnake Middle School and Hellgate High School. The County will receive \$93,990.00 for this project. The documents were returned to Peggy Seel in OPG for further handling.

Mutual Release of All Claims - Chairman Evans signed a Mutual Release of All Claims, paying \$6,635.00 to Seeley Lake Solid Waste Management District for matters relating to the Administrative Fee levied against the District by the County. The Release was returned to Paul Webber, CAO, for further handling.

Other items included:

- 1) The Commissioners approved a staff request for up to \$20,000.00 of Missoula County Program Income funds to be used for construction and contingency as part of the Sunset West Water Improvement Project.

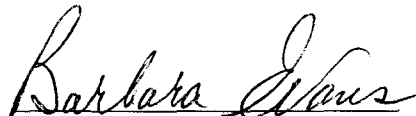
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, OCTOBER 9, 1998

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

In the afternoon, Commissioners Hart and Kennedy accompanied County Surveyor Horace Brown on a site inspection of Rumble Creek Road in the Condon area.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, OCTOBER 12, 1998

The Courthouse was closed for the Columbus Day holiday.

TUESDAY, OCTOBER 13, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office October 13-16 because of illness.

Monthly Report -- Acting Chair Fern Hart examined, approved, and ordered filed the Report of the Sheriff, Doug Chase, for the month ending September 30, 1998.

Payroll Transmittal Sheets - The Commissioners signed Payroll Transmittal Sheets for Pay Period 18, with a total Missoula County payroll of \$725,513.78; and Pay Period 19, with a total Missoula County payroll of \$633,732.31. The sheets were returned to the Auditor's Office.

Plat and Development Agreement - The Commissioners signed the plat and development agreement for Meadowlands, Lots 2A and 2B, an amended subdivision plat located in the E1/2 of Section 28, T14N, R20W, PMM, Missoula County, a net and gross area of 2.25 acres, with the owners of record being Wayne A. Povsha, Sr. and Johnna L. Povsha, and Michael D. and Brandy H. Povsha. The development agreement is intended to meet Condition #6 of the approval.

ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 98-079, a resolution granting revocation of agricultural use covenant for Tract 1, COS 3451 for James and Arleaetha Miller and Terrance and Evelyn Hanson.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Judith Himber for a 10-week session for a domestic violence support group, through the Rural Domestic Violence Grant. Performance schedule is from October 15, 1998 through December 31, 1998. Compensation shall not exceed \$2,940.00. The Contract was returned to Leslie McClintock in OPG for further signatures and handling.

General Project and Maintenance Agreements - Chairman Evans signed two sets of General Project and Maintenance Agreements:

1. A CTEP Maintenance Agreement and General Project Development and Construction Agreement for the Training Drive Walkway in Missoula, stating that the County will be responsible for \$6,418.00, and Federal participation will be \$41,417.00.

2. A CTEP Maintenance Agreement and General Project Development and Construction Agreement for the Clements Road/North Avenue Path in Missoula, stating that the County will be responsible for \$26,683.00, and Federal participation will be \$172,155.00.

Both were returned to Horace Brown, Surveyor, for further signatures and handling.

Other items included:

- 1) Commissioner Kennedy moved that the Commissioners approve the Buy/Sell Agreement with Harlan Douglass recommended by the Realtors and Management Team, and amended on October 13, 1998. Commissioner Hart seconded, and the motion carried with a vote of 2-0. The Agreement lists a purchase price for Tracts 1, 2, and 3 of COS 4440 (old County Shops property) of \$2,400,000.00.

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

WEDNESDAY, OCTOBER 14, 1998

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

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated October 14, 1998, pages 2-42, with a grand total of \$288,372.91. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Acting Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Mr. Miniblink as principal for Warrant #28932 issued 9/22/98 on the Missoula County SD #40 Fund in the amount of \$5,649.00 now unable to be found.

PUBLIC MEETING - October 14, 1998

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Fern Hart. Also present were Commissioner Michael Kennedy, County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$288,372.91. Acting Chair Hart seconded the motion. The motion carried on a vote of 2-0.

Proclamation - Domestic Violence Awareness Month

Leslie McClintock, Office of Planning and Grants, read a statement in support of Domestic Violence Awareness Month.

"During the past year, the Missoula Victim Assistance Program, which includes the City and County Attorney's Offices and Rural Outreach Crime Victims Advocate Office in Seeley Lake, provided services to more than 1,500 victims of domestic violence. We've come a long way during the past 20 years from society viewing domestic violence as a dirty little secret that was the business of the family alone to a point where we, as a society, are aware of and talk about domestic violence openly. We've been able, as a result of Federal laws, such as the Victims of Crime Act and the Stop Violence Against Women Act, and the funding and attention that have followed the passage of those laws, to build systems of services for victims in every locality in America, as well as for the more than 1,500 victims in the City and County of Missoula who've come forward last year to our programs to report what's happening to them and to receive services. But the purpose of Domestic Violence Awareness Month is to focus our attention as a community, not on the victims, but on ourselves. Domestic Violence Awareness brings with it a responsibility to establish a supportive environment in which domestic violence can be acknowledged and addressed, including the responsibility to understand the dynamics of domestic violence and why it flourishes here to the point that over 1,500 victims need to come forward to say, 'This is happening to me.' It's important during Domestic Violence Awareness Month to become educated and knowledgeable as a community about the unique problems that people face when they experience violence in the home and to begin to address the economic and social disparities that make it difficult for the survivors to leave the situation."

Leslie McClintock then asked Claudia Marieb, Crime Victims Advocate in the County Attorney's Office, to make a brief statement.

Claudia Marieb acknowledged and thanked the work done by Leslie McClintock and the County Commissioners, without which there would not be a Crime Victim Advocate Program. Leslie has been outstanding in obtaining grants from Federal and State sources and the program continues to grow, which is important as more and more victims are being seen. The services offered are very strong, particularly now with the increase in funding. There is an office that deals with orders of protection, they address safety concerns with all victims in the County, there is a Rural Outreach Program in the Seeley Lake and Condon areas, those people were rarely seen before. There is an office in the County Courthouse that advocates for victims of crimes that have cases pending in the County Attorney's Office. As an advocate, she talks about safety and give information about court cases, as a victim may get lost because the criminal justice system is offender-focused. Victims often don't know when someone is going to be released from jail, and that can be the difference between life and death. As advocates, they talk a lot about victims and how victims feel and

what they are going through, but what they would like is for people to stop telling victims what they need to do to not be victims again, and switch it around to start talking with perpetrators about what they need to do to not offend again.

Acting Chair Hart stated that there is a fine display at City Hall of a statue in honor of women who have died in Montana as a result of domestic violence. That statue was in the Courthouse last year. She was glad it could be used year after year.

Commissioner Kennedy stated it was a shame that a proclamation of this was needed at all, but hopefully it would increase awareness that the problem persists. The public needs to do all they can to stop this type of violence and this proclamation states the feelings of the Board of County Commissioners regarding domestic violence. He then read the Proclamation.

Proclamation - County of Missoula

Whereas, violence against women and children continues to be a pervasive social problem because of the imbalance of power related to gender and age; and

Whereas, the problems of domestic violence are not confined to any group or groups of people, but cross all social and economic barriers; and

Whereas, the problems of domestic violence are exacerbated by societal biases and indifference; and

Whereas, the crimes of partner assault and family member 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 violence is wide-ranging, profoundly affecting women, children, and society as a whole; and

Whereas, women who have experienced domestic violence have been in the forefront of efforts to bring peace and equality to our homes;

Therefore, We, the Board of County Commissioners of Missoula County, do hereby proclaim the month of October, 1998 as Domestic Violence Awareness Month and urge all citizens of Missoula County 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. --Dated October 14, 1998 and signed by the Board of County Commissioners: Barbara Evans, Chairman; Michael Kennedy, Commissioner; and Fern Hart, Commissioner.

Commissioner Kennedy stated this shouldn't be a once a year thing, it is a 24-hour, 7-day a week awareness that needs to be practiced and the word needs to be spread by all of us.

Bid Award - Water Meters for RSID 901 (Lolo Water and Sewer)

Commissioner Kennedy stated he had reviewed the proposal and felt there was insufficient data to make a recommendation at this time.

Commissioner Kennedy moved to refer the matter to an administrative meeting where a discussion can be conducted before the decision is made. Acting Chair Hart seconded the motion. The motion carried on a vote of 2-0.

Decision On - Petition to Establish Rumble Creek Road as a County Road (Condon Area)

Acting Chair Hart stated this was a continuation of the public hearing from September 23, 1998 and asked for additional public comment.

Mary Phillips, who lives on Rumble Creek Road, said she had stated her position at the last meeting and asked what the consequences of making this a County Road would have on maintaining the road?

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

Acting Chair Hart stated there was some confusion about having a petition come before the Commissioners, that it required 10 signatures of freeholders, people who own land in Missoula County. The long list of names was the people who were notified, which is also a part of that statute. She asked Colleen Dowdall about the maintenance question?

Colleen Dowdall reiterated that the County has been treating this as a County road, created by prescription, which means it has appeared on County road maps, but there is no public record basis for that. If the petition is not granted, she assumed it would continue to be treated as a County road created by prescription. In conversation with Horace Brown, he indicated if the petition was not granted, he would not change the maintenance he is currently conducting on the road. It would still appear as a County road on the map, but it would not appear in the public records if a title search was done. If access to property tried to be established, it would not appear as a county road that had some legal basis.

Commissioner Kennedy stated the process for this action included examining the petition, a public hearing and a site visit with the County Surveyor. A report was then prepared. There are several choices before the Board, they can accept the petition as it stands, they can reject the petition as it stands, or they can modify the petition, based on their findings and conclusions. A modification is likely today. He said all three Commissioners were scheduled to visit the site, and in fact two Commissioners and the County Surveyor did visit the site. That seemed an inappropriate process, only one Commissioner should have visited the site. The site visit turned into a public meeting with citizens who were opposed to the petition. The information was collected, as well as findings from research, which he was prepared to report on today. There are four, distinct, separate actions regarding this roadway.

The first portion of the roadway, from the Highway 83 to approximately the center line of Section 5, is a prescribed roadway. The section from the center line of Section 5 to the turnaround exists in some fashion as a county road, with

varying widths and the section on the southeast quarter of Section 5 exists within an easement that is 30 feet wide and north of the section line. The last portion is from the maintenance turnaround to the Forest Service boundary, it exists currently as a private drive with no county maintenance. As to those distinct and separate segments, based on the Board's findings, the last portion that exists on private ownership beyond the turnaround of county maintenance, has never been a county road and he recommended it not be included as a county road, leave the status as it is. Regarding the first segment from the highway to the existing easement that is currently a prescribed road, he recommended that portion become a dedicated county roadway to a maximum width of 40 feet, that is centered on the center line of the existing traveled way. He proposed that the road be surveyed to have a final location of that right of way. The third part of the recommendation is more complicated. In Section 5, on the south side of the southeast quarter of Section 5, the 30 foot easement exists only north of the section line. He asked Horace Brown if the easement contained the existing traveled way.

Horace Brown stated it did not.

Commissioner Kennedy stated the existing traveled right of way exists south of that point into Section 5 outside the existing easement.

Horace Brown stated that was correct.

Commissioner Kennedy asked what additional width would be needed for an easement in the northeast quarter of Section 8 in order to continue use of the road as it is currently being used?

Horace Brown stated 20 additional feet would be needed to total a width of 50 feet, except where the turnaround is, it may be able to be contained in 60 feet, but it might be better to have a 50 foot radius turnaround. He would like to see the 20 feet added to make a total of 50 feet for the right of way, 30 feet north of the section line and 20 feet south of the section line.

Commissioner Kennedy stated the existing easement in the southeast quarter of Section 5 exists 30 feet wide north of the section line and the recommendation from the surveyor is that the county declare 20 feet of the northeast quarter of Section 8 as county road as well, making the total right of way width in that area 50 feet, rather than the existing 30 feet.

Peter Dayton, Worden, Thane & Haines, P.C., representing the petitioners, stated he had a copy of the deed and the right of way is actually 40 feet wide. He had made a mistake in the petition saying it was 30 feet wide, which he mentioned at the first hearing.

Acting Chair Hart asked Horace Brown why 50 feet of right of way was needed when only 40 feet is needed on the first section of the road?

Horace Brown stated the section line does not go down the center of the road, if there was less than 50 feet, there was not enough room to maintain the road. The south 40 feet of the southwest one-quarter 2.4 acres would follow the section line, but he was not sure where this would fall on the road. Part of the way, the section line goes down approximately to the middle, but there are areas where the road is north of the section line.

Acting Chair Hart stated that in order to follow the current traveled way, 50 feet was necessary because in some cases the traveled way is outside the section line.

Horace Brown stated he was not sure exactly where the road lays on the 40 feet of right of way. It was surveyed several years ago and he remembered there were places where the section line was on the south side of the road and places where the section line was on the north side of the road.

Acting Chair Hart stated the goal was to have 20 feet from the center of the traveled way on each side of the road.

Horace Brown stated that was correct, that was the minimum necessary to maintain the road.

Commissioner Kennedy stated the traveled way does not follow the section line between Section 5 and Section 8, in places the traveled way intrudes into Section 8 for which there is no easement. Horace Brown is saying that if there is 20 feet of easement in Section 8, even though the full width would be 60 feet, only 20 feet would be south of the section line, which would be sufficient to take care of the road as it exists and is currently traveled.

Horace Brown stated he remembered that was correct, the survey was conducted approximately 16 years ago.

Commissioner Kennedy asked Horace Brown if 20 feet was more than needed. He did not want to develop a right of way that was not needed.

Horace Brown stated on the west end, 20 feet may not be enough, because the section line is way north of the road. On the east end, the section line is south of the road.

Commissioner Kennedy stated that his recommendation was to acknowledge a county road in a width that is sufficient to address current county needs in Section 5 and Section 8. It is estimated that need is 20 feet in Section 8, which may not be an accurate number. He recommended deferring decision until the need is determined, or as an alternative, make a decision today, recognizing the width will be adjusted according to what the actual physical need is in the field, as determined by survey.

Colleen Dowdall stated that could be addressed, she had prepared some proposed language to deal with the issue, which would go along with Commissioner Kennedy's request that the entire road be surveyed. Even on the prescriptive part, it is described as 40 feet, using 20 feet on either side of the center line. If we do a similar easement

on this portion, where it leaves Section 5, that the right of way extend 20 feet south of the center line of the traveled way, then it would be able to say exactly what is meant, subject to the survey.

Commissioner Kennedy stated the turnaround is in Section 4 and his understanding was the right of way exists at a 60 foot width in Section 4, in which case there is no need for additional right of way for the turnaround.

Horace Brown stated 60 feet was difficult to turn around on, it would probably be better if there was a 50 foot radius, which may not all be used, but it would give room enough for the big plows and sanders turned around.

Commissioner Kennedy asked Horace Brown what is currently used?

Horace Brown stated currently approximately a radius of 40 feet was used.

Commissioner Kennedy asked if the county was currently using 40 feet, why would more be needed?

Horace Brown stated it was difficult to turn around in the area currently available, the trucks needed to back up in order to complete the turn.

Peter Dayton stated he had more information about the turnaround. He referenced the book and page of the easement granted over the south half of Section 4 and the north half of Section 9, and it is actually more complicated. Attached to the easement is a survey showing the location of the easement. It is in the southwest quarter of Section 4, it is the south 30 feet of the section. In the northeast quarter of Section 9, it is the north 30 feet, then there is a strip of land 30 feet wide which curves down and goes past the north/south center line of the section. The 30 foot strip in the south portion of Section 4 ends at the section line. It is a complicated shape.

Commissioner Kennedy stated the way to solve this is the same way counsel suggested, the overall right of way in that portion of Section 4 be 20 feet either side of the surveyed center line of the existing traveled way.

Peter Dayton stated his observation from driving the road was that he doubted the road is very close to the center line, it wanders all over.

Commissioner Kennedy stated the County intended to have the road surveyed and in an effort to solve this issue, the County will declare a county road that has a 40 foot right of way width that is centered on the center line of the existing traveled way, up to the turnaround point.

Peter Dayton stated that would work fine. He felt it could end up with the existing easement, and a county road that may diverge from it, but there would be legal access.

Commissioner Kennedy stated that could be dealt with separately, with an abandonment process, or possible relocation.

Colleen Dowdall stated it would be better to deal with them separately, after the survey.

Commissioner Kennedy stated this way would be better, because the new information shows there would be a "no man's land" in-between the two easements. This way, that would be eliminated. Regarding the turnaround, he asked Horace Brown if there was a 40 foot radius that is currently used, is that an exact number?

Horace Brown stated it was an estimate, but he knew the trucks had a hard time completing the turn.

Commissioner Kennedy asked what a normal cul-de-sac radius was?

Horace Brown stated curbed ones were normally a 50 foot radius. The minimum amount a regular truck can turn around is 43 feet, a snowplow or sander requires more space to turn around.

Commissioner Kennedy asked if the current turnaround existed on the current county easement partially or was it on private property beyond the easement?

Horace Brown stated he believed it was on private property.

Commissioner Kennedy asked if there was a way to locate the turnaround south and west of private property partially on the existing easement?

Horace Brown stated it can be located wherever the county wants to put it.

Colleen Dowdall stated she assumed the county would also be claiming, for the portion of the roadway that leads the easement, it has been granted to the county as the county is maintaining it, it is by prescription also. Even the turnaround would come under this reasoning.

Commissioner Kennedy stated his concern was that if the county is currently using a turnaround that is an approximate 40 foot radius, if that is expanded on private property to a 50 foot radius, then there is a potential for a demand for taking from the person who owns that land.

Colleen Dowdall stated there was a potential for compensation.

Commissioner Kennedy asked Horace Brown if the existing turnaround was then sufficient for his needs?

Horace Brown stated the trucks turn around there now, but not easily or conveniently.

Commissioner Kennedy stated if the turnaround was also surveyed according to the existing use, whatever the dimension is would be declared the county right of way for turnaround purposes, sufficient to care for road department needs, acknowledging that it might be somewhat inconvenient.

Horace Brown stated snow storage would also need to be included.

Commissioner Kennedy stated that would be included in the survey, which should take care of that problem.

Colleen Dowdall agreed that should take care of the problem.

Commissioner Kennedy moved the Board of County Commissioners change the petition to acknowledge their discussions. That is to not consider anything beyond the turnaround as a county road, because the findings indicate the county has never maintained it and it can be concluded the county has no obligation to extend maintenance nor declare it a county road for general public use. Rumble Creek Road between the turnaround and Highway 83, whether it is in existing easement or prescribed, will from here on be a county road with a width of 40 feet that is centered on a surveyed center line of the existing road, except where the existing easements north of that road in Section 5 and Section 4 are 40 feet currently. He added the Board accept his motion with a condition, that there will be no additional cost to the County for granting the petition as modified because the road is already constructed and there are no damages that would be resultant to the existing property owners because the county currently operates and maintains that road and currently uses that road. The creation of the right of way is conditioned upon receiving the consent of the owners affected without compensation from the County. A resolution accepting the right of way will be executed and filed upon this condition being satisfied.

Commissioner Kennedy stated the motion was based on the following findings of fact:

1. The county has established a right of way through prescription for the 40 feet because of the use by the public and the maintenance by the county.
2. The right of way is needed between Highway 83 and the deeded right of way to establish a county road on the public record.
3. Because the road exists as a prescriptive county road, granting the petition does not result in any damages to the property owners whose lands abut the road. The benefit of having a right to access their property made a part of the public record exceeds any damages claimed.
4. The right of way is not needed through the area that has deeded right of way.
5. The right of way is also not needed across the private property, heading north for access to Forest Service land. The county does not currently maintain that portion of the road, its condition would preclude county maintenance and the right of way is not needed for use by the public.

Commissioner Kennedy stated from these findings, it is concluded that:

1. Granting the petition is feasible because the road is established as a county right of way by prescription.
2. Granting the petition is desirable in that it will result in clearly establishing access to property that is part of the public record.
3. There will be no additional cost to the county for granting the petition because the road is built, there are not known damages to pay to property owners and because the county currently maintains the road.

Acting Chair Hart seconded the motion. She asked if it was concluded that the turnaround would be surveyed?

Commissioner Kennedy stated the area would be surveyed and include space for snow storage.

Acting Chair Hart stated she felt this was confusing and would be try to answer any questions the public might have.

Peter Dayton stated some of these questions would be answered by the map prepared by Horace Brown after the survey. It is important to establish exactly where the county road end because currently there is an easement that runs just a little bit past the north/south center line of the section. He asked Horace Brown if he knew where the turnaround was located?

Horace Brown stated he thought it was before the section corner, but it has been too long since the survey to be exact.

Peter Dayton stated his recollection was that it was a little bit before. By making this a county road, everyone that this road touches has legal access. The map will establish exactly where the road runs, to which properties, which would be helpful. Another fact to consider is the county may not want to abandon the old easement because if the road diverges away from someone's property and the easement is abandoned, it could result in someone who suddenly loses access.

Acting Chair Hart stated this was a very technical issue and if anyone had questions, they would be glad to try and answer them.

Commissioner Kennedy asked about an issue separate from this motion which he would like discussed and resolved prior to passing the motion. It was in regard to one of the easements to the north in Section 4, and whether or not the Board wants an abandonment of that at a separate time or if it can be part of this process without additional hearing?

Colleen Dowdall stated that just for the reason Peter Dayton pointed out, that shouldn't be considered until the survey was completed, to insure that everyone has access to their property.

Commissioner Kennedy stated he was only concerned about the area on the easterly part of the southwest quarter of Section 4 where the easement exists and the road exists in a separate place where a new right of way will be created and there may be a small patch of "no man's land."

Colleen Dowdall stated she would be more comfortable if they waited so there would be a description of what to abandon.

Commissioner Kennedy stated that was fine and he then called for the question. He expected this motion would pass and wanted to reiterate what a result of this action may be in terms of the affected landowners. There will be no change in the way the county addresses operation, maintenance, repair and use of the road as a result of this action. It will not be any different than it was before. It will remove a cloud in terms of the prescriptive part and will define in a memorialized way what the county access and responsibility is. It won't guarantee maintenance, there is no guarantee of maintenance on a declared county road in Missoula County. That is a resource issue, if resources are available, then maintenance may follow. Maintenance may or may not be continued there, it has nothing to do with this particular action. This action doesn't extend public use at all in his judgment, it merely memorializes what already exists in prescriptive use and easement use. It doesn't extend area use, it is currently maintained up to the turnaround and this action will not proceed beyond that turnaround at all. Lastly, his recommendation intends for the width of the right of way to be only sufficient to take care of existing operation, maintenance and repair needs for the county roadway system, that is why the 40 foot width was used, to accommodate the use and rural nature of the road, and to not suggest that because it is now a memorialized county road that any use will change by this action. He then called for the question.

The motion carried on a vote of 2-0.

Acting Chair Hart stated if the residents have concerns about the way the road is designated they should consider a Citizen Initiated Zone. With a zone, the residents would have a say in how the area develops.

Commissioner Kennedy made an editorial comment about what is happening in the Columbia Basin and how the project affects residents lives locally. What is noticed throughout the Columbia Basin, a quarter of a million square miles, is the use of that land and policies and practices have created problems, as acknowledged by the residents initial objection to this petition. A problem seen near the lookout is the invasion of exotics, non-native species of vegetation. The Columbia Basin Project (CRB) is attempting to develop a protocol by which certain roads and certain accesses in the basin be abandoned because the overall cost of those roads in terms of the invasion of weeds and fire, etc., outweighs the benefit of maintaining access. A way to keep these areas as pristine as possible is to self regulate ourselves in a way that is beneficial to us and future generations. This area is an example of this because of the invasion of weeds. If the CRB is implemented, and it appears it will be, this may be one of the roads considered for abandonment because of the invasion of exotics. He agreed with Acting Chair Hart that if the residents wanted to do more, they should impose a Citizen Initiated Zoning District.

Hearing - Boundary Relocation and Amendment of Agricultural Covenant (Calcagno)

Kathy Smith, Paralegal, County Attorney's Office, gave the staff report.

This is a consideration of a request to amend the agricultural covenant currently existing on Tracts 6 and 7, COS 1509 and relocate the boundaries between Tracts 6 and 7, COS 1509, Tract 5E1, COS 4513 and a parcel described in Book 457 Micro, Page 533, located in Section 34, T15N, R22W, for Roy G. and Kathleen F. Calcagno.

Kathleen Calcagno has submitted a request to amend two agricultural covenants which currently exist on Tracts 6 and 7 of COS 1509, and relocate the boundaries between Tracts 6 and 7 of COS 1509, Tract 5E1 of COS 4513, and a parcel described in Book 457 Micro, Page 533. The current parcels are located in the Nine Mile area south of Highway 90 and adjacent to the Clark Fork River. Mrs. Calcagno has indicated she wishes to relocate the boundaries between all four parcels to better conform to the topography of the land and amend the agricultural covenants currently existing on Tracts 6 and 7 of COS 1509 to follow the new boundaries. Two of the proposed parcels will be used for a home currently existing on one of the parcels and the other for a future home. The two parcels which Mrs. Calcagno is proposing to amend the existing agricultural covenants will continue as open space.

The history of the parcel is as follows: COS 1509 was filed in June, 1978, creating 5 parcels greater than 20 acres in size and the two agricultural parcels. Tract 5 of COS 1509 was superseded by COS 2044, filed in July, 1979, which created a family transfer parcel, occasional sale and remainder parcel. The boundaries of Tracts 5-B and 5-C of COS 2044 were relocated with the filing of COS 4140 in July, 1992. COS 4140 was then superseded by COS 4513, filed in June, 1995, which relocated the boundaries between Tracts 5-D and 5-E of COS 4140. The Calcagnos purchased all four parcels in 1995.

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

Acting Chair Hart opened the public hearing.

Andy Fisher, Eli & Associates, was present representing the Calcagnos. Kathy Calcagno was also present. He stated this consideration as explained was not exactly what they had in mind. They are not requesting the agricultural exemptions be revoked or changed. The owners live on proposed Tract D and they did not want to expand the agricultural covenant from the old Tract 6 to proposed Tract D. They would like to leave the agricultural covenants where they are, as a portion of the new tracts. They would like descriptions of the portions that would remain under agricultural covenants, portions of the proposed Tracts B and D.

Acting Chair Hart asked if he was saying they did not want any change in the agricultural covenants at all?

Andy Fisher stated the covenant that exists on 6 and 7 just stay on what is now 6 and 7.

Acting Chair Hart asked which boundary line was to move to make Tracts A and C?

Andy Fisher stated that was essentially moving part of the old railroad right of way. By taking the existing Tract 5E1 and cutting it off at 5 acres, which approximates the drop from the upper bench to the tracks, then what is proposed as Tract C is the remainder of that plus the chunks of the railroad right of way that are adjacent to that lower section.

Acting Chair Hart stated it seemed like they were getting more parcels out of this.

Colleen Dowdall stated they would not get more parcels, but did not understand why they wanted to keep the agricultural covenant, was there a reason to keep it?

Andy Fisher stated there was no reason to take it off.

Colleen Dowdall stated there was in that the use of the agricultural exemption creates the parcel. If the parcel is to be made bigger, how is the agricultural covenant described?

Andy Fisher stated that did present a problem and asked if there could be a no build restriction or some other restriction?

Colleen Dowdall stated she remembered it is in a floodplain and couldn't be built on anyway. She felt the agricultural covenant was not needed anymore and would make matters less complicated if it was removed. She stated that instead of adding the railroad right of way to the river frontage, it would be added to the proposed parcel closer to the highway, to retain river frontage with the existing house.

Andy Fisher stated that was correct.

Colleen Dowdall stated the Calcagnos wanted to make into one parcel river frontage and railroad right of way that they live on, and another parcel on the other side of the BLM land, again adding river frontage and railroad right of way. The riverfront parcels were created by agricultural covenant. She did not know why they were created that way but the need for the agricultural covenant doesn't exist.

Acting Chair Hart stated if the agricultural covenant was lifted, the parcels would be the size proposed and there would be a buildable area.

Colleen Dowdall stated the Calcagnos started out with four parcels and ended with four parcels.

Kathy Calcagno stated she wanted the boundary location because she did not want to live on a long, skinny piece of property. This made the four lots more logical.

Acting Chair Hart asked if they were requesting the agricultural covenant to be lifted on both parcels?

Andy Fisher stated it apparently was necessary to complete the boundary relocation.

Scott Hollenbeck stated he was in support of what the Calcagnos were doing. He sold them the ground several years ago and at that time he indicated they should come back and reorganize these four parcels of land to make sense out of them.

There being no further comments, Acting Chair Hart closed the public hearing.

Commissioner Kennedy moved that the Board of County Commissioners approve the request to amend the agricultural covenant currently existing on Tracts 6 and 7, COS 1509, and relocate the boundaries between Tracts 6 and 7, COS 1509, Tract 5E1, COS 4513 and a parcel described in Book 457 Micro, Page 533, located in Section 34, T15N, R22W, for Roy G. and Kathleen F. Calcagno, as it appears that it does not violate the subdivision laws. Acting Chair Hart seconded the motion. The motion carried on a vote of 2-0.

Hearing - Family Transfer (Deschamps)

Kathy Smith, Paralegal, County Attorney's Office, gave the staff report

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 101 Micro, Page 852 less COS 3188, COS 2854, COS 2580, COS 2521, COS 2492, COS 3404, COS 3483, COS 3645 and COS 4540, for Alfred G. and Rosemary Deschamps.

Fred Deschamps 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 70.47 acres in size located northeast of Frenchtown off Mill Creek Road, adjacent to the Frenchtown Irrigation Ditch. Mr. Deschamps proposes to create an approximately 5 acre parcel on the west portion of the property for transfer to his son and daughter-in-law, Bryan G. and Kristin A. Deschamps.

The history of the parcel is as follows: Mr. and Mrs. Deschamps purchased the original approximately 185 acres located in both Sections 35 and 36 in July, 1977. In August, 1977, they filed COS 1239 creating an 8.58 acre occasional sale parcel. Since the creation of the occasional sale parcel, COSs 2135, 2521, 2580, 2854 and 3188 have been filed by subsequent property owners further splitting the 8.58 acres. In December, 1980, the Deschamps filed COS 2492, creating 5 parcels greater than 20 acres in size from the 105 acres in Section 36. In December, 1986, COS 3404 was filed by the Deschamps creating an occasional sale parcel from Tract 1 of COS 2492. Since COSs 2492 and 3404 were filed, COSs 3483, 3645 and 4540 have been filed by subsequent property owners.

According to the records kept by the Missoula County Surveyor, the applicant has used the exemptions to the Subdivision and Platting Act as set forth above along with a family transfer exemption in 1978 to his son, Jack

Billington, creation of more parcels greater than 20 acres in size and two boundary relocations, all on unrelated property.

Fred Deschamps stated the last part of the staff report was incorrect, he never gave any land to Jack Billington, it was probably his father that was being referred to. Jack Billington was not his son.

Kathy Smith stated it was her mistake.

Acting Chair Hart stated there were a lot of survey numbers, were they correct as this went into the record.

Kathy Smith stated that is the legal description because when the other surveys were done, the remainder was not surveyed, so the remainder retains the old deed number less the new surveys.

Fred Deschamps stated he purchased the property in 1965, not 1977 as stated.

Kathy Smith stated the records in the Clerk and Records Office said 1977.

Fred Deschamps stated he had warranty deeds that proved he bought that property in 1965.

Kathy Smith stated that was not an issue.

Colleen Dowdall stated she suspected Mr. Deschamps bought it on a contract and the transaction wasn't recorded until 1977.

Acting Chair Hart stated she was removing from the request the language from the last paragraph regarding Jack Billington. She explained the Family Transfer process and asked Mr. Deschamps how many children he had.

Fred Deschamps stated his son has lived in a mobile home on the property for seven years and water and sewer have been installed. He had not done the Family Transfer prior to this, but his son would now like to build a house. He also stated he had two other sons.

Acting Chair Hart opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Kennedy moved that the Board of County Commissioners approve the request to create a family transfer for that parcel described in Bob 101 Micro, Page 852 less COS 3188, COS 2854, COS 2580, COS 2521, COS 2492, COS 3404, COS 3483, COS 3645 and COS 4540, for Alfred G. and Rosemary Deschamps, for transfer to their son and daughter-in-law, Bryan G. and Kristin A. Deschamps, as it does not appear to be an attempt to evade the Subdivision Regulations. Acting Chair Hart 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 2:47 p.m.

THURSDAY, OCTOBER 15, 1998

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:

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Women's Opportunity and Resource Development, Inc., Family Basics, for family advocacy services for CS Porter School families. Value of the Agreement is \$12,696.00. Duration of the Agreement is July 1, 1998 through June 30, 1999, and is contingent upon receipt of Interagency Coordinating Council Grant funds by Missoula County.

The Commissioners approved a request from Head Start for a \$6,000.00 renovation loan that will provide office space for personnel providing speech and psychological therapy services for Head Start children. Funds are from the County Program Income Account.

Extension Letter - The Commissioners approved a six month extension for final plat submittal for Alloy Court Summary Subdivision, making the new filing deadline March 8, 1999, with a letter to Ron Ewart of Eli and Associates.

Preaward Compliance Review Report - Acting Chair Fern Hart signed a Preaward Compliance Review Report from the US Environmental Protection Agency for the Sunset West Water Improvement Project. The Report was returned to Cindy Wulfekuhle in OPG for further handling.

Loan Agreement - The Commissioners signed a Loan Agreement with Nutritional Laboratories, Inc., for a Community Development Block Grant to create 21 full-time equivalent positions for low and moderate income persons. Amount of the loan is \$260,000.00. The Agreement was returned to Cindy Wulfekuhle in OPG for further signatures and handling.

Budgetary Authority Resolution - Acting Chair Fern Hart signed Budgetary Authority Resolution No. 98-080, for Nutritional Laboratories, Inc., allocating \$265,000.00 in state funds to various Missoula County budget line items.

Quitclaim Deed - Acting Chair Fern Hart signed a Quitclaim Deed to Rocky Mountain Elk Foundation for a six-acre parcel on Mount Jumbo (Jack Green parcel). RMEF will convey the parcel to the City of Missoula to be a part of the Mount Jumbo Open Space Complex. The Deed was forwarded to Scott Laird at the Rocky Mountain Elk Foundation.

Other items included:

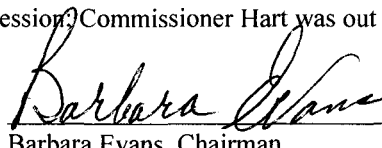
- 1) The Commissioners decided not to join NACo for the year 1999.
- 2) The Commissioners discussed Nurture's proposed settlement. The default notice is still in effect. Paul Webber will notify Nurture in writing.

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

FRIDAY, OCTOBER 16, 1998

The Board of County Commissioners did not meet in regular session; Commissioner Hart was out of the office all day.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, OCTOBER 19, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Hart was in Helena attending a DPHHS Advisory Council meeting.

Payroll Transmittal Sheets - The Commissioners signed a Payroll Transmittal for Pay Period 20, with a total Missoula County payroll of \$642,058.12, and a Payroll Transmittal for Pay Period 21, with a total Missoula County payroll of \$634,607.04. Both sheets were returned to the Auditor's Office.

Task Order - Chairman Evans signed a Task Order between the Montana Department of Public Health and Human Services and the Missoula City-County Health Department to provide services of the USDA Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to the residents of Missoula County. Duration of services is from October 1, 1998 through September 30, 1999. The Department shall reimburse the Contractor for actual expenses which are allowable and reasonably incurred in the performance of this Task Order. Source of funding is a federal grant from the USDA. The Task Order was returned to the Health Department for further handling.

TUESDAY, OCTOBER 20, 1998

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.

ADMINISTRATIVE MEETING

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

Agreement - The Commissioners signed an Agreement with Local Unit No. Two (Nurses) of the Montana Public Employees Association, recognizing the Association as the exclusive representative of all registered nurses employed at the Missoula City-County Health Department and the Partnership Health Center, except administrative personnel, for the purposes of collective bargaining with respect to rates of pay, hours, and other conditions of employment. Term of the Agreement is July 1, 1998 through June 30, 2000. The Agreement was returned to Steve Johnson in Personnel for further signatures and handling.

Extension Letter - The Commissioners approved a six month extension for final plat submittal for Green's Acres Subdivision for Lease or Rent, making the new filing deadline March 30, 1999, with a letter to Todd Green.

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

WEDNESDAY, OCTOBER 21, 1998

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Evans gave a welcome at the Interagency Training held at the Grant Creek Inn.

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated October 20, 1998, pages 3-36, with a grand total of \$201,052.63. The Audit List was returned to the Accounting Department.

Subdivision Exemption Affidavit - Chairman Evans signed a Subdivision Exemption Affidavit for boundary line relocation between Parcel B of COS 3708 and Parcel 1 of COS 4702. The Affidavit was returned to WGM Group for further handling.

Development Agreement - The Commissioners signed a Development Agreement for Frenchtown Homesites Subdivision for Lease or Rent. The Agreement was returned to Ron Ewart of Eli and Associates for further handling.

PUBLIC MEETING - October 21, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$201,052.63. Chairman Evans seconded the motion. The motion carried on a vote of 3-0.

Consideration of - Big Waters Ranch (3 lots) - Clearwater River Area

Dave Loomis, Office of Planning and Grants, gave the staff report.

The applicant, Wildlands LLC, proposes to divide 160 acres into 3 tracts, two of 70 acres each, and one of 20 acres. The project fronts along the Clearwater River for about 4,000 linear feet. About the northeasterly 300 feet front on Salmon Lake. Historical access was once across a bridge or fording the Clearwater River in low water as it flows out from Salmon Lake. The bridge washed out many years ago, access is now by way of Blanchard Creek Road off State Highway 200, northerly up Lost Prairie Road approximately five and 1/2 miles to Big Waters Ranch Road. Big Waters Ranch Road, an existing private road, continues on to some cabin sites north of the project on the west side of Salmon Lake.

The property is unzoned, the 1975 Missoula County Comprehensive Plan designates this area as open and resource land, with a density of 1 dwelling unit per 40 acres. This project meets the density guidelines and is consistent with the proposed uses, both residential and recreational.

The topography is varied, ranging from flatter areas away from the river on the westerly portions of the property, to steeper slopes of 30 and 40 percent. The applicant has identified two alternative building sites for each of the three lots. Each lot has a site near the river and a site higher in the terrain offering views. Field investigations have revealed that all but one of the proposed alternate sites are clearly feasible with little intrusion into slopes over 25% or into riparian vegetation. A driveway has already been roughed in to alternate site 1 on Lot 3 but not identified on the plat. Proposed alternate site 1 for Lot 1 is located along the Salmon Lake frontage. Field review revealed that a significant group of riparian trees and bushes is located in the center of alternate site 1 but not identified in the submittal. However, review of the site and topography also reveal another house site equally close to the lake with no constraints adjacent and to the west of the proposed alternate site 1.

The applicant has applied for annexation into the Greenough Potomac Fire Service Area. The FSA has presented the applicant an extensive list of driveway and turnaround requirements and specifications, all of which are consistent with the County Subdivision Regulations.

The subdivision is located along 4,000 feet of Clearwater River frontage. The river widens out for about 1,200 feet into Black Lake before it continues south from the subdivision. There was significant evidence of beaver activity, but apparently not within the past year or two. The shore of the river contains riparian vegetation, some areas thinly scattered, other areas the dominant plant habitat. Riparian plants included water sedges, iris (not further identified), willows, red osier dogwood, water birch, western snowberry, serviceberry, chokecherry, and woods rose. Areas not adjacent to the river also contained riparian vegetation such as small groves of aspen, hawthorn, and a lone cottonwood. The applicant submitted a riparian vegetation survey which identified some of the plants. The survey did not propose any restoration or buffer zones to mitigate development adjacent to those riparian areas. As a condition of approval, staff is recommending a complete riparian survey and management plan, including buffers along the river.

The Office of Planning and Grants recommends approval of the variance request from Article 3-2(5)(A) of the Missoula County Subdivision Regulations for sidewalks and pedestrian walkways to be provided in all subdivision; and approval of the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations for Big Waters Road to be less than the 24 foot required width and to not be paved.

The Office of Planning and Grants recommends approval of the Big Waters Ranch Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

Dick Ainsworth, Professional Consultants, Inc., developer's representative, was present, as was Wes Wills, representing Wildlands LLC. He stated he was notified by Michael Sehestedt that there was a concern regarding public notification, this consideration was not included on the Commissioners agenda mailed last Friday. This application was submitted September 9, 1998, OPG accepted it September 17, 1998, making today the 35th day, which is the time limit for action according to the regulations. Michael Sehestedt's suggestion was to complete the hearing and discussion on the subdivision today, but delay the decision until next week. That request continues to delay this process, but he felt he had little choice but to accept the delay.

Chairman Evans stated she hoped a process could be defined that will prevent this from happening in the future, a developer should not have to wait due to any error on the part of government.

Dick Ainsworth stated the staff report was complete and appreciated the work done by staff, he felt this was an excellent, low-density development.

Michael Sehestedt stated his concern was that notification and hearing was not part of the subdivision regulations on minor development, but the Montana Constitution and Montana Statutes require that for matters of substantial public interest be provided with notice and an opportunity to submit views or opinion prior to the time a decision is made. The method accepted on minor subdivision has been notification on the Commissioners agenda and the Weekly Public Meeting agenda, which is mailed and distributed to several hundred people who may have interest in what the Board is doing. For whatever reason, this proposal did not get on the agenda that was distributed last Friday. That departure

from practice seems to raise the possible issue of denial of public right to participate and comment. He recommended that the presentation be completed today, but continue the issue for one week with an opportunity for public comment before making the decision. He too was not happy about the solution, but the reason for the requirement is to give the public the opportunity to comment, so he would recommend giving notice in the usual manner and delaying the decision for one week. He apologized and understood what Dick Ainsworth and his client were experiencing because of this delay.

Chairman Evans stated if the public involvement were not included, it could negate any approval given by the Board and she would prefer to delay the decision for one week, for the developers benefit and the Board's benefit, with apologies. She asked if that met with approval from the other two Commissioners?

Commissioner Hart stated it met with her approval if Dick Ainsworth would request such a delay.

Dick Ainsworth stated he did request such a delay, although he was not happy with the decision and had little choice.

Chairman Evans stated the Board would postpone, at the developers reluctant request, decision on this subdivision until next Wednesday, October 28, 1998. She then asked for public comment on the issue and stated that public comment would also be taken next week on this issue. There being none, the public comment section was held open until next week.

Commissioner Hart asked about comments from the fire district, which roads would be used for emergency response?

Dick Ainsworth stated the fire area is the Greenough Potomac Fire Service Area, not Seeley Lake. A petition has been sent for annexation into the FSA which has tentative approval, and the developer has agreed to a \$100 per lot fee and other requests.

Commissioner Kennedy asked about the modification to Condition 2 concerning dust abatement. The original condition required dust abatement on an annual basis, and in staff discussions it was the intent to determine a way to implement abatement when appropriate. The language selected was to merely include dust abatement in the covenants. As there are only three homeowners, this appears to eliminate any requirement for dust abatement and he would like to see something different.

Dick Ainsworth stated the language was derived from a conversation with Colleen Dowdall and Dave Loomis after planning staff on Monday, which would be acceptable to him if it addressed the concern.

Commissioner Kennedy stated that the condition as now written eliminated the consideration of dust abatement altogether.

Colleen Dowdall stated requiring dust abatement on a private road is very difficult to do through the subdivision regulations. The best that can be done is require it be in the covenants. To enforce annual dust abatement is also something that is difficult to do in the covenants. It was felt the best thing to do was have the provision in the covenants that would compel participation financially by all the owners and be included as the road maintenance that the residents are required to participate in. There is also a paragraph in the covenants that discusses authorizing the Association to enter into agreements with other landowners in the area for road maintenance and it was recommended dust abatement be added to that paragraph also. It provides all of the mechanisms possible on a private road within a subdivision so the structure is there for dust abatement to occur. To compel it to happen is nearly impossible through subdivision regulations.

Chairman Evans stated this hearing would be continued and a decision would be made next Wednesday, October 28, 1998.

Consideration of - Rufus Subdivision (2 lot split) - Miller Creek Area

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicants, Lelan G. and Susan T. Rufus, are requesting approval to divide a 2.39 acre parcel into 2 lots, 1.56 and 0.83 acres in size. The property is located near Gharrett Avenue in the Lower Miller Creek area. The property is legally described as Lot 16A, 1st Amended Plat of South Side Homes Addition Lot 15 and 16, SW 1/4 Section 6, Township 12N, Range 19W. The property is zoned C-RR3, Residential, not to exceed 4 dwelling units per acre. The 1997 Miller Creek Comprehensive Plan designates Urban Residential land use with a maximum density of 6 dwelling units per acre.

Missoula city limits are located directly adjacent and to the north of the property. South Hills Evangelical Church property is located to the east and south of the proposal. Other adjacent land uses are single family residential.

One house is currently located on the property, which is served by Mountain Water and an individual septic system. Existing sewer lines are located along Gharrett Avenue to the east and Anthony Lane to the north. Connections to Mountain Water and city sewer are proposed for the new lot. The applicant proposes to connect the existing home to city sewer when its septic system fails.

A private driveway from Gharrett Avenue currently serves the existing home on the subject property as well as another home on the adjacent property to the west. Access to the new lot will be provided via this driveway. When a driveway serves 3 or more lots, Subdivision Regulations require that road standards apply. The applicant has requested variances from these standards and proposes to maintain the driveway at a 12 foot paved width within a 30 foot easement. A neighbor has expressed concerns about the volume and speed of traffic on the existing driveway, as well as encroachment on adjacent private property by vehicles parking or turning around.

The neighbor also stated that children sometimes cross the private driveway to access the church playground. The applicant's representative has indicated that the applicant may be willing to grant a blanket easement for the use of the private road by pedestrians.

The City Public Works staff has concerns about the property with respect to drainage. There is a history of neighborhood drainage flow problems.

The Office of Planning and Grants recommends approval of the Rufus Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

The Office of Planning and Grants recommends approval of the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; and approval of the variance request from Section 3-2 of the Missoula County Subdivision Regulations for the private road serving the dwelling units to vary from the required 60 foot right-of-way to a 30 foot right-of-way, based on the findings of fact set forth in the staff report.

The Office of Planning and Grants recommends denial of the variance request from Section 3-2(1)(I)(1) that states that a private access lane that serves 3 or more lots shall be considered a private road; and denial of the variance request from Section 3-2 of the Missoula County Subdivision Regulations for the private road to vary from the required 24 foot paved width to a 20 foot compacted all weather surface that includes a 12 foot paved surface. The Office of Planning and Grants recommends approval of a variance to a 20 foot paved surface width, based on the findings of fact set forth in the staff report.

Commissioner Hart stated she could not see three lots on the plan.

Nancy Heil explained that the third lot is not part of this subdivision, it is a separate house that has access from the same driveway.

Gilbert Larson, Druyvestein, Johnson & Anderson, Inc., developer's representative, was present, as was the applicant, Lelan Rufus. With respect to the driveway access, he stated it was agreed to have a narrower road width and narrower right of way, but would request consideration to allow it to continue to be a driveway instead of making it a road. One of the key reasons for this is that the owner to the west is not included in this subdivision and both these homes have existed for quite some time. By requiring the driveway to become a road, it would necessitate naming a new street and changing the addresses for these two existing homes. Especially in the case of the third party not involved in this subdivision, it would impose an undue hardship. Both homes are currently listed with a Gharrett Avenue address. He also requested consideration regarding the width of the driveway from Gharrett to the first home. Mr. Rufus and his neighbor have put in a ditch with culverts that goes along the southern boundary of this road. It could be paved to 16 feet with a 2 foot shoulder on each side of compacted gravel material so it would meet the fire department standards, which would allow use of the existing drainage, which works well. There is some concern about drainage off Meadowlark Court, which will be investigated, but those are off-site concerns. He asked the Commissioners to allow continuation of the driveway designation and allow the pavement width to be 16 feet with 2 foot shoulders.

Commissioner Kennedy asked if there were any physical differences between the designation?

Gilbert Larson stated he did not know of any physical differences, either way it would be a 30 foot easement and the standards for construction would be the same.

Nancy Heil stated she was not aware of any differences, it is whether it is called a driveway or a roadway.

Horace Brown stated it has been the Surveyors practice whenever there have been three or more residences on a driveway, it had to be a named road and the houses had to be addressed from that named road. This is a county-wide policy, but the Commissioners may grant a variance.

Nancy Heil asked if there were any differences regarding speed limits or driving practices between a private driveway and a private roadway?

Horace Brown stated there were no differences as far as the county was concerned because it was private and they did not have jurisdiction.

Commissioner Kennedy asked Gilbert Larson about road width, he was agreeable to paving 16 feet with 4 feet of compacted shoulders, what would be the difference to paving the entire 20 feet?

Gilbert Larson stated the difference was running asphalt to the end of the cut would eliminate any shoulders and could damage the culverts.

Commissioner Kennedy asked about church access?

Nancy Heil and Gilbert Larson stated it exists off Gharrett, about 100 feet south of this driveway.

Commissioner Kennedy asked if there was church access from this private driveway?

Gilbert Larson stated the church has no access to or from this driveway.

Nancy Heil stated the area where the driveway exists is more than an easement, it is owned by Mr. Rufus, he has a "flag" shaped lot.

Gilbert Larson stated there was a berm along the southern boundary of the driveway and there was no church access at all. The church access is off Gharrett. The berm was marginally landscaped.

Commissioner Hart asked about emergency response and how that could be accomplished with three homes off this driveway?

Gilbert Larson and Nancy Heil stated the addresses for the existing dwellings are posted on Gharrett by their respective mailboxes, so there would be a way for emergency vehicles to respond. It would be 300 feet or more down the driveway.

Chairman Evans asked if there was a possibility of naming the road Gharrett Lane, but leaving the Lane off, so as to not change the existing address?

Horace Brown stated there was a specific way of addressing which would require new numbering and possibly an east/west designation, it would not be that simple.

Commissioner Hart asked about the property west of this site, was it developable, with regard to what to name the street?

Nancy Heil stated there was one house on the adjacent property now. All of the property in the area is zoned in such a way that it could be further divided and still meet zoning requirements.

Commissioner Hart was wondering if this road could be connected with another subdivision and become a through road?

Chairman Evans stated there was a steep drop off into Miller Creek, it was doubtful a road could go through.

Gilbert Larson stated he did not know the exact slope but it was fairly steep.

Nancy Heil stated it would be impractical because of topography for this road to ever be extended to meet Miller Creek Road.

Horace Brown stated the purpose of requiring a road name where there are three or more homes is to make it safer so 911 and emergency response is possible.

Commissioner Kennedy stated he was not a pavement fan and there was a way to find an alternative that works better, he would support 16 feet of pavement with 2 foot shoulders on either side. There has been much discussion about the three lots triggering a road and he supported the staff denial of this variance.

Chairman Evans asked for public comment.

Amy Clawson, 2625 Bonnie Court, mentioned a few concerns about this subdivision. The first concern was regarding the driveway which runs between her house and the church. There are a number of children who cross this driveway to board and exit school buses. The church has a playground which children use and access is also across this driveway. The width of the driveway was also a concern for her. Currently when two cars try to pass on this driveway, one of them has to pull off to the side. Even though the road will be private, without a speed limit of some kind, it could be dangerous.

Commissioner Hart asked where the children board and exit the school buses and what happens when two cars meet?

Amy Clawson stated the children board the school bus by the water tower and unload in front of the church. When two cars meet, one car has to pull off to one side. She has experienced a car pulling into her yard, approximately 12 feet from her bedroom window.

Chairman Evans asked if the 16 foot roadway with 2 foot shoulders on each side would alleviate this problem.

Amy Clawson stated if there was 20 feet, it would indicate a road was there with enough room to pass without pulling into other people's yards.

Commissioner Hart asked if the road was well defined or was it just tracks?

Amy Clawson stated they mow the edge of the road so it looks green like their lawn, then there is compacted gravel which looks like a road. At some points the road seems narrower because of the drainage ditch. It may cause problems discerning the road.

Commissioner Kennedy stated these problems probably weighed somewhat in staff's decision. It has also changed his mind about road width.

Commissioner Hart stated she was in favor of both denials.

Nancy Heil stated the fire department would work with a 20 foot width as long as the road surface was suitable. She did not know if a 16 foot paved surface with 2 foot compacted gravel shoulders would meet the intent of defining where the road surface is and still allow the applicant to retain the drainage system. It was unclear what would happen to the drainage system with the full paved 20 foot surface.

Gilbert Larson stated a 16 foot paved width with 2 foot shoulders would not impact the drainage ditch. Shoulders beyond the asphalt are necessary otherwise the drainage ditch would erode under the asphalt.

Commissioner Kennedy stated there was a design solution that would retain the drainage and achieve a 20 foot roadway, it would need to be solved.

Commissioner Hart suggested Mrs. Clawson not mow past the end of her yard to improve road edge definition, maybe even use rocks to define the edge.

Chairman Evans stated the rocks could lead to a liability problem and should probably not be used.

There being no further comments, the public comment section was closed.

Commissioner Kennedy stated people trespassing on other's property to pass on this driveway was inappropriate. There needs to be sufficient width for cars to pass. He felt 16 feet was marginal and suggested 18 feet of paved surface with minor shoulders, which would support the asphalt and would not impede the drainage.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, based on the finding of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners deny the variance request from Section 3-2(1)(D)(1) of the Missoula County Subdivision Regulations that states that a private access lane that serves three or more lots shall be considered a private road, based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2 of the Missoula County Subdivision Regulations for the private road serving the dwelling units to vary from the required 60 foot right of way to a 30 foot right of way, based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners deny the variance request from Section 3-2 of the Missoula County Subdivision Regulations for the private road to vary from the required 24 foot paved width to a 20 foot compacted all weather surface that includes a 12 foot paved surface; and that the Board of County Commissioners approve a variance to an 18 foot paved surface width. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Rufus Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, with the amendment to an 18 foot paved road width in Condition 1 as listed below. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

1. The private road shall be paved to an 18 foot width to the point where it serves only 2 two lots. The final plat shall show the location of turnarounds for emergency vehicles. Road plans shall be approved by the County Surveyor and Missoula Rural Fire Department prior to plat filing. The road shall be named, subject to County Surveyor approval, prior to plat filing. *Subdivision Regulations 3-2 and County Surveyor, City Engineer, and Missoula Rural Fire Department recommendations.*
2. A maintenance agreement shall be developed, subject to County Attorney approval, for the private road serving both lots prior to plat filing. *Subdivision Regulations Article 3-2(2)(H) and staff recommendation.*
3. The applicant shall request that the County Surveyor's office evaluate the need for road or traffic signs on the private road. Any signage requirements shall be met prior to plat filing. *Subdivision Regulations Article 3-2(2)(F) and staff recommendation.*
4. 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 improvements to Gharrett Avenue, 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 City Engineer recommendation.*

5. If connection to city sewer is not required, 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 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, Health Department recommendation.*

6. Drainage plans for the subdivision shall be reviewed by the City Engineer. Review comments shall be forwarded to the County Surveyor prior to plat filing. The plat shall include a statement by the consulting engineer certifying that the drainage design will effectively retain any additional drainage that results from the subdivision on site or release it a manner which will not substantially increase the peak run-off normally present before the subdivision. A statement on the face of the plat shall also alert lot owners to the absence of drainage facilities within Gharrett Avenue and Meadowlark Court that could pose a threat to adjacent properties in the event of an intense storm. *Subdivision Regulations 3-4 and City Engineer recommendation.*

Consideration of and Decision on - Van Ostrand Subdivision Lot 2 (4 lots) - Off Mormon Creek Road in Lolo
(Continued from September 23, 1998)

Chairman Evans stated the Board had previously heard this subdivision but decision was delayed for one month to allow research into possible historical significance of the site.

Nancy Heil, Office of Planning and Grants, gave the update.

This subdivision was first brought to the Commissioners on September 23, 1998, and the applicant, Thomas Mercer, offered to request an extension to allow archeological surveys. She spoke with Nancy Maxson who is coordinating the survey work, and on the Van Ostrand property they have discovered approximately 14 teepee rings. Magnetometry surveys are ongoing but metal detection has not progressed due to the knapweed. The society has applied to extend National Historic Landmark status on the Van Ostrand property and the Duke and Duchess property approved in September. Nancy Maxson felt there was significance to the site beyond the Lewis and Clark activities, there are cultural resources important to the Salish tribes. Tim Hall is coordinating a meeting in Lolo on November 5, 1998, for all interested parties regarding the historic significance of this site. The applicant is requesting the Commissioners act on this proposal today. The surveys are still ongoing, and in consultation with the County Attorney's Office, there is nothing under subdivision regulations to allow this to be delayed any further.

Ron Ewart, Eli & Associates, developer's representative, was present, as was Kevin Mytty of Shelter West, representing the owner, Tom Mercer. He stated the land owner has had communications with the Traveler's Rest Chapter of the Lewis and Clark Trail Heritage Foundation and the prior owner of the property, and he is willing to allow them to continue the archeological assessment. There is also a plan to possibly let the Lewis and Clark folks acquire the property. They would, however, like to see an action on the proposal today. Negotiations with the Traveler's Rest Chapter of the Lewis and Clark Trail Heritage Foundation are ongoing.

Chairman Evans stated the public comment section was left open from the previous meeting and asked for additional public comment.

Kevin Mytty, Shelter West, stated he had been in contact with the Traveler's Rest people. He would like to go ahead and have the subdivision approved, however, he will continue to work with the Traveler's Rest group regarding the site. He was unsure of their resources or abilities, but if the site is indeed historic and they want to acquire the property, he would not stand in the way of that happening. As far as the site being impacted, there are currently two houses out there already. He will continue to work with the Traveler's Rest group, but would like approval for the subdivision in the event the group is unable to acquire the land.

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

Commissioner Hart remembered that this property was not directly on the historic site, but adjacent to it.

Nancy Heil stated the site initially identified as Traveler's Rest is the Deschamps property to the north. Nancy Maxson had said based on their recent investigation, they are seeking to extend landmark status to the south and west of the Deschamps property. Duke and Duchess was a mobile home park approved in September, this development would be four individual lots.

Kevin Mytty stated the type of home had not yet been determined, but the land would be sold as 4 individual 1 acre lots. Even if mobile or manufactured homes were installed, they would be on permanent foundations. The Deschamps property is on a bench to the north and east of this property. There is some uncertainty as to where the actual Traveler's Rest site was located, it would seem logical that a permanent Indian campground would have been on the bench to avoid flooding.

Nancy Heil stated the course of the creek has changed over the last 200 years as well. She added the Traveler's Rest group is essentially a small group of active volunteers who have an interest. They do not have the resources to manage a large piece of property, they are actively seeking some public or other agency that would take over the management/administration of the land if they were able to acquire it. Also, right now the Park Service cannot purchase, buy or administer any new land, excluding them from this site. There is still quite a bit of uncertainty as to what to do with the land, possibly to include an interpretive center, as well as the archeological information gathering on the site. Nancy Maxson has been in contact with Marsha Cross of the Tribes to find out what their interest is as well.

Commissioner Hart appreciated the cooperation of the developer in allowing the archeological studies.

Commissioner Kennedy stated one way to enhance this property would be to approve the subdivision and allow a conservation easement and sell the residual to interested parties.

Kevin Mytty stated that was their intent, but it could not be a condition of subdivision approval.

Commissioner Hart moved that the Board of County Commissioners approve the variance request for Section 3-2(5) 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; and approve the variance request from Section 3-2 of the Missoula County Subdivision Regulations for Onyx Drive to vary from the required 24 foot width to the existing condition, based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion passed on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Van Ostrand Lot 2 Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion passed on a vote of 3-0.

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Mormon Creek Road and Onyx Drive, including dust abatement and

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 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 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 Articles 3-1(1)(D), 3-7(2) and Health Department and staff recommendation.*

3. The applicant 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 plat filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
4. The applicant shall construct a turnaround area serving Onyx Drive in a location and design to be approved by the County Surveyor and Missoula Rural Fire District. Plans shall be approved prior to plat filing. *Subdivision Regulations 3-2(10)(D) and County Surveyor and Missoula Rural Fire District recommendation.*
5. The final plat shall show the correct locations of the Onyx Drive and Jade Lane rights-of-way as recorded in Book 23 Micro Page 1544 and Book 51 Micro Pages 1351-1352, subject to County Surveyor review and approval. *Subdivision Regulations 5-3(4), 5-2(3)(E) and County Surveyor recommendation.*
6. The applicant shall identify and contact the ditch company responsible for the ditch across proposed Lot 2A. If recommended by the ditch company, the final plat shall indicate how legal and physical access to irrigation ditches shall be provided to the lots created by the subdivision. *Subdivision Regulations 4-1(11)(A) and staff recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:40 p.m.

THURSDAY, OCTOBER 22, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office October 22 and 23.

ADMINISTRATIVE MEETING

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

Budget Agreement - The Commissioners approved a Budget Agreement with MSU Extension Service for funding for Extension Office personnel, operations, and capital in the amount of \$312,001.00. The Agreement was returned to Jerry Marks in Extension for further signatures and handling.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Missoula Public Library for purchase of parent education materials funded by DPHHS Partnership to Strengthen Families grant funds. Value of the Agreement is \$1,000.00. Term of the Agreement is July 1, 1998 through June 30, 1999.

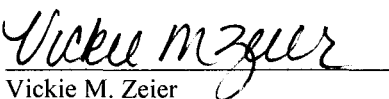
Other items included:

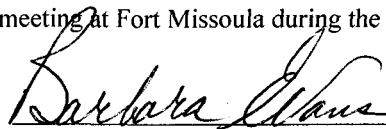
- 1) The Commissioners approved the Final Draft of the Lolo Wastewater Facilities Plan and authorized its submittal to DEQ for public hearing.

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

FRIDAY, OCTOBER 23, 1998

The Board of County Commissioners did not meet in regular session; Commissioner Evans was out of the office all day, and Commissioner Hart attended a Mental Health Board meeting at Fort Missoula during the day.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, OCTOBER 26, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was on vacation October 26 and 27.

Plat and Agreement - The Commissioners signed the plat and agreement for South Horseback Ridge, a 2 lot subdivision located in the SE1/4 of Section 28, T13N R20W, PMM, Missoula County, with the owners of record being FJ Gies III, and Douglas C. and Stephanie R. Smith.

Communications Use Lease - Chairman Evans signed a Communications Use Lease with the US Forest Service, Department of Agriculture, for a communication site on Point 118. The Lease shall terminate at one minute after

midnight on December 31, 2006. The Lease was returned to Teresa Emery in Communications for further signatures and handling.

Subordinate Deed of Trust and Deed Restriction Agreement - Chairman Evans signed two Subordinate Deeds of Trust and Deed Restriction Agreements:

1. with Janice V. Salomon, for property located at 2106 Wyoming, Missoula, MT 59801. The Borrower owes Lender the principal sum of \$3,987.00, loaned as HOME funds for downpayment, closing costs, or mortgage reduction assistance.
2. with Rachel J. Pace, for property located at 2108 Wyoming, Missoula, MT 59801. The Borrower owes Lender the principal sum of \$4,345.00, loaned as HOME funds for downpayment, closing costs, or mortgage reduction assistance.

Both were returned to Cindy Wulfekuhle in OPG for further handling.

TUESDAY, OCTOBER 27, 1998

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

Audit List -- Commissioners Evans and Hart signed the Audit List, dated October 28, 1998, pages 3-44, with a grand total of \$583,158.75. The Audit List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Memorandums of Agreement - The Commissioners signed three Memorandums of Agreement:

1. with the Salvation Army, for basic needs assistance for indigent residents of Missoula County. Value of the Agreement is \$15,000.00. Duration of the Agreement is July 1, 1998 through June 30, 1999.
2. with Child Care Resources, Inc. to provide respite care for families participating in the Partnership to Strengthen Families Project, and activities for children whose parents are attending classes provided by the Child and Family Resource Council. Value of the Agreement is \$27,791.00. Duration of the Agreement is October 1, 1998 through September 30, 1999.
3. with the Refugee Assistance Corporation, to do outreach work with the Russian and Hmong communities in Missoula. Value of the Agreement is up to \$23,743.00. Duration of the Agreement is July 1, 1998 through December 31, 1999, and is contingent upon Missoula County's receipt of Domestic Violence Enforcement Grant Program Funds from the Violence Against Women Grants Office.

Subordinate Deed of Trust and Deed Restriction Agreement - Chairman Evans signed a Subordinate Deed of Trust and Deed Restriction Agreement with Misti M. Stewart, for property located at #1 Catrina Lane. Borrower owes Lender the principal sum of \$4,200.00, loaned as HOME funds for downpayment, closing costs, or mortgage reduction assistance. The documents were returned to Cindy Wulfekuhle in OPG for further handling.

Resolution - The Commissioners signed Resolution No. 98-081, granting revocation of agricultural use covenant for Roy and Kathleen Calcagno, for Tracts 6 and 7, COS 1509, so they may relocate the boundaries between the properties.

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

WEDNESDAY, OCTOBER 28, 1998

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

Motion to Approve - Chairman Evans signed a Motion to Approve Awarding of the Construction Contract for the Sunset West Water Improvement Project to AAA Construction of Missoula, in the amount of \$293,950.81.

PUBLIC MEETING - October 28, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Michael Kennedy, Commissioner Fern Hart, County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$583,158.75. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Hearing - Family Transfer (Smith)

Kathy Smith, Paralegal, County Attorney's Office, gave the staff report.

This is a consideration of a request to create a family transfer parcel for COS 3364 located in Section 19, T16N, R22W, for Marion R. and Connie M. Smith.

Marion Smith has submitted a request to create a parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 20.08 acres in size and located in the Ninemile area off Butler Creek Road (the "other" Butler Creek Road). The parcel is surrounded by National Forest land and intersected at the south end of the parcel by Butler Creek Road. Mr. Smith wishes to create a parcel south of the road, using the road as a boundary, for transfer to his adult son, Steven T. Smith.

The history of the parcel is as follows: The parcel is described as an aliquot part and was retraced by request of the Forest Service as shown on COS 3364. Mr. and Mrs. Smith purchased the parcel in 1986.

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

Marion Smith was present and came forward to answer questions.

Commissioner Kennedy stated that under this process, the Board can ask questions that may seem inappropriate, but are allowed to ask them anyway. He stated that the road bisected this parcel and asked how large the parcel was that would be given to his son?

Marion Smith stated it was approximately 3 and 1/2 acres.

Commissioner Kennedy asked what the intention was for the two parcels?

Marion Smith stated he lived on the parcel to the north of the road and his son would like to build on the parcel south of the road.

Commissioner Kennedy asked if the son had plans to do that?

Marion Smith stated that he did not have plans at the current time, he lives in Washington state. He would be moving back to Montana late this year and may look at building a house next spring.

Commissioner Kennedy asked if Butler Creek Road was a Forest Service road?

Marion Smith stated it was a Forest Service road and they had an easement through the property.

Commissioner Kennedy asked Horace Brown if the county had an agreement for maintenance on this road, or if it was strictly Forest Service maintenance?

Horace Brown stated it was strictly Forest Service.

Commissioner Kennedy told Mr. Smith that the county would have no involvement with road maintenance.

Marion Smith stated the Forest Service does maintenance in the summer but does not in the winter, they do their own plowing to Ninemile Road.

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

Commissioner Kennedy moved that the Board of County Commissioners approve the request to create a family transfer parcel for COS 3364 located in Section 19, T16N, R22W, for Marion R. and Connie M. Smith, for transfer to their son, Steven T. Smith, in that it does not appear to be an attempt to evade Subdivision Regulations. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated Mr. Smith would receive an approval letter from the Commissioners, but this does not guarantee septic approval, road maintenance, dust abatement, etc.

Consideration of and Decision On - Big Waters Ranch (3 lots) - Clearwater River area (Continued from October 21, 1998)

Dave Loomis, Office Planning and Grants, gave an update.

The applicant, Wildland LLC, is requesting approval to split a 160 acre parcel into 3 lots. Two lots would be 70 acres in size with frontage on the Clearwater River, the other lot would be 20 acres adjacent to Salmon Lake. The property is located 5-1/2 miles up Blanchard Creek Road to Lost Prairie Road to Big Waters Road from the intersection with State Highway 200.

The staff's recommendation for approval of the variance requests and the subdivision as stated at the previous meeting still stand.

Commissioner Hart asked Dick Ainsworth about the "dot-dash-dash-dash" line on the map, what did that represent.

Dick Ainsworth, developer's representative, was present, as was the applicant, Wes Wills, representing Wildlands, LLC. He stated it was probably a power line, a high voltage transmission line.

Commissioner Hart asked if there was any other exit from this property in case of a forest fire?

Dick Ainsworth, stated there were no roads as the river was at the back side of the property, however, if the river was low enough it could be crossed in an emergency.

Commissioner Kennedy asked if there was anyone in the audience who was going to testify today. No one indicated they were going to testify.

Colleen Dowdall pointed out that this was not a public hearing and did not require public notice, but it was not on the agenda last week for purposes of the open meeting policy that the Commissioners have, where everything that is going to be on the agenda is published ahead of time so people who have an interest may attend.

Commissioner Kennedy stated that in the original staff report, the second condition covered dust abatement. That language was changed after discussions with staff and the applicant. The condition as now written is unacceptable because it doesn't do anything in regard to dust abatement. It is still an issue, because there is a request to vary from the Subdivision Regulations for pavement and it is recommended to approve that variance. At the same time, one of the reasons for pavement is dust abatement and it seemed a reasonable tradeoff to him if a variance is approved from paving requirements, then there should be the latitude to impose a dust abatement condition.

Colleen Dowdall stated the issue was more that dust abatement is ongoing maintenance and there is no way in the Subdivision Regulations to compel ongoing maintenance on a private road, except through the covenants. For many of the standards that are imposed for performance after the plat is filed, the only way to compel that is through the covenants and the Homeowners Association. The first time this was discussed at length was Lamoreaux Lane. She thought there was an implication that she had never said this before and she wanted the Commissioners to know it had been discussed at length prior to this subdivision. If paving is required, it can be compelled by requiring a bond be posted or the work done before the plat is filed. For ongoing dust abatement, it has to be in the covenants, and in the regulations there is a provision that says the Commissioners may require that some things in the covenants not be changed without their permission. Because there are no zoning regulations in the county, as much of this as possible has tried to be put into the regulations, using the only enforcement tool available.

Commissioner Kennedy understood what Colleen Dowdall was saying. The issue is whether or not a way can be developed to honor what the staff has determined to be a reasonable condition, to require dust abatement as quid pro quo for granting the variance for paving requirements. It seems that since this is a private road and there is no SID allowance, the development agreement is the place where not only paving can be required, but dust abatement also. It would seem like that can be done.

Colleen Dowdall stated paving can be required in the approval of the subdivision because there is a way to compel that it happens. If we also required that there be ongoing maintenance of the roadway, the only way to compel that would be in the covenants, which is a private development agreement among the people who own the property. It has been written into regulations the ability of the Commissioners to become a party to that. She would also caution the decision isn't whether the Board honor recommendations that staff thinks are reasonable, it is whether they believe it is something that is supported by both the findings of fact and conclusions of law. The staff has given their best recommendation, but it is not a matter of choosing her opinions, staff opinions, or developers opinions, it is the Board making independent findings and conclusions.

Commissioner Kennedy stated his inference was that Colleen Dowdall was saying that she did not feel that a development agreement could be structured in such a way as to take care of ongoing dust abatement.

Colleen Dowdall stated she was not saying that, she was saying a development agreement, which is a private agreement, could be in the covenants or could be a separate agreement. All the covenants are a contract, a development agreement of sorts. She is saying the dust abatement can be included in the agreement if they wish, and if it is done there and the county is to enforce it, then the County has to become a party to that agreement. If they do not become a party to it, then the homeowners are self-enforcing. Either way is acceptable to her, it is the Commissioners' choice.

Commissioner Hart asked which road in specific this discussion was regarding? Was it Lost Prairie Road?

Dick Ainsworth stated the road in question is Big Waters Ranch Road, the internal road through the subdivision.

Dave Loomis stated that was correct, it was Big Waters Ranch Road. In the covenants, Section 9, Page 10, Subsections A and E, Subsection A speaks strictly to Big Waters Ranch Road, and Subsection E speaks to the ability of the association to make agreements across the board for road maintenance. It does not say they have to make such agreements, it gives them the authority to make other agreements which could deal with Lost Prairie Road. That is how both he and Colleen Dowdall agreed it gave the association authority to do both activities, dust abatement on-site and off-site.

Commissioner Hart stated this could be an issue, but there are only 3 dwellings, miles apart, and are probably seasonal. A bed and breakfast was a possibility which could lead to more traffic.

Dick Ainsworth stated his client did not have any problem with participating in a dust abatement program on the road, his concern is the fairness of the plan as that road will serve other potential users as well, including Clearwater Cove, Legendary Lots and some Plum Creek land. The owner did not feel it was fair for him to do all the dust abatement for this road when it is also used by others. There is an agreement with Plum Creek and Clearwater Cove to share in the maintenance of all of the roads out to the highway. It is possible that dust abatement could be included in the agreement if the other parties were agreeable to it, but there is a lot of road.

Chairman Evans asked if it would be possible to put a statement in the covenants such as if and when all the homeowners in the area decide to do dust abatement, that the covenants would call on the owners of these three lots to participate.

Colleen Dowdall stated the provision as rewritten essentially says just that. There were two places where changes were recommended, one was in the covenants, to say dust abatement was part of the road maintenance. The other was that the Homeowners Association could enter into agreements with other parties for maintenance or improvements.

Knowing the road maintenance agreement was already in existence with Plum Creek and others that did not address dust abatement directly, this would give the Homeowners Association the authority to negotiate to bind all the owners.

Chairman Evans stated the language in the first draft of the staff report was much more acceptable, however, it was not the one that appeared in the final staff report.

Commissioner Kennedy stated this was their single chance to do anything with respect to dust abatement. Regardless of what is in the covenants, there is nothing else that will happen in the future to trigger dust abatement.

Chairman Evans stated this is a remote area and she did not feel it was fair to require this owner to do all the maintenance since others use the road as well.

Dick Ainsworth stated the language in the second report was changed to include thoughts by Colleen Dowdall and Dave Loomis that would better address the concern. Part of the problem with the language in the first draft was that it called for the owner to develop a maintenance agreement and one already exists.

Commissioner Hart asked if dust abatement could be put in the existing agreement.

Dick Ainsworth stated it was not included, the agreement was already in place when the land was purchased.

Commissioner Hart asked if Plum Creek was included in the existing agreement because of logging.

Dick Ainsworth stated that it was doubtful if Plum Creek would ever log through on Big Waters Ranch Road.

Colleen Dowdall stated at the time the agreement was created, Plum Creek was in the process of transferring some of its property. The maintenance agreement was executed by all who would be a party to using the road. It was intended for residential use. The agreement states whoever uses the road, and causes a need for repairs, shall make the repairs. It also mentions weed control along the road, it did not envision dust abatement.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations for Big Waters Ranch Road to be less than the 24 feet required width and to not be paved; and approve the variance request from Article 3-2(5)(A) for sidewalks and pedestrian walkways to be provided in all subdivisions. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Big Waters Ranch Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Blanchard 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 depicted herein.” *Subdivision Regulations Article 3-2.*

2. Section 9(a) and (e) of Article VIII of the Covenants shall be amended to include dust abatement of Big Waters Ranch Road as within the authority of the Board to implement. *Subdivision Regulations Article 3-2(1)(G) & (H), Health Department.*
3. The applicant shall follow the recommendations of the Greenough Potomac FSA on driveways, signs, fuel management, and impact fees. An impact fee of \$100 per residential unit shall be paid to the FSA prior to filing of the final plat. *Subdivision Regulation Article 3-7(1).*
4. The Riparian Resource Management Plan shall to be amended to include the following:
 - a. A field survey and identification by a qualified professional of all riparian areas within alternate building site 1 for all three lots, including non-ravine areas shall be completed, any site needing mitigation for potential impacts shall include buffer areas between those riparian areas and any building sites shall be included.
 - b. Revise the proposed low impact use of the area to exclude animal keeping and corrals out of the riparian and buffer area (to be determined elsewhere in the Management Plan).
 - c. Revise the section on planned mitigation of impacts to include a riparian buffer and the applicants suggested Storm Drainage Requirements, Straw Bale Barrier and Filter Fabric Fence Details for all alternate site 1 building sites. *Subdivision Regulations 3-13(3).*
5. The covenants shall be amended to:
 - a. Article IV, Section 2 shall be amended to include limiting of any buildings and structures outside of any riparian or riparian buffer area identified in the approved Riparian Management Plan.
 - b. Article IV, Section 3 shall be amended to restrict all owners stock to within fenced areas outside the identified riparian and buffer zones in the approved Riparian Management Plan.
 - c. Article IV, Section 9 shall be amended to limit fencing to outside the identified riparian or buffer zones identified in the approved Riparian Management Plan. *Subdivision Regulations Articles 3-13 and 5-1(5).*
6. The sections of the covenants related to wildlife, driveway standards, road maintenance, and the riparian resource management plan shall not be amended or deleted without governing body approval. Such statement shall be included in the covenants and reviewed by OPG prior to plat filing. *Subdivision Regulations Articles 3-1(1)(B), 3-2(6), 3-2(1)(I), 3-13, and 5-1(5)*

7. The applicant shall designate another alternate site 1 for Lot 1 that does not encroach upon riparian vegetation and slopes in excess of 25%. *Subdivision Regulations Article 3-1(2), 3-13*

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

THURSDAY, OCTOBER 29, 1998

The Board of County Commissioners attended the MACo District 10 and 11 Counties meeting in Polson. In the evening, the Commissioners were volunteer servers at the RSVP Recognition Program at Hunter's Glen.

Indemnity Bond -- Acting Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Christine Fogerty as principal for Warrant #53846 issued 10/20/98 on the Missoula County MCPS Payroll Fund in the amount of \$2,036.47 now unable to be found.

FRIDAY, OCTOBER 30, 1998

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

Application for Issuance of Replacement Warrant -- Chairman Evans approved an Application for Issuance of Replacement Warrant naming Joe Pablo as principal for Warrant #337393, issued 10/21/98 on the Missoula County 2130 Fund in the amount of \$760.00, not received in the mail.

Memorandum of Agreement - Chairman Evans signed a Memorandum of Agreement between Child Care Resources and the Missoula City-County Health Department for public health nursing participation in training and consultation for child care providers. Value of the Agreement is \$16,500.00. Duration of the Agreement is through June 30, 1999.

Resolution - Chairman Evans signed Resolution No. 98-082, a resolution relating to Rural Special Improvement District No. 8458; creating special funds and accounts and defining the terms and manner of payment of a \$291,000.00 Rural Special Improvement District No. 8458 bond (DNRC Drinking Water Revolving Loan Program). She also signed related documents: Bond, Certificate and Receipt of County Treasurer, Certificate Showing Due Execution of Construction Contract, Officers' Certificate, Rebate Certificate.

Notice of Public Hearing - Chairman Evans signed a Notice of Public Hearing for the Lolo Sewer and Water District, setting two public hearings for November 17, 1998:

1. At 7:00 pm the Board of County Commissioners will conduct a hearing on the final draft of the Lolo Wastewater Facilities Plan. This plan describes improvements and expansion options for the wastewater treatment plant. The plan recommends that, as a minimum, \$2,283,000.00 of improvements are needed to upgrade the existing plant.
2. At approximately 8:30 pm, following the above hearing, the Board of County Commissioners will conduct a second public hearing on a proposed increase in the development fee collected when new lots are developed and connected to the sewer and water systems. The proposal is to increase the fee from \$852.00 to \$1,381.00 for each residential equivalent connection.

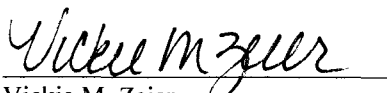
Extension for Conservation of Riparian Areas - Chairman Evans signed an Extension of the Department of Natural Resources and Conservation Grant, extending the termination date to October 31, 1999. The project has approximately \$50,000.00 remaining to assist private landowners and land trusts in establishing conservation easements. The Extension was returned to Tim Hall in OPG for further signatures and handling.

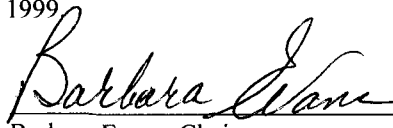
Modification - Chairman Evans signed Modification No. 3 of Agreement 270054 with the Montana Department of Environmental Quality, extending the completion date for a draft facility plan for construction of municipal wastewater facilities to October 23, 1998, and extending the completion date for the final plan to March 1, 1999. The Modification was forwarded to DEQ in Helena.

Agreement - The Commissioners signed an Agreement between Blue Mountain Clinic and the Missoula County Health Department for the Local Breast and Cervical Health Projects and Qualified Primary Care Provider, extending the prior contract to a period beginning July 1, 1998 through July 30, 1999.

Agreement - The Commissioners signed an Agreement with Blue Mountain Clinic to provide colposcopy services for the Montana Breast and Cervical Health Program in Missoula County. Duration of the Agreement is July 1, 1998 through June 30, 1999.

Agreement - The Commissioners signed an Agreement with Community Medical Center to provide mammography services for the Montana Breast and Cervical Health program in Missoula County. The Agreement extends the period of service to a period beginning July 1, 1998 through June 30, 1999.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, NOVEMBER 2, 1998

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

Monthly Report -- Chairman Evans examined, approved, and ordered signed the Monthly Reconciliation Report for Justice Court 1, John Odlin, and Justice Court 2, Michael Jaworsky, for the month ending October 31, 1998.

ADMINISTRATIVE MEETING

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

Contract - The Commissioners signed a Contract with Dick Marick and Dale Brown, to supply sanding material for the Lolo area. Term of the Contract is September 29, 1998 through July 1, 1999. Value of the Contract is \$18,500.00.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Turning Point for project evaluation, service learning activities, and project coordinator's salary at CS Porter Middle School - Board of Crime Control Grant. Value of the Agreement is \$20,788.00. Duration of the Agreement is August 1, 1998 through June 30, 1999.

Resolution - The Commissioners signed Resolution No. 98-083, a resolution opposing DEQ's proposed legislation regarding septic systems in subdivisions. The Resolution was adopted by the Missoula City-County Health Board on October 15, 1998.

Extension Letter - The Commissioners approved a 90 day extension for final plat submittal for Richter Lots Summary Subdivision, making the new filing deadline January 29, 1999, with a letter to Ron Ewart, Eli & Associates.

Notice of Award and Agreement Form - Chairman Evans signed a Notice of Award and Agreement Form for AAA Construction of Missoula, awarding them the bid for the Sunset West Water System Improvement Project. Total bid was \$293,950.81. The documents were returned to Cindy Wulfekuhle in OPG for further signatures and handling. The minutes of the Administrative Meeting are on file in the Commissioners Office.

Professional Services Contract - The Commissioners awarded a bid and signed a Professional Services Contract with Higgins Consulting Engineers for duties involved with enforcement of oxygenated fuel program regulations, gasoline fueling facility inspections and gasoline storage tank sampling. Performance schedule is November 2, 1998 through February 26, 1999. Compensation shall not exceed \$2,499.00. The Contract was returned to the Health Department for further signatures and handling.

TUESDAY, NOVEMBER 3, 1998

The Courthouse was closed for General Election Day.

WEDNESDAY, NOVEMBER 4, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was in Great Falls attending a Growth Management Montana Conference November 4-6.

Resolution - The Commissioners signed Resolution No. 98-086, replacing Resolution Nos. 89-084, 90-047, and 93-031, adopting amendments to the County Animal Ordinance.

PUBLIC MEETING - November 4, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Fern Hart, Clerk and Recorder/Treasurer Vickie Zeier, Deputy County Attorney Colleen Dowdall, and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$460,886.86. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Reconsideration of - River Ranch II Subdivision (4 lots) - West of Frenchtown

Nancy Heil, Office of Planning and Grants, gave the staff report.

In the River Ranch II subdivision, the applicant, B.J. Lefler, proposed to divide a 102.74 acre parcel into four 4 acre lots and one 86.74 acre lot. (Portions of the property had undergone two previous subdivision reviews in 1996 as River Ranch I). The Board of County Commissioners approved the River Ranch II subdivision on August 12, 1998 with 8 conditions. Condition 1 required that Lots 1, 2, and 3 be removed from the plat. This condition was based on a finding that the original proposal and the offered mitigation did not comply with the Comprehensive Plan. This finding was based on concerns about residential density and the agricultural viability of small tracts of land. The applicant subsequently appealed the imposition of Condition 1 in District Court. The applicant also requested a

reconsideration of the subdivision with an amendment to Condition 1. In this proposal, Lots 2 and 3 would be combined, resulting in two 4 acre lots, one 8 acre lot and one 86.74 acre lot.

After a review of the amended proposal, staff has prepared the following discussion of the reconsideration, as well as findings of fact and amendments to the conditions that the Commissioners may wish to consider adopting.

Discussion of Previous Findings

Compliance of the River Ranch II proposal with the Comprehensive Plan was the primary basis for the imposition of Condition 1. The property is within an area designated Open and Resource, one dwelling unit per 40 acres in the 1975 Comprehensive Plan. As noted in the original River Ranch II findings, the property was designated Open and Resource due to agricultural land, riparian resources, and proximity to services.

Density Analysis

The first River Ranch I proposal was denied based on incompatibility with the 1975 Comprehensive Plan with respect to density and impacts to agricultural lands. A revised River Ranch I proposal was subsequently approved. River Ranch I was approved with an overall density of one dwelling unit per 17 acres, setting aside the best agricultural land for continued production. This is the same acreage that has been proposed for further subdivision in River Ranch II.

The following table summarizes the density of the various proposals on the applicant’s total acreage:

Proposal	# Lots	Acres	Density
River Ranch I - Denied 1996	10 lots	106 acres	1 d.u./10 acres
River Ranch I - Approved 1996	6 lots	106 acres	1 d.u./17 acres
River Ranch II - Proposed 1998	10 lots	129 acres	1 d.u./13 acres
River Ranch II - Approved 1998	7 lots	129 acres	1 d.u./18 acres
River Ranch II - Reconsideration Request 1998	9 lots	129 acres	1 d.u./14 acres

The property south of a bench is within the 100 year floodplain. Density in the developable area north of the bench only is summarized below:

Proposal	# Lots	Acres	Density
River Ranch I - Denied 1996	10 lots	74 acres	1 d.u./7 acres
River Ranch I - Approved 1996	6 lots	74 acres	1 d.u./12 acres
River Ranch II - Proposed 1998	10 lots	74 acres	1 d.u./7 acres
River Ranch II - Approved 1998	7 lots	74 acres	1 d.u./10 acres
River Ranch II - Reconsideration Request 1998	9 lots	74 acres	1 d.u./8 acres

In the River Ranch II consideration, staff recommended retaining a density comparable to that approved on the River Ranch I subdivision.

Agricultural Land

The River Ranch II proposal would potentially have removed 16 acres of land from agricultural production. The applicant proposed to bring additional land into production and to increase production on existing agricultural acreage to offset loss of agricultural land from the subdivision. The soils in the area of the 4 acre lots are classified as Desmet, which are considered Prime Farmland Soils if irrigated. The applicant purchased an additional 23 acres in the floodplain at the southern end of the property to bring into production, with soils classified as Xerofluvents, which are not considered prime agricultural soils. An analysis by NRCS showed that increased production through more intensive management practices could more than offset the loss of yield from the 16 acres involved in the subdivision. The NRCS also noted that if buyers used one acre each for their homestead and outbuildings that there would still be approximately 12 irrigated acres available for hay or forage production. The applicant offered to restrict building to the northern 150 feet of the property to allow maximum preservation of agricultural land. The irrigation system would also be extended to the new lots.

The agricultural analysis and findings were based on the following points:

1. Bringing additional land on lower quality agricultural soils into production does not mitigate the loss of prime agricultural soils.
2. Increase in existing productivity does not mitigate a loss of prime soil. The soil is the resource to be protected. The subdivision approval cannot be tied to productivity on the remainder of the property.
3. The viability of continued production on 3 acre tracts of land is questionable. While it can be argued that there are a variety of possible agricultural uses appropriate for smaller tracts, the original intention of the open and resource designation was to preserve large tracts of agricultural land. Staff concluded that 16 acres of agricultural land would be impacted by the proposal; the applicant argued that only 4 acres of land would be impacted.

Riparian Resources

Roman Creek runs through the southern portion of the property and has been heavily impacted by grazing. The subdivision would not result in further impacts to the creek. Condition 8 of the River Ranch II subdivision approval required that the Riparian Management Plan be amended to address grazing, stock watering, restoration of native species, and flow control structures. Staff and the applicant also discussed other measures that could be taken to enhance the habitat values on the property.

Discussion of Proposed Reconsideration

The applicant has requested a reconsideration of the project with one 8 acre lot, two 4 acre lots, and one 86.74 acre lot, with an amendment of Condition 1.

The density of the reconsideration proposal is somewhat comparable to that previously approved in River Ranch I and II. It is slightly less dense than the original River Ranch II proposal. The larger 8 acre tract allows more potential for agricultural use on the land. Covenants could also encourage the continued viability of agricultural use of the parcels. The applicant had previously offered to restrict building to the northern 150 feet of the lot.

The riparian resource on the property could be greatly enhanced. No specific restoration goals or objectives were required with the River Ranch II approval, since no direct impacts to Roman Creek would have resulted from the subdivision. Both agricultural resources and riparian resources are recognized as important components of the Open and Resource designation for the property. The loss of one resource could arguably be mitigated by the restoration of another resource identified as valuable in the Comprehensive Plan. The County could receive a benefit in terms of riparian resource, while recognizing a potential cost to the agricultural soil resource on other portions of the property. This would require the landowner not only to address the issues stated in River Ranch II Condition 8, but also to design and implement an active restoration plan.

The amended proposal could be found to be in substantial compliance with the goals of the Comprehensive Plan if the agricultural land is protected to the maximum extent possible given the parcel sizes and the riparian resource on the property is enhanced. The following requirements could be used to meet those objectives:

1. That development is restricted to the northern 150 feet of the lots as proposed in the applicant's June 26, 1998 letter.
2. That the applicant develop covenants that encourage the continued agricultural viability of the portions of the parcels not used for residential purposes.
3. That a detailed restoration and management plan for Roman Creek be developed and implemented.

Staff has prepared a possible motion to approve the amendment to Condition 1 of River Ranch II, based on the findings of fact and subject to amended Condition 8, and additional Conditions 10 and 11.

Ron Ewart, Eli & Associates, developer's representative, was present, as was the applicant, B.J. Lefler. He stated that this reconsideration process was based on the provision in the previous approval letter; it allowed options and kept the dialogue open. He felt some agreement with staff could be reached with a recommendation for approval with additional conditions. It was felt the original proposal of 5 lots substantially complied with the 1975 Comprehensive Plan, which is somewhat outdated. With the additional conditions and other subjects addressed, it is felt to be in even more compliance with the Comp Plan. There is subjectivity to be in compliance with a Comp Plan, it is not as clear as zoning. Mr. Lefler plans to stay on this land and continue farming. He has also had several conversations about improving the riparian resources, and has ideas to improve wildlife habitat and agricultural use. A minor change to Condition 10 was suggested, adding "residential" buildings are restricted to the northern 150 feet of Lots 1-3, this would allow for non-residential buildings, such as hay barns, to be built outside the 150 restricted area. If all buildings, residential and non-residential, were restricted to the northern 150 feet, there would not be enough room to accommodate them. Otherwise there were no problems with the conditions as amended.

B.J. Lefler thanked the Commissioners for the opportunity of this reconsideration. Colleen Dowdall and Nancy Heil had worked very hard to reach this new agreement. He appreciated the opportunity and thanked the Commissioners, regardless of the decision today.

Commissioner Hart asked Nancy Heil if changing Condition 10 to include "residential" would make a difference in the clustering that is trying to be achieved?

Nancy Heil stated she had conversations with Tim Hall and Ron Ewart about this question. Staff would encourage that non-residential buildings located on other portions of the parcels be located around the perimeters to allow for farming equipment use. It was recommended that something be added to the covenants that states that agricultural types of buildings are encouraged to be located on the perimeters of the property. Adding the word "residential" would work.

Commissioner Hart asked if this limited agricultural buildings to the perimeter of the 150 foot restricted area?

Nancy Heil stated that was not correct, non-residential buildings should be restricted to the perimeter of the larger lot area. Staff could support restricting residential buildings to the northern 150 feet, and non-residential buildings should be placed in such a manner as to not interfere with haying (agricultural) operations.

Chairman Evans asked for public comment. There being none, the public comment section was closed.

Commissioner Hart stated she appreciated the way B.J. Lefler and Ron Ewart have worked together with staff on this reconsideration. Staff has not made a recommendation, but given the Board an opportunity to make this approval. She stated there were no variances.

Nancy Heil stated that was correct, this is simply a request to amend Condition 1 of the previous approval, with the imposition of an amended condition and some additional conditions.

Commissioner Hart moved that the Board of County Commissioners approve the amendment of Condition 1 of River Ranch II Subdivision approval, as written. Based on that change in Condition 1, there will be an addition in Condition 8, dealing with riparian habitat, and the addition of Conditions 10 and 11, based on the new findings of fact and conclusions of law. Chairman Evans seconded the motion. The motion passed on a vote of 2-0.

CONDITIONS OF SUBDIVISION RECONSIDERATION APPROVAL

1. Lots 3 and 4 shall be combined into one lot. *Subdivision Regulations Article 3-1(1)(C) and staff recommendation.*
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 improvements to Mullan 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 staff recommendation.*
3. The location of the 5 foot gravel walkway along Lefler Lane shall be shown on the plat. *Subdivision Regulations Article 3-2(5) and staff recommendation.*
4. A road maintenance agreement for Lefler Lane shall be developed and approved by the County Attorney approval prior to plat filing. *Subdivision Regulations Article 3-2 and staff recommendation.*
5. 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 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 Article 3-7(2) and staff recommendation.*
6. The developer shall contribute \$100.00 per new lot to the Frenchtown Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District Recommendation.*
7. The following statement shall appear on the plat and in each instrument of conveyance:

“Acceptance of a deed for a lot within this subdivision constitutes the assent of the owner to the creation of an RSID/SID for the maintenance of a park or parks in the Frenchtown-Huson area, defined as the Frenchtown school district, on an equal basis with other properties in the area.” *Subdivision Regulations Article 4-1(12) and staff recommendation.*
8. The Riparian Resource Management Plan shall to be amended to address grazing, stock watering, restoration of native species, and flow control structures. The plan shall be approved by the Office of Planning and Grants prior to plat filing. The riparian plan shall be added to the covenants prior to plat filing. The riparian habitat along Roman Creek shall be enhanced through measures such as: fencing enclosures, revegetation, off-stream stock watering sites, removal of flow control headgates, and creation of buffer zones. A riparian restoration plan shall be developed and shall include site specific habitat goals and objectives; implementation plan and timeline; measurable success criteria, such as percentage of vegetative cover or survival rates; and monitoring plans. The restoration plan shall be reviewed and approved by OPG prior to plat filing. *Subdivision Regulations Article 3-13 and staff recommendation.*
9. Covenants related to wildlife, driveway standards, and the riparian resource management plan shall not be amended or deleted without governing body approval. Such statement shall be included in the covenants prior to plat filing. *Subdivision Regulations Article 3-1(1)(B), 3-2(6), 3-1(1)(1), 3-13 and staff recommendation.*
10. Residential buildings shall be restricted to the northern 150 feet of Lots 1-3. It is recommended that agricultural buildings be placed so that a haying operation could continue or be initiated. The covenants shall be amended to reflect this requirement. *Subdivision Regulations 3-1(1)(C) and staff recommendation.*
11. The covenants shall be amended to encourage the continued agricultural viability of the parcels, through such changes as the inclusion of an intent statement and the listing of agriculture as a permitted use, subject to OPG and County Attorney approval prior to plat filing. *Subdivision Regulations 3-1(1)(C) and staff recommendation.*

SUBDIVISION RECONSIDERATION FINDINGS OF FACT**A. ZONING AND COMPREHENSIVE PLAN COMPLIANCE****Findings of Fact:**

1. The property is unzoned.

Comprehensive Plan Guidelines:

2. The 1975 Missoula County Comprehensive Plan designates Open and Resource land use with a density of 1 dwelling unit per 40 acres. This designation is made to protect areas of important resource production and extraction, to protect areas of natural hazard, and to reserve land for the future where development during the time frame of the plan would be premature and costly. The Plan states that the development of agricultural, recreational and forestry activities with their usual associated uses should be encouraged within these areas.
3. The Plan identifies activity circles in Huson and Frenchtown where development could occur to “strengthen the communities and provide a base to support convenience shopping commercial which should also be located within the activity centers.”

4. The Plan calls for land use policies that will "encourage the continuation of agricultural and forestry operations and protect such operations from the adverse impact of urban development" and "encourage forms of development which will minimize the effect on agricultural and timber lands and critical natural areas." In the Frenchtown-Ninemile Planning area a Plan objective is to "promote incentives for continuation of agricultural operations and minimize adverse impacts of residential development on adjacent agricultural areas."
5. The Plan also calls for policies to "preserve and enhance natural vegetation and develop landscaping which will protect visual amenity, soils, air and water quality, and other environmental features and will reduce conflicts between land use activities."

Project History:

6. The 1996 proposal for a 10 lot subdivision of 106 acres had an overall density of one dwelling unit per 10.6 acres and would have substantially altered 40 acres of land in agricultural use. This proposal was denied in June 1996 based on incompatibility with the 1975 Comprehensive Plan with respect to density and impacts to agricultural lands.
7. The revised River Ranch I subdivision proposal, consisting of 5 lots on 26 acres and an 80 acre remainder had an overall density of one dwelling unit per 17.7 acres. Staff concluded that while the proposal was not generally consistent with the recommended density in the Comprehensive Plan that it was generally consistent with the developing land uses in the area and other Plan policies encouraging the retention of the maximum amount of agricultural land and preservation of rural character. This proposal was approved in September 1996. Since the remainder was actually a separate parcel, it was not shown on the final River Ranch plat.
8. The landowner later acquired 23 acres to add to the remainder and form a 102.74 acre parcel. The River Ranch II proposal was to divide the 102.74 acre parcel into four 4 acre lots and one 86.74 lot. The proposed overall density on the subject parcel is approximately one dwelling unit per 20 acres. The resulting density for the 129.33 acres included in both River Ranch I and River Ranch II would be one dwelling unit per 12.9 acres. The Board of County Commissioners approved the subdivision on August 12, 1998 with 8 conditions. Condition 1 required that Lots 1, 2, and 3 be removed from the plat, resulting in approval of one 4 acre lot and one 98.74 acre lot.
9. The applicant has requested a reconsideration of the subdivision with an amendment to Condition 1. In this proposal, Lots 2 and 3 would be combined, resulting in two 4 acre lots, one 8 acre lot and one 86.74 acre lot.

Subdivision Reconsideration Compliance with Comprehensive Plan:

10. The property was designated Open and Resource due to the agricultural land, riparian resource, and proximity to services.
11. The proposal is located outside both the Frenchtown and Huson activity circles. The area is not recognized as a residential neighborhood by the plan. Although the previous submittal did bring services into the vicinity of the property, the proposal will add trips and impacts to providers of County services.
12. Surrounding land use includes large agricultural tracts to the east and west. The 4-6 acre tracts of the first River Ranch subdivision are located north of the proposal. The Clark Fork River is located south of the property and the Erskine fishing access is located to the southeast.
13. The first River Ranch subdivision was approved with an overall density of one dwelling unit per 17 acres, setting aside the best agricultural land for continued production. A portion of this land is now being proposed for residential uses on two 4 acre parcels and one 8 acre parcel. While it can be argued that there are a variety of possible agricultural land uses on smaller tracts, the original intention of the Comprehensive Plan's Open and Resource designation was to preserve large tracts of agricultural land. The subdivision could result in the removal of 16 acres of farmland on prime soils from production.
14. The applicant has added additional lands to the property in an effort to increase the agricultural viability and to offset the loss of agricultural land proposed for subdivision. Production on other portions of the property could be increased to more than offset the yield from the 16 acres. However, the soils on these portions of the property are not considered by the Missoula Conservation District to be the best soils for agriculture.
15. No development is proposed in the riparian area on the property and minimal impacts to the riparian area are anticipated from the residential uses. Continued or increased agricultural use of the riparian area will further impact the vegetation and creek bank. The applicant is developing a proposal to enhance the riparian and wildlife habitat values on the property.
16. During the River Ranch II review, the applicant submitted an amended proposal designed to mitigate agricultural impacts and bring the proposal more fully into compliance with the Comprehensive Plan. The revised proposal restricted building to the northern 150 feet of each lot to cluster the homesites and to keep more land potentially in agricultural production.
17. The larger 8 acre tract allows more potential for agricultural use on the land than the two 4 acre tracts. The density of the reconsideration proposal is somewhat comparable to that previously approved. Covenants could also encourage the continued viability of agricultural use of the parcels.
18. The riparian resource on the property could be greatly enhanced. No specific restoration goals or objectives were required with the River Ranch II approval, since no direct impacts to Roman Creek would have resulted from the subdivision. Both agricultural resources and riparian resources are recognized as important components of the Open and Resource designation for the property. The County could receive a benefit in terms of riparian resource, while recognizing a potential cost to the agricultural soil resource on other portions of the property, if restoration of Roman Creek were required. This would require the landowner to design and implement a restoration plan for Roman Creek.

Conclusion of Law:

1. The amended proposal can be found to be in substantial compliance with the goals of the Comprehensive Plan if the agricultural land is protected to the maximum extent possible given the parcel sizes and the riparian resource on the property is enhanced. The subdivision reconsideration proposal can be found to be in substantial compliance with the goals of the Comprehensive Plan if amended Condition 8 and additional Conditions 10 and 11 are met.

Commissioner Hart stated this is the second subdivision from the same parcel and both were summary subdivisions. She asked if there was a parks requirement?

Nancy Heil stated there was not a parks requirement. This subdivision came through as a minor subdivision because River Ranch I was filed with the 5 lots on the northern portion of the property, the rest of the land was shown as a remainder, due to the way the property was previously described. She had conversations with Ron Ewart and Colleen Dowdall when this was originally considered, the remainder was then requested to be divided into five lots. Because it was a remainder, it was not a second summary subdivision, and did not have a parks requirement.

There being no further business to come before the Board, the Commissioners were in recess at 1:47 p.m.

THURSDAY, NOVEMBER 5, 1998

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

Application for Issuance of Replacement Warrant -- Chairman Evans approved an Application for Issuance of Replacement Warrant naming Staples as principal for Warrant #325220, issued 2/18/98 on the Missoula County Road Fund in the amount of \$56.88, not received in the mail.

Application for Issuance of Replacement Warrant -- Chairman Evans approved an Application for Issuance of Replacement Warrant naming Staples as principal for Warrant #325871, issued 3/4/98 on the Missoula County Road Fund in the amount of \$85.39, not received in the mail.

Application for Issuance of Replacement Warrant -- Chairman Evans approved an Application for Issuance of Replacement Warrant naming Ziegler Building Center as principal for Warrant #22044, issued 8/12/98 on the Missoula County SD #4 (Hellgate Elem.) Fund in the amount of \$91.11, not received in the mail.

Monthly Report -- Chairman Evans examined, approved and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of October, 1998.

ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 98-084, a Budget Amendment for the Office of Planning and Grants in the amount of \$265,000.00 (CDBG Grant for Nutritional Labs, Inc.).

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Montana Legal Services: The Family Law Advice Clinic, to purchase legal assistance for low income clients in Missoula County. Value of the Agreement is \$4,925.00. Duration of the Agreement is July 1, 1998 through June 30, 1999.

Other items included:

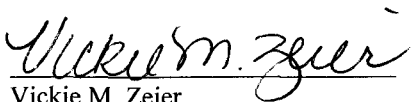
- 1) The Commissioners discussed an offer to purchase approximately 16.44 acres in the Missoula Development Park for \$575,000.00. No decision was made, and the discussion will resume at a later date.

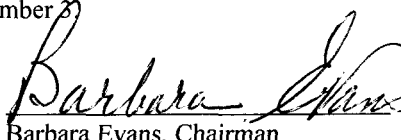
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, NOVEMBER 6, 1998

The Board of County Commissioners did not meet in regular session. In the forenoon, Commissioner Evans attended a meeting of the Judicial Standards Commission at the Russell Smith Courthouse in Missoula.

Also in the forenoon, Commissioner Hart, Clerk of Court Kathleen Breuer, and Superintendent of Schools Rachel Vielleux canvassed the General Election which was held November 3.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, NOVEMBER 9, 1998

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy attended a meeting of the MACo Resolutions Committee in Helena, and Commissioner Evans was out of the office all day.

TUESDAY, NOVEMBER 10, 1998

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

Audit List -- Commissioners Evans and Hart signed the Audit List, dated November 6, 1998, pages 2-31, with a grand total of \$214,795.26. The Audit List was returned to the Accounting Department.

Application for Issuance of Replacement Warrant -- Chairman Evans approved an Application for Issuance of Replacement Warrant naming Metrologic Instruments as principal for Warrant #21043, issued 8/27/98 on the Missoula County Road Fund in the amount of \$505.77, not received in the mail.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending October 30, 1998.

Plat - The Commissioners signed the plat for Ross Homesites #2, an amended plat of Lot 1, Ross Homesite, a platted subdivision located in the NE1/4 of Section 21 and the NW1/4 of Section 22, T14N, R20W, PMM, Missoula County, an area of 5.56 acres, with the owners of record being Glen and Roxanne Ross.

ADMINISTRATIVE MEETING

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

Application for Beneficial Water Use Permit - Chairman Evans signed an Application for Beneficial Water Use Permit for an irrigation well at the new jail site on Mullan Road. A \$200.00 fee is assessed with the application. The Application was returned to Paul Webber, CAO, for further handling.

Resolution and Notice of Hearing - The Commissioners signed Resolution No. 98-085, a resolution of intention to create RSID #8840, for maintenance of five fire hydrants to be located in the Sweetgrass Addition at Maloney Ranch - Phase I Subdivision; and a Notice of Hearing, setting the hearing date for Wednesday, December 2, 1998 at 1:30 pm in Room 201 of the Courthouse Annex.

Bus Turn-A-Round License - The Commissioners signed a Temporary Bus Turn-A-Round License and Construction and Maintenance Agreement with Montana Rail Link, Inc. to construct a bus turn-a-round on Rail Link right-of-way in Huson, MT.

Standard Listing Contracts - The Commissioners signed Standard Listing Contracts with FLR Partnership, dba Lambros Real Estate, for properties at 315 and 319 West Pine Street. Broker will receive a 6% commission based upon the sales price of the properties. Listing price of 315 W. Pine St. is \$125,000.00, and listing price of 319 W. Pine St. is \$90,000.00. The Contracts were returned to Jerry Ford of Lambros Realty.

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

WEDNESDAY, NOVEMBER 11, 1998

The Courthouse was closed for the Veterans Day Holiday.

THURSDAY, NOVEMBER 12, 1998

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:

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Missoula City-County Health Department to purchase health assessments for students and families of CS Porter Middle School - Flagship Project. Value of the Agreement is \$4,088.00. Duration of the Agreement is July 1, 1998 through June 30, 1999. The Agreement was returned to the Health Department for further signatures and handling.

Resolution - The Commissioners signed Resolution No. 98-087, fixing tax levies for Missoula County for FY 1998-1999.

RESOLUTION NO. 98-087
FIXING TAX LEVIES FOR MISSOULA COUNTY
FOR FISCAL YEAR 1998-1999

WHEREAS, the Board of County Commissioners of Missoula County, Montana, has approved and adopted the budget for Fiscal Year 1998-1999, 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 \$151,539 County-wide, and a value of \$74,515 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 1998-1999 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	45.05	A and B
Bridge Fund	3.84	
Poor Fund	3.53	
Fair Fund	.61	
Museum Fund	1.88	
Extension Fund	1.25	
Weed Fund	0.65	
Planning Fund	2.00	
District Court Fund	6.07	
Mental Health Fund	0.47	
Aging Fund	0.56	
Park/Recreation Fund	0.31	
Risk Management	1.89	
Child Daycare	0.30	
Open Space	0.01	
Library	5.00	
<u>SUB-TOTAL</u>	<u>73.42</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
Jail	8.73	
G O Issue (Computer)	1.00	
<u>SUB-TOTAL</u>	<u>9.73</u>	
<u>TOTAL COUNTY-WIDE & DEBT SERVICE LEVIES</u>	<u>83.15</u>	
Road Fund	13.83	
Health Fund	6.47	
Animal Control	.83	
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>21.13</u>	
CITY OF MISSOULA	139.84	
MISSOULA COUNTY SCHOOLS	VARIOUS (SEE ATTACHMENT)	
STATE OF MONTANA		
UNIVERSITY MILLAGE FUND	6.00	
STATE ASSUMPTION/CNTY WELFARE	9.00	
STATE SCHOOL FOUNDATION	40.00	
SPECIAL FIRE DISTRICTS		
CLINTON RURAL	26.75	
MISSOULA RURAL	57.02	
ARLEE/JOCKO VALLEY RURAL	10.66	
FLORENCE-CARLTON RURAL	16.63	
EAST MISSOULA RURAL	12.81	
FRENCHTOWN RURAL	26.30	
SEELEY LAKE	29.22	
OTHER SPECIAL DISTRICT LEVIES		
SOIL CONSERVATION	1.45	
S.O.S. HEALTH CENTER	3.00	
CARLTON CEMETERY	1.34	
MISSOULA URBAN TRANSIT	9.82	
SEELEY LAKE CEMETERY	4.00	
SPECIAL ASSESSMENT DISTRICTS		
LOLO MOSQUITO	VARIOUS (SEE ATTACHMENT)	
JOCKO IRRIGATION	VARIOUS (SEE ATTACHMENT)	
FRENCHTOWN IRRIGATION	VARIOUS (SEE ATTACHMENT)	
MISSOULA IRRIGATION	VARIOUS (SEE ATTACHMENT)	
FOREST FIRE PROTECTION ASSN	VARIOUS (SEE ATTACHMENT)	
ELK MEADOWS WATER DISTRICT	VARIOUS (SEE ATTACHMENT)	
SEELEY LAKE REFUSE DISTRICT	VARIOUS (SEE ATTACHMENT)	
BIG FLAT IRRIGATION	VARIOUS (SEE ATTACHMENT)	
LORRAINE SO. WATER DISTRICT	VARIOUS (SEE ATTACHMENT)	
CLINTON IRRIGATION	VARIOUS (SEE ATTACHMENT)	
GREENOUGH/POTOMAC VOLUNTEER FIRE	VARIOUS (SEE ATTACHMENT)	
SPECIAL IMPROVEMENT DISTRICTS	VARIOUS (SEE ATTACHMENT)	

WATER QUALITY DISTRICT

VARIOUS (SEE ATTACHMENT)

All of the above attached, approved and ordered entered into the official minutes of the Board of County Commissioners this 12th day of November, 1998.

Notice of Lease Termination - The Commissioners signed a Notice of Lease Termination with Earl M. Pruyn, for a lease dated April 22, 1991, recorded at Book 328, Page 380, Micro Records of Missoula County.

Warranty Deeds - The Commissioners signed four Warranty Deeds for Dodd Development Co., in consideration of the sum of \$10.00 each, for Lot 5, Block 9; Lot 6, Block 9, Lot 7A, Block 9; and Lot 7B, Block 9 of the Missoula Development Park., Phase 2.

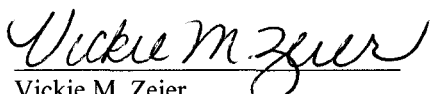
Other items included:

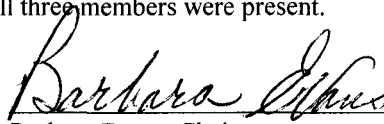
- 1) The Commissioners approved the weekly claims list dated 11/6/98, with a grand total of \$214,795.26.

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

FRIDAY, NOVEMBER 13, 1998

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


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, NOVEMBER 16, 1998

The Board of County Commissioners met in regular session; all three members were present. At noon, the Commissioners attended the groundbreaking ceremony for the Northside Access Pedestrian Bridge and the California Street Pedestrian Bridge projects.

In the afternoon, the Commissioners and Mary Lou Gilman of the Health Department conducted an inspection of the Missoula County Jail.

Extension - The Commissioners approved an extension for preliminary plat submittal for Placid Lake South Shore Tracts, and lengthened the time required for submittal of successive phases from three years to four years. The Commissioners also approved striking the second sentence of condition 4, which conflicts with the Missoula County Shoreline Regulations. The new filing deadline is March 25, 2011. A letter was sent to Dick Ainsworth and Les Turnbull.

TUESDAY, NOVEMBER 17, 1998

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioners Hart and Kennedy accompanied Tim Hall of the Office of Planning and Grants on a tour of the Travelers Rest Campsite area.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Helen Richardson as principal for Warrant #98144 issued 8/31/98 on the Missoula County Trust Fund in the amount of \$200.00 now unable to be found.

ADMINISTRATIVE MEETING

At the administrative meeting held in the forenoon, the following item was signed:

Resolution - The Commissioners signed Resolution No. 98-088, a Budget Amendment for the Office of Planning and Grants for a \$93,990.00 Federal Juvenile Justice Grant.

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

PUBLIC HEARING - November 17, 1998 - Lolo Community Center - 7:00 p.m.**Lolo RSID 901 Wastewater Facilities Plan**

Following a short meeting of the Lolo Community Council, the Public Meeting was called to order at 7:20 p.m. by Chairman Barbara Evans. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, Chief Administrative Office Paul Webber and County Attorney Michael Sehestedt.

Chairman Evans stated there would be two hearings tonight, the first on the final draft of the Lolo Wastewater Facilities Plan. This plan describes improvements and expansion options for the wastewater treatment plant. The plan recommends that a minimum \$2,283,000 of improvements are needed to upgrade the existing plant. The second issue is a hearing on a proposed increase in the development fee collected when new lots are developed and connected to the sewer and water system. That proposal is to increase the fee from \$852 to \$1,381 for each residential equivalent connection. She then introduced Paul Webber, Chief Administrative Officer.

Paul Webber, Chief Administrative Officer, stated there would be a presentation by Dan Harmon of HDR. In May of 1997, this consulting plan was started with funds David Haverfield found to help pay for the study. The final draft is ready and the Commissioners have been briefed on it. A summary of the report prepared by HDR will be used in the discussion. Following this discussion, the hearing on the connection fee will have an impact on individuals who have a potential to subdivide lots within the district and create more than one lot out of a larger parcel and therefore be required to pay an extra connection fee. The policy will require a connection fee for every additional lot that is created, and in addition, the new policy will raise the fee from \$852 to \$1,381. Another consultant from Druyvestein, Johnson & Anderson (DJ&A) will present that briefing.

Dan Harmon, HDR, stated this study has been in progress for about a year and a half. This study went beyond the reaches of the current RSID boundary, from Mormon Creek to Rossignol Ridge, and east from the Bitterroot River to the foothills on the west. The study focused on six different alternatives, four addressing the wastewater within the Lolo study area, and two which looked at possible regionalization of the service with the City of Missoula.

ALTERNATIVES EVALUATED

Alternative A-1: No Expansion of Service Area and Secondary Treatment with River Discharge

The existing service area boundary would remain unchanged. All unit processes would continue to operate as they currently do, implementing recommended priority capital improvements to the treatment plant and wastewater collection system to better handle projected flows and loads for ultimate buildout of the existing RSID. Discharge to the Bitterroot River would continue and it is assumed effluent discharge limits remain unchanged from current permit limits. Priority improvements to the treatment plant would include upgrading sampling systems, new screenings system, new secondary clarifier, biosolids harvesting and management, emergency power and other miscellaneous process improvements.

Alternative A-2: No Expansion of Service Area and Advanced Treatment with River Discharge

The existing service area boundary would remain unchanged with this alternative. Similar to Alternative A-1, recommended priority capital improvements to the treatment plant and wastewater collection system would be implemented. The unit processes at the wastewater treatment plant would be upgraded in phases to enable the facility to perform biological nutrient removal to handle projected flows and loads for ultimate buildout of the existing RSID. Improvements to the unit processes would include expansion of the existing aeration basin capacity, installation of mixed liquor pumping, installation of additional secondary clarification capacity, expansion of influent/transfer pumping systems, expansion of return sludge pumping facilities, modification to the existing disinfection facilities, and expansion of aerobic digestion capacity. The treatment plant effluent would continue to discharge to the Bitterroot River.

Alternative B-1: Expanded River Service Area and Secondary Treatment with River Discharge

The existing service area would be allowed to expand to the study area boundary under this alternative. Priority capital improvements as part of Alternative A-1 would be implemented. Increasing the service area would require phased installation of collection system extensions, increasing the size of Influent Pumping Station No. 1, and expansion of the wastewater treatment plant facilities to continue to provide base secondary treatment. Discharge of treatment plant effluent to the Bitterroot River would be continued.

Alternative B-2: Expanded Service Area and Advanced Treatment with River Discharge

The existing service area would be allowed to expand to the study area boundary under this alternative. All secondary treatment modifications included in Alternative A-2 would be implemented including the recommended priority capital improvements. Advanced treatment improvements included in Alternative A-2 would be expanded in phases to handle flows and loads from the expanded sewer service area. Discharge of treatment plant effluent to the Bitterroot River would be continued.

Alternative B-3: Expanded Service Area and Secondary Treatment with Seasonal Land Application

Similar to Alternative B-1, the existing collection and treatment systems would be expanded in phases to serve the entire study area. To address potential nutrient discharge limits, this alternative would pump treated effluent to nearby land application sites during the months of May through October when limitations on discharge to the Bitterroot River are expected to be in effect. Discharge of treatment plant effluent to the Bitterroot River would be continued during the winter months.

Alternative C-1: Expanded Service Area and Regional Wastewater Treatment

The service area would be expanded to serve the entire study area under this alternative. The existing wastewater treatment plant would be phased out of service. A new wastewater pumping station and force main would be constructed to convey sewage to the City of Missoula Wastewater Treatment Plant via a regional interceptor. Modifications of the existing collection system would be phased to eventually provide service out to the study area boundary.

The "A" alternatives addressed no expansion of service area, "B" alternatives addressed expanded service area, and "C" alternative addressed regionalization. Evaluation criteria consisted of the following categories: Cost; Environmental Quality; Technical Feasibility; Regulatory Compliance; Compatibility with Existing Facilities; Constructability; and Ease of Maintenance. There are strong cost advantages to not expanding beyond the RSID boundaries ("A" alternative), however, from a regulatory compliance and environmental quality standpoint, the advantages are quite low. On the other hand, collection from an expanded area ("B" alternatives) are expensive but address the other criteria better. The alternative connecting with the City of Missoula ("C-1") scored quite high in addressing environmental and regulatory issues, and it was quite expensive.

The recommended plan calls for a comprehensive approach to protecting water quality in the Lolo area to be carried out through the year 2045. Key elements of the Recommended Plan are summarized below.

Collection System Near-Term Improvements

It is recommended that Missoula County continue their program to identify and remove significant inflow sources (manhole lids), and provide cost effective reduction of infiltration sources identified along Lakeside Drive. The partial blockage of the sewer line in O'Connell Drive should also be repaired through a preventative maintenance program.

It is also recommended that near term improvements be implemented to address: 1) surcharging problems with the River Drive sewer along Hayden Lake; 2) replacing the existing bubbler systems at Lift Station Nos. 1 and 2 with new ultrasonic type level elements; and 3) replacing the influent pumps at Lift Station No. 1 to increase facility capacity. Installation of standby power capability at Lift Station Nos. 1 and 2 is also recommended as a priority improvement.

Wastewater Treatment Plant Near-Term Improvements

It is recommended that the existing wastewater treatment plant be upgraded to address near-term capacity/priority improvements identified. Influent and effluent sampling equipment have recently been replaced as recommended. The plant influent screening and screenings handling facilities will be improved to provide more reliable, automated screenings handling and improved screenings removal from the waste stream. Solids stored in the existing sludge storage lagoon will be harvested for beneficial reuse and a solids management plan is recommended to be developed. A second secondary clarifier will be installed to relieve current capacity limitations and provide process unit redundancy. The existing aeration basins will be modified for improved mixing and expansion of the systems existing aeration capacity. Capacity of the existing Influent/Transfer pumping units will be increased. Similarly, the RAS pumping system will be modified to increase system capacity and provide for process unit redundancy. The aerobic digestion system will be monitored for digestion performance. Standby power service will be installed at the wastewater plant for the secondary process units and chlorination facilities. It is also recommended that the chlorine storage and feed facilities be upgraded to meet current codes for containment, ventilation and scrubbing.

Flow Transfer and Regional Treatment

The current financial evaluation of Alternative C-1 includes assumed fees for capitalization of new facilities for conveyance and treatment at the City of Missoula Wastewater Treatment Plant of approximately \$3,500/residential connection. This results in a total cost for connection fees to the City of Missoula of \$7,000,000 for serving the entire Lolo study area. It is recommended that these connection fees be developed in more detail through additional discussion with the City of Missoula. It is also recommended that a more comprehensive evaluation of the alternative be conducted where the following are examined in further detail:

- The stand-alone cost of the physical connection to the City to enable regional treatment.
- The probable consequences of connection to the City system in terms of better defined capital and O&M costs.
- The benefits to the City of Missoula in terms of expanding its rate base and reducing its nutrient reduction exposure.
- The timing of improvements required to enable flow transfer from Lolo to the City of Missoula's system compared to the schedule of improvements proposed by the City.
- A cost-to-benefit of installing flow transfer facilities and connecting to the City of Missoula's system versus the benefits of reduction of nutrient exposure and expanding the City's rate base.
- The land use and annexation considerations impacting the decisions to be made at Lolo.

If after further review this alternative appears viable, no additional upgrades would be implemented at the wastewater treatment plant. The focus of further capital expenditures would be on installation of necessary collection system improvements to the City of Missoula system including extension out to the Miller Creek area, installation of the flow transfer pumping station at the Lolo Wastewater Treatment Plant site, and installation of a flow transfer force main from the Lolo Wastewater Treatment Plant site to the extended City of Missoula collection system. Standby power service would be included at the pumping station and provisions for elimination of existing Pumping Station No. 1 would be considered.

Wastewater Treatment Plant Advanced Treatment Modifications

Following completion of the near-term priority improvements, and if flow transfer and regional treatment does not appear a viable alternative, it is recommended the treatment plant be upgraded to provide advanced levels of treatment for nitrogen and phosphorus. An additional Secondary Clarifier will be constructed and the existing aeration basin, secondary clarifier, and aerobic digester will be modified to provide expanded aeration basin capacity. Mixed liquor recycler pumping and anoxic/anaerobic basins will be included in the aeration basin rehabilitation to enable biological nutrient removal to be performed using the activated sludge process. A new aerobic digester will be installed as replacement of the existing digestion system removed from service.

Collection System Expansion for Expanded Service Area

To provide sewer service to the study area outside the current RSID 901 service area, installation of a series of interceptor sewers, main collector sewers, local collector sewers, and pumping stations will be required. The sewer required to serve the study area is separated into four general collection basins: the Highway 12 Basin; the Lewis and Clark Basin; the Mormon Creek Basin; and the Rodeo Ranchettes Basin.

Extension of sewers beyond the current RSID Boundary is contingent upon the County's and community's ability to fund the required capital improvements. Installation of sewers in the Highway 12 Basin offers the greatest opportunity for reduction of water quality impacts while also addressing areas where the greatest interest in development has been shown. The Highway 12 Basin facilities can be incorporated into the existing RSID collection system via gravity without the need for intermediate pumping. Therefore, initial expansion of the collection system is recommended in the Highway 12 Basin. Water quality concerns identified in the Mormon Creek Basin make it a higher priority area for sewer extension; however, this basin required extension of sewers to the greatest reaches of the study area, through the Lewis and Clark Basin.

Extension of sewers to the Mormon Creek and Lewis and Clark Basins are recommended to be implemented concurrently since cost of service and public health protection needs are relatively equal for both basins.

The Rodeo Ranchettes Basin is located across the Bitterroot River and serves a smaller projected population. As a result, cost of service for this basin is high and benefits including water quality protection and public health protection are relatively low. Extension of the collection system to the Rodeo Ranchettes Basin is not recommended.

Wastewater Treatment (Advanced Treatment) Expansion for Expanded Service Area

To provide treatment of the flows received from an expanded service area, the wastewater facilities will need to be expanded to handle a peak flow rate of 1.01 mgd. In addition to the priority and base advanced treatment modifications described in previous paragraphs, the secondary treatment process will require additional expansion as additional service area is place on-line. Installation of a new aeration basin, MLSS pumping, and RAS pumping facilities will be required. The chlorine gas disinfection system will be retained and dechlorination facilities will be added.

Another key feature of the recommended plan is its emphasis on flexibility. Missoula County determined that it is best for the RSID 901 to remain flexible to respond to changing conditions since new regulations may be imposed in the future which modify treatment and discharge requirements.

The findings of a separate study currently examining water quality needs in the Clark Fork River may alter the future requirements of the wastewater utilities along the Bitterroot River. It is recommended that this plan be reviewed every 5 years to determine whether population growth, regulatory requirements, or other conditions impacting wastewater management needs have changed significantly.

Implementation of the recommended plan will require a coordinated effort on the part of Missoula County, the RSID 901 Board and citizens of Lolo to see that the various elements of the plan are implemented within the community and the larger study area. In order to progress in the implementation of the wastewater facilities plan, the following activities are recommended, with schedule targets noted:

- Wastewater Facilities Plan adoption by the Missoula County Commission and Lolo RSID Board - October 1998
- Submit Wastewater Facilities Plan to Montana DEQ - October/November 1998
- Conduct Discussions with the City of Missoula to Refine Alternative C-1 Flow Transfer and Regional Treatment - October 1998 to March 1999
- Prepare Financing Plan and Rate Study - October 1998 to March 1999
- Prepare Detailed Design of Near-Term Improvements and Develop a Biosolids Management Plan - October 1998 to March 1999
- Prepare Preliminary Design of Treatment Plan Improvements/Regional Flow Transfer Facilities - November 1998 to April 1999
- Construct Near-Term Improvements and Harvest/Utilize Stored Biosolids - April 1999 to September 1999
- Prepare and Submit Outside Funding Requests - May 1999
- Prepare Detailed Design of Treatment Plant Improvements or Regional Flow Transfer Facilities - May 1999 to March 2000
- Construct Treatment Plant Improvements or Regional Flow Transfer Facilities - April 2000 to March 2001

Dan Harmon pointed out the Wastewater Treatment Plant is operating under an expired permit with Montana Department of Environmental Quality (DEQ), which is not unusual. The permit expired in April and DEQ is running about 2 years in the process of developing and negotiating permit updates. It is quite likely that more stringent requirements will result from this process, necessitating more advanced treatment at the Lolo site.

Recommended Plan Summary of Costs - UPGRADING EXISTING FACILITIES

	<u>Alternative A-1</u> <u>Near</u> <u>Term</u> <u>(1998-2001)</u>	<u>Alternative A-1/B-2</u> <u>Advanced</u> <u>Treatment</u> <u>(2001-2005)</u>	<u>Alternative B-2</u> <u>Service Area</u> <u>Expansion</u> <u>(>2005)</u>
PROGRAM CAPITAL COSTS BY PHASE	\$2,283,000	\$1,298,000	\$7,720,000
TOTAL REC.OMMENDED PLAN CAPITAL COSTS AND ESTIMATED ANNUAL O&M COST	<u>\$11,301,000</u>		

Recommended Plan Summary of Costs - REGIONAL FLOW TRANSFER

	<u>Alternative A-1</u> <u>Near</u> <u>Term</u> <u>(1998-2001)</u>	<u>Alternative C-1</u> <u>Develop Regional</u> <u>Option</u> <u>(2001-2005)</u>	<u>Alternative C-1</u> <u>Service Area</u> <u>Expansion</u> <u>(>2005)</u>
PROGRAM CAPITAL COSTS BY PHASE	\$2,283,000	\$5,175,100	\$8,978,000
TOTAL RECOMMENDED PLAN CAPITAL COSTS AND ESTIMATED ANNUAL O&M COST	<u>\$16,436,100</u>		

Dan Harmon stated that the costs presented could be affected significantly by several factors, most possibly decreasing the cost but with a slight chance for increasing the cost.

Chairman Evans opened the public hearing.

Tom Cook stated he understood the wastewater facility was out of accordance with DEQ since April of this year, which is not unusual. He wanted to know what can happen, worst case scenario, if these changes are not met or made? What if nothing is done, what can happen?

Dan Harmon stated it is not known what the new permit will involve after it has been negotiated. There are some deficiencies at the plant currently, which is no reflection on the job David Haverfield is doing. There is a solids accumulation that needs to be addressed, it is believed the solids will start recycling within the system and will cause some trouble in meeting the current permit. The secondary clarification capability is also borderline. If near-term improvements are not made, it is their opinion that there is a risk of not meeting the current permit. Two years from now there is also the potential for more stringent requirements which means that Lolo will have to make some improvements to address the new requirements.

Commissioner Kennedy stated Federal and State laws have been enacted at the request of citizens to protect waterways. The Federal law is TMDL (Total Maximum Daily Load) for streams. The Clark Fork River system is the number one priority in the State of Montana, which includes the Bitterroot River tributary. In order to facilitate the law, certain things have to be done, including improving treatment capabilities on all of the facilities on the Bitterroot and Clark Fork river systems. The second action is the VNRP (Voluntary Nutrient Reduction Program) which extends from Butte into Idaho. The four big dischargers, Butte, Deer Lodge, the City and County of Missoula and Stone Container, have volunteered to reduce their nutrient load on the river in an attempt to comply with the State and Federal regulations under TMDL. When VNRP was adopted, the four dischargers agreed to commit to certain regulatory steps in order to achieve the guidelines. One of those things is the reduction in the number of septic tanks that create problems within those reaches of the rivers. In order to accomplish that, other things are necessary, including dealing with the problems that exist at the Lolo treatment facility. Even though the facility is operated and maintained well, and has received an award, there are things it cannot accomplish without some improvements. Those improvements are very expensive, no matter which alternative is selected. Currently the best choice is that the plant is under no obligation and no directive from the state nor the Federal government to do anything which puts it in the best economic position to guide what needs to be done at both Lolo and Missoula, that will cost the least and gives the most planning flexibility. A consultant was engaged to have the facility plan written to keep ahead of the directive that would come from the state. If the facility does nothing, a directive will be received from the state and Federal levels directing it to do not what would be done voluntarily, but what they think is in the best interest of the river system, which could be substantially more expensive than what has already been identified.

Tom Cook stated that Lolo will either do something at one cost today, voluntarily, on a short-term basis, or do something voluntarily on a long-term basis, or have it done for Lolo at perhaps a higher cost yet.

Commissioner Kennedy stated that was a fair assessment. Citizens lobbied for TMDL on the Federal and state level, this is a regulatory process imposed upon ourselves. Now it has to be lived with, meaning the waters will not be allowed to deteriorate further, which comes at an economic cost. The best and least expensive plan can be implemented now or wait for other planners in other areas to do it, which will be more expensive.

Dan Harmon stated the Commissioners want to identify these issues up front and be proactive at funding assistance to minimize the impact to the community. It is important that this plan be put into place because it does position the community better in developing their applications for grants.

Chairman Evans asked Acting County Attorney Michael Sehestedt to address the audience on the CI-75 issue. It was not clear how voting on all new taxes and having something imposed by the Federal government would mesh.

Michael Sehestedt stated those two things would mesh poorly. The County is going to have to propose a program that keeps Lolo and the other sewer systems, and septic issues, in compliance with state and Federal law. To do that is going to cost money, so the development of those plans needs to be interactive with the rate payers. Under CI-75, an increased cost cannot be imposed without getting it approved by a vote of the people who bear the burden of that tax. Although these are assessments and charges, CI-75 is very specific and very exhaustive in including those sorts of things in its particular definition of a tax subject to a vote. If the state and the Federal governments tell Lolo it has to do something or it can't discharge into the river, it is priced and discussed with the community, then the community votes it down, then typically these laws are enforced by the imposition of fines, court orders, even criminal sanctions in some cases. He did not believe the County would incur fines, but would find funds someplace else to put into the sewer system that the people would not agree to pay. That puts the County in a difficult position, because under CI-75 it can't increase the fees to pay for the improvements, and without the improvements the system can't keep operating without paying fines. He expected the alternative would be some sort of partial shutdown of the system, which creates a nightmare scenario. Given the fact that these questions can only be put to the voters once a year, it would be wise to have a plan that has general support in the community.

An unidentified citizen asked about needing the votes of people who are not directly involved with the situation.

Michael Sehestedt stated the classic example is city annexation. The City of Missoula, effective last week, has begun to refuse to give any sewer connection permits outside the city limits of Missoula, notwithstanding prior understandings or agreements. The reason these new applications are being turned down is that prior to CI-75, the right to protest annexation into the city could be waived; such a waiver is required to hook up to city sewer. Once hooked up to the city sewer, the city would annex the property. Under CI-75 it is not that simple. For example, if the 901 area was to expand, in the past an appropriate number for capital contribution would be determined and paid and the annexation would be complete. Now a vote would need to be held and it is unclear if the people in the new area alone would vote or if the vote would be the entire RSID district. That is one of the things that needs to be clarified under CI-75. The same thing is true with city annexations. The Attorney General will be asked his opinion on this and other questions about CI-75 and ultimately the Montana Supreme Court will tell us what it means.

Sterling Miller stated that he has heard that the Lolo plant is operating at capacity and may exceed its permit and the new permit is likely to be strengthened. Having heard what Michael Sehestedt just said about the uncertainties of CI-75, in addition there are 47 new units which are going into the existing plant, under construction now, which will certainly

exceed capacity at the plant. He asked if there was any wisdom in keeping those 47 new units from being added to existing capacity.

Chairman Evans stated those 47 new units were included in the capacity of the district.

Michael Sehestedt stated the biggest item in plant improvement is disposing of biosolids. The current accumulation of biosolids is the result of not having a plan to do anything with them. That cost would have to be incurred whether these 47 units came on line or not. Some of the other items that need addressing reflect the fact that the plant is old and needs updating.

Dan Harmon stated in their analysis that the plant is at or near capacity, considering commitments that have been made but not connected yet, and other unbuilt lots in the district.

Michael Sehestedt stated a lack of redundancy at the plant is a major item, which again reflects the fact that the plant was built without any capacity for anything going wrong and still functioning.

Dan Harmon stated the standard practice is to provide backup treatment units on critical processes in the event there is a breakdown or shutdown. There is only one secondary clarifier which is a key component, and there is some leakage in the diversion process if the secondary clarifier would need repair, which is not desirable.

Michael Sehestedt stated it would be fair to say this improvement would be recommended even if the existing load was considered.

Dan Harmon stated this improvement is highly recommended regardless of whether there is any additional commitment.

Louann Hanson stated the idea of a shutdown at the plant concerned her. She hoped that the people of Lolo would not say no to these improvements. She stated that, according to an article quoting Rob Natelson, if cities and counties don't approve what is recommended, privatization is an option. That means someone could come in, for profit, and purchase the plant, then the community would have no say in what they want to do. She wanted to know if that was a possibility if the citizens of Lolo voted no on improvements.

Chairman Evans stated that it would have to be a profitable business for someone to offer to purchase the plant. She believed that with all the improvements that need to be done, a private firm would not find this to be a profitable business. If someone did offer to purchase the plant, the offer would be looked at and the legalities discussed.

Louann Hanson stated that to make it profitable, the citizens would be paying for it.

Michael Sehestedt stated it would be legal to sell public property. He did not know if the Lolo Sewer and Water system would be attractive to a private purchaser. He was hoping to convey that this is very serious business to developing the alternatives and deciding which way to go on the improvements because there are consequences in trying to stand still, which could be severe. A private entity purchasing Lolo Water and Sewer system would be subject to the PHC rate making general rules. It is possible to purchase the system but it would be a major community undertaking, however if the citizens take it seriously and work together, a sale should not be necessary.

Mark Behan stated Mr. Harmon is posing a very difficult question. He is in favor of spreading nitrates and phosphates on the land instead of putting them into the water way, but he did not know how much it would cost him. There should be an economy of scale, a larger plant should result in cheaper operation. He wanted to know if he could afford to do what is desirable, could Mr. Harmon provide him with a dollar figure.

Dan Harmon stated he could provide a range of figures, there has been a brief financial analysis done, however there are a lot of unknowns because no design has been done yet. The figures provided are an educated estimate, and they do not include any funding assistance that might be available. Rates could increase from \$11 per month, to \$37 per month, or even \$61 per month, using Alternative A-1. He also stated that the \$10.60 per month that Lolo residents currently pay is low compared to other facilities in the state, Missoula is currently in the \$25-\$30 range. The range for the other alternatives is: A-2 - \$55-\$85 per month; B-1 - \$40-\$60 per month; B-2 - \$50-\$66 per month; B-3 - \$61-\$81 per month; and C-1 - \$69-\$93 per month.

Commissioner Hart asked if that was the operation and maintenance charge for the facility at that time, or is it the O&M charge plus some kind of reserve for upgrades. It can't be the total capitalization, so what is the fee to cover and is it based on assessment or hookups and usage.

Dan Harmon stated the rates are currently structured not on use, but on assessed value of the property, which is unusual. The numbers he presented include O&M costs plus some capitalization, that associated with addressing the nutrient removal issues and improvements necessary to address permit requirements. There is also an additional capitalization fee involved for all those outside the district that would benefit from expansion, those range from \$2,500 to \$7,000.

Michael Sehestedt stated if the decision was made to expand the district, that decision should not cost the residents of Lolo anything. Current RSID 901 residents should not subsidize the provision of service to areas outside of the current RSID boundaries. The rates for current RSID 901 residents will increase for the improvements necessary within the district, which is an unfortunate fact of life. However, they will not be charged additionally for bringing Mormon Creek on line.

Dan Harmon stated that was one of the loudest comments received from citizen meetings, and it was factored into the numbers presented. The intent of the recommended plan is not to have the current RSID rate payer subsidize those outside the current boundaries.

Jean Belangie-Nye stated a full copy of the plan should be at the school library and administration office so it may be studied. She asked if the projected costs include what is currently paid or is above what is currently paid?

Dan Harmon stated the monthly rates shown on the breakdown do include the \$11 users currently pay to operate and maintain the facility.

Jean Belangie-Nye stated RSID 436, approximately \$32 per month per household, will be paid off in 1999. Have other RSID's that will disappear over time been factored into these projected costs.

Dan Harmon stated the charts are based on current budgeting from the County.

David Haverfield stated RSID 436 was done in 1990-91 to improve the water system, it included a 500,000 gallon storage tank, a redundant water line behind Lolo School and fire hydrants.

Stan Hendrickson stated the people of Lolo wanted to independent from the City of Missoula. There is the geographic barrier to the option of running a line to Missoula and hook up to their sewer. In his opinion, he felt the citizens of Lolo could solve their own problem without joining with Missoula. He asked about the possibility of septic tanks in each yard and pumping water to the system, if solids are the problem, why not take care of solids through the septic systems. Would that get rid of the solids problem.

Commissioner Kennedy stated much of the waste to a septic system is dissolved in the water and the solids that settle out are the least of the problems. The separation of the solid material dissolved in the water is problematic and costly. Even if the solids were able to be maintained on site and pump them to a common treatment facility, the water discharge pollution problems and treatment problems at the facility still exist. He also stated there are some costs presented that are excessive with respect to a connection fee for Lolo to the City of Missoula treatment facility, they are estimated by the consultant at \$7 million. If the \$7 million is added into the overall cost, you get an excessive cost and the most expensive alternative. He believed the City of Missoula can't afford to charge Lolo that kind of fee, as was the case with East Missoula. East Missoula was faced with a \$3 million connection charge but because of successful negotiation with the City, that charge was reduced to \$297,000, eight percent of the estimated charge. He felt negotiations with the City need to begin to reduce substantially the overall burden to the Lolo community so the citizens will know what the difference is, then make a judgment as to whether or not they wish to go it alone and pay the difference in costs. The City of Missoula has been made aware of this and they are willing to sit down and discuss the issue.

Diana Mitchell stated she had a concern with a "Band-Aid" fix to the current system. The town is growing so fast that the infrastructure needs to be able to accommodate the growth into the future to avoid putting a "Band-Aid" on top of a "Band-Aid." To just fix the current system is not enough.

Commissioner Kennedy stated that when a consultant is hired they have to respond in a professional manner, but for the citizens who pay the bills, it can get a little cloudy. If a lower fee were negotiated with the City of Missoula, investing in "Band-Aids" for this facility could possibly be avoided. Dan Harmon cannot professional agree with that, because there are problems with the facility, but the town and the Commissioners will decide what to do based on his report. What Dan Harmon has presented are worst case costs all down the line. It is the Commissioners responsibility to figure out a way to make sure that whatever cost is paid is the minimum cost that is fair over the long term. The Commissioners are just starting on the process.

Chairman Evans also pointed out that if the City of Missoula negotiated a reduced rate with Lolo or East Missoula, someone has to pick up the difference. The citizens of the City of Missoula may not be want to subsidize East Missoula or Lolo, to bring them into their sewer system.

Commissioner Kennedy stated the question was asked if the people within 901 would be asked to subsidize those on the outside and the answer was "No." The people in the City of Missoula also would not subsidize this facility. What has happened in East Missoula, and could happen in Lolo, is they have an overall financial plan to capitalize \$125 million worth of improvements over a long period of time. Included in their rate base are only areas that are close to Missoula. Specifically excluded from that rate base was Lolo and the Bonner-Milltown-East Missoula area, so any negotiation that succeeded in those areas brought about a rate base and dollar value to the city that it did not count on, so there is no subsidy involved. That is why the City of Missoula is open to those kinds of negotiations, they see there is a benefit to them by reducing nutrients in the river and by increasing their rate base. There is an obvious benefit to the people of Lolo, because there is a lowering of the overall cost. That negotiation with the City of Missoula needs to happen.

Dan Harmon responded to the "Band-Aid" over a "Band-Aid" comment, one of the things looked at in the implementation steps were things that would still work with future alternatives. Something would not be done first that would not be useful and applicable to necessary facilities in the future.

Diana Mitchell stated she was confused, was Commissioner Kennedy advocating connection with Missoula?

Commissioner Kennedy stated he was advocating studying the possibility, it could be significant in terms of costs Lolo will end up paying.

Diana Mitchell asked how Lolo could connect to Missoula without being annexed.

Commissioner Kennedy stated that issue was faced by East Missoula and it was resolved. It also needs to be resolved here. For the sake of argument say the issue cannot be resolved, Missoula will refuse to provide service. Lolo should still have the choice as to whether or not they want to pay \$7 million less by being annexed, or \$7 million more by remaining independent. He felt, however, that the City of Missoula would negotiate fairly on this issue and annexation would not be a requirement. His reasoning for this was the updated Urban Comprehensive Plan, adopted by both the City and County, which identified separate communities, including Lolo, making sure Lolo always maintains it independent identity.

Commissioner Hart stated that 901 and the improvements needed were like having a house that was 25 years old and needed some fixing up. There are some basic things that need to be replaced and upgraded, which is Alternative A-1. By going further, like Alternative A-1/B-2, improvements need to go further to meet regulatory requirements. Alternative B-3 then makes the system even more valuable, because it is upgraded and the key to a growth management tool for the future

of Lolo. The city of Lolo is growing up and this is a big step, the study needs to be sent to DEQ to be eligible for grants from state and Federal agencies. The people need to know the details and costs of this potential project. She complimented the citizens for their seriousness on this situation.

Carolyn Dergan stated her concerns regarded CI-75 and how to deal with the expenses. She wondered if there was a possibility of making a decision today to do what is necessary to meet codes in the near-term and deferring the decision on expansion, until the effects of CI-75 are more fully understood. She felt more time was needed to educate the people of Lolo on long-term possibilities but that near-term items should be completed before the new regulatory guidelines are imposed. She agreed with Commissioner Hart that the report should be submitted so Lolo can be positioned to receive funds. She also questioned approving new developments in Lolo which could impact the sewer system until it is known what improvements will be done.

Chairman Evans stated this plan needs to go to DEQ, as Commissioner Hart said.

Commissioner Hart stated she was impressed with the intelligent comments from the citizens of Lolo.

Commissioner Kennedy stated this is not the time for a decision on an alternative. This is simply the conclusion of a technical report and recommended plan which the state has granted some funds for and now needs to be submitted to the state DEQ. A rate study, financial planning and a final decision will be done in the future, with community involvement. Today's meeting was to inform the citizens the report is completed and it will be submitted to the state, no decisions have been made.

An unidentified citizen asked who will make the decision on which alternative?

Commissioner Kennedy stated the Commissioner will ultimately make the decision.

Commissioner Hart stated that the citizens would have the final vote on any decision chosen. She reiterated that the first step is to submit the report to the state.

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

Lolo Water and Sewer Development Fee Increase

Chip Johnson, Druyvestein, Johnson & Anderson (DJ&A), stated the fee in question was not assessed to those who live within the boundaries of RSID 901, it applies to those that have made requests of the Board of County Commissioners and 901 Board for connection to use Lolo Water and Sewer facilities. In the early 1990's, many people who lived outside the district made petitions to be connected. That question was not easily answered at that time as capacities were not well known. At that time the County hired DJ&A to determine what the capacities were and DJ&A submitted a report to both the Board of County Commissioners and the 901 Board which stated what the capacity of both water and sewer systems were at that time. Further, the capital improvements costs were examined to determine what a value per single family residence would be, which was \$852. That is the fee that has been assessed to those outside the district who have connected to the water and sewer facilities. That study was completed several years ago and more money has been spent in that time, so the County asked for a re-evaluation of the connection fee. The adjusted fee has been set at \$1,381. DJ&A is suggesting that the Board of County Commissioners modify their resolution adopted in 1993 to utilize the new adjusted fee. The \$1,381 fee is assessed to someone with a parcel of land outside the 901 district boundary who wants to connect to the water and sewer facilities. That would be allowed depending upon capacity and CI-75. For each single family residence that would be connected, a fee of \$1,381 would be assessed. There may be other facilities beyond single family residence, and to resolve that issue, usage will be monitored by meter. Average monthly usage is based on 500 gallons, if usage came in at 1,000 gallons, the fee charged would double.

An unidentified citizen asked about a subdivision with perhaps 10 homes?

Chip Johnson stated each house in the subdivision would be charged the \$1,381 fee. Also, the connection is for both water and sewer, one cannot be obtained without the other.

Sterling Miller stated the fee has increased by approximately 50% in the last 5 years. By setting a fixed fee, will the cost always be behind the actual cost. Was there a way to set the fee with an automatic increase based on actual cost.

Chip Johnson stated that was a point well taken. Because of the recent costs incurred with the new well, the Board of County Commissioners and the 901 Board want to act on this increase immediately and there will be some kind of routine review of the development fee as the situation changes.

Commissioner Hart asked what the ramifications of this action were in light of CI-75.

Michael Sehestedt stated right now there is a moratorium in place on new annexations to the district, which the Commission adopted until a study can be completed regarding capacity. In his judgment, there is still a moratorium on annexations, so the amount charged per unit to be annexed to the district is not a matter of immediate urgency. It is, however, something that will require additional work and will be required to be put to a vote under CI-75, it is a charge for service, therefore, subject to a vote of RSID 901 current residents. An automatic escalator could be included or the capital cost and economic value could be evaluated to approximate the economic worth to a developer. He felt an automatic escalator would more than likely fall under CI-75 and need to be voted on by the people.

Chairman Evans asked Michael Sehestedt if the Commissioners dealt with this issue tonight?

Michael Sehestedt stated testimony should be taken this evening, however, whatever the final fee is determined to be cannot be imposed without going to a vote under CI-75. A built in percentage increase may also fall under CI-75, but more investigation was needed to answer that question.

Chairman Evans asked the audience, by a show of hands, how many would like the fee increased. A majority of the audience raised their hands. She then asked if any opposed the increase. There were no hands raised. She stated that the majority of the audience would like to raise the fee and asked for additional comments.

Chip Johnson stated he had spoke about properties outside the district paying this fee, however, there are also potentially properties within the district that could be subjected to the same fee. Those might include a larger parcel that is being subdivided, for example a 5 acre parcel being split into 10 lots. It is entitled to one hook up, but the developer would have to pay nine additional development fees.

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

Chairman Evans thanked everyone for coming and stated the decision to send the wastewater facilities report to DEQ would be made at the Commissioners Administrative meeting on Thursday, November 19, 1998, and the public was invited to attend that meeting.

There being no further business to come before the Board, the Commissioners were in recess at 9:20 p.m.

WEDNESDAY, NOVEMBER 18, 1998

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

Audit List -- Commissioners Hart and Kennedy signed the Audit List, dated November 17, 1998, pages 2-32, with a grand total of \$331,793.87. The Audit List was returned to the Accounting Department.

Plat and Improvements Agreement - The Commissioners signed the plat and improvements agreement for River Watch, Phase I, an 8-lot residential/recreational subdivision located in Sections 8 and 17, T15N, R14W, PMM, Missoula County, a total area of 17.86 acres, with the owners of record being Sunlight Development, LLC.

PUBLIC MEETING - November 18, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, Acting County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$331,793.87. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Consideration of - McCool Addition (2 lot Subdivision) - Linda Vista Area

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicants, Richard and Linda McCool, are requesting approval to divide a 1.06 acre parcel into 2 lots, approximately 0.5 acre each in size. The property is located on Darrell Lane in the Linda Vista Area. The property is legally described as Lot 5, Block 3, Linda Vista, Section 12, Township 12N, Range 19W. The property is zoned C-RR2, Residential, not to exceed 2 dwelling units per acre. The 1997 Miller Creek Comprehensive Plan designates Residential land use with a density of 2 dwelling units per acre.

Adjacent land uses are single family residential. One house is currently located on the property, which is served by Mountain Water and city sewer. Connections to Mountain Water and city sewer are proposed for the new lot. The property is likely to be annexed within one year.

Access is provided via Darrell Lane to a private driveway. The new lot would be served by a new driveway exiting from Darrell Lane. Darrell Lane is a 24 foot paved County maintained road within a 50 foot right-of-way. The applicant has requested variances from the requirements for a 60 foot right-of-way, pedestrian walkway, and curbs and gutters for Darrell Lane.

A gully running through the southern portion of the property serves as a drainage area to convey runoff. The applicant has shown a 20 foot drainage easement on the plat, 10 feet on each side of the centerline of the gully. No other drainage plans are included with the application packet.

The applicants have stated that drainage problems that have occurred in the Linda Vista subdivision have not been in the vicinity of this subdivision. Horace Brown, County Surveyor, stated that he was not aware of any drainage problems in that area. Steve King, City Engineer, also stated that he was not aware of drainage problems in this particular area of Linda Vista.

Condition 2 requires the applicants to provide information required by the County Surveyor to address the drainage and grading requirements of Subdivision Regulations Article 3-4(1)(A) and (B). The County Surveyor will review and approve grading and drainage plans, including the drainage easement width, prior to plat filing.

The Office of Planning and Grants recommends approval of the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; approval of the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Darrell Lane to vary from the required 60 foot right-of-way to a 55 foot right-of-way; and approval of the variance request from Section 3-2(4) of the Missoula County Subdivision Regulations that requires curbs and gutters on Darrell Lane, based on the findings of fact set forth in the staff report.

The Office of Planning and Grants recommends approval of the McCool Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

Erica Brown, Professional Consultants, Inc., developer's representative, was present, as was Richard McCool. She presented some photographs to the Commissioners regarding the drainage in the area. She stated the new house would be placed behind the large fir tree band near the front of the property. The lot will be regraded and the ditch will be kept intact. Any potential drainage problems would be alleviated with the regrading. The previous resident of the property never experienced any drainage problems in the past.

Commissioner Hart noticed that Horace Brown's comments on Big Waters Ranch were included in the packet by mistake.

Chairman Evans asked for public comments.

Commissioner Hart asked how many houses on Darrell Lane this would make?

Nancy Heil stated it would make 4 houses on the south side of the street and 3 houses on the north side of the street.

Commissioner Hart asked Colleen Dowdall about the new subdivision regulations which would require curbs and gutters with this many houses.

Colleen Dowdall stated she did not know if this would specifically fall into a subdivision that would require curbs and gutters. Distinctions have been made based on inside and outside the urban growth area; and outside the urban growth area based on the size of the frontage onto the property.

Commissioner Hart asked about the number of houses on a street with regard to curbs and gutters.

Colleen Dowdall stated that could be factor also, but was related more to a development being built, not dealing with pre-existing homes. It would not be required, even in the new regulations, for a developer who is splitting a lot in two to provide curbs and gutters for the whole street.

Commissioner Hart asked Horace Brown where in Lower Linda Vista was the backyard that always has drainage problems.

Horace Brown stated it was off Jay Lane and Eldora Street.

Nancy Heil stated the current subdivision regulations do have a requirement that states that curbs and gutters be required in urban or suburban densities of two dwellings units per acre or more, which fits this development, which is why there was a request for the variance from that requirement. Both the County Surveyor and City Engineer agreed it would not make sense to put curbs and gutters in the middle of the block without addressing the entire street.

Commissioner Kennedy stated he agreed with that assessment and there is also an RSID waiver. Darrell Lane is also not a through street and not heavily traveled.

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

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Darrell Lane to vary from the required 60 foot right of way to a 55 foot right of way; and approve the variance request from Section 3-2(4) of the Missoula County Subdivision Regulations that requires curbs and gutters on Darrell Lane, based on the findings of fact set forth in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the McCool Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Darrell Lane, 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.

2. The applicant shall provide information required by the County Surveyor to address the drainage and grading requirements of Subdivision Regulations Article 3-4(1)(A) and (B) prior to plat filing. The County Surveyor shall review and approve grading and drainage plans, including the drainage easement width, prior to plat filing.
Subdivision Regulations 3-4(1)(A) and (B) and staff recommendation.

Consideration of - Simmons Subdivision for Lease/Rent (3 units) - Silver Street in Clinton

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicants, Jerry C. Simmons and M.J. Simmons, are requesting approval to add a mobile home to an 81 acre parcel where 2 homes currently exist. The property is located in Clinton at the end of Silver Street. The property is unzoned. The 1975 Comprehensive Plan designates suburban residential land use with a density of up to 2 dwelling units per acre on the portion of the property used for residences.

Both existing dwelling units are located in the eastern portion of the property and connected to individual septic systems. A mobile home is also located between the existing two homes, which is not hooked up to a septic system and which will be removed. The new building site is located near the eastern property line as shown on the site plan. Much of the property is located within the Clark Fork River's 100 year floodplain. The existing and proposed septic systems are located outside the 100 year floodplain, as is the new building site.

The applicants also owns a 200 foot wide portion of the former Old Milwaukee Railroad right-of-way, along the eastern property boundary. A Montana Power Company gas line runs along the northern boundary of the former railroad right-of-way. A Yellowstone Pipeline easement is located in the western portion of the property, several hundred feet away from the residences.

The property is accessed via Silver Street, which is located within a 60 foot right-of-way. The County right-of-way ends at the former railroad right-of-way. The road continues through the former right-of-way, now owned by the applicant, to serve the residences and an adjacent single family home to the north.

Access to the subdivision is provided via East Mullan Road to Silver Street, which is maintained within a 60 foot County right-of-way from East Mullan Road to the former railroad right-of-way. Silver Street is paved to a 22-24 foot width from East Mullan Road to east of Clarkson Street. A gravel surface extending to the former railroad right-of-way generally varies in width from 14-18 feet. The applicant is not proposing improvements to the County maintained portion of Silver Street.

The road continues across the former railroad right-of-way, now owned by the applicant, to the subject property. The private portion of the road varies in width from 16-18 feet. The road splits to form a driveway loop. Three Silver Street addresses have already been assigned to the property.

A remnant channel of the Clark Fork River is located in the central portion of the property which supports high quality riparian habitat with a cottonwood overstory. Riparian vegetation is also located along the river itself. Hay fields are located between this channel and the river. Staff encourages the applicant to continue to preserve and enhance the riparian resources on the property. Staff recommends that a riparian management plan be developed prior to plan filing (Condition 5).

The Office of Planning and Grants recommends approval of the variance request from Section 3-2 of the Missoula County Subdivision Regulations for the County portion of Silver Street to vary from the required 24 foot width to the existing condition; and approval of the variance request from Section 3-2 of the Missoula County Subdivision Regulations for the private portion of Silver Street to vary from the required 24 foot paved width to a 20 foot gravel surface, based on the findings of fact set forth in the staff report.

The Office of Planning and Grants recommends approval of the Simmons Subdivision for Lease or Rent, based on the findings of fact in the staff report and subject to the conditions in the staff report.

Chairman Evans asked for public comment.

Jerry Simmons was present and came forward to answer questions.

Commissioner Kennedy asked Mr. Simmons if he was proposing additional development for the area within the 500 year floodplain?

Jerry Simmons stated he was not.

Commissioner Hart stated she did not understand the road issue. According to Horace Brown, the private road and parking area should be paved, but the applicant decided to construct a new road to the south of the existing road and the new road would service the two existing structures and the existing road would service the new structure.

Nancy Heil stated subsequent to that letter, staff has come up with a different variance request and a slightly different road design reflected on the site plan. Part of the variance request reads for the private portion to vary from a 24 foot paved width to a 20 foot gravel surface. Where the County maintenance ends is at the railroad right of way. There is a very small portion that crosses Mr. Simmons ownership on the Old Milwaukee right of way that technically serve three lots. Where the driveway splits, it no longer has to meet road standards, it is approximately a 100 foot portion of the roadway on the former right of way that is subject to the road standards, which will remain gravel with a 20 foot width, based on approval of the variance request. The County road paving ends just past Clarkson Street, well before the County maintenance ends. Silver Street continues to the old right of way for another approximately 250 feet, in an unpaved condition.

Commissioner Hart asked Horace Brown if that met his request.

Horace Brown stated regulations require that paving be done, it is up to the Commissioners if they want to waive the requirement, and require an RSID waiver instead. This is a substandard road as far as today's road standards are concerned, there would be more than paving required to bring it up to County standards. It is in an old subdivision, there are a lot of roads in the County that don't meet standards.

Nancy Heil stated the portion of the road from Mullan Road to the right of way is a County road, and there is a portion of that County road that is neither paved nor meets County road width standards. The County right of way does not extend, in this case, across the railroad right of way. There are other streets in Clinton, for example 6th Street, where the County right of way does extend. That approximately 125 feet is private, the rest of Silver Street is County.

Commissioner Kennedy asked what the distance of unpaved County road was, from the north boundary of the old right of way, north on Silver.

Nancy Heil stated it was approximately 200 to 225 feet.

Commissioner Kennedy asked Horace Brown if the County maintained that, all the way to the old right of way?

Horace Brown stated the County did maintain that portion.

Commissioner Kennedy stated the County maintained part of the road that is paved and part of the road that is unpaved. The part that is unpaved does not comply with County road standards, but it is maintained anyway.

Horace Brown stated that was correct, it was accepted as part of the subdivision in 1974. A list of roads that would be accepted for maintenance contained some roads that do not meet County standards, especially in these older subdivisions.

Commissioner Kennedy stated he understood the variance request better now, it was a variance from pavement as well as a variance to the existing condition. He was unclear what the existing condition was in terms of width.

Nancy Heil stated on the County portion of the road, the portion that is paved varies from 22 to 24 feet, the unpaved portion varies from approximately 14 to 18 feet, there are some shoulders on the side. Staff has asked the applicants to improve the private portion to 20 feet, they have not been asked to improve the County portion.

Commissioner Kennedy stated his concern is that for 250 feet there is a substandard County road which varies in width on the traveled way from 14 feet to something greater than that. Systematically, the Fire District has requested, and the Commissioners have granted, a minimum 20 foot width. He was concerned that width, in this case, would be granted a variance. He wanted to make sure there is a solid access for emergency vehicles, and in this case it sounded like there was not.

Colleen Dowdall wanted clarification that the 200 to 250 feet of County road is improved to 20 feet.

Commissioner Kennedy stated it was not, it was gravel, unimproved, but County maintained.

Nancy Heil stated that was correct.

Colleen Dowdall stated that then its width is also 14 to 18 feet.

Nancy Heil stated it was generally closer to 18 feet, in some places it was as narrow as 14 feet, but there were shoulders in that area. Staff has not asked the applicant to improve the County portion of the road because he is not the sole beneficiary of that road. Staff has asked him to improve the private portion to the 20 foot width, with the provision of an RSID waiver for the County portion.

Colleen Dowdall stated the map which best demonstrated the area is the floodplain map at the end of the staff report. It shows that Silver Street goes through the subdivision, then a portion of it goes through the common area of the subdivision. When it gets to the old railroad right of way, it becomes private. The conclusion is that if the applicant was required to improve the entire gravel portion, that would be what it would involve, improving it knowing that it is used by the older subdivision in addition to his three residences.

Chairman Evans stated that part of this is a County road and she could not, in good conscience, ask the applicant to improve a County road.

Colleen Dowdall stated the staff report does not suggest that, although it can be asked of an applicant in certain circumstances, if they are the only one who has access from a particular road.

Commissioner Hart asked how many approaches to Silver Street there were in the 250 feet in question.

Nancy Heil stated just to the west of Clarkson Street is where Silver Street is no longer paved. North off Silver Street there is a road that forms a loop for the Clinton Community Center. There is also another resident who lives on the former railroad right of way to the north of Mr. Simmons property.

Jerry Simmons stated although it is not a road, the County maintains the Lewis and Clark Addition to gain access into their sanitary landfill, to the south of Silver Street.

Commissioner Kennedy stated the comment from the Chief of the Clinton Rural Fire District was that the road surface should support fire apparatus weight, although width is not specified. He asked Horace Brown if the unpaved area of County maintenance with shoulders was sufficient to support fire apparatus?

Horace Brown stated there was a good base but it was not very wide, however, it will support garbage trucks and maintenance vehicles, some of which are as heavy as fire trucks.

Commissioner Kennedy stated that Nancy Heil said the overall traveled width varied from 14 to 18 feet, with an additional shoulder. His concern was with the shoulder away from the traveled width, does that have sufficient base under it to support fire vehicles?

Horace Brown stated it did, the shoulder was as strong as the road itself.

Nancy Heil stated the shoulder portion was not graveled, but there is additional unobstructed width, which she did not measure in the field, it was based on her observation.

Commissioner Hart asked Nancy Heil if the Fire Chief's question has been responded to correctly, was he referring to the County road or the driveway?

Nancy Heil stated it was her understanding that the Fire Chief was looking essentially at the access on Mr. Simmons property, to make sure that if he constructed any new driveways, that they be of sufficient base to accept emergency vehicles. The Fire Chief recommended further that there not be parking along the loop. She believed that Mr. Simmons had also had a conversation with the Fire Chief in person.

Jerry Simmons stated the Fire Chief indicated to him that the driveway was one of the best surface roads he had seen, it is well compacted. He stated he maintains his property very well, hauling gravel in and maintaining the roads above standards. The width is very wide and there will be no parking near the road itself, it will be approximately 40 feet wide. The fire engines have been there a few times, not for any emergencies, and have found the road more than adequate.

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

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2 of the Missoula county Subdivision Regulations for the County portion of Silver Street to vary from the required 24 foot width to the existing condition; and approve the variance request from Section 3-2 of the Missoula County Subdivision Regulations for the private portion of Silver Street to vary from the required 24 foot paved width to a 20 foot gravel surface, based on the findings of fact set forth in the staff report. Commissioner Kennedy second the motion, as the first part of the motion reflected the proposal for the public portion of Silver Street and the second part of the motion reflected the proposal for the private portion of Silver Street. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Simmons 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 Kennedy seconded the motion. The motion carried on a vote of 3-0.

1. The lot owner shall file a document of record with Missoula County waiving the right to protest future upgrading of Silver Street including installation of pedestrian walkways, based on benefit, which may be used in lieu of 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. Such document shall be filed prior to final plan filing. *Subdivision Regulations Article 3-2, County Surveyor and staff recommendation.*
2. The lot owner shall file a document of record prior to plan filing waiving 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 Article 3-7(2) and staff recommendation.*
3. A development agreement shall be filed, subject to County Attorney approval, that states that the private portion of Silver Street shall be improved to a minimum gravel width of 20 feet and that the driveways serving the dwelling units shall meet the requirements of Missoula County Subdivision Regulations and the Clinton Rural Fire District. The development agreement shall be filed prior to plan filing. The road and driveway design shall be approved by the Clinton Rural Fire District prior to plan filing. *Subdivision Regulations Article 3-1(1)B, 3-1(1)(E), 3-1(2), 3-2, and staff recommendation.*
4. The lot owner shall contribute \$100.00 per new dwelling unit to the Clinton Rural Fire Department prior to plan filing. *Subdivision Regulations Article 3-7(2) and Clinton Rural Fire Department recommendation.*
5. A riparian management plan shall be developed and approved by OPG prior to plan filing. *Subdivision Regulations Article 3-13 and staff recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

THURSDAY, NOVEMBER 19, 1998

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 item was discussed:

- 1) The Commissioners considered sale of additional 12,000 sq. ft. of Mullan Road property to Mountain States Leasing. Commissioners Hart and Kennedy rejected the offer. Commissioner Evans opposed their decision.

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

FRIDAY, NOVEMBER 20, 1998

The Board of County Commissioners did not meet in regular session. Commissioner Hart was in Hamilton attending a Mental Health Board meeting; Commissioner Kennedy was in Helena to attend a Statewide Growth Summit at Carroll College; and Commissioner Evans was out of the office all day. Late in the afternoon, Commissioner Hart attended the UM Bureau of Business and Economic Research 50th Anniversary Reception at the Gallagher Business Building.

Vickie M. Zeier

Vickie M. Zeier
Clerk & Recorder

Barbara Evans

Barbara Evans, Chairman
Board of County Commissioners

MONDAY, NOVEMBER 23, 1998

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

Extension - At a departmental meeting of the Office of Planning and Grants, the Commissioners approved an extension for final plat submittal for Osprey Preliminary Plat Subdivision, making the new filing deadline March 31, 1999, with a letter to Tim Wolfe of Territorial Engineering and Surveying, Inc.

TUESDAY, NOVEMBER 24, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Hart was out of the office all day due to illness.

ADMINISTRATIVE MEETING

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

Extensions - The Commissioners approved two extensions:

1. a 180-day extension for Intoto Farms Subdivision, final plat submittal, making the new filing deadline May 19, 1999, with a letter to David Fife.
2. a 180-day extension for Deschamps Lane #2, final plat, making the new filing deadline May 19, 1999, with a letter to Ron Ewart of Eli and Associates.

Other items included:

- 1) The Commissioners accepted the final draft and authorized submittal of the Lolo Facilities Plan to the Montana Department of Environmental Quality.
- 2) The Commissioners approved the adoption of a resolution for the new development fee policy for Lolo sewer and water connections.

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

WEDNESDAY, NOVEMBER 25, 1998

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

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated November 24, 1998, pages 2-42, with a grand total of \$1,728,606.54. The Audit List was returned to the Accounting Department.

PUBLIC MEETING - November 25, 1998

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

Public Comment

Al Bellusci, 4150 Edgewood Drive, stated that he had seen a report on KECI News last evening regarding the Milltown Dam, which Michael Kennedy commented on. Commissioner Kennedy's comment was that the Milltown Dam will fail and sediments will be washed downstream and therefore the dam must be removed. He asked if that was an official position of the County? Is it an official position that the dam will fail?

Commissioner Hart stated at the last meeting with DEQ, this was discussed. It is the case that the dam is not a "forever" dam. It is a rock crib over wood structure and Montana Power will not maintain it. DEQ, Commissioner Kennedy and herself are looking at what that can mean long term.

Al Bellusci asked what was the basis that would support that kind of an analysis that the dam would fail, and if there is a concern, will the County support a technical, safety evaluation of the dam?

Commissioner Hart stated she felt there would have to be a lot more technical research done in order to come to any conclusions. The bottom line is that no one is willing to maintain the dam, and the County can't take that liability. ARCO and Montana Power are discussing the dam situation. If the Federal permit expires, there needs to be someone to step up to the plate to say they will maintain the dam in perpetuity. Dams don't last in perpetuity by themselves. It was not one of

the options in discussions with DEQ and ARCO, until Montana Power decided to sell it. She did not believe that the purchaser of Montana Power facilities purchased the Milltown Dam, it is in limbo right now.

Al Bellusci stated he was in favor of sediments being removed but would look at how they were removed to make sure it was acceptable. One of the big concerns was that there not be another mining operation, it would have a significant impact on the community. It is preferred that technology be the proper course in removal. Something that is very similar in the immediate area is what has happened at Malfunction Junction, that technology and other things have taken place that have indicated the problem is not as severe there as it was originally. He has faith in technology, having just visited Europe, he found they are very environmentally conscious but they believe in solving their environmental problems technically, which they have done. Munich is a beautiful city with clean air and clean water, but they have done a lot through technology to solve those problems. He hoped and believed that is where the real problem solving lies. He was pleased to hear the board would not act without further technical evaluation of the site before any recommendation is made. He was very disturbed by the report on television last night.

Commissioner Hart stated that at the last meeting there was hours of discussion about how to remove the sediment, with DEQ helping focus the seriousness of the discussion. There is not enough money in the last of the ARCO settlements to do that. It is a major project and there is not any major money.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$1,728,606.54. Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Hearing - Family Transfer (Wheeler)

Kathy Smith requested to postpone the hearing for two weeks to December 9, 1998, as no one was present in connection with this family transfer.

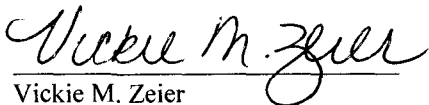
There being no further business to come before the Board, the Commissioners were in recess at 1:37 p.m.

THURSDAY, NOVEMBER 26, 1998


The Courthouse was closed for Thanksgiving Day.

FRIDAY, NOVEMBER 27, 1998

The Board of County Commissioners did not meet in regular session. Commissioners Evans and Kennedy were out of the office all day.



Vickie M. Zeier
Clerk & Recorder



Barbara Evans, Chairman
Board of County Commissioners

MONDAY, NOVEMBER 30, 1998

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.

TUESDAY, DECEMBER 1, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was in Spokane, WA to attend the NW Mining Association's Annual Meeting at the Spokane Convention Center.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of November, 1998.

ADMINISTRATIVE MEETING

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

Warranty Deed - The Commissioners signed a Warranty Deed to George Knapp in exchange for right-of-way and construction easement for realignment of Blue Mountain Road at the irrigation canal. The Deed was returned to Horace Brown, County Surveyor, for further handling.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Missoula City-County Health Department transferring a portion of funds from a Juvenile Justice grant received by OPG to the Health Promotion Division to support development of the Alliance for Missoula Kids and Families. Value of the Agreement is \$7,125.00. Duration of the Agreement is October 1, 1998 through September 30, 1999. The Agreement was returned to the Health Department for further signatures and handling.

Resolution - The Commissioners signed Resolution No. 98-089, a resolution adopting a water and sewer development fee for RSID #901. The fee shall be \$1,381.00 per single family residential lot. The Resolution shall take effect after submittal to and approval by the qualified electors of RSID 901.

Electric Powerline Easement - Chairman Evans signed an Electric Powerline Easement to the Montana Power Company, for the sum of \$1.00, along the north boundary of the Miller Creek gravel pit. The Easement was forwarded to Montana Power Company.

Extension - The Commissioners signed a 30-day Extension to the Option Agreement with Wesmont Builders for contingencies 3-C and 3-D in the Option for Reserve B.

Other items included:

- 1) The Commissioners approved a request from Art Garner, Building and Grounds Manager, for purchase of two tables (\$1,100.00 each) and 14 (\$99.00 each) chairs for the first floor jury room.

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

WEDNESDAY, DECEMBER 2, 1998

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.

Audit List -- Commissioners Evans and Hart signed the Audit List, dated December 1, 1998, pages 2-46, with a grand total of \$226,943.84. The Audit 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 Odlin, for the month ending November 30, 1998.

The Commissioners approved the Buyers and Sellers Settlement Statements for the property transaction between Dodd Development Co., and the Missoula County Airport Industrial District - Sellers Lots 5, 6, 7A, and 7B in Block 9 of the Missoula Development Park Phase II, and Buyers Tract B-2 of COS 3687.

Budget Transfers - The Commissioners signed seven Budget Transfers:

1. RSID 8901, transferring \$18,351.60 from Contracted Services to Capital - SID Construction;
2. Historical Museum, transferring \$915.00 for purchase of fax machine;
3. Health Department, transferring \$6,142.00 from Contingency and Mileage to Capital - Office Equipment;
4. Health Department, transferring \$2,313.00 from Contingency and Tuition/Fees to Capital - Office Equipment;
5. Health Department (Junk Vehicle Fund), transferring \$2,089.00 from Contracted Services and Towing to Capital - Office Equipment and Capital - Tech. Equipment;
6. Health Department (Water Quality District), transferring \$1,194.00 from Capital - Tech. Equipment to Capital - Office Equipment;
7. Health Department (Junk Vehicle Fund), transferring \$1,196.00 from Capital - Vehicles and Towing to Capital - Office Equipment.

PUBLIC MEETING - December 2, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, County Surveyor Horace Brown and Deputy County Attorney Colleen Dowdall.

Public Comment

None.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$226,943.84. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing - Resolution of Intent to Create RSID 8840 (Maintenance of 5 Fire Hydrants - Sweetgrass Addition at Maloney Ranch Phase I Subdivision)

Chairman Evans read the report.

The Sweetgrass Addition of Maloney Ranch Phase I Subdivision petitioned Missoula County to create a Rural Special Improvement District for fire hydrant maintenance. A Resolution of Intention to Create RSID #8840 was passed on November 10, 1998, for the purpose of maintenance of five (5) fire hydrants to serve Sweetgrass Addition Subdivision of Missoula County. The total estimated annual cost per year including county costs is \$1,718.64. The total estimated annual cost per each single family residential parcel is \$30.05. There are 52 lots in the district. No protests were received.

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

Commissioner Kennedy asked Jesse Sattley about the County costs being included, were they administrative costs?

Jesse Sattley, RSID specialist, stated the limit by the statute for the maintenance district is up to \$500, and it is nowhere near that for administrative costs for this district.

Commissioner Kennedy asked if this was a one time cost?

Jesse Sattley stated it was an annual cost.

Commissioner Hart asked if an RSID should be created in light of CI-75.

Colleen Dowdall stated they should be created. If the RSID is created, assessments can't be done at this point, but the district can be created. Depending upon what happens with CI-75, it may require a vote before any money can be assessed.

Commissioner Hart asked if the developer understood that?

Colleen Dowdall stated she had a conversation with the developer regarding that.

Commissioner Hart moved that the Board of County Commissioners resolve to create RSID 8840 which was initiated on November 10, 1998, for the maintenance of five (5) fire hydrants to serve Sweetgrass Addition subdivision of Missoula County. Chairman Evans seconded the motion. The motion carried on a vote of 2-0 (Commissioner Kennedy abstained).

Hearing - Boundary Relocation and Revocation of Agricultural Covenant (Disch)

Colleen Dowdall gave the staff report.

This is a consideration of a request to revoke the agricultural covenant currently existing on the remainder parcel shown on COS 2365 and relocate boundaries between the remainder parcel shown on COS 2365 and a parcel described in Book 371 Micro, Page 147 for Bernard R. Disch and Carol Kotte (now Mrs. Disch).

Bernie Disch has submitted a request to revoke an agricultural covenant which currently exists on the remainder parcel as shown on COS 2365 and relocate the boundaries between that parcel and the remainder of his ownership as described in Book 371 Micro, Page 147. The parcels are 2 acres and 13.9 acres in size and located in the Petty Creek area south of Alberton. The parcels are intersected by Petty Creek Road and Mr. Disch's and Ms. Kotte's (now Mrs. Disch) home currently exists on the portion northeast of the road. They wish to revoke the agricultural covenant, which they did not know existed when the property was purchased, and to relocate the boundaries to conform to Petty Creek Road.

The history of the parcel is as follows: The parent parcel was created as an aliquot parcel of approximately 20 acres. In May, 1979, COS 2091 was filed creating a 6 acre agricultural parcel in the southeast portion of the property. Also in May, 1979, COS 2365 was filed creating a 4 acre agricultural parcel on top of the 6 acre parcel leaving a 2 acre remainder on which an agricultural covenant still exists. Mr. Disch purchased both parcels in September 1991 and quitclaimed half interest to Ms. Kotte in January, 1993.

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

Chairman Evans opened the public hearing.

Dick Ainsworth, Professional Consultants, Inc., claimant's representative, was present, as was the applicant, Bernie Disch. He stated when Mr. Disch purchased the property, he knew he had two parcels and thought one was on each side of the road. That turned out to be false. He also did not realize that one of the parcels had an agricultural covenant against it. He would like to remove the agricultural covenant and relocate the boundary to follow the road so there will be two parcels, one on each side of the road. He lives on one parcel and the other is vacant.

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

Commissioner Hart asked about the agricultural covenant on the portion of land to the east of Tract 2.

Colleen Dowdall stated the agricultural covenant on that portion of land remains; this tract is not owned by the Disch's.

Commissioner Kennedy stated this will do what was originally intended when they changed from a 6 acre to a 4 acre agricultural covenant, it is really a housekeeping issue.

Colleen Dowdall stated that was correct.

Commissioner Hart moved that the Board of County Commissioners approve the request of Bernard R. Disch and Carol Kotte (Disch) to revoke the agricultural covenant which exists on the remainder parcel shown on COS 2365 and relocate boundaries between the remainder parcel shown on COS 2365 and a parcel described in Book 371 Micro, Page 147, for Bernard R. Disch and Carol Kotte (Disch). Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing - Boundary Relocation and Family Transfer (Nicholson)

Kathy Smith, Paralegal, County Attorney's Office, gave the staff report.

This is a consideration of a request to relocate a boundary and create a family transfer parcel for COS 2882 and a parcel described as Tract A of Deed Exhibit 3822 located in Section 8, T13N, R19W, for Eldon J. Nicholson.

Eldon J. Nicholson has submitted a request to relocate a boundary and create a family transfer parcel for COS 2882 and a parcel described in Deed Exhibit 3822. COS 2882 is .87 acres in size and Tract A of Deed Exhibit 3822 is 7.084 acres in size and are located off Grant Creek Road just south of Interstate 90. Mr. Nicholson proposes to increase the .87 acre parcel to approximately 2 acres for sale to JGL Distributing and create an approximately 3 acre parcel for transfer to his wife, Donna Nicholson, which would also leave a 3 acre remainder parcel.

The history of the parcel is as follows: Both parcels were created by deed prior to 1974. Mr. Nicholson purchased the parcel shown on COS 2882 in 1969 and Tract A of Deed Exhibit 3822 in 1988.

According to the records kept by the Missoula County Surveyor, Mr. and Mrs. Nicholson used three family transfer exemptions in January 1979 to their three children: Cheryl Ann Nicholson; Scott Loy Nicholson; and Mark LeRoy Nicholson.

A letter has been received from Mr. Nicholson regarding this transfer.

Nick Kaufman, WGM Group, stated his firm would be doing the survey should this matter be granted. The Nicholsons live in Reno, NV, and have for a number of years. He told Mr. Nicholson of the Commissioners desire to meet with the applicant personally but Mr. Nicholson was unable to be here today, so he sent a letter stating his intent and the reason for his request for exemptions.

Dear Commissioners:

It is my understanding that you will consider my request to relocate a common boundary and to give a parcel to my wife, Donna.

The boundary relocation should be self-explanatory. The owner of the adjoining parcel wishes to expand his ownership.

With regard to the requested gift to my wife, as you may be aware, I have owned this subject property for many years. I acquired the property in conjunction with my paving business, Nicholson Paving. Both Donna and I are nearing retirement age and are positioning our assets accordingly. I would like to give Donna a portion of my Missoula property as part of our estate planning.

Thank you for considering our request.

Sincerely --Eldon J. Nicholson

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

Commissioner Hart stated this troubled her, it seemed like a subdivision. The most troubling is the remainder, why doesn't he give his wife the entire 7 acres.

Nick Kaufman stated he could not answer that question. Mr. Nicholson informed him they were doing some estate planning and shifting some property around as part of that process.

Commissioner Kennedy stated he was unclear on the boundary relocation. It seemed to him that JGL will more than double the size of their parcel as a result of the boundary relocation. Is that correct?

Nick Kaufman stated visually that appears to be correct.

Commissioner Kennedy asked what they intended to do.

Nick Kaufman stated JGL Distributing is the Conoco distributor for Missoula and also owns retail gasoline outlets. In the current location, which is the old office building for Nicholson Paving, they do equipment and gasoline pump repair. He believed their intent, although he was not positive, was to acquire more land for that specific use.

Commissioner Kennedy stated his concern was he did not know what the land use and zoning were and whether it would allow the use they intend. He was concerned that if the property was expanded to twice what it currently is, they avoid the review they would receive under subdivision.

Nick Kaufman stated that on the application, on Page 2, the property is zoned CI-2, which is the County heavy industrial zone. The use that is there is permitted use in that zoning district. Review for subdivision would simply look at the exterior boundary lines. Subdivision review process does not require site plans for proposed uses.

Commissioner Kennedy stated the only review it would be receive would be in the building permit.

Nick Kaufman stated that would be correct and they would have to get a zoning compliance permit as well as a building permit.

Chairman Evans asked Colleen Dowdall if there was any legal reason that Mr. Nicholson cannot give his wife a 3 acre piece and have a remainder?

Colleen Dowdall stated family transfer parcels typically do have a remainder, one parcel is divided which creates the gift parcel and a remainder parcel. Part of the process is the inquiry into whether it is an attempt to evade subdivision review.

Nick Kaufman stated Mr. Nicholson was a businessman in this community, very successful, and for a number of years owned Nicholson Paving Co. He moved to Reno and has a sand and gravel business there. JGL Distributing, another long time Missoula business, would like to expand the ownership of their property. He had a hard time understanding how that might be an evasion. This is Mr. Nicholson's second spouse, not the same spouse referred to in the previous gifts. The Nicholsons are past 65 and are looking at retirement and managing their assets as part of their estate planning. State law allows a gift to a family member. The decision is the Commissioners.

Commissioner Hart stated her issue was not giving his wife the whole parcel.

Commissioner Kennedy stated he had a question for Colleen Dowdall, if this division went to subdivision review, how would OPG respond with respect the this boundary relocation, as it is more than doubling the size of the property.

Colleen Dowdall stated they are rarely worried about parcels that are getting bigger, usually it is when parcels are being divided or getting smaller as to whether the use that exists would fit. Doing a boundary relocation between adjoining owners is something that is not usually worried about in terms of whether it was an attempt to evade. The Commissioner do not review boundary relocations for that reason, they are completed routinely in the Attorney's Office. If they are associated with a Family Transfer, then they are reviewed by the Board. There is no new parcel created.

Nick Kaufman stated he would not know how to submit a subdivision for a boundary relocation, it is not required, no new lots are created. In a boundary relocation it starts with two lots and ends with two lots. He has never had a boundary relocation turned down in 20 years.

Commissioner Kennedy asked what the access to the gift parcel is?

Nick Kaufman stated access easements would be provided across the parcels on the COS.

Nancy Heil, Office of Planning and Grants, commented about the lot size with respect to boundary relocation. If OPG were involved in the review of a boundary line relocation with respect to zoning, one of the main things looked at would be if there were any minimum lot size requirement for the zoning district. If this lot is already permitted use, increasing the lot size would not affect zoning.

Nick Kaufman stated there is no minimum lot size in the County CI-2 district, there are minimum setback requirements.

Colleen Dowdall stated this is requesting an exemption where the use is a zoning issue. The use of the property in an industrial zone is not the issue, even in subdivision, it is the division of the land.

Commissioner Kennedy stated the fact there is no minimum lot size answers the question. In some zones there are uses that go with sizes.

Colleen Dowdall stated there are minimum different building sizes, but that is a building permit, zoning compliance process.

Commissioner Kennedy stated there is no increased use available to this owner as a result of this boundary relocation, was that correct?

Colleen Dowdall stated she had no idea, in terms of zoning, none that she knew of. In the CI-1 zone, the restrictions about the uses are not related to lot size or building size, they are related to whether a health department permit for emissions and in a CI-1 zone, it cannot have a use that requires a health department permit.

Nancy Heil stated if that use were expanded, what additional requirement there would be from the Health Department is what would trigger a review of the expansion of the use.

Nick Kaufman stated this is inside the 4-1/2 mile jurisdiction of the city building inspector, it is zoned CI-2, not CI-1, the use that is there now conforms to the zoning. Any expansion of that use, even if it is a fence over 6 feet high, requires an application for a building permit; any expansion of use requires a zoning compliance permit from the Office of Planning and Grants. There are two permitting processes that require the conformance with performance standards.

Commissioner Hart stated she would pass this request, but felt there were more and more uses of the family transfer exemption for what it was not intended to do.

Commissioner Hart moved that the Board of County Commissioners relocate a boundary and create a family transfer parcel for COS 2882 and a parcel described as Tract A of Deed Exhibit 3822, located in Section 8, T13N, R19W, for Eldon J. Nicholson. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing - Boundary Relocation and Revocation of Agricultural Covenant (Double Arrow Ranch)

Kathy Smith, Paralegal, County Attorney's Office, gave the staff report

This is a consideration of a request to revoke the agricultural covenant currently existing on Tract 3 of COS 3209 and relocate boundaries between Tracts 1, 2, 3 and 4, COS 3209, Tract 14, COS 2946 and that tract shown on COS 4193 located in Sections 11, 12 and 14, T16N, R15W, for Double Arrow Enterprises, Inc. and Double Arrow Golf Resort, Inc.

Double Arrow Enterprises and Double Arrow Golf Resort have submitted a request to revoke an agricultural covenant which currently exists on Tract 3 of COS 3209 and to relocate boundaries between Tracts 1, 2, 3 and 4, COS 3209, Tract 14 of COS 2946 and that tract shown on COS 4193. The parcels are located in Seeley Lake, east of Highway 83 off Double Arrow Road. Double Arrow would like to relocate the boundaries creating parcels that would better configure to the current uses and revoke the agricultural covenant, adding the land to a larger parcel, for a proposed subdivision; beginning with six parcels and ending up with five. Essentially, Double Arrow would be creating a 117.3 acre parcel which would undergo subdivision review, a 35.2 acre parcel out of two existing parcels for the golf course, a 20.2 acre parcel currently used as an open meadow, a 20.1 acre parcel on which exists the Double Arrow Lodge and out-buildings and an 8 acre parcel on which currently exists the Double Arrow Conference Center and related facilities.

The history of the parcel is as follows: COSs 1111 and 1116 were both filed in January 1977 as occasional sales and remainders. COS 2362 was filed in April 1980 as a parcel greater than 20 acres in size. COS 2946 was filed in September 1983 creating fourteen parcels greater than 20 acres in size. COS 3209 was filed in 1989 by Double Arrow Ranch Associates, Ltd., creating two parcels greater than 20 acres in size, the agricultural parcel and relocating boundaries. COS 4193 was filed in March 1993 by Double Arrow Enterprises, Inc., creating a parcel greater than 20 acres in size. There have been eight phases of the Double Arrow Ranch subdivision filed on adjoining land.

According to the records kept by the Missoula County Surveyor, Double Arrow Golf Resort, Inc. has not used any exemptions to the Subdivision and Platting Act, however, there are exemptions that have been used under different corporate names of Double Arrow as described above.

The previous corporation known as Double Arrow Ranch Associates, Ltd., has nothing to do with the current corporation of Double Arrow Enterprises, Inc.

Dick Ainsworth, Professional Consultants, Inc., was present representing the claimants. He came forward to answer questions.

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

Commissioner Kennedy asked when this is scheduled for subdivision review?

Dick Ainsworth stated it has been submitted and is scheduled for the Planning Board meeting on December 15, 1998; and in front of the Commissioners in early January, 1999.

Commissioner Hart moved that the Board of County Commissioners approve the request to revoke the agricultural covenant existing on Tract 3 of COS 3209 and relocate boundaries between Tracts 1, 2, 3 and 4, COS 3209, Tract 14, COS 2946, and that tract shown on COS 4193, located in Sections 11, 12 and 14, T16N, R15W, for Double Arrow Enterprises, Inc. and Double Arrow Golf Resort, Inc., in that this does not appear to be an evasion of the Subdivision Act. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Consideration of - Rowe Acres Lot 1 (5 lot Residential Subdivision) - Target Range Area

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicant, David Holy, is requesting approval to divide a 5.33 acre parcel into 5 lots varying in size from 1 to 1.13 acres. The property is located on South Avenue and 37th Avenue. It is legally described as Lot 1 of Rowe Acres, SW 1/4 Section 25, T13N, R20W.

One home and outbuildings are currently located on proposed Lot 1A. Surrounding land uses are single family residential to the west and east. Two four-plexes are located to the north. Fort Missoula land is located to the south.

Access to the property is provided via South Avenue, 37th Avenue, and Central Avenue. The section of Central Avenue north of the property is not currently a through street. Access to Lots 1A and 1B would be provided from

South Avenue. Access to Lots 1C and 1D would be provided 37th Avenue. Access to Lot 1E was originally proposed from Central Avenue, but is now proposed from 37th Avenue. The applicant has proposed to install a walkway along 37th Avenue. The lots will be served by individual wells and septic systems.

Central Avenue is located within a 60 foot right of way to the east and west of the property, and paved to a 36 foot width west of the property and a 24 foot width east of the property. Central Avenue is within only a 30 foot easement directly north of the property that is paved to an 18 foot width and currently is not a through street, it is blockaded at the northwest corner of the property. That short section of Central Avenue right now only serves the two four-plexes mentioned earlier.

The applicant, with this proposal, will be dedicating an additional 30 feet of right of way with this subdivision. Since the original application proposed access from Central Avenue, a variance request was included in the staff report as well as a condition for improvements to the surface width. Since that time, the amended proposal calls for Lot 1E to access from 37th Avenue, and the County Attorney's Office has determined that road widening could not be required. An additional memo for this proposal has some amended finding based on the access from 37th Avenue, deletes the variance request and amends Condition 3 to require a no access strip along Central Avenue, so access would be insured along 37th Avenue, and deletes some required widening of Central Avenue.

The Office of Planning and Grants recommends approval of the Row Acres Lot 1 Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. The variance request is not needed based on the new proposal.

Ron Ewart, Eli & Associates, developer's representative, was present; the applicant, Dave Holy, had to be out of town and was not present. The property is zoned CRR-2, 2 per acre; duplexes are allowed by special exception. There have been inquiries about this property, to do a trailer court or duplexes, however, the owner, Dave Holy, stated he wanted only one acre single family homes on this property. It is good to provide for the future possibility of other houses out there. Although a no-build strip through the middle of the lots is not required by subdivision regulations, in some cases it does make sense if the owner agrees, as is the case with this development. The owner has agreed to build a walkway along 37th Avenue. The owner has also agreed to the additional 30 foot easement for Central Avenue to plan for public transportation systems in the future. In a conversation with Horace Brown, any improvements to this portion of Central Avenue should be done correctly to align with the rest of Central Avenue making it a through street. The other residents of the neighborhood should be consulted before any changes are made to Central Avenue.

Chairman Evans asked for public comment. There being none, the public comment section was closed.

Commissioner Kennedy asked if there was a building setback on a no-build zone.

Nancy Heil stated the no-build strip would accommodate a future lot split and the current zoning setback for that district would be 25 feet, so a dwelling could be built up to the no-build zone and if there were a future lot split, still meet zoning requirements.

Commissioner Kennedy stated that if an SID waiver was included and CI-75 required a vote, it could mean that the waiver would preclude the County from developing any resource to provide future improvements. He wondered what might be done about that in this instance. On this subdivision, he presumed no work would be done until next spring and that the legislature should make some determination on the impact of CI-75, an option might be to approve this subject to resolution of CI-75 issues with respect to the effects on SID formation. He did not want the County to be in the position of not having resources to provide infrastructure that it thought it might have under the SID waiver provision.

Colleen Dowdall stated that if this was approved conditioned upon the RSID waiver, it needs to be assumed that is something that may not happen. Even if CI-75 is resolved and no vote is needed, there may not be adequate signatures to provide all of the funding for this infrastructure for this one block of roadway because the roadway as built could not be expanded without actually rebuilding the it. That is something that should not be imposed upon one developer in that area. She viewed the RSID waiver in this case as just some additional assurance. The RSID waiver is for South Avenue and 37th Avenue, including Central Avenue is a fail-safe action. Any condition that is imposed upon the plat either becomes a part of the public record or delays the filing of the plat. If approval is conditioned upon some resolution of CI-75 at a later date, then a decision would have to be made if that condition was satisfied. She was uncomfortable with doing that.

Chairman Evans stated she was also uncomfortable with doing that, because it could lead to a backlog of subdivisions that could not do anything pending the outcome of CI-75 questions, which could take some time.

Colleen Dowdall stated the other issue with this particular subdivision is that the improvements are not triggered unless they use Central Avenue for access. It is not in the regulations to require improvements to a roadway that is not used for access. The RSID waiver provides additional ability to have the homeowners help pay for improvements. If it is approved without access from Central Avenue, then there is no need for a variance and no way to request the improvements.

Commissioner Kennedy stated there was an RSID waiver for all three streets in the subdivision. It is still an issue that needs to be dealt with. It seems like there is only one chance and if approval is not conditioned, then that chance would be consideration of requiring improvements, or a bond for improvements, now. That seems inequitable, at that same time it is inequitable to expect, at some future time, adjacent taxpayers are going to pay for the improvements.

Colleen Dowdall stated that with regard to Central Avenue, if the subdivision is approved with access off 37th Avenue, there is nothing available to compel improvements on Central Avenue, which is why she is concerned about imposing that kind of condition. A logical extension of that would be a requirement to bond or improve 37th Avenue or South Avenue also. On Central Avenue, there is no way to compel the developer to improve the roadway under the regulations.

Commissioner Kennedy stated to simplify, speak to 37th Avenue and South Avenue and a bond and what that means and whether or not it is even possible.

Colleen Dowdall stated the scope of improvements for the developer to make would need to be determined. If they were not done prior to final plat filing, a bond would be posted. This is done all the time and the statute gives them two years to complete the public improvements. What Commissioner Kennedy is speaking about is future improvements that would occur by using RSID waivers. She did not believe there was a mechanism to do a bond beyond two years for unknown upkeep, maintenance, sidewalks, etc. A bond is done now pursuant to a subdivision improvements agreement which details the costs of the improvements that were required as a result of subdivision review and that agreement be guaranteed by some collateral.

Commissioner Kennedy asked Ron Ewart what the development schedule was for this subdivision?

Ron Ewart stated the owner would like to have lots on the market as soon as possible, but it was unlikely any building would begin before spring.

Commissioner Kennedy felt the SID waiver was a facilitation of development and was important. He was worried that it would be lost on this. His feeling was this should be approved contingent upon solution of the CI-75 problem within a specific time, approximately when the legislative session ends. He wanted to preserve the opportunity to form an SID, as deficient as it is, on this particular subdivision.

Chairman Evans stated her concern about Commissioner Kennedy's suggestion was that if this subdivision was approved contingent upon action by the legislature, and they don't act in accordance with the what the motion would say, then in essence the subdivision has been denied.

Commissioner Kennedy stated that was incorrect, he said subject to resolution by the legislature. If it doesn't happen, then some other decision would be made, but it would give some time to think about it. Also, it would not interfere with any construction work out there.

Ron Ewart wanted to know why an RSID of any type was needed. South Avenue is already 28 feet wide and has a walkway/bikeway along the north edge. 37th Avenue is 24 feet wide and the developer is putting a walkway along it. Central Avenue is not used but giving an easement for future connection. The RSID waiver is included because they are always done that way, but it was not needed right now.

Colleen Dowdall stated this particular RSID waiver was not being used to mitigate any identified impact from this subdivision. It is there because they are put on all of them, for surrounding County roads, in the event improvements are wanted in the future. If the RSID waivers are in place, they can be used if CI-75 gets resolved. If CI-75 doesn't get resolved, then they can't be used. In this case, they are not for contemplated improvements that are needed as a result of the impacts of this subdivision.

Commissioner Hart stated this was a valuable discussion and she would like more time to think about a new policy. She did not think a bond amount could be estimated for these RSID/SID's, they would be sometime in the future. It is worth it to think about where this will lead. The worst thing would be a moratorium which is not desirable. There is a need to know how to deal with RSID waivers and the CI-75 issue as new subdivisions are coming in all the time.

Commissioner Hart moved that the Board of County Commissioners approve the Rowe Acres Lot 1 Summary Subdivision, with the change in Condition 3, "The final plat shall include a one foot no-access strip along Central Avenue," and with the findings of fact which have been updated to reflect this change, and all of the other conditions as stated, based on the findings of fact and conclusions of law. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to South Avenue, 37th Avenue and Central Avenue, including installation of pedestrian walkways, sidewalks, 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 staff recommendation.*

2. Engineering plans and specifications for the walkway and drainage plans shall be approved by the County Surveyor prior to plat filing. The final plat shall change the label 37th Street to 37th Avenue. *Subdivision Regulations Article 3-2(5) and staff and County Surveyor recommendation.*
3. The final plat shall include a one foot no-access strip along Central Avenue. *Subdivision Regulations Article 3-2 and staff recommendation.*
4. 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 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 Articles 3-1(1)(D), 3-7(2) and Health Department and staff recommendation.*

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 plat filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*

6. The statement regarding irrigation ditch easements within utility easements shall be removed from the final plat. *Subdivision Regulations Article 3-5 and County Attorney recommendation.*
7. The final plat shall include provision for a future split of Lot 1B. *Subdivision Regulations Article 3-1(1)(C) and staff recommendation.*

Joint Hearing with City Council and Board of County Commissioners - Proposed Amendments to Subdivision and Zoning Regulations

After a short break, the meeting was resumed as a joint hearing before the City Council and the Board of County Commissioners. Present were: Mayor Mike Kadas, City Council President Chris Gingerelli, City Council Vice President Jim McGrath, and City Council members Lou Ann Crowley, Scott Morgan, Larry Anderson, Jamie Carpenter, Tracy Turek, Dave Harmon, Andy Sponseller, Myrt Charney and Jack Reidy. Council member Lois Herbig was not present.

Chairman Evans opened the public meeting. She stated this was a joint City/County meeting which would take testimony regarding the proposed zoning and subdivision regulations that have been drafted. She stated this was not a meeting to "wordsmith" the document, it was simply to take public testimony. She asked Barbara Martens to give a brief presentation.

Barbara Martens, Office of Planning and Grants, stated she would talk about the process that has been undertaken to bring the discussion to this point. Today, changes to both City and County Subdivision Regulations are being looked at, and also the City Zoning Ordinance Title 19 and County Zoning Resolution 76-113. The Growth Management Task force was formed in 1994. Because of the recognition of the need to plan for future growth and development, the Commissioners joined with the Mayor and City Council, the Chamber of Commerce and the neighborhood network to form the Growth Management Task force. There is also a representative from the Planning Board on the Task Force. The Task Force drafted a Themes Document which suggested some goals and objectives, guiding principles and action steps for consideration as the community plans for growth. There were 10 tools that were proposed along with recommendations from the stakeholders. Six of these tools were to be used to develop the regulatory changes, those include the sensitive land overlays, quality design standards, regulatory incentives and density bonuses, impact fees, a designated urban service area and adequate public facilities and concurrency. In order to reflect these themes, the Growth Management Task Force developed the recommended changes to implement these tools. Over the last two years, over 200 public agencies and private groups were mailed notices of the workshops that occurred. They were also sent copies of the proposed amendments. Staff held over 30 workshops with the Technical Review Committee, each meeting lasted anywhere from three to five hours. The Technical Review Committee forwarded these recommendations on to the Growth Management Task Force. The Task Force went over the recommendations, made changes, and forwarded their proposal to the Planning Board. The Planning Board held its first public hearing on March 31, 1998, and the hearing was continued to April 21, 1998. After the April hearing, the Planning Board decided to form an Ad Hoc Committee, made up of three Planning Board members and others from the community. The Ad Hoc Committee had 19 workshops, meeting every Friday for 5 hours each. Over this two year time period, there have been about 50 workshops, lasting from 3 to 5 hours, to go through these proposals. The Planning Board held an additional hearing on July 14, 1998, and again on October 27, 1998, where they forwarded this recommendation onto both City Council and the Board of County Commissioners. They adopted the recommendations of the Ad Hoc Committee with no changes, and that proposal is what is presented today.

Chris Gingerelli, City Council President, stated what the process from here on will be. No votes will be taken today, this is the County Public Hearing. The City Council has a Public Hearing next Monday, December 7, 1998, at 7:00 p.m., and anyone who might not have been able to make today's meeting is invited to come testify at that time. The County Commissioners, the City Council and the Mayor will reconvene in workshops, at least one, perhaps more, after these public hearings to work out what has been heard from the public. It is not expected to vote on these amendments for several weeks.

James Carkulis stated he was a member of the Ad Hoc Committee and was speaking as a private citizen today. From a fairly diverse and contentious group at the onset, to a rather remarkable effort at consensus building, is how this process managed to get to this point today. There are many areas that one can disagree with, from any point of view, but what is primarily important here is that a lot of the issues that would never have been resolved in any prior sessions, have now been resolved, and there is an amicable way of proceeding with the implementation of the urban growth plan. He spoke to three areas he found some deficiencies in and would like to see further discussion on. The first is the rather remarkable job done at creating good regulations for infill in the urban area and somewhat in the suburban area. It needs to be defined very clearly the primary and secondary urban growth areas and it needs to be mapped out. But not a lot of time was spent, nor are there adequate regulations, for developments in the rural segment of Missoula County, as far as large lot subdivisions are concerned. He urged those present to spend some time and have staff and themselves work on this to establish some concepts and a process for large lot subdivisions in rural area, different from urban and suburban regulations. The second essential area for predictability for business and the growth plan is that in the primary urban growth area, it must be zoned, no areas should be left unzoned. The third area, which is being resolved, is reference to the Wildlife Residential Interface. There is not much language on it, however developers and staff have a fairly clear idea of what this is, outside of the definition in subdivision regulations. Anybody new to the process would have a difficult time in understanding exactly what the requirements would be. In all fairness, this process was a remarkable job in a relatively short period of time.

Ron Ewart, 5201 Skyview Drive, stated he has worked with subdivision regulations for the past 6 years on a regular basis, both in Missoula and surrounding counties. The proposed regulations in some ways are good, there are some good changes and a lot of people have put a lot of time and work into them. He felt these were the most far reaching and complicated subdivision regulations ever in the state of Montana. He believed that in some cases, some of the things that are in the regulations go beyond what local government should be regulating. Land use regulations have to be constitutionally valid and there are certain things they have to be weighed against. He presented a letter that talks about constitutional validity, which was his Masters thesis. He felt some of the things were vague and broad and rely on interpretations and opinions, they are not objective. He liked things that were clear. An example was not being

able to destroy any significant cultural phenomenon, but it was very vague, who would make such a decision. He did not mean to be hard on the people who have worked on this, these are just his views. He probably represented the group of people who haven't had time to be involved, and he hoped the public comment period would be extended, so discussions can be continued. He hoped all involved would take some time and take a good look at the regulations, listening to other points of view.

Diane Beck stated she wanted to clarify the record regarding the article in today's Missoulian. Her statement to Rob Chaney is in reference to what Ron just talked about. Now that this is in front of the governing bodies, there are a lot of people who may not have been aware of it up to this point. In no way, shape or form was there any insinuation in her comments that there has not been fair and equal participation. The Office and Planning and Grants and everybody involved have done an outstanding job. And also for the record, the Technical Review Committee will be testifying on Monday night before the City Council. They are here today to monitor the discussions and will make their comments at that time.

Sara Busey, League of Women Voters, stated that she, Patricia Zapp, and Jan Hulme participated in the Ad Hoc Committee, under the expert guidance of Bonnie Gee. The staff was excellent and everyone should be proud of Barbara Martens and Colleen Dowdall for their expertise and guidance. She was speaking on two issues, one was public participation and the other was actual proposed changes in the regulations. She passed out copies of testimony given to the Planning Board, which read in part: *"The League applauds the process the Planning Board chose to develop possible amendments to zoning and subdivision regulations pursuant to the newly adopted 1998 Urban Comprehensive Plan. The League support broad public participation at every stage of the rulemaking process. A manageable number of knowledgeable citizens assembled by the Planning Board has crafted, after six months of meetings, documents workable for all. The participants included contractors, Realtors, technical staff, community resource citizens, elected officials and interested citizens. Combining their suggestions with those of others presented at the Planning Board's March and October public hearings, and now the combined Council and Commissioners' two hearings, we believe, creates adequate public participation for all interested parties."* She stated this passage left out the earlier Technical Review Committee and the planning sessions to be held later. She did not imply that what was before them was perfect, changes should be made based on testimony heard. There will be proposals presented to make changes, and she urged the Council and Commissioners to look at the minutes from the Ad Hoc Committee, so they can see all sides presented. Some of these issues were argued and presented from many different points of view, and what is presented is a compromise. Her letter also addressed some specific things that the League of Women Voters supports, based on their study of growth management, including, *"♦ Incentives, such as density bonuses, flexible setback and height requirements, and cluster development standards that encourage infill; ♦ Incentives for affordable housing, such as bonuses for density, cluster/open space, re-use of historical buildings, mixed neighborhood commercial use, flexible park dedication and connection to the sewer; ♦ The required involvement of neighbors in any planned cluster development where a density bonus is requested; ♦ Provisions for pedestrian and bicycle facilities; ♦ New standards for grading, drainage, erosion control and hillside development; ♦ A 25% density bonus for sewer hookup; ♦ Fair and thorough submittal requirements for development; and ♦ Coordination of City and County regulations within the Urban Growth Area. These more flexible, predictable regulations, combined with future development fees that reflect the true cost of government services, exemplifies growth management at its best. The League urges you to approve these proposed zoning and subdivision amendments."*

Judy Smith, 224 Crosby, stated she was present today as one of the Neighborhood Council Co-Coordinators. She will not be able to attend the City Council meeting Monday so some of her comments will be reflecting the City's relationship to Neighborhood Councils and where appropriate, she suggested that language be in this document, so it can be adopted by both governing bodies. She is very supportive of the content and process used to come up with these recommendations. She did present her suggestions to the Planning Board and was referred to these public hearings since there are some possibilities for change. She felt there were some refinements needed in the neighborhood involvement section. She was pleased to see the level of neighborhood involvement has been included, the language is the same and has established a process to involve neighborhoods when there is the suggestion of a density bonus or cluster development. From personal experience, giving people 5 days notice is an impossible deadline. In her opinion, if this is adopted with the 5 days notice, it would invalidate the Neighborhood Councils work. Her other concern is that Neighborhood Councils have a very particular relationship with the City, especially where they were created by ordinance. The created organization cannot make decision quickly on purpose, because it is not to be a small group that makes a decision, but one that invites the whole neighborhood into discussions to make a decision. Once again, because of the 5 day notice, it would make it very hard for neighborhood councils to respond responsibility to this process. She suggested in areas where there are established Neighborhood Councils, that those councils be placed on the existing Agency Notification list for rezoning and subdivision review, and that the Neighborhood Council response to OPG and the developer will parallel the agency review cycle. That way it will be taken out of a specific number of days required and put it into the cycle that already exists with other agencies. The rationale here is that the Neighborhood Council in some ways is an agency. There may be areas without Neighborhood Councils, especially in the County, and two changes are suggested to the language proposed, one being that instead of 5 days notification it be changed to a least 15 days; the second is to develop a section of the application that would be inclusive of a Neighborhood Association's written response to the development proposal. Now the language basically says that the developer would set up the meeting, invite the folks and attach minutes or letters received. She is suggesting a more pro-active role for the Neighborhood Association, such as an actual section in the application that solicits something in writing. Part of this discussion comes from the fact that people who have attended some of these meetings feel like they need some reflection time before they respond to a subdivision proposal. She is very supportive of the overall approach and felt her suggestions would help refine the desired neighborhood involvement.

Colleen Dowdall stated there seems to be a misconception that this is the County meeting and Monday is the City meeting. She wanted everyone to understand that these are noticed City and County meetings, so any testimony given on either City or County issues counts at both meetings.

Roberta Manis, Board of Directors of the University Homeowners Association and on the Leadership Team for the Neighborhood Council, stated she seconded what Judy Smith just said about the time frame, make it possible or it makes a joke out of the whole thing. There needs to be a minimum of 15 days to respond and the application should

be amended as an agency of the whole permitting process as Judy suggested. In addition to those considerations, she made a couple comments regarding the wording, "Arrange structures to avoid adverse effects ... on the residents," to also include neighbors. She also mentioned cluster developments, speaking as an individual. She did not find anything inherently wrong with houses being close together, there are some in her neighborhood, however they are owner occupied. She understood that this cannot be legislated, but have them designed in such a way that it is promising to have them owner occupied. She was afraid of having rentals only, in the absence of any occupancy standard or covenant, it could become a project. Another item she has brought up before, and mentioned again, is adequate parking space. The only other comment, which is kind of picky, is something in the Design Standards section about review of dormers. There are some real nasty ones in her area.

Bonnie Gee stated she would be talking down the middle. She helped coordinate the meetings and felt they were very valuable and a lot was learned about each other as people as well as business people and neighborhood residents. She felt that was the key to having regulations that everybody could support. If the regulations don't have that support, people will simply not follow them. There were a number of Realtors and developers who came to most meeting, devoting over 100 hours of their work time to this process and she commended them. There were also people with engineering and architectural backgrounds, and the League of Women Voters was present at every meeting. Someone from the University's Environmental Studies was also present at every meeting. There was good commitment from people to understand the issues and to deal with real world application of the regulations. Because the team knew each other as people from spending so much time together, they had a lot of outside work done. They had professional and neighborhood people do real applications of the law on real development and bring back the results of how it would work if a particular law was passed, or how it would work if done another way. This is not to suggest that because real world applications were looked at, perfect answers were defined. Points of view that often started out as being very different ended up being a lot closer together because the opposite side was also understood. She also mentioned Scott Morgan, present at most of the meeting, who brought with him the perspective of having to administer these rules. She wanted to say that real applications were looked at. The third area she addressed was the number of hours spent on revising these new regulations, every single page was reviewed a minimum of four times and comments were made on each at least four times. There is probably noting that the Council and Commissioners will address on any single sentence that has not been addressed, it doesn't mean they shouldn't be changed, but they have been reviewed. There was probably legal advice given on each one as well. Finally, she wanted to say the work that was done by the citizens on this was amazing. She felt people did put a lot of thought into it and now there is an opportunity to put into effect something that can be positive, which is a really good thing. She also felt that through this collaborative effort they have come to know one another better, and perhaps opened the lines of communication. She would not argue the 5 or 15 day notification, hopefully they will already be talking to one another. There are difficult things to consider, but absolutely both points of view must be considered.

Steve King, City Engineers Office, wanted to speak to implementation of this, there has been a lot of talk about the drafting and process, but there are specific sections of this that create new ordinance and new regulations, both with commitments for the development community and for the administration of that new ordinance. He wanted to be clear and specific about some of his concerns about that. The zoning regulations have a new section on grading, drainage and erosion control. Currently there is no review of grading, drainage and erosion control for private development. There is no review of the debris that might leave the site or effects on adjacent properties, the grade and location of the structure on the property, there is simply no agency in the City or County government that reviews that currently. This document attempts to fill that gap and create specific requirements for both submittal and review and development standards. He supports that and has been a drainage hawk for some time, it is a wonderful new standard and it certainly needs consideration and revision, but it also implies enforcement. Quite clearly, the City and County Public Works agencies do not have staff to implement this, there is not a permit process, and it needs to be understood that there will be a follow-up to this. There would need to be process put in place and resources committed to implement at least this one portion. There may be other portions as the standards are defined, there is an expectation from the community, from the developers, to have execution of those standards. Staff needs to have resources to make that come true.

Jim McGrath asked Roberta Manis about her comment on dormers, he did not understand her concerns and what suggestions she was making?

Roberta Manis stated she is suggesting that when people use the height upper limit to provide more livable space on a second or third floor, they typically do so by adding dormers. Some of these dormers are attractive additions and other are atrocious, reminding everyone of the "Flying Nun" by her house. That was the kind of thing she wanted to bring to attention, that dormers would also need to be approved by a design review board. She also mentioned that there were some secondary access stairways that were very unsightly.

Chairman Evans reminded everyone they could also testify Monday night, December 7, 1998, at 7:00 p.m., City Council Chambers, at another joint hearing of the City Council and County Commissioners.

Colleen Dowdall added another thank you to a staff person who has given incredible amounts of time, Steve King from the City Engineers Office. He made himself a regular part of the committee and provided great technical and personal expertise. He is another one of the people that everyone got to know better. He deserves a lot of credit for putting these Fridays into his work schedule.

Kirby Christian stated he was not involved in or knew about this process, probably through his own ignorance, until after the Planning Board meeting. In general he commended the people who worked on it, it shows a lot of hard work, effort and thought. He had one item he would like to address today, that has to do with the slope density reductions for hillsides. Having been through the Rattlesnake process, that presupposes two items he was not willing to presuppose, that is that hillsides are already zoned higher than they should be and that if they are not zoned higher than they should be, the Comp Plan treats them the same as they treat valley floors, which they don't. Having been through that process himself, in the Rattlesnake there was much more density on the valley floor, much less density on the hillsides, recognizing that hillsides are not as good a place to build. The Comp Plan, in some regards, was 1 per acre on the valley floor, 1 per 10 on the hillsides, now it will be a blanket 50% of that. He had a problem with that, if the standard is applied that way, it is zoning it twice. The Comp Plan really doesn't address the concerns of the property, it treats

all property the same, which he did not believe. He did not think the way the City has been zoned treats all the property the same, hillsides are treated differently in zoning than valley floors are. He is not critical at all with the design concepts, narrower streets, possibly shorter homes, items of landscape and those issues. But he is really concerned as a person who represents a number of developers who have hillside properties that are being arbitrarily zoned in two stages. The area has been zoned once, and it is recognized this is a less desirable place to build and now it is being said that adjusted density will be reduced by 50% if it's over 20% slope, or some other factor for other slopes. That fact needs to be considered when these regulations are being looked at. As a lawyer, he also had some constitutional concerns. When speaking about density as zoning, there are certain protections that state law requires, notice protection, rights of protest, issues like that. He will spend more time looking through the draft and be more informed and not as negative the next time. He felt there was a lot of work done here.

Sandy Sickels stated that as someone who spent a lot of hours in meetings, she wanted Roberta Manis to know that everyone was reminded often that it is very difficult to legislate good taste. The "Flying Nun" was not the only example of that. She even brought some photos to one of the meetings as examples of things "if we could've, we would've outlawed." She also wanted Kirby Christian to know that not all items were agreed upon in full by all people on the Ad Hoc Committee. There are still some things they will ask to be looked at again to see if what was determined is in the best interest of what they were trying to do. There is still some disagreement on a few items.

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

Chairman Evans suggested the Council and Commissioners thank Colleen Dowdall, Barb Martens, Steve King, and everyone who has worked on this, they have done yeomen's work, Mike and Scott also. She did not have a list of all those to thank and apologized if she missed anyone.

Mayor Kadas stated there were a lot of thanks you and those people knew who they were. He asked Cindy Klette to assist with scheduling the next meeting while everyone was assembled.

Cindy Klette stated the Commissioners have a scheduling conflict on Monday, December 21, 1998, which was a date set aside for a conference committee work session. The original time set was 9:30 a.m. to 12:00 noon, the Commissioners conflict goes from 9:00 to 10:00 a.m. If it would be possible for this group to meet from 10:00 a.m. to 1:00 p.m. instead, the same date can be kept. She asked if it was agreeable to everyone.

Chairman Evans stated it was not agreeable to her.

Chris Gingerelli stated the only date the Council had talked about at some length was December 14, 1998. The other dates were tentative. She could meet from 10:00 a.m. to 1:00 p.m. on December 21, 1998, was there any Council member who could not meet at that time. She also wanted to know if a decision had been made on December 28, 1998.

Cindy Klette stated as far as she knew, that date had not been discussed by this group. She did not have anything firm and thought it was discussed to go back to a Monday morning schedule.

Chris Gingerelli stated her sense was December 28th may be a problem, it is the Monday after Christmas. She suggested to not meet on the December 28, 1998.

Chairman Evans stated she was not available Christmas week.

Mayor Kadas stated his son had a small operation scheduled for December 21, 1998, he would be gone in the morning and did not know when he would return, he hoped to be back by 10:00 a.m., but could not be sure. If the group does meet on the 21st, there will need to be an alternative for chairing it, he would be there as quickly as possible.

Cindy Klette stated it was possible if the group got finished on December 14th, they may not need to meet on the 21st. Staff was so optimistic that the group could get done in one meeting, they had preliminarily scheduled 6 meetings for them.

Mayor Kadas suggested it would be beneficial to meet on the 21st, even if by chance they get finished on the 14th, they have to meet again to give an opportunity to participate to those who couldn't attend the meeting on the 14th. He would be surprised if things were completed in two meetings. He would like to see Monday mornings reserved into January for continuing discussions. If they are done early, those times can be eliminated.

Cindy Klette said room reservations could be penciled in through Lowaine Lee, Kate Pope and Marty for Monday mornings through January if that would be agreeable. As the group goes along they can determine if they need to meet the next Monday.

Chairman Evans asked if that was agreeable to everyone.

Cindy Klette said they 21st could be decided on at the meeting on the 14th, but it will be penciled in.

Jim McGrath stated it was said to meet on the 21st and not the 28th, the week between Christmas and New Years, which he felt was a poor time to schedule a meeting. To be clear, they will be meeting on the 14th and they might not meet again until January.

Chairman Evans stated that would be her preference, she did not care to do this during the Christmas holiday.

Commissioner Kennedy asked if it would be worth it to consider meeting during the week of the 14th in multiple meetings? Obviously there will be conflicts during the holidays and the fresher it is in their minds, the better off they might be.

Chairman Evans suggested to plan for the meeting on the 14th and further discuss other meetings at that time.

Diane Beck asked what time the meeting was on the 14th.

Chairman Evans stated the meeting would begin at 9:30 a.m., Monday, December 14, 1998.

There being no further business to come before the Board, the Commissioners were in recess at 3:30 p.m.

THURSDAY, DECEMBER 3, 1998

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners attended a reception held at Stone Container Corporation's Frenchtown mill.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with United Way of Missoula County for coordination activities for the Missoula Alliance for Youth. Value of the Agreement is \$19,400.00. Duration of the Agreement is October 1, 1998 through September 30, 1999, and is contingent upon receipt of Juvenile Justice Grant Funds by Missoula County.

Memorandums of Agreement - The Commissioners signed two Memorandums of Agreement with the Missoula YWCA:

1. for participation in the DPHHS Domestic Violence Program. Value of the Agreement is \$31,316.00. Duration of the Agreement is October 1, 1998 through September 30, 1999.
2. for participation in the Rural Domestic Violence Program. Value of the Agreement is up to \$70,804.00. Duration of the Agreement is July 1, 1998 through December 31, 1999.

HOME Documents - Chairman Evans signed a Deed Restriction Agreement and a Subordinate Deed of Trust with Michelle Noyd for purchase of property at 10550 Highway 10 East, Missoula, MT, through the HOME Program. The documents were returned to Cindy Wulfekuhle in OPG for further handling.

Other items included:

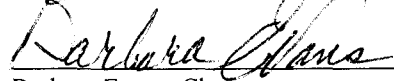
- 1) The Commissioners approved and adopted the Larchmont Golf Course Annual Budget, Capital Replacement and Debt Reduction Schedule and Fees for 1999.
- 2) The Commissioners discussed a request for reconsideration of purchase of a portion of the bench area of the Mullan Road property by Mountain States Leasing. They will counter-offer for the amount of \$2.04 per square foot and require that the Buyer landscape and maintain the sloped area. They also discussed an offer on the Pine Street properties.

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

FRIDAY, DECEMBER 4, 1998

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


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, DECEMBER 7, 1998

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners participated in a Joint Hearing with the City Council regarding revisions to the subdivision and zoning regulations. The minutes of the Hearing are on file in the Commissioners' Office and the City Clerk's Office.

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated December 4, 1998, pages 2-30, with a grand total of \$135,958.48. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Congressional Quarterly, Inc. as principal for Warrant #101085 issued 9/11/97 on the Missoula County General Fund in the amount of \$352.14 now unable to be found.

ADMINISTRATIVE MEETING

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

Plat - The Commissioners signed the plat, Subdivision Improvements Agreement and Common Area Management Plan and Maintenance Agreement for Sweet Grass Addition at Maloney Ranch, Phase I, a subdivision of Missoula County located in the E1/2 of Section 11, T12N R20W, PMM, Montana, a total area of 29.027 acres, with the owner of record being Maloney Properties, LLC.

Payroll Transmittal - The Commissioners signed a Payroll Transmittal for Pay Period 22, with a total Missoula County payroll of \$638,522.66. The Transmittal was returned to the Auditor's Office.

Memorandum of Understanding - The Commissioners signed a Memorandum of Understanding between Missoula Aging Services/RSVP and the Senior Environment Corps to coordinate volunteers for Missoula County departments. The Memorandum was returned to Marie Pruitt in Personnel for further signatures and handling.

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

TUESDAY, DECEMBER 8, 1998

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was in Deer Lodge to attend a meeting of the Upper Clark Fork River Basin Steering Committee.

WEDNESDAY, DECEMBER 9, 1998

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

Resolutions - The Commissioners signed two resolutions:

1. Resolution No. 98-090, granting revocation of agricultural use covenant to Double Arrow Enterprises, Inc. for Tract 3, COS 3209;
2. Resolution No. 98-091, granting revocation of agricultural use covenant to Bernard Disch and Carol Kotte for the remainder parcel shown on COS 2365.

Plat and Improvements Agreement - The Commissioners signed the plat and subdivision improvements agreement for Boyer Subdivision, a five-lot subdivision located in the NE1/4 of Section 33, T15N R21W, PMM, Missoula County, with the owner of record being Lisa Boyer.

Plat and Improvements Agreement - The Commissioners signed the plat and subdivision improvements agreement and guarantee for Equine Estates, a minor subdivision located in the SE1/4 of Section 25, T13N R20W, PMM, Missoula County, a total of 4.96 gross acres, with the owner of record being John Diddel.

Notices of Sale of Real Property - Chairman Evans signed Notices of Sale of Real Property for 315 West Pine Street and 319 West Pine Street. The properties will be offered for sale at public auction at 1:30 pm on December 23, 1998 in Room 201 of the Courthouse. 315 West Pine is appraised at \$125,000.00, and 319 West Pine is appraised at \$90,000.00.

PUBLIC MEETING - December 9, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, Deputy County Attorney Colleen Dowdall and Land Surveyor Chuck Wright (filling in for Horace Brown, County Surveyor, who was on vacation).

Public Comment

None.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$135,958.48. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Hearing - Family Transfer (Wheeler) - Postponed from November 25, 1998

Colleen Dowdall gave the staff report.

This is a consideration of a request to create a family transfer parcel for Tract A, COS 3867, located in Section 28, T13N, R20W, for Bruce and Juanita A. Wheeler.

Bruce Wheeler 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 20.45 acres in size and located off Upland Trail in the O'Brien Creek area west of Missoula. Mr. Wheeler wishes to create an approximately 5 acre parcel using Upland Trail as the boundary for transfer to his mother, Eula S. Wheeler.

The history of the parcel is as follows: The parcel was once a part of the Maclay Ranch ownership. Various portions of the land have been subdivided and the subject property is currently under a density transfer agreement with Missoula County. Mr. and Mrs. Wheeler were given two density transfer units pursuant to that agreement. The parcel was purchased by Gilbert L. and Eula S. Wheeler and Bruce and Juanita A. Wheeler from the Maclays in December 1989. In November 1990, the half interest owned by the elder Wheelers was transferred to Bruce and Juanita Wheeler. In November 1990, COS 3867 was filed as a retracement of the aliquot parcel.

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

John Kellogg, Professional Consultants, Inc., was present representing Bruce Wheeler, who was also present. He stated the division of this property was along Upland Trail, which divides it into approximately a 6 acre tract and 14 acre tract. The transfer is part of a financial arrangement with Bruce Wheeler and his mother regarding the residence on the property. He presented an aerial photo of the property to the Commissioners.

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

Commissioner Hart stated this 20 acre parcel was purchased and owned in common and undivided in 1989 by Gilbert, Eula, Bruce and Juanita Wheeler. Almost a year later the half interest of Gilbert and Eula was purchased by Bruce and Juanita, which is why the COS was needed in 1990, was that correct?

Colleen Dowdall stated that all four owned it together, each owning an undivided one half interest, which is how it was purchased in 1989. In 1990, Gilbert and Eula did a quitclaim deed of their interest, for a stated sum of money, \$16,100.

Commissioner Hart stated that the younger Wheelers bought a half of the property for \$16,100. The retracement of an aliquot parcel was done then to establish the boundaries.

John Kellogg stated the reason for the COS was to define the 1/2 interest as requested by the title company. Then in 1990, Bruce and his wife bought out the interest of his parents.

Commissioner Hart asked John Kellogg to read a letter from Bruce Wheeler.

John Kellogg stated this was from the letter Bruce wrote him explaining his request to the Commissioners. *"As I mentioned to you earlier, my wife and I borrowed \$30,000 from my parents (my father has since died) in 1994, toward the construction costs of our home. My mother and I have agreed that if the Board approves our family transfer request that she will give us another \$20,000 which we will use to purchase further equity in our home and in return my wife and I will transfer the 6 acre parcel to her via the family transfer."*

Commissioner Hart stated that says to her that the mother, Eula, will buy back 6 acres for \$20,000. She explained that the statute, an exemption, a way to transfer land without going through the subdivision review, puts the burden on the Board to determine if indeed the statute's instructions are followed and then the Board can say this achieves the transfer based on the statute. Many times, the Board has to ask very personal questions. She asked Mr. Wheeler if his father was still alive.

Bruce Wheeler stated he was not, he died in October of 1996.

Commissioner Hart asked Mr. Wheeler if he repaid the \$30,000 loan?

Bruce Wheeler stated it was still outstanding. This transfer will pay that loan.

Commissioner Hart stated this transfer will gain Mr. Wheeler \$20,000.

Bruce Wheeler stated there was a loan and \$20,000, both. He would be repaying the loan and acquiring an additional \$20,000, and then the property would be deeded to his mother, who is 89. Then in her will, she would will that property to his two sons, Brian and Matt, ages 5 and 8.

Commissioner Hart stated the 6 acres is to be eventually deeded to his children.

Bruce Wheeler stated that was correct.

Chairman Evans asked Colleen Dowdall if there was any legal problem with this transfer?

Colleen Dowdall stated it was just the factual question of determining whether there is an attempt to evade subdivision review, based on those questions.

Commissioner Hart stated this process told her that Eula Wheeler will have invested \$50,000 in Bruce Wheeler's house and given up, for \$16,100, half of the first parcel, then she will give her 6 acres to the boys. She needed to get it clear in her mind.

Bruce Wheeler stated he understood and was happy to answer any questions.

Commissioner Hart stated this is an invasion of his private life, but she needed to understand the transfer.

Bruce Wheeler stated he had no intention of selling the property, it is going to be either an investment for the boys for college or hopefully one will remain in Missoula and will use the land for a homesite sometime in the future.

Commissioner Kennedy stated Mr. Wheeler's mother originally sold the 10 acres to him for \$16,100, he sold 5.1 acres back to her for \$50,000, which is how he understood it.

Colleen Dowdall stated it wasn't a matter of 10 acres, it was an undivided 1/2 interest in 20 acres, which has a significantly different value than 10 acres, owned as joint tenancy with right of survivorship.

Bruce Wheeler stated they have made improvements to the property since that time also, on the 6 acre parcel in question.

Commissioner Hart stated since Mr. Wheeler owns all the property, he could deed the 6 acres to his sons.

Bruce Wheeler stated he could do that, and it would probably be okay with his mother, but this way the boys will get the land from her when she is gone, a way for them to remember their grandmother.

Commissioner Hart asked Commissioner Kennedy if he would make the motion.

Commissioner Kennedy stated he thought it was a subdivision and did not like it. He would approve it but would not make the motion.

Chairman Evans moved that the Board of County Commissioners approve the request to create a family transfer parcel for Tract A, COS 3867, located in Section 28, T13N, R20W, for Bruce and Juanita A. Wheeler, in that it does not appear to be an evasion of the Subdivision Act. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Hearing - Proposed Relocation of Right-of-Way (River Pines Road)

This is a petition to alter "The right-of-way of River Pines Road from the west low water line of the Bitterroot River to Blue Mountain Road, located in the southeast one-quarter (SE 1/4) of Section 27 and the northeast one-quarter (NE 1/4) of Section 34, Township 13 North, Range 20 West, Principal Meridian, Montana, Missoula County, Montana."

The reasons for the request are as follows:

- 1. This right-of-way is moved to the new right-of-way location shown on Certificate of Survey Number 4805.
- 2. The road right-of-way was deeded to the county by warranty deed in January, 1979, as shown in Book 133, Page 1116, of Micro Records. That deed required that the property be used for roadway purposes within seven years or that it revert to the landowner.
- 3. In 1982, the same land was deeded to the county for right-of-way purposes, recorded in Book 176, Page 1564, of Micro Records with the condition that it be used for public roadway purposes or revert to the Grantors. The county accepted the dedication of land by Resolution Number 82-073, recorded in Book 176, Page 1563, of Micro Records.
- 4. The dedications of the right-of-way provides the approach to a new Maclay Bridge. An alteration of the road right-of-way from the location dedicated by deed to the one shown on Exhibit A (on file in the Clerk and Recorder's Office) will provide access to the bridge as it is currently designed. Because it will not now be used for roadway purposes, the original right-of-way will revert to the ownership of the Grantors, their successors or assignees.

The following land owners have been notified:

William R. Maclay Sr. Co-Trustee	Fleta Elizabeth (Betty) Kenna	County of Missoula
M. Josephine Maclay Co-Trustee	Trustee of the Betty Kenna Living Trust	Missoula Co. Court House
16300 Lavender Dr.	7718 N. Washington St.	200 W. Broadway
Los Gatos, CA 95035	Spokane, WA 99208-6140	Missoula, MT 59802

Chuck Wright, Land Surveyor, Surveyor's Office, stated the exhibit attached to the packet showed the existing County road to be altered. That section of right-of-way will be moved up to along River Pines Road as the COS shows. This is transferring one right-of-way for the other and fulfilling the agreement with the Maclays to have this taken care of.

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

Michael Sehestedt stated the procedure for this process involved continuing the hearing and have a site inspection done by one Commissioner and the County Surveyor.

Commissioner Evans stated action on this matter would be continued for one week to allow time for a site inspection. Subsequent discussion revealed the County Surveyor will be on vacation until December 16, 1998, so this matter was actually continued for two weeks until December 23, 1998.

Hearing - Proposed Relocation of Right-of-Way (North Placid Lake Road)

This is a petition to relocate "A portion of the right-of-way of North Placid Lake Road to the actual location of the road in Section 17 and a portion of the NW 1/4, NE 1/4 of Section 20 in Township 16 North, Range 15 West, P.M.M., Missoula County, Montana."

The reasons for the request are as follows:

- 1. In order to prevent disputes from arising concerning access to and over land in the area.
- 2. In order to prevent uncertainty concerning the location of the right-of-way for the road from clouding the title to land in the area.
- 3. In order to protect the sensitive habitat areas located in Tract 1 of Certificate of Survey No. 4594.

The following land owners have been notified:

A. C. Pederson and Associates LLP	Five Valley Land Trust Inc.	Plum Creek Timber Co. LP
85 Brookside	PO Box 8953	999 3rd Ave Ste. 2300
Missoula, MT 59802	Missoula, MT 59807	Seattle, WA 98104-2818

Mark F. Meyer & Brenda K. Meyer Wayne E. Linnell & Sallie L. Linnell Ervin W. Winslow Jr.

2745 4th Ave. N.
Great Falls, MT 59401-2818

2720 Alamo Dr.
Great Falls, MT 59404-3734

1729 Virginia Dale St.
Helena, MT 59601-5825

Wayne K. Lowe
PO Box 414
Seeley Lake, MT 59868-0414

Patricia R. Littell
4926 Calle del Oya
Las Vegas, NV 89120-1009

Wesley W. Brennan
PO Box 688
Seeley Lake, MT 59868

Department of Fish, Wildlife & Parks
State of Montana
1420 E. 6th Ave.
Helena, MT 59601-4556

John F. Fulton & Elizabeth C. Fulton
Trustees of the Fulton Family Trust
730 Woodworth Ave.
Missoula, MT 59801-7049

Chairman Evans opened the public hearing.

Ed Eck stated he and his wife filed the petition for this right-of-way relocation. This road is at the north end of Placid Lake, and both the GLO and County right-of-ways are far different than the actual road location. The purpose of the petition is to get the right-of-ways where the actual road is. The reasons for this relocation are: 1) The bulk of this land is marsh land, an area of some ecological significance which has a conservation easement on it; 2) to clean up the title; and 3) to give the County the right-of-way where the road is actually located. The 10 freeholders who signed the petition all have cabins along Placid Lake or own land near by.

Wendy Ninteman, Five-Valleys Land Trust, stated they hold the conservation easement on this property. This piece of land is considered exceptional in its conservation value. It is habitat for some species of particular interest. She was here to support this relocation, if the road were altered, it would have a negative impact on the conservation value.

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

Commissioner Hart stated she had an inquiry about an owner on that end of the lake that was building docks. Was the whole end of the lake in conservation easement?

Ed Eck stated the conservation easement only affected his parcel. He had a floating dock which had not been used for a year, but knew of no other docks being built in the area.

Commissioner Kennedy stated he understood there were two right-of-ways, a GLO as well as a County. This petition would take care of abandoning both right-of-ways. Would it complicate the matter to go from two to one?

Colleen Dowdall stated it was actually better to get rid of some of the old right-of-ways at the same time, they cloud titles and possible future development.

Commissioner Kennedy asked how far beyond the property the right-of-ways extended?

Ed Eck stated the petition only covers the road around the adjacent area, but Commissioner Kennedy was correct, these two right-of-ways extend beyond his property and may affect some neighboring property.

Commissioner Kennedy asked if it was worth considering doing the entire road, could the petition be expanded?

Colleen Dowdall stated it could be expanded in the course of the site visit.

Chairman Evans stated this hearing would need to be continued to allow for a site visit, would there be enough time to get that done before next Wednesday?

Colleen Dowdall stated there would not be enough time and there was no urgency. It would be acceptable to do this after the first of the year, possibly even next spring. If the Commissioners wanted to do this before next week, perhaps the other parts of the roadway could be explored and ask for the cooperation of the residents to initiate a petition if necessary.

Commissioner Kennedy stated it would be logical to do all of it at the same time.

Colleen Dowdall stated there might be some notice issues to involve the entire road.

Commissioner Kennedy stated then acting on just this petition would be fine.

Commissioner Evans stated action on this matter would be continued for two weeks to allow time for a site inspection, until December 23, 1998.

Consideration of - Starburg Addition (2 Lot Residential Subdivision) - Elkhorn Road/Seeley Lake

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicants, Robert and Jewel Starburg, are requesting approval to divide a 10 acre parcel into 2 lots, approximately 6 acres and 4 acres in size. The property is located on Elkhorn Road in the Double Arrow Phase V Subdivision in Seeley Lake. The property is unzoned. The 1989 Seeley Lake Area Comprehensive Plan Amendment applies to the property.

There is currently one dwelling unit on the property in the northeast portion of proposed Tract 32A. The property is timbered and contains steep slopes greater than 25% in some locations.

The property is accessed by Elkhorn Drive, a private road, which is maintained by the Double Arrow Homeowner's Association. Elkhorn Road is approximately 20 feet wide for 1/2 mile, then narrows to 18 feet from near the property boundary to the junction with Wolverine Drive. Elkhorn Road narrows to 14-15 feet along the remainder of the property frontage. The existing driveway exits from the upper narrower portion of Elkhorn Drive. The new drive will exit from Elkhorn Drive south of Wolverine Drive.

The grade of Elkhorn Road along the frontage of the property varies from 1% to over 16%. The 831 foot frontage along Tract 32B has an average grade of 13.4%. The 510 foot frontage along Tract 32A has an average grade of 10.2%.

The applicant has requested variances from subdivision requirements for right-of-way width, road width, road grade, and pedestrian walkways. Staff had some concerns about road grade and road width. However, Jim White of the Seeley Lake Fire District and Colin Moon of DNRC have both stated that their emergency vehicles can access the property.

Jim White, Seeley Lake Rural Fire District, stated that as long as the driveway is located as shown on the plat and has a minimum 12 foot driveway surface and a vertical clearance of 15 feet, it will meet the fire department's needs. Since the new driveway will be located near the intersection of roads, there will be a place for emergency vehicles to pass and the intersection will serve as a turnout.

Recommended Condition 2 of subdivision approval requires that the applicant provide written documentation that emergency services are available year round. Also, recommended Condition 4 includes development covenants that address driveway location and standards, vegetation clearing and roofing standards that relate to the property's location in a Wildland/Residential Interface. Condition 4 also requires a residential sprinkler system be installed in the new residence on Tract 32B to further address health and safety concerns and the ability of watertenders to reach the subdivision. Installation of a residential sprinkler system in the existing home is also encouraged, however it is not a required condition.

Staff is recommending approval of the four variance requests: 1) from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; 2) from Section 3-2(1)(I) of the Missoula County Subdivision Regulations for Elkhorn Road to vary from a 60 foot right-of-way width to the existing 54 foot right-of-way width; 3) from Section 3-2(1)(I) of the Missoula County Subdivision Regulations for Elkhorn Road to vary from the road grade standard to the existing condition; and 4) from Section 3-2(3) of the Missoula County Subdivision Regulations for Elkhorn Road to vary from a 24 foot road width to the existing condition; based on the findings of fact set forth in the staff report and subject to conditions in the staff report.

Staff is also recommending approval of the Starburg Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report.

Erica Brown, Professional Consultants, Inc., developer's representative, was present, as was the applicant, Robert Starburg. She stated they were in agreement with the conditions in the staff report. She added that road improvement information from the Double Arrow Ranch Landowners Association (DARLA) was also included to show the roads are constantly being worked on in the area. She asked Colleen Dowdall if it would be easier to do a development agreement rather than covenants to insure that the Living With Wildlife recommendations had been addressed, as well as fire safety?

Colleen Dowdall stated they were essentially the same thing, with covenants, just the owner signs.

Nancy Heil stated this was discussed while the conditions were being developed and Colleen Dowdall recommended that there be a development covenant.

Colleen Dowdall stated she wanted the owner to sign the agreement, but it does not have to be full blown covenants or have a Homeowners Association or anything such as that.

Erica Brown stated with each phase of Double Arrow more and more covenants are being added.

Nancy Heil stated these covenants apply only to those two properties, they are not ones that affect anybody else in the rest of the Double Arrow subdivision.

Erica Brown stated she understood that, but a future property owner who looked at the covenants would be intimidated and to add to those would confuse matters further. To call it a development agreement might help separate it from all the rest already in place on the property.

Nancy Heil stated a development agreement would also show up in a title search, and future property owners would also be subject to that agreement, it seemed like a matter of semantics.

Colleen Dowdall stated that was technically correct, except with the connotation of an agreement which is signed by the County also. It was her feeling this would be one the Commissioners would not want to be a party to necessarily.

Chairman Evans asked for public comment.

Robert Starburg stated he and his wife bought this property in 1981. While doing research on a boundary line, the possibility of dividing the lot was raised. After considering that option for some time, he and his wife decided to divide the land which brought them to Nancy Heil in the Office of Planning and Grants. They did not know how involved the process was and at that time they retained the services of PCI. They hoped the subdivision would be approved so they could attempt to sell the land.

Commissioner Kennedy asked Erica Brown why she presented the information on the Double Arrow road budget?

Erica Brown stated it was just to show that the roads are constantly being improved in the area. Although the road system through Double Arrow is extensive and privately maintained, it is always being improved.

Robert Starburg stated he concurred with that fact, there have been many improvements made over the last 15 years.

Commissioner Hart moved that the Board of County Commissioners approve the variance request from Section 3-2(5) 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(1)(I) of the Missoula County Subdivision Regulations for Elkhorn Road to vary from a 60 foot right-of-way width to the existing 54 foot right-of-way width; approve the variance request from Section 3-2(1)(I) of the Missoula County Subdivision Regulations for Elkhorn Road to vary from the road grade standard to the existing condition, subject to conditions in the staff report; and to approve the variance request from Section 3-2(3) of the Missoula County Subdivision Regulations for Elkhorn Road to vary from a 24 foot road width to the existing condition, subject to conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart moved that the Board of County Commissioners approve the Starburg Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Commissioner Hart asked Mr. Starburg if he lived there year round?

Robert Starburg stated that he did live there year round.

Commissioner Kennedy asked what the road situation was like two years ago during the heavy snowfall?

Robert Starburg stated he had no trouble at the all, the roads were plowed and well maintained, he did not even need chains.

Starburg Addition Summary Subdivision Conditions of Approval:

1. Slopes greater than 25% shall be shown on the plat as a no-build zone. *Subdivision Regulations Article 3-1(2) and staff recommendation.*
2. The applicant shall provide written documentation from the Seeley Lake Rural Fire District that the District can provide year round emergency services to the subdivision prior to plat filing. *Subdivision Regulations Article 3-1(1)(B), 3-1(1)(F), 3-2(1)(E) and staff recommendation.*
3. The developer shall contribute \$100.00 per new lot to the Seeley Lake Rural Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Seeley Lake Rural Fire District recommendation.*
4. Developments covenant shall be filed, subject to OPG and County Attorney approval, to include the following items related to minimizing potential wildlife conflicts, wildland residential interface standards and mitigation of fire department access:
 - A. Domestic pets are to be kept in a contained area to avoid wild animal harassment.
 - B. Pets shall be fed indoors and pet food shall be stored indoors.
 - C. Garbage shall be stored in well sealed containers and inside storage units.
 - D. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use.
 - E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged.
 - F. All garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement.
 - G. Compost piles shall be enclosed in a container.
 - I. Apiaries may attract species such as bears and should be avoided. Before an apiary is located on a lot, the owner of the bee hive(s) should first contact the Department of Fish, Wildlife and Parks to discuss their plans and how to best avoid wildlife conflicts.
 - H. The brochure "Living with Wildlife" shall be distributed to all lot owners. *Missoula County Subdivision Regulations Article 3-1(1)(C) and staff recommendation.*
 - J. The driveway serving Tract 32B shall be constructed in the location shown on the plat. Driveways shall be constructed in accordance with the Missoula County Subdivision Regulations and Seeley Lake Rural Fire District requirements. The Seeley Lake Rural Fire District shall approve the final driveway design. Turnaround for fire apparatus shall be provided for dead-end driveways in excess of 150 feet, to be approved by the Seeley Lake Rural Fire District. *Missoula County Subdivision Regulations Article 3-2(3)(C), 3-2(6)(E) and staff recommendation.*
 - K. An address sign shall be provided for the new lot in conformance with the standards of the Seeley Lake Rural Fire District. *Missoula County Subdivision Regulations Article 3-1(1)(F) and Seeley Lake Rural Fire District recommendation.*
 - L. 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 as 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 *Missoula County Subdivision Regulations Article 5-1(5)(H) and staff recommendation.*
- M. Only Class A or B fire-rated roofing materials shall be used for any new construction. *Missoula County Subdivision Regulations Article 5-1(5)(H) and staff recommendation.*
- N. A residential sprinkler system shall be installed in the residential structure on Tract 32B. *Missoula County Subdivision Regulations Article 3-2(7), 4-1(12)(A) and staff recommendation.*

The covenants shall also state that these covenants shall not be amended without prior approval by the governing body. The covenants shall be recorded with the County Clerk and Recorder and approved by OPG prior to final plat filing. *Missoula County Subdivision Regulations Article 3-1(1)(C), 3-1(1)(F), 3-2(6)(E), 5-1(5)(H).*

5. 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) and staff recommendation.*

6. The plat shall include the following statement:

"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) and staff recommendation.*

7. The plat shall include the following statement:

"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 brought up to standards and accepted by the County of Missoula for maintenance." *Subdivision Regulations Article 5-2(5)(C) and staff recommendation.*

Other Business

Paul Conn, Chairman of the Seeley Lake Community Council, stated he was there to observe the Commissioners since the Council regularly sends reports to the Commissioners on issues related to Seeley Lake.

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

THURSDAY, DECEMBER 10, 1998

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

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending November 30, 1998.

ADMINISTRATIVE MEETING

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

Certificate of Survey - The Commissioners signed a Certificate of Survey for a tract of land being Parcel 2 of COS 4702, perimeter, to relocate common boundaries between adjoining properties for Jeffrey W. Gordon. The COS was returned to Mike Sehestedt, Deputy County Attorney, for further handling.

Extension - The Commissioners approved an extension for final plan submittal for New Castle Court Subdivision for Lease or Rent, making the new filing deadline December 11, 1999, for Phase I. The filing deadline for Phase II will remain December 11, 2000. A letter was sent to Tim Wolfe of Territorial Engineering.

HUD Reports - Chairman Evans signed the Annual HUD reports for Missoula County's HUD Grants for the SHARE House and YWCA Transitional Housing programs.

Other items included:

- 1) The Commissioners appointed Norm Taylor to the County Tax Appeal Board for a three-year term; they appointed Bob Tutskey to the Historical Museum Board for a three-year term.
- 2) The Commissioners discussed a proposal regarding alternate work week/office hours. Mike Sehestedt, Deputy County Attorney, will respond.

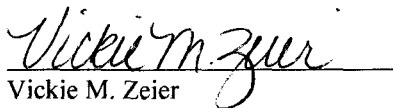
The minutes of the Administrative Meeting are on file in the Commissioners Office.

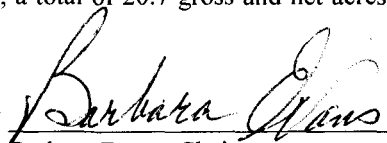
FRIDAY, DECEMBER 11, 1998

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.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Twila Keeler as principal for Warrant #55010 issued 11/13/98 on the Missoula County 78-42 Fund in the amount of \$142.09 now unable to be found.

Plat - The Commissioners signed the plat for Oman Lots, a subdivision located in the SW1/4 of Section 9 and the NW1/4 of Section 16, T14N R20W, PMM, Missoula County, a total of 20.7 gross and net acres, with the owners of record being Ronald and Elizabeth Oman.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, DECEMBER 14, 1998

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

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Albertsons as principal for Warrant #333839 issued 8/12/98 on the Missoula County 2273 Fund in the amount of \$13.17 now unable to be found.

TUESDAY, DECEMBER 15, 1998

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

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Zoua Yang as principal for Warrant #49907 issued 6/30/98 on the Missoula County School District 1 Fund in the amount of \$43.00 now unable to be found.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement for JTPA Work Experience with the Human Resource Council to provide job training work experience for HRC clients. The Agreement was returned to Marie Pruitt in the Personnel Office for further signatures and handling.

Counter Offers - The Commissioners signed two Counter Offers:

1. with John Schulte for 315 West Pine Street;
2. with John Lentz for 319 West Pine Street.

Price Change - The Commissioners signed a Price Change form with the Missoula County Association of Realtors Multiple Listing Service, Lambros Realty, changing the price of the Mullan Road property from \$1,570,000.00 to \$1,285,800.00 and removing the two parties exclusion.

Resolution - The Commissioners signed Resolution No. 98-092, a Budget Amendment for the District Court - Drug Court, in the amount of \$42,980.00.

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

WEDNESDAY, DECEMBER 16, 1998

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

At the Departmental Meeting with the County Attorneys, the Commissioners administratively approved a request by Steve Adler to change the building envelope on Lot 5, Pfau Acres, due to septic considerations as per the exhibit (copy in file).

PUBLIC MEETING - December 16, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, Deputy County Attorney Colleen Dowdall and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Kennedy moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$1,137,721.49. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Hearing - Family Transfer (Gendusa)

Colleen Dowdall stated there was no one present for the hearing, they might be running late. She suggested skipping this item now and come back to it later in the meeting.

Hearing - Annexation to Missoula Rural Fire District (Maloney Ranch Phases I & II, Sweet Grass Addition)

Commissioner Hart read the report.

A petition has been received by the Clerk & Recorder's Office to annex numerous parcels 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 areas to be annexed and a majority of tax-paying freeholders within the areas described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The areas to be annexed are described as follows:

"The Sweet Grass Addition at Maloney Ranch Phase 1 & 2 located in the SE 1/4 of Section 11, Township 12 North, Range 20 West; Lot 11 of Certificate of Survey No. 4815 located in the North 1/2 of Section 24, Township 12 North, Range 20 West; Tract B1, B2 and B3 of Certificate of Survey No. 2835 located in the South 1/2 of Section 27, Township 12 North, Range 20 West; Parcel A and B of Certificate of Survey No. 2219 as well as a 26.35 acre tract belonging to Walter V. Lane located in the SW 1/4 of Section 27, Township 12 North, Range 20 West; the SW 1/4 of the SW 1/4 of Section 27, Township 12 North, Range 20 West; the SW 1/4 of the SW 1/4 of Section 5, Township 12 North, Range 19 West and all of Section 8, Township 12 North, Range 19 West."

(See the petition on file in the Clerk and Recording Office for complete legal descriptions, maps and landowner signatures).

Per a letter from Missoula Rural Fire District dated November 10, 1998, it was stated that at a regularly scheduled Board of Trustees Meeting, the Missoula Rural Fire District approved this area for annexation.

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

Commissioner Hart moved that the Board of County Commissioners approve the petition to annex into the Missoula Rural Fire District the areas noted, in that it has been noticed correctly and the petition has been checked and verified and that the Missoula Rural Fire District has indicated that they have voted to receive this district. Commissioner Kennedy seconded the motion.

Colleen Dowdall asked if any CI-75 discussion had been held regarding this annexation?

Chairman Evans stated no discussions had been held on fire districts.

Commissioner Hart stated that the Board had passed one Special Improvement District for fire hydrants, she thought Michael Sehestedt had indicated that the Board could pass the issue, but it might not be accepted because of CI-75.

Colleen Dowdall stated that was essentially what had been communicated, she felt the Board could take action today.

Chairman Evans stated the Board would take action on the matter contingent upon any determination of CI-75 that might need to be followed.

Colleen Dowdall stated Michael Sehestedt talked about approval conditioned upon meeting the requirements if necessary.

Commissioner Hart stated she would included that statement in her motion. The motion passed on a vote of 3-0.

Consideration - Schulz Subdivision for Lease or Rent (2 Dwellings) - Arlee

Allison Handler, Office of Planning and Grants, gave the staff report.

The applicants, Gary and Lindsay Schulz, are requesting approval to add one dwelling unit to an 11.32 acre parcel where one dwelling unit currently exists. The property is located on Highway 93 five miles south of Arlee, and is legally described as Tract 2, COS 3548, Section 31, Township 16 North, Range 19 West. It is across the highway from the Sheep Ranch Inn.

The property is unzoned. The 1975 Comprehensive Plan designates Open and Resource land use, with a residential density of one dwelling per 40 acres. The applicants use their parcel primarily for agricultural purposes. Land uses in the vicinity are agricultural and residential on lots generally varying from 2 acres (on the east side of Highway 93) to 40 acres (on the west side of the highway).

There are currently two approaches to the property roughly 200 feet apart. The applicant proposes that the new dwelling unit will be located just south of the northern driveway approach, approximately 100 feet south of the East Fork of Finley Creek, which flows west across the northern portion of the property. It flows through a culvert under the highway that was installed in 1964. The applicants propose to provide access to the new dwelling via this

driveway, which exits from Highway 93. The driveway will be approximately 400 feet long to the new dwelling unit, and includes a turnaround for emergency vehicles.

The dwelling units will be served by individual septic systems and individual wells. The existing house is currently served by a well near Finley Creek; that well will be used to serve the new dwelling, and a new well will be drilled close to the existing dwelling.

The proposal does not comply with the Comprehensive Plan designation. The adjacent parcels on the west side of the highway tend to be larger parcels. The property is important from the standpoint of open space and natural resources conservation, in terms of agricultural and scenic value and habitat. Finley Creek is especially important, since riparian areas provide habitat for many different species.

The property has two approaches which are relatively close together. The Transportation Department is working on approach standards to establish minimum distance between approaches and they believe that the Schulz property can be adequately accessed by a single approach. Both driveways are 12 feet wide, the southern driveway has a 12 foot gate and the northern driveway has a 16 foot gate. Regulations call for an unobstructed driveway width of 20 feet to provide access for emergency vehicles. The applicants are requesting a variance for driveway width, to allow a 16 foot width to be permitted, and the fire department has no objections to the variance.

The property is on the Flathead Indian Reservation, subject to tribal regulations as well as County regulations. The property contains an area of riparian resource along the creek and one of the considerations is how best to protect that resource.

Highway 93 is designated as a Primary Travel Corridor in the regulations so there are standards that have to do with landscaping to preserve scenic values.

There are 7 conditions for the subdivision. Condition 1 has to do with clustering of the dwellings to protect the creek, the riparian area, to minimize impacts to open space, agricultural and natural values, and to bring the proposal into substantial compliance with the Comprehensive Plan.

Conditions 2 and 3 are standard, requiring RSID waivers for pedestrian walkways, water and sewer hookups.

Condition 4 is unique to the property. Per MDT request, staff is recommending aggregation of the approaches into a single approach. MDT has requested that the lot owners utilize the northern access and abandon the southern one. This will place the access directly across Highway 93 from the Sheep Ranch Inn access, to make it function as an intersection, to minimize approach difficulties. The new driveway will need approval by the Arlee Fire District and meet subdivision standards unless a variance is granted.

Condition 5 is provision of water for firefighting purposes.

Condition 6 is unique to the property, that the applicant submit a riparian management plan which OPG staff would approve.

Condition 7 is also unique to the property, which has to do with the landscape plan to show how the property complies with the Primary Travel Corridor standards.

Staff recommends approval of the variance request from Section 3-2(6) of the Missoula County Subdivision Regulations for driveway width to vary from the required 20 foot unobstructed width to a 16 foot unobstructed width, based on the findings of fact and subject to the conditions in the staff report.

The Office of Planning and Grants recommends approval of Schulz Subdivision for Lease or Rent, based on the findings of fact and subject to the conditions in the staff report.

Gary Schulz was present representing himself and was available to answer questions. He stated the property to the south of his on the west side of the highway is a 6.5 acre tract with three residences on it. Directly adjacent to them is a 20 acre tract with two residences on it. To the north is a 47 acre tract, on the west side of the highway, with four residences on it. To the west is the only large piece of open property, bounded by the railroad tracks, which is approximately 27 acres. He was using this information to show the area is residential in nature, not prime farmland.

Commissioner Hart stated Mr. Schulz's examples were showing that not many of the adjacent tracts complied with the 1 dwelling per 40 acres requirement.

Gary Schulz stated that was correct.

Commissioner Kennedy stated that even though this did not meet the Comprehensive Plan, that was exactly what Allison Handler was representing in her report, to show how it generally complies.

Gary Schulz stated his son has spoken with the Department of Transportation and to go ahead with the approaches as is until they come up with a new highway plan. At that time they will give instructions of how to aggregate the two approaches into one. DOT was not sure where the location would be, but their driveway will be directly across the road from the Sheep Ranch Inn, wherever that may be.

Commissioner Kennedy stated Condition 1 had to do with the clustering of the homes. He asked Mr. Schulz if he understood what that means? The site plan proposal as presented in the staff report would not be acceptable.

Gary Schulz stated they were placed where the drain fields would have to lie, he presumed that was as close as the two properties could be.

Commissioner Kennedy asked for further explanation of what that condition means.

Allison Handler stated the applicant has the proposed dwelling to be 100 feet south of the creek and staff is asking him to move it closer to the existing dwelling. Since there is going to be an aggregation of driveway approaches, at whatever point in time that happens, the driveway can be looped around to service both dwellings being close to one another. She did not foresee that it would mean moving the drain field, it would mean moving the actual, physical dwelling site further from the creek and closer to the existing house. The point is to cluster the impact in one location to minimize the impact to the rest of the property and preserve the horse pasture land, protect the scenic value and the creek. It brings the proposal into greater compliance with the Comprehensive Plan.

Chairman Evans asked Mr. Schulz if he had an understanding of this condition and if there was a problem with it?

Gary Schulz stated he was not sure, the proposed location for the trailer house was almost 150 feet from the creek, 100 feet from the edge of the riparian zone. To get the drain field within the property line, within 10 feet of the fence line, because of the irrigation ditch, the drain field has to run straight south. It had been originally planned to run it at an angle, to the southwest, but Ken Anderson pointed out they would have to stay 100 feet from the irrigation ditch with the drain field. In order to do that, and stay 10 feet from the fence line, that is why it was positioned where it was.

Chairman Evans asked if Allison Handler understood that and if she had a problem with it?

Allison Handler stated that the site plan, as it is drawn right now, does not show clustering of the dwellings. One of staff's concerns was that because of that, they could not find substantial compliance with the Comprehensive Plan for the existing proposal.

Commissioner Kennedy stated in order to interpret that, perhaps it needs to be designated on the plan the location the Planning Department thinks would allow it to meet substantial compliance by clustering.

Allison Handler stated staff could do that.

Commissioner Hart asked where that would be?

Allison Handler stated it would be closer to the existing structure. She suggested perhaps a building envelope, showing that somewhere within a defined area would be acceptable to place the new structure.

Commissioner Hart stated Mr. Schulz could use the distance from the irrigation ditch to site his drain field, but the trailer home might be south of the drain field, where now it is north of the drain field.

Gary Schulz stated the reason for the present location was that regulations state a building cannot be put within 50 feet of the property line. If the building is moved south, it would crowd that position, of where it is planned to divide off 5 acres of the property. It would be about 300 feet to the north to the property line, but only about 70 feet to the south.

Commissioner Hart stated this is a subdivision for lease or rent.

Gary Schulz stated the reason it is a lease or rent is they could not afford the \$2,000 extra to divide the property. They are planning to gift deed the 5 acres to his son. In order to go that route, they would have had to come up with an additional \$2,000, to pay for another survey, so they decided on this route.

Chairman Evans said why not consider having a condition be that Allison Handler determine all the requirements of setbacks, drain field proximity to the creek, to the road, to the house, etc., and come up with a location area for the house. She stated she did not like telling the applicant where to put his house, it offended her, it is their land and they should be able to put their house where they want, as long as it does not damage things for everybody else, but that is not the general attitude.

Commissioner Hart stated it is not the law.

Colleen Dowdall stated she did not know of a regulation that required the structure be 50 feet from the property line. She stated that had not come up in prior discussions.

Commissioner Hart stated that was the Arlee Fire Department.

Gary Schulz stated the requirement was so that there would not be two building closer than 100 feet apart.

Commissioner Kennedy stated the issue is where they had proposed to install the dwelling unit, the staff can't find compliance with the Comprehensive Plan and that forms the basis for doing one of two things, recommending disapproval of the plan or looking for some way in which substantial compliance can be found. The staff has said that if the two living units are clustered, then they can find substantial compliance. What the staff needs to do is interpret that by showing the area where to locate the additional dwelling to gain approval. Otherwise approval may not be granted.

Oby Schulz asked what the definition of the law of clustering was, what is the perimeter of the cluster, it is 40 square feet, a mile square, what is it?

Commissioner Hart stated it was closeness.

Commissioner Kennedy stated the staff needs to determine the perimeter for them.

Allison Handler stated it was site specific and would have to be determined on a case by case basis. They would need to look at the site map and what the constraints are, bearing in mind the Schulz's future intentions to try to

accommodate that. It is fairly loose in a lot of ways, their major concern is the creek and the fact that they pasture horses, and the property is agricultural in use, as well as residential. They are looking to preserve all those different values and also comply with the Comprehensive Plan. At this point, 11 acres with two dwellings does not comply. There is a way to achieve compliance if the structures are brought closer together. There is room to negotiate how close together that is. There is no interest in preventing them from doing that and to say the house must be located in a particular spot, but the proposal cannot be approved as it is right now. Staff can draw an envelope within which they would like to see the clustering.

Oby Schulz stated he would like whoever can decide where the house be located, since they cannot do it themselves, to come out and look at the site and situation they are dealing with. There is a reason they want to locate the house in that spot, it is not a huge parcel and there are other structures. By moving further south they would be across the property line and closer to another drain field.

Commissioner Hart stated this was the first she knew this property would be subdivided. She thought they were looking at a lease or rent and did not know what their future plans were. Now that she has listened to this, it is a different issue.

Oby Schulz stated they started out to go this route, for lease or rent, looking into the future also. He would like to own it at some point and did not want to eliminate that possibility right now. He wanted to locate the trailer house in such a manner that in the future when he is able to purchase it and they are able to subdivide it, the house would not be in the middle of the property lines.

Allison Handler stated she had done a site visit, right now north of the house are horse corrals, they are no other structures. There is a good 400 feet of distance between the current structure and where the proposed drain field is to be located. There is plenty of room to move the proposed second dwelling south of the drain field. It may mean moving the horse pasture, a set of fences, it is not a building and would be easier to move.

Chairman Evans stated that on the other hand, if they wanted to separate this land at some point and give a piece to the young family, it was not desirable to have the line five feet between the buildings.

Allison Handler stated there was 400 feet of distance.

Gary Schulz stated from his house and drain field, it would be no more than 200 feet to the proposed drain field. There is approximately 875 feet from north to south. His property sits about 200 feet from the south boundary. The house is 40 feet long. The drain field comes out of his house, going north. The corral is 60 feet wide. The end of his drain field is basically at the corral. From the corral, 60 feet over, is where they propose to put the other dwelling. They were told they had to have it 50 feet from that fence line, if it was to be divided at that point, the drain field could come no more than 10 feet from that line. What they proposed for the drain field is two 90 foot lines for a three bedroom residence, to put that 10 feet back from that line and come 90 feet with the drain field, there has to be 5 feet from the septic tank, the septic tank will take about 8 feet of space. For that to be there they had to be more than the 50 feet they were told they had to be from the property line, so that is why it is was set back 70 to 75 feet from the proposed property division. If they move the property line further south where they are proposing to divide it, that would give another 50 feet, meaning he would have to take out his corrals. From the north property line, they are already over 200 feet from where the house is. His son's house would be sitting right on where they made a division line on his south boundary. That is not even close to centering it on the piece. They are clustering it toward the other house, as far as they can within the perimeters of the rules for the drain field. They cannot go north of the drain field, they don't want to because of the creek. They are going south with the drain field and the lay of the land being the way it is. If they put the proposed house farther east, the slope of the land is greater.

Allison Handler stated on the site plan they submitted, the new trailer site is north of the drain field. She asked if he could clarify where he was talking about.

Gary Schulz stated he would draw a dotted line where they are proposing to separate this property.

Chairman Evans stated it disturbed her and she did not feel this public meeting was the place to be doing this, it should have been done before they ever came before the Board. He should have been given a clear answer and the Board should have been given a clear picture.

Commissioner Hart asked Allison Handler if she knew they were planning to subdivide?

Allison Handler stated she did not.

Commissioner Hart stated the whole story was not evident until today.

Chairman Evans stated this is where they are and wanted to see if the issue could be resolved. She asked Mr. Schulz to draw the dividing line on the map.

Gary Schulz asked Barbara Martens if she remembered when she pulled up and he told her his original intention was to do a Family Exemption?

Barbara Martens stated he did mention that.

Gary Schulz stated he told her the reason they did not do that is that it would cost more to do a survey first. He explained that the corral boundary and that line was the piece of property his son was proposing to put his trailer on. There is a fence all across there. It was the way he had originally subdivided the property for rotating the grazing.

Barbara Martens stated she remembered him mentioning that. When Allison Handler spoke with him later, it was understood, or perhaps misunderstood, that they had decided not to go that route, to go the lease or rent route instead. She did not understand that they were still going to divide.

Gary Schulz stated they went this route or he would not have submitted it to Allison Handler. They had to decide that because of the increased cost. His son would like to move to the property from his current location.

Chairman Evans asked if it was necessary for Mr. Schulz to mark on the map his concerns.

Gary Schulz stated he would mark on the map where the corral boundary is.

Allison Handler asked the Board if they would like staff to do this on their time and come back to the Board.

Chairman Evans stated she did not want the applicants to wait and would like to take care of it today. She suggested a 10 minute break to allow time to work on this.

After a short break, Chairman Evans resumed the meeting.

Gary Schulz stated it was his understanding a Family Exemption would be hard to have approved if it is known that they have been turned down for another reason.

Commissioner Hart stated it shouldn't be a part of their decision, maybe it is sensed it would make a difference, but they are told to simply look at it on the basis of whether or not it qualifies.

Colleen Dowdall stated that in the past a Family Transfer has been turned down in the case where it had already been turned down for subdivision review, because it did not comply with the Comp Plan. She did not know that anyone was recommending that this be turned down. Staff is recommending it be approved with conditions. If it is approved with these conditions, it is up to the applicants to determine whether they want to come in for a Family Transfer Exemption, or whether they want to develop the property and meet the conditions.

Commissioner Hart asked Colleen Dowdall if the Board turned down a Family Exemption because it did not meet the exemption.

Colleen Dowdall stated that was incorrect, a Family Transfer Exemption was turned down because they had already been in and asked for a subdivision that had been turned down, because it was an attempt to evade subdivision review. The subdivision review required they comply with the Comp Plan. In this case, the recommendation from staff is that the Board approve the subdivision for lease or rent based upon the conditions. If it is approved on that basis, the applicant has the choice of coming in and requesting the Family Transfer or developing the property in compliance with the conditions imposed.

Commissioner Kennedy stated the overall notion of comprehensive planning and any land use regulatory process is one that is misunderstood. The understanding of it should be clear. That is the land needs to be cared for in a way that serves the needs of everyone, not just the person who wants to develop it, the neighbors as well, because they might be the neighbor the next time when someone across the creek might want to develop. It is agreed as a community to self regulation to achieve a greater goal. That is what regulation is all about. Separate from that there are ways the legislature had dealt with separating land without going through a formal process. The Board regularly finds there are conflicts when they try to employ those methods, because they are in conflict with what would happen if it went through subdivision review. It is still in the back of their minds what they want to accomplish, not just for the neighbors but for the applicants and those that will come after the applicants. That is the contexts of it, it is not meant to be suppressive of what is to be accomplished. It is meant to be supportive of the general community, including Mr. Schulz and his son. The question that was just answered was that someone came in, requested a subdivision, got denied for legitimate reasons and then tried to use one of the other methods in order to separate the land in order to do what they wanted to do anyway. The Commission saw through that and said no, it was an attempt to evade subdivision and the answer was no. They need to use common sense in how this is approached. Allison Handler and staff are attempting to be as supportive of what they want to do as possible by finding the development meets substantial compliance with the Comprehensive Plan. Allison Handler has found a way to do that by clustering the homes. The Schulz' may have a problem with that and he hoped they would recognize what it trying to be accomplished here in the overall greater good.

Chairman Evans asked what was determined during the break, is there a place to put the house that meets the Comp Plan that is satisfactory to the applicant?

Allison Handler stated that the response to the question of what clustering means, essentially it means some location south of the proposed second septic which will place the new dwelling further from the creek and closer to the existing dwelling. It would be preferable if it could also be east, again being closer to the current dwelling, but south at least will get it closer to what it means to cluster the dwellings. She understood there were issues with where the corrals are but right now this is being considered as one parcel with two structures and where they can be located so that there is Comprehensive Plan compliance.

Chairman Evans stated her concern was that in looking at this map, if there is a spot closer to the existing dwelling and they tell the younger couple they have to come closer to it, what is done about drawing a logical line between the two residences if a parcel is given to the son. If that is not a possibility without making it a convoluted line, then what has been gained.

Commissioner Kennedy wanted the applicant to know that the living unit and the septic tank don't have to be next to each other.

Gary Schulz stated he understood that but the physics needed to be looked at as well. They could only drop three feet for the drain field, below the surface and no less than six inches below the surface. To flow into the septic tank from the living site, there needs to be a drop of at least 1 inch in 12 feet. They had figured this out based on how it would work. The Board is looking at it from the aesthetics. They had to look at it from the working situation for the drain field and the other part was the old road to the field approach, the gate is still there, the road they regraveled was already the existing path of travel. To put it further north would cause them to take out the corral, rebuild the road, which to him would be disturbing the aesthetics even more.

Chairman Evans stated the picture they needed to be looking at was the Schulz' wanted to locate the home for their children at a reasonable place based on the topography and the problems of the land. There is a determination by staff that it may not meet the Comprehensive Plan as they have suggested it, but Mr. Schulz has told the Board, as to the houses that are around him, that it doesn't seem enough of a deviation of what surrounds him to demand that they put the house where they do not want to put it.

Commissioner Hart stated the issue is Mr. Schulz decision. She would vote to support the planning staff if that would help in his decision.

Commissioner Kennedy stated he would also support the staff, because when Mr. Schulz was asked for his comments, he stated he agreed with the staff report, which is why the question was asked. He was not sure that Mr. Schulz understood the condition and after this discussion, he was sure Mr. Schulz did not understand it. The condition that has been presented is the condition that allows staff to recommend approval because it meets substantial compliance. He would support staff's recommendation as well.

Chairman Evans stated that meant if Mr. Schulz wished to have an affirmative vote, he had to be willing to put the additional dwelling where the Planning Staff tells him to, otherwise the vote will not be affirmative.

Commissioner Hart stated her understanding was the Board would vote to approve the request based on the Planning Staff's conditions, if they did not want to live with that, they have other options to choose from. This would not be a disapproval in the sense that the subdivision was not approved. The Board will approve it with the conditions. He could make the decision now to withdraw or to abide by the conditions imposed.

Gary Schulz stated the only chance for approval is if they move the house to a place they feel is illogical.

Commissioner Hart stated that was correct.

Gary Schulz stated then he did not even want to submit it. He felt it would be better to go another route, it was his mistake and he misunderstood.

Commissioner Hart stated she had learned something new from this process as well.

Chairman Evans stated she had an official request from Mr. Schulz to withdraw his proposal.

Gary Schulz stated that was correct.

Chairman Evans asked if there was any other business to come before the board.

Colleen Dowdall stated the Gendusa Family Transfer has been skipped at the beginning of the meeting. As there was still no one present representing the applicant, she asked that the matter be continued to the second week in January, making the hearing date January 13, 1999.

Chairman Evans stated that would be done.

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.

THURSDAY, DECEMBER 17, 1998

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 - The Commissioners signed an Agreement between Shelter West, Inc. and Missoula County RSID #901 for 47 connection rights to RSID #901, at a cost of \$852.00 per unit. \$22,152.00 will be payable upon the first connection permit to the system, which represents the amount required to satisfy 26 hookups, and the remaining balance of \$17,892.00 will become payable upon the 27th connection to the system or on December 14, 2001, whichever occurs first.

Warranty Deed and COS - The Commissioners signed a Warranty Deed and COS with Mountain States Leasing for purchase of 4+ acres of the Mullan Road site, for the sum of \$10.00. The COS is to relocate common boundaries between adjoining properties. The Deed and COS were returned to Jerry Ford of Lambros Realty.

Quitclaim Deed - The Commissioners signed a Quitclaim Deed with Jeffrey Gordon for a 2 foot strip of land along the east property line of the Dollar Store, to eliminate an encroachment onto the Jail property, for the sum of \$10.00. The Quitclaim Deed was returned to Mike O'Hara in the Sheriff's Department for further handling.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Lolo Community Council to purchase local government liaison services promoting the interests and welfare of the residents of the Lolo

community. The value of the Agreement is \$800.00. Duration of the Agreement is July 1, 1998 through June 30, 1999.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Dr. Richard Ammons to launch weather balloons during the winter months, to measure strength of inversions to predict air quality trends. Performance schedule is December, 1998 through March 15, 1999. Compensation shall be \$26.40 for each sounding performed. The Contract was returned to the Health Department for further signatures and handling.

Agreement - Chairman Evans signed an Agreement between the Missoula City-County Health Department and the Butte/Silver Bow Unified Government for the purpose of conducting childhood lead poisoning prevention activities. Performance schedule is July 1, 1998 through June 30, 1999. Compensation shall be up to \$10,800.00. The Agreement was returned to the Health Department for further signatures and handling.

Extension - The Commissioners approved an extension of the final plat submittal for Montana Vista Phase II (Lot 9) Subdivision, making the new filing deadline June 11, 1999, with a letter to Ron Ewart of Eli and Associates.

Detention Services Agreement - The Commissioners signed a Detention Services Agreement between Martin Hall Juvenile Facility Board and Missoula County Youth Court for services of the Juvenile Facility and its staff for incarceration of juveniles. Payment shall be \$115.00 per day per juvenile. The Agreement was returned to Youth Court for further handling.

Notice of Hearing - Chairman Evans signed a Notice of Public Hearing for a proposal for American Legion Post #27 to sub-lease Cregg-Lindborg Field to Mountain Baseball, LLC, a minor league professional baseball team, for a period not to exceed two years. The hearing will be held January 6, 1999 at 1:30 pm in Room 201 of the Courthouse Annex.

Other items included:

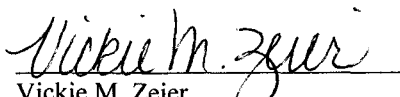
- 1) The Commissioners reappointed John Rimel to the Weed Control Board as a alternate with a three-year term; they reappointed Susan Barmeyer, Carrie Sayler, and Rick Magnussen to the Aging Services Governing Board for three-year terms; they reappointed John Fuchs, Jean Belangie-Nye and Dale Wisby to the Lolo Mosquito Board for three-year terms; and they reappointed Tom Blunn and Mike Knopik to the County Board of Adjustment for two-year terms.


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

FRIDAY, DECEMBER 18, 1998

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

Resolution - The Commissioners signed Resolution No. 98-093, annexing to the Missoula Rural Fire District a parcel of land located in Missoula County, described as "the Sweet Grass Addition at Maloney Ranch Phase 1 and 2."


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, DECEMBER 21, 1998

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

Audit List -- Commissioners Hart and Kennedy signed the Audit List, dated December 21, 1999, pages 3-39, with a grand total of \$174,790.40. The Audit List was returned to the Accounting Department.

Sellers Settlement Statement - The Commissioners signed a Sellers Settlement Statement with Mountain States Leasing for sale of acreage adjoining the Jail site on Mullan Road. Sales price of \$306,902.00. The Statement was returned to Mike Sehestedt, Deputy County Attorney, for further handling.

TUESDAY, DECEMBER 22, 1998

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

In the afternoon, Commissioner Hart accompanied County Surveyor Horace Brown on site inspections for the proposed relocations of right-of-way for River Pines Road and North Placid Lake Road.

ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 98-094, a Budget Amendment for District Court for a JAIBG-A Grant in the amount of \$272,662.00, for FY99.

Memorandums of Agreement - The Commissioners signed three Memorandums of Agreement:

- (1) with the Salvation Army, for use of Emergency Winter Shelter funds for indigent residents of Missoula County. Value of the Agreement is up to \$3,000.00. Duration of the Agreement is December 1, 1998 through March 31, 1999.
- (2) with the City of Missoula, Municipal Court, for continuation of funding for the Court Screener position by the Board of Crime Control. Value of the Agreement is \$6,575.00. Duration of the Agreement is July 1, 1998 through June 30, 1999.
- (3) with the City of Missoula, Attorney's Office, providing matching funds for the Board of Crime Control Grant funding the Crime Victims' Advocate position. Value of the Agreement is \$8,884.00. Duration of the Agreement is July 1, 1998 through June 30, 1999.

Contract - The Commissioners signed a Contract with Dennis and Martha Rehbein for purchase of sanding material for the Ninemile area, at a price of \$3.00 per cubic yard.

Other items included:

- 1) The Commissioners approved the 1999 Community Services Block Grant Work Plan and Budget for the Human Resource Council.
- 2) The Commissioners approved a counter-counter-offer proposal by John Schulte for the property at 315 West Pine Street, Missoula, MT.
- 3) The Commissioners appointed Evan McKinney to the Missoula Urban Transportation Board for a three-year term.

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

WEDNESDAY, DECEMBER 23, 1998

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.

Contract - The Commissioners signed a Section 5303 Contract between the State of Montana, Department of Transportation, Transportation Planning Division, and the Missoula Office of Planning and Grants to provide federal assistance to evaluate, select and monitor technical study projects and transportation planning projects (the Missoula Unified Work Program adopted by TTAC and TPCC). Performance schedule is October 1, 1998 through September 30, 1999. MDT will reimburse OPG for personnel and operational expenditures up to the contract amount. Specific dollar amounts and work elements are detailed in the Missoula Unified Work Plan.

Agreement - The Commissioners signed an Agreement to Extend Preliminary Plat Deadline with Placid Lake Properties, LLP, for the preliminary plat of Placid Lake - South Shore Tracts, extending the deadline to March 25, 2011.

PUBLIC MEETING - December 23, 1998

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, Deputy County Attorney Colleen Dowdall and County Surveyor Horace Brown.

Public Comment

None.

Routine Administrative Actions

Commissioner Hart moved that the Board of County Commissioners approve the routine administrative items adopted this week and approve the weekly claims list in the amount of \$174,790.40. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Bid Award - Purchase of Three (3) Vehicles for the County Motorpool

Chairman Evans read the report.

Bids were let for the purchase of 3 vehicles for the County Motorpool. Four vendors responded. After inspecting the vehicles, it was decided that the award should go to DeMarois Olds for one (1) four door sedan and to Ronan Auto Body for two (2) 4x4 vehicles. The total cost of these vehicles will be \$45,666, which is \$8,334 below the amount that was budgeted.

Commissioner Kennedy moved that the Board of County Commissioners approve the bid award to DeMarois Olds for one (1) four door sedan and to Ronan Auto Body for two (2) 4x4 vehicles, for a total cost of \$45,666. Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Hearing - Family Transfer (Gendusa) - Postponed from December 16, 1998

Colleen Dowdall read the report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Parcel 55, COS 351, NE 1/4 NE 1/4, Section 13, Township 15 North, Range 22 West, for Tony and Isabel Gendusa.

Tony and Isabel Gendusa 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 13.8 acres in size located north of Huson in the Elk Meadows area. The parcel is accessed off of Sixmile Road connecting to Wapiti Road and finally off of Wambli Lane. The applicants propose to create an approximately 5 acre parcel on the east portion of the property for transfer to their 23-year-old daughter Regina M. Gendusa, for use as a future homesite. There is an existing home on the remainder parcel.

The applicants have one other child. They have not previously used exemptions from the Subdivision and Platting Act to divide land.

The history of the parcel is as follows: Parcel 55 was created on COS 251 in 1978. The applicants acquired title in 1993 by warranty deed.

Chairman Evans opened the public hearing.

Isabel Gendusa was present and would answer any questions the Board may have.

Commissioner Hart stated this looked like a family transfer and would be happy to recommend approval. Sometimes the Commissioners ask personal questions in an attempt to determine whether or not the requester is trying to evade the Subdivision Act. She also noticed that the daughter planned a future homesite. She had no questions.

Commissioner Kennedy had no questions.

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

Commissioner Hart moved that the Board of County Commissioners approved the request to create a family transfer parcel for that parcel described as Parcel 55, COS 351, NE 1/4 NE 1/4, Section 13, Township 15 North, Range 22 West for Tony and Isabel Gendusa for transfer to their 23-year-old daughter Regina M. Gendusa, in that it does not appear to be an evasion of the Subdivision Act. Commissioner Kennedy seconded the motion. The motion carried on a vote of 3-0.

Chairman Evans stated the Gendusas would receive a letter of approval from the Board of County Commissioners. Having the Family Transfer approved did not guarantee there would be any additional public services, roads, sewer, etc.

Decision On - Proposed Relocation of Right-of-Way (River Pines Road) - Continued from December 9, 1998

This is a petition to alter "The right-of-way of River Pines Road from the West low water line of the Bitterroot River to Blue Mountain Road, located in the southeast one-quarter (SE 1/4) of Section 27 and the northeast one-quarter (NE 1/4) of Section 34, Township 13 North, Range 20 West, Principal Meridian, Montana, Missoula County, Montana."

Chairman Evans stated that as required by law, the site was inspected by the County Surveyor and one of the Commissioners.

Horace Brown stated this is a transfer of right-of-way from an area that was deeded to the County for use of the bridge in the future. It is requesting the right-of-way be relocated to the area where the bridge will actually be built. He recommended the right-of-way be transferred.

Commissioner Hart stated she was the Commissioner who accompanied the Surveyor on the site visit, and she supported Horace Brown's recommendation.

Commissioner Kennedy moved that the Board of County Commissioners support the petition to alter "The right-of-way of River Pines Road from the west low water line of the Bitterroot River to Blue Mountain Road, located in the southeast one-quarter (SE 1/4) of Section 27 and the northeast one-quarter (NE 1/4) of Section 34, Township 13 North, Range 20 West, Principal Meridian, Montana, Missoula County, Montana." Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Decision On - Proposed Relocation of Right-of-Way (North Placid Lake Road) - Continued from December 9, 1998

This is a petition to relocate "A portion of the right-of-way of North Placid Lake Road to the actual location of the road in Section 17 and a portion of the northwest 1/4, northeast 1/4 of Section 20 in Township 16 North, Range 15 West, P.M.M., Missoula County, Montana."

Chairman Evans stated that as required by law, the site was inspected by the County Surveyor and one of the Commissioners.

Horace Brown stated this is an area where there is a County road that does not fall on the GLO or Book 1 right-of-way as shown. The right-of-way is being transferred to the location of the County road as it exists today. The right-of-way will be centered on the center line of the current road. He recommended the right-of-way be transferred.

Commissioner Hart stated she and Horace Brown did inspect the road and clarified the road with the map. She supported Horace Brown's recommendation.

Commissioner Kennedy moved that the Board of County Commissioners support the petition to relocate "A portion of the right-of-way of North Placid Lake Road to the actual location of the road in Section 17 and a portion of the NW 1/4 NE 1/4 of Section 20, Township 16 North, Range 15 West, Principal Meridian, Montana, Missoula County, Montana." Commissioner Hart seconded the motion. The motion carried on a vote of 3-0.

Sale of Real Property - 315 West Pine Street

This is the house currently occupied by the Office of Planning and Grants. It is surplus to the current County needs and operation and maintenance has been costly. The Office of Planning and Grants will relocate when City Hall is remodeled. The terms of the sale are stated in the Notice.

The Missoula County Board of County Commissioners will offer for sale at public auction at 1:30 p.m., on December 23, 1998, in Room 201 of the Missoula County Courthouse, 200 West Broadway, Missoula, MT 59802, Lot 3 and the east half of Lot 4, Block 18 of the C.P. Higgins Addition, Missoula, Missoula County, Montana. The minimum acceptable bid for the property is the appraised value of \$125,000.

Further Description of the Property. Lot 3 and the east half of Lot 4, Block 18 of the C.P. Higgins Addition are commonly known as 315 West Pine, Missoula, MT 59802. Copies of the appraisal of the property are available for inspection and copying in the County Commissioners Office located on the second floor of the Courthouse Annex. Missoula County does not warrant the information contained in the appraisal and makes this document available only as additional information for potential purchasers.

Manner of Sale. The minimum bid price is the appraised value of \$125,000. County will accept sealed bids for the property at any time up to the time set for the auction. Sealed bids may be delivered to the Board of County Commissioners Office in Room 200 of the Courthouse. At the time set for the auction the sealed bids will be opened and read. The oral auction will then begin with bidding in increments of \$500 with the highest sealed bid as a starting point provided that the highest sealed bid equals or exceeds the minimum price. If no sealed bids are received which equal or exceed the minimum price then the oral auction will begin with the minimum bid amount of \$125,000. Sealed bids must be accompanied by bid security/earnest money in the amount of \$12,500 in the form of cash, cashier's check, certified check or equivalent made payable to Missoula County. Bidders at the oral auction should be prepared to deliver to Missoula County the same security at the auction as a condition of acceptance of their bid. The bid security of unsuccessful bidders will be returned within three working days. The bid security of the successful bidder will be retained by Missoula County and applied against the bid price at closing. In the event that the successful bidder fails to close the transaction as required, Missoula County shall be entitled to retain the bid security as liquidated damages.

Terms of Sale. The successful bidder shall pay the balance of the purchase price to Missoula County in cash no later than 60 days after the date of auction.

Title. Missoula County will convey to the purchaser by warranty deed subject only to exceptions appearing in the title insurance commitment dated September 23, 1998, and issued by First Montana Title and Escrow. A copy of the title insurance commitment is available for inspection and copying at the Office of the County Commissioners on the second floor of the Courthouse Annex. The property is also subject to occupancy by Missoula County until completion of the Missoula City Hall remodeling project or November 1, 1999, whichever occurs sooner.

Closing. The sale will be closed at First Montana Title and Escrow, Inc., at a mutually agreed time within sixty (60) days of the sale with closing costs to be divided equally between County and purchaser provided, however, that purchasers shall be solely responsible for the cost of any desired title insurance.

The County reserves the right to waive irregularities and informalities in any bid and to reject any and all bids. Information on the sale may be obtained from Paul Webber, Chief Administrative Officer at Missoula County Courthouse, 200 West Broadway, Missoula, MT 59802, or (406) 523-4877.

Chairman Evans stated there were no sealed bids received. She offered at auction, three times, the property at 315 West Pine at the appraised value of \$125,000. There being no bids received the auction was closed.

Sale of Real Property - 319 West Pine Street

This is the "Share House." It is surplus to current County needs and operation and maintenance have been costly. Share House is relocating October 1, 1999. The terms of sale are stated in the Notice.

The Missoula County Board of County Commissioners will offer for sale at public auction at 1:30 p.m., on December 23, 1998, in Room 201 of the Missoula County Courthouse, 200 West Broadway, Missoula, MT 59802, the west half Lot 4 and all of Lot 5, Block 18 of the C. P. Higgins Addition, Missoula, Missoula County, Montana. The minimum acceptable bid for the property is the appraised value of \$90,000.

Further Description of the Property. The west half of Lot 4 and all of Lot 5, Block 18 of the C.P. Higgins Addition are commonly known as 319 West Pine, Missoula, MT 59802. Copies of the appraisal of the property are available for inspection and copying in the County Commissioners Office located on the second floor of the Courthouse Annex. Missoula County does not warrant the information contained in the appraisal and makes this document available only as additional information for potential purchasers.

Manner of Sale. The minimum bid price is the appraised value of \$90,000. County will accept sealed bids for the property at any time up to the time set for the auction. Sealed bids may be delivered to the Board of County Commissioners Office in Room 200 of the Courthouse. At the time set for the auction the sealed bids will be opened and read. The oral auction will then begin with bidding in increments of \$500 with the highest sealed bid as a starting point provided that the highest sealed bid equals or exceeds the minimum price. If no sealed bids are received which equal or exceed the minimum price then the oral auction will begin with the minimum bid amount of \$90,000. Sealed bids must be accompanied by bid security/earnest money in the amount of \$9,000 in the form of cash, cashier's check, certified check or equivalent, made payable to Missoula County. Bidders at the oral auction should be prepared to deliver to Missoula County the same security at the auction as a condition of acceptance of their bid. The bid security of unsuccessful bidders will be returned within three working days. The bid security of the successful bidder will be

retained by Missoula County and applied against the bid price at closing. In the event that the successful bidder fails to close the transaction as required Missoula County shall be entitled to retain the bid security as liquidated damages.

Terms of Sale. The successful bidder shall pay the balance of the purchase price to Missoula County in cash no later than 60 days after the date of auction.

Title. Missoula County will convey to the purchaser by warranty deed subject only to exceptions appearing in the title insurance commitment dated September 23, 1998, and issued by First Montana Title and Escrow. A copy of the title insurance commitment is available for inspection and copying at the Office of the County Commissioners on the second floor of the Courthouse Annex. The property is also subject to a rental agreement expiring on October 1, 1999, which provides for payment by the tenant of \$732 per month as rental and of all utilities except garbage collection.

Closing. The sale will be closed a First Montana Title and Escrow, Inc., at a mutually agreed time within sixty (60) days of the sale with closing costs to be divided equally between County and purchaser provided, however, that purchasers shall be solely responsible for the cost of any desired title insurance.

The County reserves the right to waive irregularities and informalities in any bid and to reject any and all bids. Information on the sale may be obtained from Paul Webber, Chief Administrative Officer at Missoula County Courthouse, 200 West Broadway, Missoula, MT 59802, or (406) 523-4877.

Chairman Evans stated there were no sealed bids received. She offered at auction, three times, the property at 319 West Pine at the appraised value of \$90,000. There being no bids received the auction was closed.

Chairman Evans stated there were offers on these properties and since no bids were received at auction, the offers would be finalized with Lambros Realty.

Presentation and Consideration of - Proposal Between Mountain Baseball and American Legion Post 27 for Pro-Ball Use of Cregg-Lindborg Fields

This is a request to amend a lease with American Legion Post #27 and, thereby, permit activation of sub-lease agreements that will permit temporary use of Cregg-Lindborg Field by a minor league baseball team.

A public meeting for a presentation to the Commissioners has been scheduled and advertised for 1:30 p.m. on Wednesday, December 23, 1998. A public hearing on the proposal has been scheduled and advertised by the Commissioners for 1:30 p.m. on Wednesday, January 6, 1999.

Chairman Evans stated this was not a public hearing but she would take comments from the audience today. There will be a public hearing on the matter on January 6, 1999 at which time further testimony would be taken. She then asked for public comments.

Larry Swanson, President, Missoula Mavericks Legion Baseball Program, stated there had been some review of this matter with the Commissioners. He wanted to bring some people by today who could answer any questions the Commissioner might have. Tim Toleman, CTA Architects and Engineers, was present. CTA is working with the Mavericks and the Legion Post on the site plan for the facility improvements that are part of the long range plans, as well as part of the needs for minor league play for the coming year. CTA will also be working out the elements of a parking and traffic management plan, which is part of the proposed agreement with Mountain Baseball LLC. Joe Easton is also present. He is the manager of Missoula's Pioneer League Team, the team that will be sharing the field with the Legion. Wey Symmes is supposed to be here and should arrive shortly. Bill Schwanke is also present. He was the Chairman of the Legion Baseball Committee from 1971-1976. He felt Bill's comments about where this program has come from over the years would be important. Late last winter Michael C. Ellis and Michael A. McMurray, co-partners of Mountain Baseball LLC, attended a Legion Board meeting to discuss thoughts about sharing the field and minor league baseball coming to Missoula. Later some additional discussions were held and the Legion was asked to take a position if there was a proposal to share the field temporarily. This is a temporary proposition, the request is to use the field this coming season with an option for a second year should a baseball park not be in place for their use at that time. The Maverick Board, which oversees, manages and finances the Legion Baseball Program in the Missoula valley, endorsed their initial ideas last spring. Over the course of the summer, discussions were held to determine how this would be done and work was started on elements of an agreement. At an early meeting of the County Park Board some elements of an early agreement were reviewed. Subsequently there have been more meetings with the Commission. The Tower Street Park Stewardship Committee has provided a variety of recommendations and Commission members also had some concerns. The agreement has been adjusted to reflect changes in three main areas. The elements discussed included requiring Mountain Baseball to accommodate the two Maverick tournament dates, which has been done. Under the insurance clause, it is now subject to approval by the Missoula County Risk Manager and will provide that Missoula County be listed as an additional insured party, as part of Mountain Baseball LLC's policy, while using the field. A termination clause has been added as well, based on discussions with Michael Sehestedt, County Attorney's Office. The traffic management clause language has been to include review and approval by Missoula County Surveyor. Those were the principals changes as a result of discussions at the last meeting. He asked if the Commissioners has any further questions.

Chairman Evans asked if there was anyone not associated with this project, a citizen, who wished to speak (none were present). She wanted those associated with the project to come forward with their comments. She asked Commissioner Kennedy if his previous questions and concerns had been met.

Commissioner Kennedy stated the four concerns that Larry Swanson mentioned addressed his concerns satisfactorily.

Commissioner Hart stated there was additional language added.

Chairman Evans asked if there was anyone else who would like to speak. These same comments will need to be expressed at the public hearing on January 6, 1999. She strongly supported the baseball project and wished them good fortune.

Joe Easton stated he was the General Manager of the new Missoula Professional Baseball Club. He appreciated Larry Swanson and the Legion Post and the Missoula Maverick's Board for their interest and cooperation in service, as well as the Commissioners cooperation in their beginning business in Missoula. He will be available to the Commissioners if they have any further questions.

Bill Dahlgren stated he was Vice President of Westside Little League, Chairperson of the Tower Park Stewardship Committee, and neighbor of the park at 2008 37th Avenue. He had provided copies of the minutes of a single purpose meeting the Stewardship Committee had on November 19, 1998, related to this project. He was available as a resource if the Commissioners had any questions. At their meeting the Stewardship Committee discussed the proposed site plan, as well as use by the professional baseball organization of the American Legion fields for one year, with a potential extension for an additional second year. There were some concerns related to parking, lighting, alcohol use and traffic, and the solutions proposed were all satisfactory. The organization was willing to work at solving those problems and minimizing the impacts. The Stewardship Committee voted unanimously to support the use of the park by the baseball organization.

Bill Schwanke stated he was chairman of the Legion Baseball Committee from 1971 to 1976. Even before that he was a fan of the Missoula Timberjacks and remembered quite fondly attending the professional baseball games in the late 50's and early 60's with his grandfather. He knew some concerns had been voiced about whether professional baseball would interfere with or hinder American Legion Baseball and its progress in the community. Back in those days, the Timberjacks and the American Legion team shared Campbell Park at the corner of South Avenue and Higgins with no difficulty. From 1971 to 1976, the American Legion played on that same field in a much less classy basis, playing on a clay field. He was excited about how the program has developed since then. He also remembered that even in those days there were no concerns on the part of Legion Baseball about bringing professional baseball back, it could only help all levels of baseball in Missoula by providing a goal for young players. He lent his support to this project.

Wey Symmes stated he is a member of the American Legion. He was involved with obtaining Larry Swanson's and Dale Dahlgren's approval to ask the Commissioners to amend the lease between the County and the Legion. He is also the Chairman of Play Ball Missoula, the group that is associated with this effort to bring this dream back to Missoula. He thanked the Commissioners for their consideration. He also reiterated how committed everyone is to making this a family friendly, quality experience for all of Missoula. The Commissioners could count on their commitment at all levels of this effort to make sure that happens.

Dale Dahlgren stated bringing the team to town will improve the park by 100% and it will get more people involved with baseball. It will be good for the American Legion baseball program, along with the professional team.

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

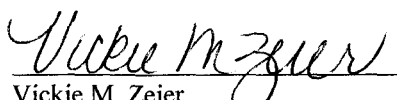
There being no further business to come before the Board, the Commissioners were in recess at 1:55 p.m.


THURSDAY, DECEMBER 24, 1998

The Board of County Commissioners did not meet in regular session. All three Commissioners were out of the office all day.

FRIDAY, DECEMBER 25, 1998

The Courthouse was closed for the Christmas Day holiday.


Vickie M. Zeier
Clerk & Recorder


Barbara Evans, Chairman
Board of County Commissioners

MONDAY, DECEMBER 28, 1998

The Board of County Commissioners did not meet in regular session; Commissioners Evans and Kennedy were out of the office all day.

TUESDAY, DECEMBER 29, 1998

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

Audit List -- The Commissioners signed the Audit List, dated December 28, 1998, pages 3-25, with a grand total of \$250,758.07. The Audit List was returned to the Accounting Department.

Payroll Transmittal - The Commissioners signed a Payroll Transmittal sheet for Pay Period 23, with a total Missoula County payroll of \$632,158.80. The sheet was returned to the Auditor's Office.

Plat - The Commissioners signed the plat for Laura's Addition, a three-lot subdivision of Lot 5, Block 1, Lolo Center, First Supplement, located in the SW1/4 of Section 26, T12N R20W, PMM, Missoula County, a total area of 0.2886 acres, with the owner of record being Ronald G. Daley.

Plat and Development Agreement - The Commissioners signed the plat and development agreement for Richter Lots, a subdivision plat located in the W1/2 of Section 9, T14N R20W, PMM, Missoula County, a total gross and net area of 20.9 acres, with the owner of record being Lee Richter.

Plat and Improvements Agreement - The Commissioners signed the plat and improvements agreement and guarantee for Dinsmore's Orchard Homes Addition No. 5, Lots 21A and 21B, a subdivision plat located in the SE1/4 of Section 24, T13N R20W, PMM, Missoula County, an area of 2.76 acres, with the owners of record being Allen L. and Dorothy M. Kuhl.

Plat and Improvements Agreement - The Commissioners signed the plat and improvements agreement and guarantee for Moua Lane, a subdivision located in the SW1/4 of Section 24, T13N R20W, PMM, Missoula County, with the owners of record being Pao K. Moua, Mao X. Moua, and Ying Thao.

CTEP Participation Form - Chairman Evans signed a CTEP Participation Form for the Montana Department of Transportation stating that Missoula County will participate in CTEP for FFY 1998 and FFY 1999.

ADMINISTRATIVE MEETING

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

Agreement - The Commissioners signed a Fine Arts Collection Management and Insurance Agreement with the Art Museum of Missoula, stating that the Museum shall be the official caretaker of the Missoula County Art Collection, which shall remain the property of Missoula County, in exchange for fine arts insurance by Missoula County.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Ginny Tribe for facilitation of sessions between the Health Department and the Missoula AIDS Council. Completion of Contract shall be by January 15, 1999. Compensation for services shall be \$1,200.00. The Contract was returned to the Health Department for further signatures and handling.

Extension to Option Agreement - The Commissioners signed an Extension to Option Agreement with Wesmont Builders/Developers, Inc., for Reserve B parcel in the Missoula Development Park. The extension is for contingencies 3(b), 3(c) and 3(d), and will expire at midnight on February 26, 1999.

Contract Amendment - Chairman Evans signed Amendment Number Two to a Contract with the Montana Department of Health and Human Services for support of a statewide tobacco use prevention and control program, to increase funding to support additional subcontractor services by Community Care, Inc. Compensation shall be up to \$14,600.00. The Contract was forwarded to DPHHS in Helena.

WEDNESDAY, DECEMBER 30, 1998

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

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming McGraw Hill as principal for Warrant #28128 issued 6/1/98 on the Missoula County SD #40 Fund in the amount of \$797.47 now unable to be found.

Plat and Subdivision Improvements Agreement - The Commissioners signed the plat and subdivision improvements agreement and guarantee for Orchard Park, Phases I and II, a subdivision of Missoula County located in the N1/2 of Section 35, T12N R20W, PMM, a total area of 25.35 acres, with the owner of record being James P. Murphy Development Co.

Plat and Improvements Agreement - Commissioners Hart and Evans signed the plat and improvements agreement and guarantee for Miller Creek View Addition - Phase I, an urban residential subdivision located in the SW1/4 of Section 12 and the N1/2 of Section 13, T12N R20W, PMM, a total area of 41.13 acres, with the owner of record being Lloyd A. Twite Family Partnership.

Agreements - The Commissioners signed two Agreements:

(1) Agreement to Remit Unused Portion of Tax Increment Urban Renewal Monies to Missoula County Board of Commissioners for Countywide Schools for Fiscal Year 1998-1999, in the amount of \$40,044.20, distributed in two semi-annual payments from the City of Missoula.

(2) Agreement to Remit Unused Portion of Tax Increment Urban Renewal Monies to Missoula County Board of Commissioners for Fiscal Year 1998-1999, in the amount of \$33,281.38, distributed in two semi-annual payments from the City of Missoula.

The term of both Agreements shall be solely the 1998-1999 fiscal year. One original of each Agreement and claim forms was returned to the Missoula Redevelopment Agency, and one set was recorded.

Pay Increases - The Commissioners signed two Pay Increase letters:

(1) for Jane Ellis, Chief Financial Officer, increasing her hourly rate by 2.5%, to \$27.99, effective December 13, 1998.

(2) for Hal Luttschwager, Risk Manager, increasing his hourly rate by 2.5%, to \$26.98, effective November 15, 1998.

The letters were forwarded to Steve Johnson, Personnel Director, for handling.

No Weekly Public Meeting was held.

THURSDAY, DECEMBER 31, 1998

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Swearing-In Ceremony for elected officials was held in Room 201 of the Courthouse, followed by a farewell reception for Commissioner Hart, who is retiring as of this date.

Monthly Report - Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 2, Michael Jaworsky, for the month of November, 1998.

MONDAY, JANUARY 4, 1999

The Board of County Commissioners met in regular session; all three members were present. The Commissioners selected Michael Kennedy as Chair of the Board for 1999.

TUESDAY, JANUARY 5, 1999

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

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending December 31, 1998.

ADMINISTRATIVE MEETING

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

Agreement - The Commissioners signed an Agreement between the County of Missoula and the Federation of Missoula County Employees, to promote harmonious relations between Missoula County and the Federation, and to establish rates of pay, hours of work, fringe benefits, and other conditions of employment. Term of the Agreement is July 1, 1998 through June 30, 2000. The Agreement was returned to Steve Johnson in Personnel for further signatures and handling.

Resolution - The Commissioners signed Resolution No. 99-001, a resolution to alter a portion of the right-of-way at the Blue Mountain Road/River Pines Road Intersection area.

Resolution - The Commissioners signed Resolution No. 99-002, a resolution to alter a portion of the GLO Road and Road Plat Book 1 Road in Sections 17 and 20, T16N, R15W.

Other items included:

- 1) The Commissioners approved board assignments for themselves for 1999.

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

WEDNESDAY, JANUARY 6, 1999

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

Audit List -- The Commissioners signed the Audit List, dated January 5, 1999, pages 2-38, with a grand total of \$368,237.78. The Audit List was returned to the Accounting Department.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of December, 1998.

PUBLIC MEETING - January 6, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, Deputy County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, Clerk and Recorder/Treasurer Vickie Zeier and County Surveyor Horace Brown.

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 list in the amount of \$368,237.78. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Continuation of Hearing and Decision On - Agreement between Mountain Baseball and American Legion Post 27 for Pro Ball Use of Cregg-Lindborg Fields

This is a request to amend a lease with American Legion Post #27 and thereby permit activation of sub-lease agreements which will permit temporary use of Cregg-Lindborg Field by a minor league baseball team. A public hearing on the proposal has been scheduled and advertised by the Commissioners for 1:30 p.m. on Wednesday, January 6, 1999.

Chair Kennedy stated there was a meeting and presentation on this item on December 23, 1998 at which time some public testimony was taken. This is the official public hearing on the issue. He asked if there was anyone present who was not associated with the park who wished to give testimony. A few individuals indicated they would like to speak. He asked those connected with the issue if they would be brief in their presentation to allow time for everyone to speak. He then opened the public hearing.

Larry Swanson, President of the Missoula Mavericks, stated there had been several opportunities to review this proposal with staff and the Commissioners. Discussions with Mountain Baseball LLC began about a year ago. The meetings with the principal owners, Michael C. Ellis and Michael A. McMurray, have been open and constructive. Essentially the Missoula Mavericks baseball board has unanimously endorsed an arrangement outlined in the agreement presented today.

The agreement is constructive and a win/win situation for the Mavericks and Mountain Baseball. It is an opportunity to leverage additional resources to the facilities. By accommodating the major league team it allows the Legion to get some things done at the facility that have needed to be done for a long time. It has also created an opportunity for architectural and engineering services to be made available to the park. The plan has been reviewed with the Tower Street Stewardship Committee, to try and make the changes compatible with the area and enhance the amenities. The issues that have been raised by concerned parties have been addressed, including traffic management and parking. Large crowds are not expected at the facility. He was available to answer questions.

Dale Dahlgren, American Legion Baseball Program, stated he has worked with this program for approximately 14 years. The Legion has built a nice ballpark and this agreement gives them the opportunity to improve the facilities with \$100,000 from the professional organization in exchange for one, or possibly two, years use of the field. It will not cost the County anything. It will allow the Legion to make necessary improvement immediately, otherwise, it could take 5 to 6 years to raise the money needed for the improvements.

Joe Easton, General Manager of the Missoula Professional Baseball Club, stated the team was excited about the opportunity to play at the Legion park and appreciated all the efforts of the Legion board and Play Ball Missoula. It demonstrated there is a real desire to bring professional baseball to Missoula. He expressed that the team is here for the long term and is ready to make large commitments to the community. He will be available at any time to answer questions the Commissioners may have.

Bill Schwanke, Assistant Athletic Director at the University of Montana and life-long resident of Missoula, stated at the previous hearing he talked about bringing baseball back to Missoula from a personal standpoint, having witnessed it when it was here before. The use of the Legion field is a necessity in bringing baseball back this time. When the Diamondbacks first spoke with Wayne Hogan, the Athletic Director at UM, and himself, it would have been easy to look at the project as a threat to UM athletics, cutting into entertainment dollars that may affect the University. The conclusion was reached that this community needs more entertainment opportunities, making this a viable project. He went on record, from a personal standpoint, saying this is something that is needed and will benefit the community.

Bill Dahlgren, President of the Tower Street Park Stewardship Committee, stated he was available to the Commissioners if they had any questions. The Stewardship Committee was established by the Commissioners to oversee development and stewardship of the park, and as a mechanism for public input related to development of the park. The Committee unanimously approved this proposal at a meeting last month, which was attended by neighbors and Target Range Homeowners Association representatives. He also presented a letter that was sent to all those bordering the park which announced some of the developments.

Wey Symmes, Play Ball Missoula, stated that, as most everyone knows, Missoula is not always in agreement with things that happen here. This proposal has been unique and pleasant, as all parties involved are in agreement that this is a good thing for Missoula. He stated there was commitment for all the groups involved to make this a quality family environment and experience, at the Legion park and the new park when it is constructed.

Dennis Toussaint, President of Western States Insurance, stated he would like to go on record, lending his support as a citizen of this valley, for this project. It will be good, clean family entertainment which this community can use.

John Squillante stated he did not represent any moneyed interest, he was just a baseball fan and private citizen. He is donating time from his own business to this group because it is a grassroots effort and because he loves baseball. He supported the effort and the way it has been handled.

Kathy Ogren, Bitterroot Motors, stated her involvement went back to 1985 when the County land was going to revert back to the County. At that time she spoke with Barbara Evans and others, including Dale Dahlgren. A group of five men were essentially responsible for getting the ball field going. Her business heartily supports Legion ball every year and she wanted to keep the interest in baseball moving forward. There is great interest in Missoula for baseball and it will be affordable family entertainment. She wanted to go on record as supporting this project.

Jim Caron, Director of Missoula Children's Theater, stated he strongly supported this project because it shares the same values as his organization represents. He also has tremendous confidence in the integrity and community concern of the people involved, not only locally, but from the Diamondbacks. If someone came to him and asked to use the theater for 30 to 35 nights a year when he was not using it and put \$100,000 worth of improvements into the theater, he would not think twice about allowing that to happen.

Commissioner Evans asked Joe Easton to return to the podium. She informed the audience that she liked to tease and did not like baseball, but she did like Charley Pride and asked if he was going to be brought back?

Joe Easton asked if she wanted him to sing or play?

Michael Sehestedt suggested regular attendance for Barbara Evans and she may get to see the next Charley Pride.

Chair Kennedy told Joe Easton that Charley Pride was in his grandfather's era.

Joe Easton promised Commissioner Evans he would try.

Commissioner Carey asked Joe Easton what the tickets would cost.

Joe Easton stated general admission tickets would be \$3.75, 12 and under would be \$2.75. There will be reserved seats per game and as season tickets, but those prices have not been set yet.

Chair Kennedy asked if there were any questions from the audience for any of the speakers. There being no further questions or comments, the public hearing was closed. He stated the agreement proposed was negotiated successfully over several weeks. When the proposal was first presented, there were a number of concerns and each and every one of them has been addressed and satisfied. It was his feeling the latest Memorandum of Agreement does represent all parties

in their best interest and does address all of the concerns raised. The attorneys for Missoula County have not yet read the agreement. He would accept conditional approval today or table the matter to give Commissioner Carey a chance to study the proposal.

Commissioner Carey stated he was willing to accept the Memorandum of Agreement on condition that it be approved by the Attorneys.

Commissioner Evans moved that the Board of County Commissioners agree to amend the lease agreement between the American Legion Post #27 and Mountain Baseball to allow professional baseball to play at the Cregg-Lindborg Field. Commissioner Carey seconded the motion.

Chair Kennedy suggested that Commissioner Evans add, "subject to approval by the County Attorney," to her motion.

Commissioner Evans agreed and added that statement to the motion.

The motion carried on a vote of 3-0.

Hearing - Leonard's Clark Fork Estates (12 lot subdivision) - Orchard Homes

Dave Loomis, Office of Planning and Grants, presented the staff report.

This is a request by Emma Court Development, Inc., represented by Nick Kaufman of WGM Group, to create 12 residential lots from 6.05 gross acres.

The applicant, Emma Court Development, Inc., is proposing to create 12 single family residential lots from 6.05 gross, and 3.25 net, lotted acres. The 6.05 acres of property is located along Grove Street and the Clark Fork River, just west of Reserve Street and south of River Road.

Most of this area is zoned C-RR3, four dwelling units per acre, and a small portion of the island is zoned C-RR1, one dwelling unit per acre, making this project consistent with zoning requirements. The 1998 Urban Comprehensive Plan Update designated this area as urban/suburban residential at four dwellings units per acre, making the zoning and Comprehensive Planning consistent with each other. A portion of the river and island is designated as parks and open space.

The property borders the Clark Fork River. In fact, a channel of the river is adjacent on the west side of the proposed lots, with continued ownership across the channel on an island of about 2.37 acres. The applicant is proposing to dedicate the island, with the exception of a small portion yet undermined to remain in the ownership of the applicant, to the County for a conservation park.

An older home and several outbuildings exist on the property. Surrounding uses are generally consistent with the proposal, and typical of urbanizing areas west of Reserve Street. Lot sizes range from five or more acres down to one-half acre. On the east side of Grove Street the Plummer Addition subdivision contains 14 lots with an average lot size of one half acre.

The property borders the Clark Fork River and would typically be threatened by the natural meandering of the river. However, the property is protected by the upper end of the Orchard Homes levee system constructed in the 1960's by the Army Corps of Engineers and maintained by Missoula County. The property's elevation is two feet above that of a 100-year flood, and the levee rises four feet above the flood elevation (as is typical of Army Corps levees). The primary protection given by the levee at this location is prevention of bank erosion and limiting of the river's ability to change course. While levees never are a guaranteed protection from flooding, Missoula County has accepted the responsibility of maintaining this system to protect other properties downstream that are in the floodplain. The commitment involves maintaining a stable, armored bank along the Leonard's Clark Fork Estates property.

A 15 foot wide maintenance trail exists along the top of the levee. The applicants are willing to offer the opportunity to provide future pedestrian access along the river which could eventually connect to the downtown river front trail system and the Old Milwaukee Railroad right of way trail. The city non-motorized transportation manager, the city parks and citizens advisory committee all recommended the public access easement along the top of the levee. In addition, it was felt a connecting pedestrian easement from Hamilton Way out to the levee trail was needed, as reflected in Condition 5. A variance is requested for the easement be 10 feet, not the required 20 feet, and located between Lots 3 and 4.

A 2.37 acre island park is proposed for dedication to the County. The park provides critical wildlife habitat and is not intended for extensive recreational use. There was an interest expressed about a small, on-site, play area park. The area is relatively limited, about 3 acres of the lotted area. In order to provide a park, one of the lots would need to be removed. Putting the island area into a conservation easement, or in the public hands through other methods, would benefit the public greater than, in this particular case, an on-site park.

The lots are proposed to connect to City of Missoula sewer and to construct a public water system or a community well according to the plat.

Access to the property is via Grove Street, which is paved to 22 to 23 feet wide and has no curbs or sidewalks. A variance is requested to not widen the pavement to the required width and to not provide pedestrian walkways along Grove Street at this time. The proposed Hamilton Way will serve the interior lots. It is proposed to be paved to 32 feet wide, within a 54 foot right of way, with curbs and boulevard sidewalks, consistent with subdivision standards.

In the staff report presented to Planning Board there were two variance requests. It turned out that since Condition 1 covers a future RSID for improvements to Grove Street, which include pedestrian improvements, a variance to that

section of the regulations is not needed. The Board needs to consider a variance request for the actual street improvements to Grove Street.

Charlie McKenzie, President of Emma Court Development, reported the history of how this subdivision progressed. In July, 1998, Leonard Hamilton, his partner, approached him with the intention of doing another project. Mr. Hamilton was 93 years old at the time and had been diagnosed with cancer. He wanted to see another project go through before he died. He and Mr. Hamilton have been developing projects in the City of Missoula with in-fill affordable housing, using city services. Mr. Hamilton was interested in seeing housing that was affordable to the average person in Missoula. It is important that this subdivision be hooked up to the city sewer and have a community well system. One of the things that makes this project feasible is the concept of bracketing. It is intended to sell the existing house in the low \$90,000, houses on less desirable lots will sell in the low \$100,000, and riverfront lots will be selling at \$150,000 or more. The concept of bracketing allows them to lower the cost on the other lots, with the riverfront lots carrying the majority of the burden for the development costs. They have worked extensively with the neighbors. Mr. Gates, the neighbor directly to the north, is present. There have been several conversations with him to make sure the project will have as little impact on his property as possible. Mr. Gates owns the north tip of the island and would like to have a buffer between the park and his property.

Nick Kaufman, WGM group, developer's representative, stated the cul-de-sac street has an easement that extends to the southerly portion of the property so it can become a through street in the future. The design of the subdivision evolved from the considerations of the adjacent property owners. There were two neighborhood meetings during the design stage. A lot of the comments from the neighbors was incorporated into the design. Another feature is that the interior court has landscaped, concrete boulevard sidewalks on both sides of the street. The diversity of cost of housing within the subdivision is unique. The issues of public sewer have delayed this project by one month while it has been worked out with the City Engineers offices, trying to get gravity sewer to this property. The preservation of the natural area of the island along the river by Mr. McKenzie is emotional, relating to his connection with Mr. Hamilton. He hoped the Commissioners would take very seriously Mr. McKenzie's concern to retain a portion of the northern part of the island. Mr. Gates' concerns about the northern border with his property will be addressed by trying to keep those homes single story. Mr. McKenzie is both developer and builder of this subdivision.

Chair Kennedy opened the public hearing.

Ben Gates, owner of the property north of this subdivision, stated his main concern for this development was the sewer line. None of the adjacent owners are interested in a pump system. Where it has been installed in other areas, it has been a constant problem. The system proposed is a gravity system which will be acceptable. He had no objections to the subdivision after meeting with the developer, with the houses being kept at single story and the setbacks adjusted away from his property line. He felt perhaps the number of houses was too many for the area, but it was progress and there was nothing he could do to stop it.

Chair Kennedy told Mr. Gates that the density complies with the existing zoning and Comprehensive Plan.

Alan Summers stated he lives to the east and south of this property and is also an excavating contractor in Missoula. He had concerns about the water on this subdivision. Another neighbor, Mr. Roderick, had trouble with his sewer a few years ago and could not put in a three foot drain without getting into ground water. If the street drainage was done in rock sumps, the sumps would be sitting in water. He put a cesspool in years ago across from Mr. Gates and it is in two feet of water, the tank had to be sunk in the water. He did not understand how anyone could think about building houses there, they are being built right behind a dike, there will be ground water coming into crawl spaces. His property is higher and further from the river than this, both his well logs have water during the dry time of the year. The homes at Mullan Trail have experienced flooding problems, as well as Dorothy Court. As soon as digging goes below the top soil, the ground is very porous. He felt there would be water problems and wanted to make sure the problem had been addressed or there would be serious problems. There is no way to get to the island. Every morning he can hear shots coming from the island, whoever is over there is killing wildlife of some kind.

Chair Kennedy asked Mr. Summers if he was aware of any standing water during the wet spring of 1997?

Alan Summers said there was no surface water.

Chair Kennedy asked what the ground water depth was on his property in the spring of 1997?

Alan Summers stated it was a 9 feet.

Chair Kennedy asked what the difference in elevation was between his property and this property?

Alan Summers stated it was about 8 feet.

Chair Kennedy stated that would make 1 foot of free board on this land during the spring of 1997, but there was no surface water.

Alan Summers stated that was correct, but it wouldn't require very deep digging to discover ground water.

Commissioner Evans asked Nick Kaufman to address the issues that have been raised when testimony was complete.

Mary Ann Summers stated there would need to be improvements to Grove Street because of this subdivision. There are children walking down the middle of the street because there are not any sidewalks. 12 houses on three acres would increase the number of people and children. She also thought the zoning was one dwelling per acre in the area which would limit the development to three houses.

Ben Gates asked if the Commissioners received a letter from Bob Kimball. Mr. Kimball lived in the area and had to put four feet of concrete in his basement in order to keep the water out. He had not considered the water table before and wanted to make sure it had been addressed.

Nick Kaufman stated that in 1975, when the Urban Area Comprehensive Plan was adopted, the recommended density for this property was four dwelling units per acre and the zoning was C-RR3, also four dwelling units per acre. Other studies of the area over the past twenty years have also designated the property as four dwelling units per acre. This subdivision is being built within the guidelines of 23 years of planning and zoning history. One of the first things looked at with this development was existing groundwater monitoring on the site, done by the previous owner. In the lowest portion of the site, ground water comes within 2 feet of the surface during seasonal high water, it is further from the surface in other portions of the property. The developer is well aware of the ground water constraints relative to this project. The dominate vegetative species on this property is spotted knapweed, which will not grow in area where high ground water comes too close to the surface, it won't grow when its roots are wet. He felt there was no surface water on the site, there is high ground water and the engineers are well aware of that fact. This subdivision is serving as a catalyst to bring gravity sewers into this area. The City of Missoula has plans to run a 36 inch sewer main, starting at Reserve Street, along the south side of the Clark Fork River to run along the south shore and come down to Grove Street. The sewer main will extend all the way south to near Big Sky High School. There is a contract sewer agreement with the city for this project. Initially the sewage was going to be pumped into a 4 inch force main back to one of the force mains along Reserve Street. The city engineer said instead to take the money that would have been applied to that system, and they will apply it to the construction of the gravity collection system. Because the plan is for the new sewer to go up Grove Street, it does not make sense for this subdivision to improve Grove Street at this time. That needs to happen after the sewer system is installed, which is why they are asking for the variance. Steve King, the city engineer, supports the variance at this time, because of the future capital facilities in terms of sewer and water. The city has let a contract to design the sewer and it is their understanding it will begin construction this spring. Again, this is why this project was delayed by one month. Mr. McKenzie is the contractor and is very aware of the ground water constraints. These homes will be built with slab on grade, no crawl space. The surface elevation of this property is at a minimum two feet higher than the flood plain. This is not anything like Mullan Trail, where water comes up over the surface. Storm water needs to be taken care of, both with the future improvements for Grove Street, as well as this property. They do plan on using on-site storm drainage in the form of shallow sumps and it will have a head and charged disposal of storm water back into the ground water.

Commissioner Evans asked if the perk tests that have been done indicate that houses can be placed there with good drainage?

Nick Kaufman stated everything that has been done on this property indicates there is an engineering solution that will be satisfactory long term to the development of this property.

Commissioner Carey asked if, in Mr. Kaufman's view, future homeowners would have excessive insurance costs due to the location?

Nick Kaufman stated that would not be a problem, the property is not in the 100-year floodplain and would not require flood insurance. The problems mentioned at Mr. Kimball's property were because he has a basement. He did not doubt that if basements were included in an area where ground water came to within two or three feet of the surface there would be problems. This development is not proposing basements, it is proposing slab on fill construction. Any time sewer or water lines are buried in ground water areas, special considerations for construction must be taken.

Commissioner Evans asked if one of the conditions could be that there would be no basements?

Nick Kaufman stated the covenants will be amended. Mr. McKenzie is the builder and if the Commissioners want that as a condition, it would not be a problem. Basements cannot be built on this property.

Commissioner Evans asked if there had been any complaints about flooding from other homes in the area?

Nick Kaufman stated that the homes in the area bordered by Grove Street, Krysty Drive and Reserve Street are at a density of about two dwellings units per acre, on a city improved street with storm drainage facilities. Every one of them has subsurface sewage disposal. To the best of his knowledge, there has not been any kind of crisis in this neighborhood relative to shallow ground water. Mr. Summers was correct in his comments and they were appreciated. The problems are well known and the developer has designed around them.

Horace Brown asked about the temporary cul-de-sac, once it is built straight through, is the property going back to the adjacent landowner.

Nick Kaufman stated the road is an easement so the land will be the adjoining property owner's. If the County would like to vacate a portion of that easement, the adjoining owners would appreciate that.

Horace Brown stated the sumps that are there would be outside the 54 foot right of way. Could this be designed so they stay within what would become the new right of way?

Nick Kaufman stated that could be done. The easement could be expanded to include the drainage structures.

Chair Kennedy stated there were several engineering solutions to that problem. He asked Mr. Kaufman about the monitoring that was done. The two foot of free board during high water, was that for the spring of 1997?

Nick Kaufman stated he did not bring the ground water monitoring with him. It had been done two separate time on the property, in two different years, but did not know the years. The last monitoring was fairly recent, it may have been in 1997. The monitoring was done by the health department.

Nick Kaufman read a letter dated June 17, 1998: "The sanitarians met today to discuss the ground water testing on Ann Lingle's property, 511 North Grove Street, in Missoula. They agreed that the 1989 testing in the front field could

only be used for one single family dwelling as we discussed previously on the phone. The 1996 testing revealed two holes in the same vicinity, but at a slightly lower elevation, failed on June 11, 1996 at 2 foot 7 inches and 3 foot 3 inches. The site is marginal at best for subsurface sewage disposal..." --Shannon Therriault, *Environmental Health Specialist*. He stated this answered the question about the year of testing, it was done in 1996.

Nick Kaufman read a letter from Don Stinger: "Dear Nick: I am going to be unable to attend the County Commissioners meeting January 6, 1999, and I'd like to follow up on the comments I made before the Planning Board when they considered this project on December 15, 1998. After attending both of your neighborhood meetings, I believe you answered well all of the concerns of the neighbors and like I stated to them, 'This is as good as it gets.' Your project is an excellent model for future development in the area. Sincerely." --Don Stinger, *Neighborhood Network Representative, Orchard Homes*

Chair Kennedy asked Mr. Kaufman if he had a relative elevation of the floodplain in that location to the property?

Nick Kaufman stated the approximately elevation of the 100-year floodplain was 44 feet. The elevation on the land is between 46 and 49 feet.

There being no further comments, Chair Kennedy closed the public hearing.

Chair Kennedy added there was correspondence from Ms. Emery who is concerned about the visual of any pumping facilities. He felt the gravity facilities with no pumping would seem to satisfy the concern raised.

Commissioner Evans moved that the Board of County Commissioners approve the request for the variance from Section 3-2(3) of the Missoula County Subdivision Regulations to not pave Grove Street to a 32 foot width at this time, 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 request for the variance from Section 3-2(5) of the Missoula County Subdivision Regulations to require sidewalks or pedestrian pathways along Grove Street. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve Leonard's Clark Fork Estates Preliminary Plat Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, with revised Condition 4.

Dave Loomis stated that the Planning Board had included a variance request for the width of the pedestrian easement from Hamilton Way out to the levee to be only 10 feet. The regulations require 20 feet. The Planning Board recommended approval of the variance. As stated in his report, the variance request to require sidewalks or pedestrian pathways was not needed.

Chair Kennedy stated the pedestrian easement variance would be from the normal requirement of 20 feet for the width, to 10 feet.

Dave Loomis stated that was correct, from Section 3-6 of the Subdivision Regulations.

Chair Kennedy wanted some discussion on this variance. There is a sideyard requirement, what is the width of the sideyard in that area.

Nick Kaufman and Dave Loomis stated it was 7-1/2 feet.

Chair Kennedy stated there was a potential for a walkway that would be 7-1/2 feet from a building on each side of that easement.

Dave Loomis stated one 10 foot easement could split the difference between Lots 3 and 4. The walkway could potentially be on the property line, or not, that choice has not been made yet by the developer. The point is that it would require only 5 feet from each lot for the variance. That is still less than the setbacks. The lots are 11,000 to 12,000 square feet, there is plenty of room to move a house around. A house could be relatively close to a pathway or not.

Chair Kennedy stated he was concerned about the restriction of the width of the pathway. He would like to know where the pathway was suggested and where it might be acceptable to the developer.

Nick Kaufman stated staff recommended initially that the 10 foot easement occur on the south side of Lot 7. The reason for that was in the future, if the adjacent land is developed, it would contribute the other 10 feet. The developer would prefer, if there is going to be an access easement, that it be more central to the subdivision, between Lot 3 and Lot 4. The design is trying to accomplish several things here, it is a balancing process. They did not want to lose a lot or have a lot that is too narrow to be developed because there is a 20 foot easement on it. The Planning Board felt that 10 feet of easement was enough and future developments would also have connections. The developer is trying to maintain a lot of things here.

Dave Loomis stated in the Request for Commission Action it shows the change to Condition 5 the Planning Board recommended.

Nick Kaufman stated that in speaking with Mr. McKenzie at the Planning Board meeting, if it is asked for the easement in the future to be wider than 10 feet, it needs to go on the south line of Lot 7. If 10 feet is acceptable, the developer would prefer to put in between Lot 3 and Lot 4. The highest value lot on the property is Lot 7, which is why they don't want the easement on that lot. He felt it works better toward the middle of the development. If the Commissioners feel the easement has to be potentially wider in the future, they would accept 10 feet on the south side of Lot 7, rather than 20 feet to the interior.

Chair Kennedy asked Mr. Loomis is staff had a preference.

Dave Loomis stated they did not.

Commissioner Evans stated she would prefer it in the middle of the development. If the easement is wider maintenance becomes more of a problem. 10 feet was satisfactory to her.

Commissioner Evans moved that the Board of County Commissioners approve the request for the variance from Section 3-6 of the Missoula County Subdivision Regulations for a pedestrian easement connecting Hamilton Way to the conditional easement at the top of the levee to be 10 feet, not the required 20 feet, and that the easement be placed between Lot 3 and Lot 4, 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 Carey stated that on one document the property owner would dedicate a 2.3 acre island to Missoula County, and the material from the planner says that a small part of the island would be kept by the owner.

Nick Kaufman stated that the original intent was to dedicate the whole island. During the interim, Mr. McKenzie said he would like to keep part of the island. During the next neighborhood meeting, Mr. Gates expressed that having public ownership up against his tip of the island would be a concern and would rather have some buffer between his ownership and the public land. The developer asked the Planning Board to modify one of the conditions of subdivision that they work with Missoula County to define where the appropriate location for this boundary is, which is reflected in Condition 8. Mr. McKenzie would like to keep about 1/2 acre.

Chair Kennedy asked Mr. Gates to return to the podium.

Commissioner Carey asked Mr. Gates to tell him a little bit about his island? What is on it, how often does he get out there?

Ben Gates stated there was a log jam on one end brought in by the flood of 1997. There are a few trees and lots of rocks.

Commissioner Carey assumed it was flooded from time to time.

Ben Gates stated it was flooded every year for about a month and a half.

Commissioner Carey asked Mr. Gates how often he visited the island?

Ben Gates stated approximately once or twice a year.

Chair Kennedy asked about the concern for a buffer between County property and his property? Was his concern that there would be substantially more use, even though the access was by boat or wading?

Ben Gates stated that was correct, he felt there would be more use. He wanted to keep it his own, or private.

Chair Kennedy asked what Mr. Gates used the island for?

Ben Gates stated it was mostly for fishing.

Chair Kennedy asked if people hunted on the island?

Ben Gates stated that was correct, duck hunting.

Chair Kennedy asked Colleen Dowdall about the extraterritorial law for the city, under certain circumstances by request of the County Commissioners, to limit hunting in certain area. How might this area be affected?

Colleen Dowdall stated there were restrictions against the discharge of a firearm in the city. There were restrictions as to how close to housing someone could be before discharging a firearm. She did not know what the distance was, but could check with the Attorneys Office.

Chair Kennedy stated there was testimony from Mr. Summers that people hunt out there. It seems as if there is a compatibility issue out there. If they were approving a subdivision, they should be thinking about the conflict hunting on the island could present. He asked Mr. Kaufman if he had had any discussions about hunting on the island.

Nick Kaufman stated that ultimately the property would be in the ownership of the city, that's a given. The discharge of firearms within the city limits is prohibited. In the long run, there would not be discharge of firearms on city property, but that has not yet been investigated.

Charlie McKenzie stated that from the edge of the property the other river bank is 100 to 125 yards and the city sewer plant would be further beyond that. This island area could be considered the head of Kelly Island, which is an area currently used for hunting.

Commissioner Evans asked Colleen Dowdall if the County accepts the offer of this land as parkland, how can it be done to always keep it a conservation area. Can it be given instead to Fish, Wildlife and Parks, or Five Valleys Trust, etc., but still be the contribution of the developer to satisfy their parkland dedication.

Colleen Dowdall stated the developer can satisfy their parkland dedication by insuring it is set aside in some way as open space for the public, or even for the homeowners. It does not have to come to the County, which may be something to explore between now and final plat. It could be made a part of the Kelly Island process.

Commissioner Evans did not want the County to have parkland that would then require maintenance. She would like to see the island as the parkland contribution from the developer and have the habitat maintained. Did Mr. Kaufman have any ideas on how to accomplish this.

Charlie McKenzie stated if the County does not want to maintain ownership, the developer could retain ownership and grant a conservation easement so there would be no development and it would remain open space.

Nick Kaufman stated this could be accomplished by making one change to Condition 8, replacing "or" with "and." The condition would read, "The developer shall work with Missoula County to determine boundaries and ownership of the island."

Commissioner Evans wanted to make sure Mr. McKenzie gets to keep the piece of the island that he wants. She felt he was exceeding the legal requirement of one-ninth of his donation for parkland. She would also like to see the island remain in its current condition.

Chair Kennedy stated that it seems like, in the long run, everyone is better off if somehow human use was limited on the island, such as with a conservation easement. He was asking Mr. Gates and Mr. McKenzie if they might be willing to do that, so that the whole island ends up in a conservation easement with limited human activity based on conditions of the easement. Was that something they would be interested in?

Ben Gates stated he would rather not do that, he had experienced someone shooting through his bedroom, he did not want the public out there shooting off the island in the direction of his house.

Chair Kennedy stated he was suggesting a restricted conservation easement that prevents any kind of activity at all, it prevents people from being out there.

Ben Gates replied that would be fine with him.

Chair Kennedy asked if he would be agreeable to giving up his land to do that?

Ben Gates stated he would not be agreeable to giving up his land.

Chair Kennedy asked if Mr. McKenzie would be willing to give up his land?

Charlie McKenzie stated he would be willing to put a conservation easement on the land if it could be made simple and did not cost a fortune.

Nick Kaufman stated a conservation easement was a good idea except for the cost. Even for a simple conservation easement, with the appraisal, the drafting of the design of the easement, and paying the holder of the easement the annual maintenance fees, the cost could be between \$5,000 and \$20,000. If Condition 8 is amended as suggested, the developer would explore options, including a conservation easement or direct fee ownership to FWP or another entity. The idea can be accomplished in a more economical way. A conservation easement is fairly expensive unless there are development rights to offset it as tax credits.

Chair Kennedy stated the developer will stay with the parkland dedication, with the additional proviso that they will look at other options.

Commissioner Evans stated that Horace Brown did not want to maintain the levee trail. She recommended that on the trail or walkway on the levee the developer install signs indicating that the trail has not been improved and is not maintained. The revised Condition 4 prepared by Colleen Dowdall is acceptable for that purpose.

Commissioner Evans moved that the Board of County Commissioners approve Leonard's Clark Fork Estates Preliminary Plat Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, with revised Condition 4 and including the change to Condition 8. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvement to Grove Street, including widening of the road and installation of pedestrian walkways, sidewalks 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.*

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 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 Articles 3-1(1)(D) and 3-7(2).*

3. The developer shall contribute \$100 per new lot, or install a fire hydrant, to the satisfaction of the Missoula Rural Fire District. Evidence of approval of either alternative shall be presented to the Office of Planning and Grants

prior to final plat filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*

4. The dedication of the public walkway easement on the levee shall be condition upon:
 - a. The consent of the owner of the underlying Dike Maintenance Easement to the dedication of the walkway easement.
 - b. That a trail will not be built or maintained by the governing jurisdiction until a plan for trail extension and maintenance has been developed.
 - c. That the developer will install signs indicating that the trail has not been improved and is not maintained. *Subdivision Regulations Articles 3-2(5) and 3-6.*
5. A 10 foot easement for the benefit of pedestrians accessing from Hamilton Way to the Conditional Walkway Easement along the top of the flood control dike shall be shown on the Plat. Such easement is conditioned upon the connection of the top of dike trail to a property either north or south of this property within 10 years. No structures, fences or other obstructions shall be placed within this 10 foot easement. If no further connections to the north or south of this property are made within 10 years of the filing of the final plat, and the governing body waives its intent to provide that connection, the homeowners association may petition the governing body to strike that conditional easement from the plat. *Subdivision Regulations Article 3-2(5) and 3-6.*
6. The plat shall be labeled to show the extension of the 54 foot easement from the temporary cul-de-sac on Hamilton Way to the southerly property line. *Subdivision Regulations Article 3-3(3).*
7. Upon discovery of cultural artifacts at any time during construction of the infrastructure or on any individual lot, the applicant or lot owner or contractor shall notify the Confederated Salish and Kootenai Tribes Preservation Office of such discovery and allow sufficient time for the tribes to determine appropriate handling. *Subdivision Regulations Article 4-1(12) and recommendation of the Confederated Salish and Kootenai Tribes.*
8. The developer shall work with Missoula County to determine boundaries and ownership on the island. *Planning Board recommendation.*

Hearing - The Meadows (51 lot subdivision - Double Arrow Ranch) - Seeley Lake

Dave Loomis, Office of Planning and Grants, presented the staff report.

This is a request by Double Arrow Enterprises, Inc., represented by Dick Ainsworth of PCI Inc. to create 51 residential lots on 117 gross acres.

The applicant, Double Arrow Enterprises, Inc., is proposing to create 51 residential lots on 117 gross acres. The entire project also consists of a 2.5 acre common area and a 9 hole golf course on 57.2 acres. The project is located south and east of the town of Seeley Lake, within the Double Arrow Ranch, east of State Highway 83. The applicant proposes three phases, Phase 1 consisting of 18 lots, Phase 2 consisting of 7 lots and Phase 3 consisting of 26 lots, primarily located along the new nine holes of the golf course.

Trail Creek and Drew Creek are two year-round streams with fish populations and riparian vegetation along the banks. Portions of Trail Creek also have a well developed riparian tree overstory along the second hole of the proposed golf course. There is a large open grassy meadow in the central portion of the project. Some of the meadow will be utilized by the golf course and driving range, and some by the lots along the new Golf View Drive. About 21 acres of the meadow remain as not within this subdivision.

Except for the first 1,500 feet of Double Arrow Road, and the next 1,000 feet of Lodge Way, all of the roads within the Double Arrow are private. This project proposes to build two new roads. Dunham Way is a cul-de-sac serving 13 new lots in Phase 1. Golf View Drive is proposed to serve 5 lots within Phase 1, the expanded golf course, and 26 new lots in Phase 3. The first 1,350 feet of Golf View Drive already exists as an approximately 20 foot wide road. The next 4,750 feet of Golf View Drive does not presently exist and is proposed to be built to 20 feet of paved width. Both new roads are proposed to have a 5 foot wide gravel path along one side.

Each lot is proposed to provide its own on-site well and septic system.

One of the key conditions deal with the treatment of Trail Creek. It has a significant riparian area which caused concern by staff and others about the treatment of the golf course edge and its interface with the riparian area. The applicant has a riparian management plan within the submittal. The applicant is also proposing to restore an area that was significantly degraded by the old corrals, near hole #2 of the golf course. Although there will be some loss of mature cottonwood trees at the tee for hole #2, there will be a restoration in a different area around the corrals, which will compensate for some of the loss of riparian vegetation.

On the new Golf View Drive, and the part that currently exists, the applicant is proposing an off-site 5 foot gravel pathway on one side, including Dunham Court, meeting the requirement for pedestrian pathways. The pathway will be contained in the 60 foot private right of way. The distance between the walkway and the road will vary based on existing terrain.

The new proposed condition regarding Drew Creek and Trail Creek is intended to cover any plans developed by U.S. Fish and Wildlife Services regarding bull trout habitat issues.

Dick Ainsworth, PCI, Inc., developers representative, was present. He stated there were a couple of variances requested that they are in disagreement with staff on. The first has to do with the width of Golf View Drive. Part of Golf View Drive is presently constructed and the road will be extended through this subdivision. The road is presently paved to a width of approximately 20 feet. The developer has asked for a variance on all of the new roads, including

Golf View Drive and Dunham Court, from 24 feet of pavement to 20 feet of pavement. Staff is supportive of this variance, with the exception of the portion of Golf View Drive that currently exists, they feel it should be 24 feet wide, and have recommended against the variance on this stretch of road. The developer would like the Commissioners to consider their request again, they feel it makes no sense and is unnecessary to have this small stretch of Golf View Drive widened. It is a low profile, low impact road that serves the golf course clubhouse presently. It will have increased traffic with the additional 9 holes of golf, but it can easily handle the traffic projected in its present state. Widening the road would cause the loss of more vegetation and could potentially increase speeds. The developer is requesting the Commissioners grant Variance #1 in its entirety.

Variance #2 deals with paving Lodge Way. At the Planning Board meeting, Colleen Dowdall informed the board that this variance was probably not needed, she did not consider it an off-site road that met the conditions of the subdivision regulations. The developer intends to pave the road to Dunham Court. Staff has asked for paving up to the access of Lot 6. The rest of the roads are well maintained gravel roads treated with dust abatement. This additional paving does not add anything and the developer would like to withdraw this variance request.

The other variance deals with the driveway that serves Lots 49, 50 and 51. According to subdivision regulations, if a driveway serves more than 2 lots, it is a road, not a driveway, and has to be wider with more right of way. Lot 49 could access directly off Double Arrow Road and leave the driveway serving 2 lots, but it made more sense to request the variance and avoid having one more lot access the busier road. The Planning Board has agreed with the variance.

The developer has no problems with Conditions 1, 2, 3, 5, 7, 8 and 9. Condition 4 deals with the same issue that Variance #1 does, the widening of Golf View Drive up to the clubhouse. If Variance #1 is granted it will eliminate Condition 4. Condition 6 deals with fire protection. A great deal of time has been spent on this issue. Condition 6 is worded per a Planning Board request, as discussions with the fire department are ongoing. The condition is intended to repeat the regulations, that water for fire protection purposes will be provided in one of the ways listed. In conversations with the fire chief, some as recently as today, the terms of fire protection have not been completely solved. A verbal agreement had been reached to provide sprinkler systems in the houses in the development, which meets the requirement of the regulations. The fire chief has also asked the developer to provide other sources of water for fighting wildfires, which has also been agreed on. The three locations are where Golf View Drive crosses Drew Creek, where Double Arrow Road crosses Drew Creek (adjacent to Lot 49) and along Golf View Drive near the northerly corner of Lot 27. One of the concerns the fire chief has with sprinkler systems is the enforceability of the requirement. In speaking with Colleen Dowdall, it was determined that it could be difficult to enforce. It could, however, be put in the covenants. The fire chief wanted to have control and review of the systems as they were put in and do annual inspections. Colleen Dowdall was concerned about how that could be enforced and the liability to the County. In light of all of these problems, the developer went back to the fire chief and suggested dropping the sprinkler system altogether and provide additional accesses to water. The fire chief would be in agreement with that idea if he could be assured of the kind of flows he wanted out of those additional sources, approximately 250 gallons per minute for 30 minutes. It is felt they could achieve such flows from the three sites currently suggested. They did not have an exact location for additional water sites, one might be from a pond. The fire chief would go along with the two or three additional locations if he could be assured of the flows required. The answer to this matter is not completely clear at this time, more research is needed. The developer would like to propose a condition which would be an either/or compromise; either required sprinkler systems and three identified water sources, or three identified water sources and two or three additional sources to be mutually agreed upon. The fire chief would accept either of these two options. Another existing source of water discussed was the 20,000 gallon enclosed swimming pool. The option of putting a dry hydrant outside the pool enclosure was suggested. This area is not part of the subdivision but is accessible. The revised Condition 6 states the developer will do one of these two things and continue to work with the fire chief to address fire fighting issues.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans asked if the Commissioners granted the variance for Golf View Drive to remain 20 feet for the entire road, as a trade off would the developer be willing to pave Lodge Way to the entrance of Lot 6.

Chair Kennedy stated they have proposed to pave Lodge Way to Dunham Court, so this would encompass also paving Lodge Way beyond Dunham Court to the entrance to Lot 6.

Dick Ainsworth stated they could certainly do that, but it did not seem to accomplish a great deal, it is only another 200 to 300 feet.

Chair Kennedy stated the operation and maintenance of the roads was top rate. The tearing up and paving to 24 feet that portion of Golf View Drive that currently exists is unnecessary. This suggestion seemed a reasonable quid pro quo.

Dick Ainsworth stated that could certainly be done.

Commissioner Carey asked about the sprinkler systems and their enforceability, was this for installation or inspection, he did not understand?

Colleen Dowdall stated because this was subdivision review, there was little that could be enforced after plat filing. Most of the conditions have to be satisfied before the final plat is filed, that is how they can be enforced. However, the houses won't be built prior to filing the final plat, so it is difficult to enforce the installation of sprinkler systems, particularly in an area outside the building permit jurisdiction. These houses can be built without building permits from the City of Missoula, so there is no zoning compliance and the house plans do not get reviewed by Planning and Zoning. Even if they were within planning jurisdiction, only the plans would be reviewed to confirm requirements, there is not the ability to inspect what actually happens at the building site. Her concern with the requirement of the Seeley Lake Fire District inspection is that the developer is currently under jurisdiction and this would result in a subdivision condition upon the Seeley Lake Fire District. They may not always have the resources to do inspections

that would satisfy their fire safety concerns. In the event they did not do what was required of them, and there is a fire, there would be liability exposure for the County.

Commissioner Carey asked if there was any way to place actual responsibility on the homeowner, perhaps through covenants?

Colleen Dowdall stated sometimes it is required that certain things do go into the covenants, such as maintenance responsibilities. It has been required to have sprinkler systems as part of the covenants, which is an agreement amongst all the landowners and is enforced as to each other. In some cases the regulations allow Missoula County to be a party to the covenants, to enforce some conditions of approval. If, as a condition of approval, the covenants require sprinkler systems then the Commissioners would have to enforce them. With other covenants, such as maintenance of a trail system, if the trail is not maintained there isn't a huge loss of property or possibly loss of life. With sprinkler systems that is such a possibility which is why she was more reluctant with this kind of covenant requirement.

Commissioner Carey stated if this were a covenant which Missoula County were a party to, legally the County could be held liable if the subdivision burned down, even though the homeowners were required to install sprinkler systems.

Colleen Dowdall stated her concern was that if this was required and the County did not follow through and make sure, then there could be litigation. She was not certain the County would lose that litigation, but from other experiences such as Mullan Trail, the cost of damages and of defending such a case could be huge.

Chair Kennedy stated his belief was that if approval is conditioned upon the requirement of a sprinkler system, even though enforcement is difficult, there is still an obligation to provide sprinkler systems. If it is discovered that sprinkler systems were not installed, then it is enforceable. The difficulty is the detection and also knowing when these systems are going to be installed, but there is still an obligation to do it.

Colleen Dowdall stated there is an obligation to do that, the detection and enforcement is also difficult unless the County is a party to that particular covenant. If there has been some material misrepresentation once the plat is filed, such as lot lines or ownership, there are ways to deal with that, but in this case the County would not want to go to court and ask the judge to unrecord the subdivision. That enforcement mechanism is not necessarily available.

Chair Kennedy stated the assumption that if there is a condition of the subdivision to include sprinklers but the builder would not install them is not necessarily accurate. These are people who have significant resources to build significant properties up there and his assumption was they would want to construct homes that meet the requirements.

Colleen Dowdall stated that would be her hope also. If sprinkler systems are to be imposed, she thought they should be in the covenants and there should be a provision that says Missoula County may enforce that provision.

Commissioner Evans stated she understood and supported what was trying to be accomplished, there were a couple things that bothered her. One of those is the Commissioners routinely do not want to be parties to covenants, because then they are called on to enforce covenants when, in reality, it is preferred a private attorney is hired. She believed it was the responsibility of the fire department to make the determination of the best way to protect these homes. If there are several choices and the developer has to meet a couple of them to satisfy the fire department, then it remains the fire departments purview and responsibility. It would be wonderful if sprinkler systems were installed and kept operational. She did not want to be a part to such a covenant and intrude in people's homes to inspect fire systems. She preferred to allow the developer to work some satisfactory arrangement with the fire department, who has the legal responsibility to deal with fire protection.

Chair Kennedy stated this was a large subdivision in a remote area that traditionally has relied on less than adequate fire protection mechanisms. To employ antiquated mechanisms in a new subdivision is not adequate. He felt there needed to be a decision that is best for the present and future for the people who live in that particular subdivision. Making the best decision involved using the best technology and in rural areas where there is not a community water system and only a volunteer fire department, it seemed best to him to have a residential sprinkler system installed. He understood all the short coming of enforcement and inspection, but at the same time if the Board requires sprinkler systems that are approvable under current standards, that goes a long way toward giving notice to the people who might buy and develop in the area. It was originally proposed for good reason by the developer and one that needs to be looked at strongly. He did have some concerns about damming the creek but that could be resolved by installing an approximately 5,000 gallon cisterns.

Dick Ainsworth stated the size of cisterns have not been researched in great detail yet, it could be anywhere from 3,000 to 5,000, based on a standard size.

Chair Kennedy stated if the condition said 3,000 to 5,000 gallons, that would be something they could work with. The cisterns on the creek would be flow-through so the water would be clean. There would be some flushing mechanism for the one near the pump house. He suggested the Commissioners require sprinkler systems along with the three cisterns, which gives some positive way of addressing fire protection. He believed the people who build up there will, in fact, put in sprinkler systems, he had no reason to believe they would not.

Dick Ainsworth stated the fire chief, Jim White, originally wanted to look at the systems before they were put in and wanted to have annual check ups. The last time they spoke, Mr. White wanted some language that stated it is a requirement that the system be installed. The fire chief must confirm that the plans for each system meet these requirements prior to construction. After installation, but before the walls and ceilings are installed, the fire district must confirm that the system has been installed in accordance with the NFPA 13D requirements. The type of language made Colleen Dowdall very nervous.

Chair Kennedy stated he understood what the fire chief would like. The effect of such language is to transfer the liability from the owner of the property to the fire district, that is something he may not have thought out properly. To

require him to examine the plans is not something the Commissioners would want to do. It is sufficient to say to install a system to code, it remains the obligation of the builder or owner to make sure it has been constructed to code.

Dick Ainsworth responded to the comment about people building substantial homes and wanting to comply with rules by saying that people never ceased to amaze him. He is dealing with another development in Salmon Lake that has architectural control. Someone is building a home valued at over \$500,000. The plans for the home had not been reviewed and the owner did not even know such a rule existed. Neither the owner nor the builder had read the covenants for the subdivision. To assume that because someone is building a substantial home and will follow the rules is not a good assumption.

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 not improve Golf View Drive to the required 24 feet in width, leaving it at 20 feet where it currently exists and the remaining new part of the road would also be 20 feet in width, with the condition that Lodge Way be paved from where the current paving ends to the entrance to Lot 6, to a width of 20 feet. 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 variance request from Section 3-2(6) of the Missoula County Subdivision Regulations to allow a driveway to serve three lots (Lots 49, 50 and 51), 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 Meadows Preliminary Plat Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions, including the new proposed condition regarding bull trout, and revised Condition 6 as submitted by the developer with options for fire protection.

Chair Kennedy amended the motion to require sprinkler systems that meet current NFPA 13D requirements along with three concrete cisterns that have a capacity of between 3,000 and 5,000 gallons each.

Commissioner Evans stated that the amendment to the motion did not state which of the options on proposed revised Condition 6 would be excluded.

Dick Ainsworth stated that the cisterns may be fiberglass or some other material, concrete was restrictive.

Chair Kennedy stated that was acceptable.

Commissioner Evans asked if the developer or owner had a problem with the language for revised Condition 6.

Dick Ainsworth stated there was not a problem.

Commissioner Evans accepted Chair Kennedy's amendment to the motion.

Commissioner Carey wanted to be clear that the condition to require sprinkler systems had been created. He then seconded the motion.

Dick Ainsworth stated that during discussions with the fire chief, it was noted that one cistern would be installed with each of the three phases of the subdivision. The fire chief asked if the first two cisterns on Drew Creek could be installed with Phase 1 and install the northerly third cistern when Phase 3 is begun.

Commissioner Evans stated she had no problem with that, if the fire chief approves.

Chair Kennedy stated that should occur at the beginning of the phase rather than the end.

Dick Ainsworth stated that was acceptable.

Colleen Dowdall stated the first two cisterns would be with Phase I and the third with Phase 3.

Dick Ainsworth stated that was correct.

Chair Kennedy asked if that was suitable to the other two Commissioners.

Commissioner Evans and Commissioner Carey stated that was acceptable.

Chair Kennedy asked if there was any further discussion. There being none, he called the question. The motion carried on a vote of 3-0.

1. 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 assent of the lot owner to waive the right to protest a future RSID/SID for public water and sewer systems based on benefit, and may be used in lieu of their signatures on an RSID/SID petition. 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 Articles 3-7(2).*

2. The subdivision covenants shall be amended as follows:

--- Section 6.02(c) shall be amended to include language discouraging the use of wood shingle, shakes, and rough sawn siding.

- Section 6.04(c) shall be amended to add "except pruning needed for fire safety as recommended by fire safety officials" to the limitations to tree pruning.
- Section 6.20 shall be amended to include the recommended covenants which address concerns on wildlife as follows:
 - a. The planting of native vegetation is recommended for landscaping and revegetation. All fruit trees shall be properly harvested so as not to allow an accumulation of rotting organic matter.
 - b. Gardens shall be enclosed with a fence one foot below ground level and at least eight feet in height, with the top rail made of something other than wire to prevent wildlife entanglement. All compost piles shall be in wildlife proof containers.
 - c. Salt blocks and feeding platforms for deer or mineral blocks for horses shall not be allowed on any premises. Horse or livestock feed shall be stored in a secured area, not accessible to wildlife.
 - d. Pet food shall be stored indoors or in wildlife containers. Domestic pets shall be fed indoors or in an enclosed area to prevent the attraction of wildlife.
 - e. Domestic pets (dogs and cats, etc.) shall not be allowed to run free and potentially harass wildlife. Dogs and cats shall be kept in an enclosed structure when not under the direct supervision of the owner.
 - f. Apiaries may attract species such as bears and should be avoided. Before an apiary is located on a lot, the owner of the bee hive(s) should contact the U.S. Fish and Wildlife Service Grizzly Bear Recovery Coordinator in Missoula or the Department of Fish, Wildlife and Parks to discuss their plans and how to best avoid wildlife conflicts.
- Section 1.07 shall be amended to include all pedestrian paths other than golf course paths within the golf course as Common Areas and Easements.

The Guidelines for developments within Wildland-Residential Interface located within the submittal shall be amended into the Covenants. *Subdivision Regulations Article 3-1(1)(A, B and C), Article 5-1(5).*

3. 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 improvements to the first 1,500 feet of Double Arrow Road and the public segment of Lodge Way, including the installation of pedestrian walkways, sidewalks 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 3-7(2) and 5-2(5)(D).*

4. The following statement shall appear on the face of the plat and on each instrument of conveyance:

"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 brought up to standards and accepted by the County of Missoula for maintenance." *Subdivision Regulations Article 5-2(5)(C).*

5. Water supply for fire protection purposes shall be provided by residential sprinkler systems, which meet current NFPA 13D requirements for sprinkler systems for one and two family dwellings and manufactured homes, in all homes in the development and three sources for water shall be provided by the developer at the following locations:

- a. Where Golf View Drive crosses Drew Creek.
- b. Where Double Arrow Road crosses Drew Creek (adjacent to Lot 49).
- c. Along Golf Course Drive near the northerly corner of Lot 27. *Subdivision Regulations Article 4-1(12)*

6. The Riparian Management plan shall be revised to provide for mitigation for any lost mature cottonwood trees as the result of any grading or activity for the golf course. An appropriate replacement ratio is 3 trees planted for every three lost or cut down. The Plan shall also identify the location of the replacement trees, most likely at the site of the former horse corrals, but at a minimum along Trail Creek in equivalent soil and water conditions to the area of lost cottonwoods. *Subdivision Regulations Article 4-1(12).*

7. The following statement shall be included in the covenants:

"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 guideline. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs and vegetation that limit or retard fire." *Subdivision Regulations Article 5-1(5)(H).*

8. The plat shall be amended to correctly show the portion of Lodge Way that is a County road. *Subdivision Regulations Article 5-2(3)(E).*
9. The developer shall obtain all permits required prior to any development or disturbance of the bed and banks of Drew Creek or Trail Creek.

Reconsideration of - Condition #1 - Intoto Farms (Pulp Mill Road)

Nancy Heil, Office of Planning and Grants, gave the staff report.

The applicant, David Fife, is requesting approval of the deletion of Condition 1 of the Intoto Farms subdivision approval. The removal of the condition would result in the approval of the location of Lot 2 as originally proposed by the applicant.

Intoto Farms is a 2 lot subdivision of 16 acres located at the intersection of Highway 10 and Pulp Mill Road. The Board of County Commissioners approved the subdivision on November 19, 1997. Two conditions of approval were required for the proposal to substantially comply with the goals of the 1975 Missoula County Comprehensive Plan. Condition 1 required that Lot 1, the one acre lot created by the subdivision, be located in the southern portion of the property in order to cluster development. Condition 2 required that a development agreement be filed restricting further divisions of the land. The applicants have stated that they find it physically impossible to meet Condition 1 due to the presence of existing septic systems and have requested that the condition be deleted. They have offered to remove one residential use from Lot 1 as an additional mitigating measure. With two units on 16 acres, the overall gross density of the proposal would be one dwelling unit per 8 acres. On the individual lots, the resulting density would be one dwelling unit per acre on Lot 2 and one dwelling unit per 15 acres on Lot 1.

Neither staff nor the applicant discussed septic system locations during the original discussions about the imposition of Condition 1. Tom Barger, Missoula County Health Department, has stated that: "I would have to concur that the room for placing a one acre split in the area of the existing development is more limited than I would recommend. A number of easements would have to be created and although drainfields could probably fit, they would almost all have to have easement." Mr. Barger will be available to answer questions about the feasibility of drainfield siting during the Board of County Commissioners consideration of this request.

If it is considered unfeasible to site the lot in the southern portion of the property, the northern portion of the property near the roads would be an acceptable alternative with respect to the goals of the Comprehensive Plan. As further development occurs in the area, staff would likely recommend that development occur near the roads on the perimeters of the property to preserve agricultural or open space in the interior. This area continues to undergo requests for development. There was a 7.4 acre tract that was approved for lease or rent that is one lot removed from this one. There are people who live directly across the street from this proposal who have a 5.5 acre lot who are in the process of requesting a subdivision for lease or rent as well.

Chair Kennedy stated this is a reconsideration of a prior decision by the Commissioners to approve the subdivision based on a clustering condition on the property. Some of the investigatory information that was presented disclosed that had this proposal come to the planning department and the Board before any construction had been done, the recommendation would have been to cluster on the southerly end, because it would not have met Comprehensive Planning requirements as to density and preservation of agricultural land. This is a situation where there was construction without permit and a request for approval after the fact. The approval was given to allow clustering in an area that was different from construction which was unacceptable to the applicants who are now requesting reconsideration of the original decision.

Nancy Heil clarified that the two drainfields in the southerly portion were already in place at the time of consideration.

Ron Ewart, Eli & Associates, developer's representative, was present, as were Margaret Dykstra and David Fife. Margaret Dykstra and her husband, Leonard, own the mobile home that is located in the northwest corner of the property. They wish to create the one acre lot which they would purchase from David Fife, who owns the entire 16 acres. Margaret and Leonard work for a small trucking company called R.E.C. Pete's, which is owned by Mr. Fife and is also located on the property. The applicants are in agreement with the possible conditions of reconsideration of approval. They are also in agreement with the remaining seven conditions of the original approval. One of the reasons for this request is that it is felt there is not enough room for another home in the targeted portion of the property, which represents about 2.5 acres. There are already two homes and septic systems in this area, with a neighboring home and septic just beyond the property line. Eli & Associates staff engineer does not feel it would be feasible to locate another septic in this area. The area in question is also adjacent to O'Keefe Creek, an area of riparian resource. It is best to keep septic systems away from creeks if possible. Also, the targeted portion of the property is not the most desirable place to live, compared to the preferred location in the northwest corner of the property. The preferred location is on high and dry land in the far northwest corner of the property, next to Pulp Mill Road. The agricultural use of the property is maximized because of the northwest location. It is also important to note that there have been three prior approvals regarding the same proposed configuration. The same lot division as shown on the plat was approved as a family transfer that was never filed. A replacement septic permit was approved. There was an approach permit that was issued for the new home to access onto Pulp Mill Road. Sight distance is good either way and the road is in good shape. From the beginning, the applicants have stated this is all that would happen to the property, the one new lot created. In fact, the name "Intoto" is Latin for "that's all there is," and "Farm" meaning they would continue agricultural use on most of the remaining property. They plan to plant fruit trees and improve landscaping along the road in accordance with Primary Travel Corridor Standards. There are covenants and a riparian management plan. Margaret Dykstra has confided on several occasions her situation, she is not in a very good position right now. If she were forced to move the trailer, financially she would be unable to do so. She works hard for the trucking company and cannot afford to move the mobile home. Even if it could be done financially, it could not be done in the lower area, it would be problematic. He believed in helping people if possible if it will not hurt anything, as well as protect the environment. If this one acre lot is allowed, it would substantially meet the goals of the Comprehensive Plan. It would certainly help Margaret and Leonard. In his opinion, this was minor in the grand scheme of things, but to Margaret, Leonard and David it was very important.

Margaret Dykstra stated she and her husband live on this one acre site. She works in the trucking company office five days a week and walks to work, sometimes working on weekends. This is a trucking business and there are drivers coming in on weekends. She and her husband do so because they are close, that is why they moved out there. Being close also eliminates excess driving. They are close enough to be available but far enough away to be removed from the business when not there. Being available to help run this business is what they do.

David Fife stated he owns the 16 acres and the trucking company. The company was moved out of Missoula to facilitate having big trucks come and go. The location is close to the Wye, where they can get parts and service. Margaret and Leonard have worked for him for a number of years. They were able to work hard and buy a new mobile home, which they put on a rental lot in town. Margaret decided to come off the road and not drive with Leonard anymore and become a secretary in the office. He is not a developer, he thought he would sell an acre to people who work for him and who he would like to see live the American dream. They have also looked into putting a permanent

home on this land. They cannot do that yet however, as they do not own the land. He has no problem selling them the one acre, he is not a developer who will be making a bunch of money. The reasons he has chosen to divide his property, to give them this one acre, are they work for him, they are good employees and it doesn't hurt him and helps them. He did not understand why this even needed to go through subdivision review. To say this was done underhandedly was untrue. When he first bought this property it was 15 acres with the one acre plotted out to be sold as a family transfer, but the family transfer never happened. That is why this was initiated, the stakes were already there, it was already marked out, they felt it would be very straight forward. They have since learned about Comprehensive Planning, density and everything else. All community services are available, such as fire protection and bus service. It is close to the road and not in the middle of the 16 acres. The preferred area is a flat piece of ground but it already has two septic fields in it, with alfalfa planted on top. This area is also set up for trucks to drive through, so it is mostly commercial use.

Chair Kennedy asked Nancy Heil if there was any record of subdivision through family transfer.

Nancy Heil stated nothing was submitted with the application, there should be something in the County Attorney's office.

Colleen Dowdall stated she was not aware it had been approved as a family transfer, so she did not check further.

Chair Kennedy stated if it was an existing lot, it had one set of conditions, if it was not, it would be different. Could the information be located?

Colleen Dowdall stated her understanding was the family transfer was approved but the Certificate of Survey was never recorded. The lot has not been created. The creation of the lot for the prior owner was approved.

Chair Kennedy asked if that meant there was no subdivision?

Colleen Dowdall stated that meant this was a 16 acre parcel, there is no separate lot, except for the Intoto Farms subdivision as previously approved.

Commissioner Evans asked Tom Barger to speak about putting another septic in the area.

Tom Barger, Environmental Health Specialist, Health Department, stated Nancy Heil asked him about putting a one acre parcel in the lower area. By looking at it, a one acre parcel will not fit in the same area. A building could be set there with an easement for a drainfield site, with the drainfield somewhere else. He did not see how the arrangement shown on the plat could be accomplished, there is a well on one side and two large drainfields. The area is pretty much used up.

Commissioner Carey stated that it seemed to him that if a home cannot be put in the lower area because of the reasons stated by Tom Barger, then staff feels having the home in the northwest corner still would be suitable and in line with the Comprehensive Plan.

Commissioner Evans moved that the Board of County Commissioners approve the deletion of Condition 1 of Intoto Farms Subdivision approval, subject to amended Condition 2, and allow the applicants to leave the home where it is currently located. Commissioner Carey seconded the motion.

Chair Kennedy commented that the County has regulations and some may seem onerous and oppressive. They are meant to be supportive of what is to be accomplished, not just for one person but for everybody. Regardless of the reasons, they were not paid attention to in this case, which creates these kinds of problems. The Commissioners are faced with the situation of creating hardships by denying this reconsideration or approving something that might not have been approved to begin with, had it been properly. Had this proposal been made prior to the time any construction was done, the likelihood is the recommendation from the Planning Department would have been that it wouldn't be in compliance with the Comprehensive Plan. To say except for the fact that building has occurred out there, it would not have been approved, but now that building has occurred, it will be allowed, was a problem for him. He would likely approve the request but was not happy with the situation.

Chair Kennedy asked if there was any further discussion. There being none, he called the question. The motion carried on a vote of 3-0.

David Fife stated Chair Kennedy implied this should have been done more directly. He could say the same thing to the Board, it has taken them a year and they had to point out to all the professionals that there were two septic systems here and it was not feasible in the first place. They, as lay people, could see this when it was first proposed, and they are not the experts.

Condition 1 of Intoto Farms has been removed.

Condition 2 has been amended to read:

2. A development agreement subject to the approval of the County Attorney shall be placed on the property that states that no further division of land shall occur. The restriction may be lifted by the Missoula Board of County Commissioners at such time as further development becomes indicated in the area through changes in the Comprehensive Plan, zoning or provision of public sewer and water services. The development agreement shall also state that the existing residential use of the mobile home on Lot 1 shall cease and that only one structure on Lot 1 shall be used for residential purposes. The development agreement shall be filed prior to plat filing.

Conditions 3, 4, 5, 6, 7, 8 and 9 of the prior approval remain unchanged.

There being no further business to come before the Board, the Commissioners were in recess at 4:10 p.m.

THURSDAY, JANUARY 7, 1999

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

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 2, Michael Jaworsky, for the month of December, 1998.

ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 99-003, a resolution regulating parking, congregating, etc. on Maclay Bridge, and amending Resolution 79-128.

Application and Erosion Control Plan - Commissioner Evans signed a Montana Pollutant Discharge Elimination System Application and Erosion Control Plan for Storm Water Discharges for AAA Construction of Missoula, doing work on the Sunset West Water System Project. The documents were returned to Brady Nelson of AAA Construction for further handling.

Other items included:

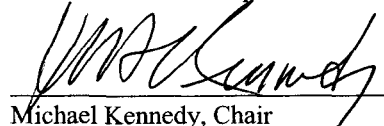
- 1) The Commissioners and Horace Brown, County Surveyor, discussed use of CTEP funds for Highway 93 South, and agreed to use the funds for this purpose.
- 2) The Commissioners approved allowing Paul Webber, CAO, to negotiate a counter offer to WORD on the Lennox Building at a minimum of \$250,000.00.

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

FRIDAY, JANUARY 8, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JANUARY 11, 1999

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

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending December 31, 1998.

At a Departmental Meeting of the Office of Planning and Grants, the Commissioners approved the Willison Two Subdivision for Lease or Rent, on Hawk Lane in Clinton, with a letter to Vern and Alvina Willison. Commissioner Evans opposed because of condition 4.

TUESDAY, JANUARY 12, 1999

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:

Adult Detention Agreement - Chairman Kennedy signed an Adult Detention Agreement between Shoshone County, Idaho and Missoula County, for housing of Missoula County Jail inmates. Compensation shall be \$45.00 per day per inmate. The Agreement was returned to Mike O'Hara in the Sheriff's Department for further signatures and handling.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Turning Point to use funds from the Office of Juvenile Justice to extend the current Flagship Project to Hellgate High School and Rattlesnake Middle School. Value of the Agreement is \$48,940.00. Duration of the Agreement is from October 1, 1998 through September 30, 1999.

Addendum to Buy-Sell Agreement - The Commissioners signed an Addendum to Buy-Sell Agreement for Additional Provisions with WORD for the property at 300-306 West Broadway (the Lennox Hotel). The purchase price shall be \$260,000.00. The contingencies listed on lines 133 and 134, 139 and 140, 145 through 150, and 202 through 209 are hereby removed. A letter of loan commitment regarding a bridge loan of \$160,000 is required. The closing date is May 3, 1999.

Payroll Authorization Form - The Commissioners signed a Payroll Authorization Form for Gwen Sebestin in the Office of Emergency Management. The Form was returned to Gwen Sebestin in OEM for further handling.

Waiver of Rights - Chair Kennedy signed a letter to Paul Putz of the Montana Historical Society Historic Preservation Office waiving his right to comment on the proposed listing of the Lower Rattlesnake Historic District in the National Register of Historic Places. The Waiver was returned to the Montana Historical Society in Helena.

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

WEDNESDAY, JANUARY 13, 1999

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

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated January 11, 1999, pages 2-33, with a grand total of \$242,877.30. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Rosemary Leach as principal for Warrant #52898 issued 12/9/98 on the Missoula County Student Account (84) Fund in the amount of \$562.50 now unable to be found.

Certification and Completion Form - Chair Kennedy signed a Local Public Agency Certification and Completion of a Project form for Six Mile Road Landslide Repair, with a completion date of September 28, 1998. The form was returned to Horace Brown, County Surveyor.

PUBLIC MEETING - January 13, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, Clerk and Recorder/Treasurer Vickie Zeier and County Surveyor Horace Brown.

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 list in the amount of \$242,877.30. Acting Chair Carey 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 1:32 p.m.

THURSDAY, JANUARY 14, 1999

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

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Robert Shea as principal for Warrant #339021, issued 11/12/98 on the Missoula County 2180 Fund in the amount of \$4016.25, not received in the mail.

ADMINISTRATIVE MEETING

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

Task Order - The Commissioners signed a Task Order with the Montana Department of Public Health and Human Services to provide breast and cervical cancer screening services. Master Contract dates are July 1, 1998 through June 30, 2005. Performance schedule for this Task Order is September 30, 1998 through October 31, 1999. Compensation shall be up to \$96,125.00. The Task Order was returned to the Health Department for further handling.

Contracts - The Commissioners signed four Contracts with Western Montana Clinic each with a period of service beginning July 1, 1998 and ending July 30, 1999:

- (1) Mammography Provider Contract;
- (2) Colposcopy Provider Agreement;
- (3) Qualified Primary Care Provider Contract;
- (4) Laboratory Services Provider.

All four contracts were returned to the Health Department for further handling.

Agreements - Chair Kennedy signed two Agreements with the Department of Environmental Quality:

- (1) to provide funds to the County to prepare a facility plan for wastewater treatment works for the Golden West area of Missoula. Performance of this Agreement shall be completed by September 1, 1999. Compensation shall be \$7,096.00.
- (2) to provide funds to the County to prepare a facility plan for wastewater treatment works for the El Mar Estates area of Missoula. Performance of this Agreement shall be completed by September 1, 1999. Compensation shall be \$10,000.

Both Agreements were forwarded to DEQ in Helena.

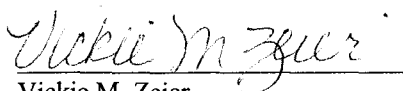
Other items included:

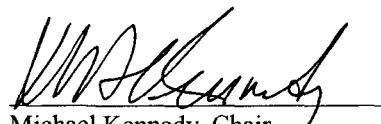
- 1) The Commissioners approved a request from Hal Luttschwager, Risk Manager, that he be allowed to sign permits for the Mullan Trail remediation plan.

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

FRIDAY, JANUARY 15, 1999

The Board of County Commissioners met in regular session; a quorum of members were present in the forenoon. Commissioner Carey was in Polson attending a Mental Health Board meeting, and Commissioners Evans and Kennedy were out of the office all afternoon.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JANUARY 18, 1999

The Courthouse was closed in observance of Martin Luther King, Jr. Day.

TUESDAY, JANUARY 19, 1999

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:

Memorandums of Agreement - Chair Kennedy signed six Memorandums of Agreement between the Missoula County Park Board and six separate community recreation programs for matching fund grants:

- (1) Nine Mile Community Center, for \$2,100.00;
- (2) Mullan Trail Little League, c/o Frenchtown School District #40, for \$1,500;
- (3) Bonner Development Group, for \$560.00;
- (4) Hellgate Lions Club, for \$1,500.00;
- (5) Friends of Bonner, c/o Bonner School District #14, for \$1,500.00;
- (6) Missoula Westside Little League, Inc., for \$1,500.00.

Funds must be spent by March 1, 2001.

Task Order - Chair Kennedy signed a Task Order to the Master Contract with the Montana Department of Public Health and Human Services for provision of services related to the Healthy Child Care Montana program. Performance schedule is July 1, 1998 through June 30, 1999. Compensation shall not exceed \$50,000.00. The Task Order was returned to the Health Department for further handling.

Sewer System Easement - The Commissioners signed a Commercial On-Site Municipal Sanitary Sewer System Easement with the City of Missoula for Larchmont Golf Course. The Easement was returned to Cheryl Schatz in City Public Works for further signatures and handling.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Land and Water Consulting, Inc. to administer the CY99 Right-to-Know Program for the Missoula Local Emergency Planning Committee. Performance schedule is January 1, 1999 through December 31, 1999. Compensation shall not exceed 100% of fees collected. The Contract was returned to Bill Silverman in OEM for further signatures and handling.

Other items included:

- 1) The Commissioners decided, on the recommendation of Mike Sehestedt, Deputy County Attorney, to close Schramm Bridge on February 1, 1999.
- 2) The Commissioners reappointed Charlie Deschamps, Bill Nooney, and Betty Jo Johnson to two year terms on the Fair Commission. This will be the last term for Bill Nooney.

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

WEDNESDAY, JANUARY 20, 1999

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

Audit List -- The Commissioners signed the Audit List, dated January 20, 1999, pages 2-41, with a grand total of \$1,209,563.10. The Audit List was returned to the Accounting Department.

PUBLIC MEETING - January 20, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans and Commissioner Bill Carey.

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 list in the amount of \$1,209,563.10. 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 1:31 p.m.

THURSDAY, JANUARY 21, 1999

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

Plat - The Commissioners signed the plat for Baumgardner Lots 7B-1 and 7B-2, a subdivision located in the SE1/4 of Section 1, T16N R15W, PMM, Missoula County, a total gross and net area of 5.90 acres, with the owners of record being John D. and Opal Baumgardner.

ADMINISTRATIVE MEETING

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

Extension - The Commissioners signed an Extension of Inspection Contingency for John C. Schulte for the property at 315 and 315-1/2 West Pine Street, extending the deadline to February 15, 1999 in order to accommodate the schedule of the property inspector and the architect. The Extension was returned to Jerry Ford of Lambros Real Estate.

Professional Services Contract - The Commissioners signed a Professional Services Contract with WGM group for amending the zoning of the former County Shops site to "EC." Performance schedule is that the contractor shall perform these services prior to January 1, 1999. Compensation shall be \$3,621.20. (This work has already been completed, and the Contract is a formality.)

Justice Court #2 Budget Request - The Commissioners approved and signed a request from Karen Orzech, Justice of the Peace, for budgetary assistance in the amount of \$3,265.52 for retroactive pay and costs related to the hiring of Georgia Bradley. Approval is subject to two conditions:

- (1) This is one-time approval given the circumstances of Judge Orzech inheriting the existing budget;
- (2) The 20-hour per week position is for the balance of FY99 only. The position may not be continued in FY2000.

Resolution - The Commissioners signed Resolution No. 99-004, a resolution relating to Economic Development Revenue Bonds for the Western Montana Mental Health Center Project in a principal amount not to exceed \$2,500,000.00. A public hearing was scheduled for February 17, 1999 at 1:30 pm in Room 201 of the Courthouse.

Standard Listing Contract - The Commissioners signed a Standard Listing Contract with FLR Partnership LLP dba Lambros Real Estate, for listing the Mullan Road parcel (parcel 1, COS 4884). List price will be \$1,375,000.00. Commission will be 6%. The Contract was returned to John Coffee of Lambros Real Estate.

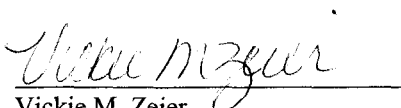
Agreement Endorsement - The Commissioners signed a statement endorsing the Lolo Highway 93 Focus Group/MDT Agreement regarding amenities to the new highway as it goes through Lolo. The amenities include landscaping, irrigation, and decorative lighting along the sidewalk/bike path.

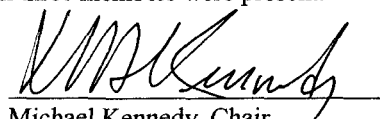
Budget Transfer - The Commissioners approved and signed a Budget Transfer for the General Fund/District Court for transfers from the raise pools in the General and District Court funds to the various departments.

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

FRIDAY, JANUARY 22, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JANUARY 25, 1999

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

Plat - The Commissioners signed the plat for Buck Creek Homesites North, a subdivision located in the N1/2 of Section 18, T20N R16W, PMM, Missoula County, a total of 40.95 acres gross and net, with the owners of record being Ross W. and Judy A. Wilcox, and John C. and Marcia L. Tapp.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Renee Herbst as principal for Warrant #21485, issued 4/8/98 on the Missoula County General Fund in the amount of \$188.96, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Peggy Mallette as principal for Warrant #21129, issued 2/5/98 on the Missoula County General Fund in the amount of \$21.95, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Brian Bessette as principal for Warrant #21838, issued 6/8/98 on the Missoula County Misc. Fund in the amount of \$30.00, not received in the mail.

Standard Audit Contract - Commissioner Evans signed a Department of Commerce Standard Audit Contract between Missoula County and Elmore and Associates, PC, to conduct a financial statement audit of the County. The audit period covered by the contract is July 1, 1997 through June 30, 1998. Compensation shall be \$59,500.00. The Contract was returned to Jane Ellis, CFO, for further signatures and handling.

TUESDAY, JANUARY 26, 1999

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioners Carey and Kennedy traveled to Hamilton to meet with the Ravalli County Commissioners regarding CTEP funds, VNRP, and Regional Land Use.

Plat - The Commissioners signed the plat for Kahle Lots, Lot 2, an amended subdivision plat located in the NE1/4 of Section 31, T14N R20W, PMM, Missoula County, a total net area of 17.91 acres, with the owners of record being Kris J. and Kimberly M. Kahle.

WEDNESDAY, JANUARY 27, 1999

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

Audit List -- The Commissioners signed the Audit List, dated January 26, 1999, pages 2-33, with a grand total of \$619,153.36. The Audit List was returned to the Accounting Department.

PUBLIC MEETING - January 27, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, Deputy County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, Clerk and Recorder/Treasurer Vickie Zeier 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 list in the amount of \$619,153.36. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Rezoning Request (Davis) - 6080 Lower Miller Creek Road (C-RR1 to C-RR2)

Allison Handler, Office of Planning and Grants, presented the staff report.

The Office of Planning and Grants has received a request from Dennis D. Davis and Annette Davis, represented by WGM Group, to rezone property located in the southeast one-quarter of the northeast one-quarter of Section 11, Township 12 North, Range 20 West, P.M.M., commonly known as 6080 Lower Miller Creek Road, from "C-RR1" (Residential) to "C-RR2" (Residential).

The property is due west of and adjacent to Linda Vista and Blue Vista neighborhoods and northeast of Sweetgrass at Maloney Ranch Subdivision.

The property is currently zoned "C-RR1," which allows one dwelling per acre. In July 1998, the Board of County Commissioners approved a family transfer exemption to allow the Davises to gift one half-acre tract to each of their three children and retain one for themselves. Since the Davis property is currently zoned "C-RR1," the newly-approved half-acre lots do not comply with zoning. Therefore, the Davises are seeking rezoning to "C-RR2" to allow two dwellings per acre, in conformance with the Missoula County Comprehensive Plan and to allow the half-acre lots to be built upon. Directly to the east of the subject property, zoning is "C-RR2."

The comprehensive plan that is pertinent to this rezoning the 1997 Miller Creek Area Comprehensive Plan Amendment. The Comp Plan designates this property for residential, two dwellings units per acre, and therefore supports the rezoning request. Currently land uses in the vicinity are residential, with some agricultural lands. The area has a rural, suburban character that is rapidly becoming urbanized with increasing development. The Comp Plan anticipates increasing residential density and even a small neighborhood commercial center and recommends steps to address the impacts of increasing development in the area.

Staff recommends approval of the rezoning request, with conditions that deal with mitigating potential increases in traffic. These conditions do not alter the density, space and bulk requirements or permitted, conditional or special exception uses of the C-RR2 zoning district, and therefore don't constitute the imposition of a new zoning district. They are conditions imposed as allowed under Section 8.08 of the Missoula County Zoning Resolution to protect the public health, safety and general welfare.

1. The applicant shall enter into a development agreement with Missoula County to provide access to all lots, including paving, an adequate turnaround, and other road and walkway improvements. This agreement shall also address the pedestrian connection to the park on the south side of the property, if deemed appropriate by the County Surveyor.

The agreement and plans shall be approved by the County Surveyor and Missoula Rural Fire Department for width, location and paving. The agreement shall specify a time frame for installation of improvements. This agreement shall be approved by the County Attorney, and shall be filed with the County Clerk and Recorder within thirty (30) days after adoption of the rezoning. Prior to the issuance of a building permit, the applicant shall have installed the requisite improvements or provided Missoula County with an improvements guarantee. *Missoula County Zoning Resolution, Section 8.08(A); compliance with Missoula County Zoning Resolution, section 3.02(A)(3); compliance with Missoula City-County Health Department Regulations; County Surveyor, City Engineer and staff recommendation.*

2. The applicant shall petition for inclusion in the Missoula Urban Transit District within thirty (30) days after adoption of the rezoning. *Missoula Urban Transit District recommendation; 1997 Miller Creek Area Comprehensive Plan Amendment.*
3. The applicant shall file a document waiving the right to protest an RSID/SID for road improvements and maintenance on Lower Miller Creek 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 conveyed. *Missoula County Zoning Resolution, Section 8.08.*

Nick Kaufman, WGM Group, was present representing the Davises. He was available to answer questions.

Chair Kennedy stated his understanding was that the adjacent subdivision, part of the Maloney Ranch, had a density in excess of three units per acre. He asked if that was correct and what the zoning was on the property?

Nick Kaufman stated it was correct that the density was in excess of three units per acre but did not know the zoning as he was not directly involved in the Maloney Ranch project.

Chair Kennedy opened the public hearing.

Commissioner Carey stated Allison Handler's memo said that Lower Miller Creek Road is a rural collector street with a 1994 average daily traffic volume of 2,700. He asked if she knew what the volume is now?

Allison Handler stated she did not know what the current volume was, however, it was predicted to rise to 6,000 by the year 2015.

Commissioner Carey asked if she had any sense of what the incremental increase might be?

Allison Handler stated she did not, but perhaps Horace Brown might speak to that better than she could.

Horace Brown stated it was usual to assign 7 trips per household, with three additional dwellings it would add 21 trips per day.

There being no further comments, Chair Kennedy closed the public hearing.

Commissioner Evans moved that the Board of County Commissioners approve the Davis rezoning request, subject to the conditions in the staff report and based on the findings of fact and conclusions of law in the staff report.

Chair Kennedy asked if Commissioner Evans' motion included the change suggested by the Planning Board to Condition 1? He asked Allison Handler to read the proposed change in the language.

Allison Handler stated in the last sentence of Condition 1 the current language is: "The applicant shall also provide an improvements guarantee as part of the development agreement." The developer has suggested this language instead: "Prior to the issuance of a building permit, the applicant shall have installed the requisite improvements or provided Missoula County with an improvements guarantee."

Commissioner Evans stated her motion would accept the change in the language.

Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Consideration of: Airport View Acres (3 lots) - Goodan Lane near Butler Creek Road

Nancy Heil, Office of Planning and Grants, presented the staff report.

The applicants, Rob and Dawn Braach, are requesting approval to divide a 12.18 acre parcel into 3 lots of approximately 4 acres each in size. The property is located on Goodan Lane, east of Butler Creek Road. The property is legally described as Tract 10-B, COS 1615, NE 1/4, Section 35, T14N, R20W.

The property is unzoned. The 1996 Butler Creek Plan Amendment designates Open and Resource land use with a density of one dwelling unit per 40 acres. The proposed density is approximately one dwelling unit per 4 acres, however, the lots in Goodan Keil Estates were created through Certificates of Survey beginning in 1978. Most of the 90 lots in Goodan Keil Estates are 4 to 6 acres in size, with the majority (approximately 60) being 4 acres. The land use designations in the 1996 Butler Creek Plan did not reflect the existing parcel sizes. The proposal is consistent with the existing use and density on adjacent parcels and substantially complies with other goals of the Comprehensive Plan.

The property is located in the Goodan Keil Estates and existing covenants govern the property. There are no existing structures on the property. Access is provided via Butler Creek Road to Goodan Lane to a short approach serving the 3 lots. Individual septic systems will serve the lots. Water will be provided via the Goodan Keil Estates private water system.

Goodan Lane is a 22 foot paved and maintained County road located within a 60 foot public access and public utility easement. The applicant does not propose improvements to Goodan Lane and has requested a variance from the requirement for a 24 foot road width.

The applicants propose that all three lots be served by one approach from Goodan Lane due to the topography along the road. The approach will be located within the Goodan Lane right of way on Lot 2 within a 54 foot width. The approach will be 50 feet long and will be paved to a 24 foot width at Goodan Lane then tapered to a 20 foot paved width where it reaches the end of the right of way.

The private driveways serving the lots will divide from the end of the approach. The driveways serving Lots 1 and 3 will be located within a 30 foot private access easement along the northern boundary of Lot 2, south of the Goodan Lane right of way. Condition 2 requires that the turnaround be approved by the County Surveyor and Missoula Rural Fire District. Condition 3 requires that a road maintenance agreement be developed for the approach and private access easement.

The County Surveyor's office recommended that the approach be moved from the curve on Goodan Lane. Condition 2 requires that the County Surveyor approve the location of the approach prior to plat filing. The Surveyors Office has also stated that a grading and drainage plan will be required if any change in the land is done during the home building process, which is reflected in Condition 4.

There are limited sidewalks or pedestrian access facilities in the area near the proposed subdivision. The proposed plat includes a waiver of the right to protest an RSID/SID for improvements to Goodan Lane. The applicant has requested a walkway variance and staff is recommending approval of the variance.

The property is relative level in the north central portions and slopes to the west and to the south at grades of 10% to 15%. The property is currently vacant and vegetated with grasses and knapweed. The Missoula County Weed District stated that the site supports moderate infestation of spotted knapweed. Due to significant ground disturbance, a revegetation plan will be required, reflected in Condition 7.

Staff recommends approval of the two variance requests and the subdivision, subject to the 7 conditions in the staff report.

Ron Ewart, Eli & Associates, developer's representative, was present as was the applicant Rob Braach. He stated they were in agreement with the recommended conditions of approval. The application packet showed a detail of the shared access for the three lots. This access was placed in a location that provided the best site distance. The approach will be paved by the applicant, the individual homeowners will be responsible for paving their individual driveways. Most of the lots in the Goodan Keil Estates are approximately 4 acres in size, there are some 20 acres parcels at the southeast end. The roads in the Goodan Keil Estates are paved to a minimum of 22 feet and are County maintained. The roads are in good condition. There is a water system for Goodan Keil which is in the process of being upgraded. The system has the extra capacity for these three lots. A letter has been received from the Homeowners Association that notes they were in agreement with this subdivision because the Goodan Keil covenants allow lots down to 4 acres in size. The property is located fairly close to community services and infrastructure.

Chair Kennedy asked for public comment.

Chair Kennedy asked Bill Lindstrom of Missoula Rural Fire District about the availability of a hydrant and if he satisfied there was sufficient water capacity for firefighting purposes.

Bill Lindstrom stated he was confident there would be enough water supply for this subdivision.

There being no further comments, the public comment section was closed.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision, and approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations for Goodan Lane to vary from the required 24 foot width to a 22 foot width, 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 Airport View Acres 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.

Chair Kennedy noted that in the findings the Missoula County Sheriff's Department will provide law enforcement services to the subdivision, subject to the limitation of the Sheriff's Department. The Department has had the same number of sworn officers since 1979, although many subdivisions have been approved since that time. Each new subdivision proposal will have to be evaluated for the impact that it has on the ability of the Department to provide basic services over longer distances. The Department will provide services to the best of its ability.

Airport View Acres Summary Subdivision Conditions of Approval:

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Goodan Lane, including installation of pedestrian walkways, sidewalks, 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 staff recommendation.*

2. The location and engineering plans and specifications for the approach shall be approved by the County Surveyor's Office prior to plat filing. A turnaround shall be approved by the Missoula Rural Fire District and County Surveyor prior to plat filing. *Subdivision Regulations Article 3-2(5) and staff and County Surveyor recommendation.*
3. A maintenance agreement for the approach and private access easement shall be developed, subject to County Attorney approval, prior to plat filing. *Subdivision Regulations Article 3-2(1)(I)(1) and staff recommendation.*
4. Grading, drainage, and erosion control plans shall be approved by the County Surveyor prior to plat filing. Grading, drainage, and erosion control plans shall be approved by the County Surveyor prior to issuance of building permits for the lots. *Subdivision Regulations Article 3-4(2) and County Surveyor recommendation.*
5. The applicant shall file a development agreement, subject to County Attorney approval, that states that driveways in excess of 150 feet in length shall have approved turnaround for fire apparatus, a minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches." *Subdivision Regulations Article 3-2(6) and staff recommendation.*
6. 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 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 Articles 3-1(1)(D), 3-7(2) and staff recommendation.*
7. 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.*

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

THURSDAY, JANUARY 28, 1999

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:

Memorandums of Agreement - The Commissioners signed two Memorandums of Agreement with Missoula Correctional Services:

(1) for a Misdemeanor Supervision Program. Compensation shall be \$132,651.00. Duration of the Agreement is July 1, 1998 through June 30, 1999.

(2) for a Community Service Program. Compensation shall be \$80,149.00. Duration of the Agreement is July 1, 1998 through June 30, 1999.

Both Agreements were returned to Sue Wilkins at Missoula Correctional Services for further signatures and handling.

Closing Documents - The Commissioners signed closing documents for the sale of 319 West Pine Street to John Lentz, including a Warranty Deed, Seller's Closing Statement, 1099-S report information, and Notice of Assignment (signed by Chair Kennedy only). The documents were returned to Lambros Real Estate.

Resolution - The Commissioners signed Resolution No. 99-005, a resolution of intent to sell real property described as Lot 15, Block 56, W.J. McCormick Addition, as right-of-way for the proposed Orange Street Bridge Project.

Contract - The Commissioners signed a Contract between Larchmont Golf Course and Culver-Hill Construction, LLC, for construction of a Mens/Womens restroom at Larchmont. Compensation shall be \$23,789.00. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Resolution - The Commissioners signed Resolution No. 99-006, a resolution of intent to rezone property located at 6080 Lower Miller Creek Road from C-RR1 to C-RR2, subject to conditions.

Agreement - The Commissioners signed an Agreement between agencies involved in the regulation of outdoor burning in Missoula County to cooperate in outdoor burning permit issuance and enforcement. The purpose is to provide for a single unified outdoor burning permit throughout Missoula County, which combines outdoor burning permits and air quality permits, and satisfies the Health Department's regulations. The Agreement was returned to Shannon Therriault in the Health Department for further signatures and handling.

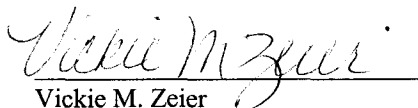
Other items included:

- 1) The Commissioners approved a Montana Board of Crime Control subgrant application for Missoula Correctional Services.

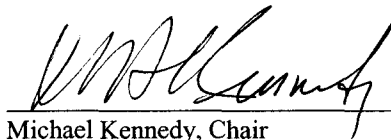
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, JANUARY 29, 1999

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners attended the Economic Outlook Seminar sponsored by the UM Bureau of Business and Economic Research and held at the Holiday Inn.



Vickie M. Zeier
Clerk & Recorder



Michael Kennedy, Chair
Board of County Commissioners

MONDAY, FEBRUARY 1, 1999

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

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending January 31, 1999.

TUESDAY, FEBRUARY 2, 1999

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.

ADMINISTRATIVE MEETING

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

Standard Agreement -- Chair Kennedy signed a Standard Agreement with the Montana Department of Transportation, Traffic Safety Bureau, for an Integrated Traffic Safety Program Plan for occupant protection, crash/injury reduction and reducing DUIs. Term of the Agreement is October 1, 1998 through September 30, 1999. Payment shall not exceed \$62,273.00. One original was forwarded to Albert Goke at the Traffic Safety Bureau in Helena.

Task Order -- Chairman Kennedy signed a Task Order to the Missoula County Master Contract with the Montana Department of Public Health and Human Services for immunization services. Performance schedule is January 1, 1999 through December 31, 1999. Maximum compensation is \$11,159.00. The Task Order was forwarded to DPHHS in Helena.

Agreement -- Chairman Kennedy signed a Standard Agreement with Architects Design Group for the Missoula County Courthouse Annex Remodeling project, floors 3 and 4. Overall budget is \$1,103,880.00. The remodeling will allow for the entire 3rd floor to be used by the Sheriff's Department, and the 4th floor to be shared by the County Attorney and Justice Courts.

- 1) The Commissioners approved delinquent property tax write-offs for tax year 1992, per the recommendation of Vickie Zeier, Clerk and Recorder/Treasurer.
- 2) The Commissioners reviewed and approved a Review of Jail Expenditures from FY95 to present and the Drug Forfeiture bank account, from Susan Reed, County Auditor. The Reviews was forwarded to the Clerk and Recorder for filing.

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

WEDNESDAY, FEBRUARY 3, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was out of the office all day to attend a funeral in Spokane, WA.

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated February 2, 1999, pages 2-38, with a grand total of \$281,013.14. The Audit List was returned to the Accounting Department.

PUBLIC MEETING -- February 3, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chairman Barbara Evans. Also present were Commissioner Bill Carey, Deputy County Attorney Michael Sehestedt, Deputy County Attorney Colleen Dowdall, Clerk and Recorder/Treasurer Vickie Zeier 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 list in the amount of \$281,013.14. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Consideration: Weimer Subdivision for Lease or Rent (Broken Wheel Ranch) - Bonner Area

Allison Handler, Office of Planning and Grants, presented the staff report.

The applicant, Barbara J. Weimer, has requested approval to add one dwelling to her parcel in Bonner, one-quarter mile northeast of Bonner proper on Highway 200. The parcel is 28.75 acres and is unzoned. The Comprehensive Plan designation is one dwelling unit per 5 to 10 acres. The property is used mostly for residential and agricultural purposes, there is a small family farm, a pasture and a few cows. There is currently one dwelling on the property, near Highway 200. Adjoining lands are timberlands except for agricultural uses to the east.

There are currently two approaches to the existing house, which join to form a gravel horseshoe driveway. The applicant has proposed to cluster the new house near the existing house to help preserve the agricultural and natural resources value of the property. The new house will share the existing driveway, share a well, and have its own septic system.

Staff recommends approval of this subdivision, based on the findings of fact and subject to the conditions in the staff report. Of the four conditions recommended, three are standard subdivision conditions not unique to the property. Condition 4 is unique to the property. Because the development is on Highway 200, it needs to comply with the Primary Travel Corridor standards in the subdivision regulations.

Barbara J. Weimer was present and came forward to answer questions.

Acting Chairman Evans asked Ms. Weimer if she understood the conditions imposed?

Barbara Weimer stated she had one reservation about Condition 1, waiving the right to protest an RSID/SID for pedestrian walkways on Highway 200. What would the outcome of that be?

Michael Sehestedt stated when an RSID is to be created it requires a petition and the property owners have a right to protest the creation of the RSID. Protests by property bearing 50% or more of the total cost of the RSID would defeat its creation. The RSID waiver says that if an RSID is created for the purpose of paying for a particular improvement, the owner waives the right to protest creation of that RSID. However, an RSID can't be created in the absence of all protests where the cost to be borne by the property owner is disproportional to the benefits. A walkway along Highway 200 with only this property to be assessed would be disproportional and could not be created, as a matter of law. Also, CI-75 has added another layer to the imposition of an RSID assessment. Up until the adoption of CI-75, the question of creation of an RSID, and the subsequent imposition of assessments, was strictly a right that belonged to the owner of real property. With the adoption of CI-75, and RSID could still be created using the same methods, but before the assessments could actually be imposed, they would have to be approved by a majority of the electors voting on the question in the geographic area to be assessed. CI-75 is currently under legal challenge. If it is upheld by the courts, no RSID assessment could be put in place until after it had been put to a vote. If the courts strike CI-75, the process will revert to the old system and RSID assessments will be strictly an issue for property owners. By doing this subdivision, she would, as a property owner, give up her right to protest an RSID for this particular purpose.

Barbara Weimer stated she is not doing a true subdivision, she is just added one dwelling on the property. Because she has such a large property frontage on Highway 200, the cost of such an RSID would be high, which is why she had reservations about giving up her right to protest.

Michael Sehestedt stated she would still have the right to object and be heard if the assessment was disproportionate to her benefit.

Barbara Weimer asked if this condition was necessary to have her subdivision passed?

Colleen Dowdall stated this was a requirement that was typically included in all subdivisions if they are not providing walkways, but accepting the condition is at the discretion of the Board of County Commissioners.

Barbara Weimer stated this subdivision was not in Bonner proper, it was a way outside of town.

Commissioner Carey stated he would support the staff's recommendation.

Acting Chairman Evans told Ms. Weimer that the chances of this RSID ever being suggested along Highway 200 was very remote.

Barbara Weimer stated that her husband had passed away and she recently had hip replacement surgery. She needs her son on the property to help her manage the place.

Acting Chairman Evans asked for public comments. There being none, the public comment section was closed.

Commissioner Carey moved that the Board of County Commissioners approve the Weimer Subdivision for Lease or Rent, subject to the recommended conditions in the staff report, based on the findings of fact and conclusions of law as set forth in the staff report. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Weimer Subdivision for Lease or Rent Conditions of Approval:

1. The applicant shall record a document waiving the right to protest participation in an RSID/SID for the installation of pedestrian walkways on Highway 200, 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(5) and staff recommendations.*
2. The applicant shall record a document waiving the right to protest participation in an RSID/SID for the installation of a community or municipal water system at such time that such a system is available. *Subdivision Regulations Article 3-7(2) and staff recommendation.*
3. The lot owners shall contribute \$100.00 per new dwelling unit to the Missoula Rural Fire District prior to plan filing. *Subdivision Regulations Article 3-7(2) and Missoula Rural Fire District recommendation.*
4. A landscape plan shall be submitted that shows how the property complies with the Primary Travel Corridor standards, and shall be approved by the Office of Planning and Grants prior to final plan filing. *Subdivision Regulations Article 3-14.*

Hearing: Sheep Ranch Inn RV Park (Arlee Area) - 12 spaces

Brian Maiorano, Office of Planning and Grants, presented the staff report.

The applicants, Alan and Rosemary Howes, are requesting approval to construct a 12 space recreational vehicle park. The Sheep Ranch Inn proposed RV Park is a 23.5 acre tract of land located on the east side of Highway 93 North, approximately 5 miles north of Evaro and 5 miles south of Arlee. The property currently contains the Sheep Ranch Inn restaurant, a single family home that also serves as a bed breakfast (which has four rooms and could accommodate up to eight guests at one time), a mobile home, several outbuildings and a commercial archery range. The property fronts on Highway 93 for about 400 feet, and extends eastward for almost four-tenths of a mile.

Aside from the archery range, all existing and proposed development is in the front third of the parcel. This portion of the parcel mostly consists of mowed grasses, buildings, driveways and parking. The East Fork of Finley Creek also runs through the northern portion of the parcel. The stream feeds an existing artificial lake. Along portions of the creek, much of the native vegetation has been removed and replaced with turf grass.

The eastern portion of the property is gently sloped and densely covered by a riparian forest. The vegetation provides excellent wildlife habitat and cover. The forest contains a walking trail and an archery course. This project proposes no additional uses for the forested part of the property.

Six adjoining parcels range in size from 1.2 acres to 5.7 acres. Other adjoining or nearby properties are generally in the 5 to 10 acre range, with some over 100 acres. The property bordering to the north and east is a large Tribal forested/wildlands area.

Two grassy areas are designated for recreation. Each RV space will have a sewer connection with one drainfield per two spaces. The RV spaces will be served by a shared water system from a new well.

Access to the property is from Highway 93, which is paved to approximately 38 feet wide at this location within a 160 foot right of way. One of the two existing accesses is proposed to be eliminated, with the other upgraded with a partial right turn bay and a 30 foot wide driveway. Individual RV spaces will be served by 15 foot one-way gravel drives.

The property is unzoned. The 1975 Missoula County Comprehensive Plan designates the property as "Open and Resource Land" with the intent to "protect areas of important natural resource production and extraction ...; to protect areas of natural hazard...; and to reserve land for the future where development during the time frame of this plan would be premature and costly." The plan further states that "while Open and Resource Land is not a primary residential designation, residential development of no more than one dwelling per forty acres would be keeping with the intent of the classification. The development of agricultural, recreation and forestry activities with their usual associated uses should be encouraged within these areas." A Land Use Goal of the plan specific to the Evaro area is to "encourage large lot residential development, to maintain rural atmosphere and ensure open space."

There is a concern that this proposed RV park does not meet the intent of the Comprehensive Plan. The proposal would result in a seasonal density of one RV per two acres, which is more consistent with a low-density suburban setting. Eight of the proposed RV spaces would be within 25 feet of an adjacent property that could have impacts on neighbors.

A Land Use Goal of the plan specific to the Evaro area is to "develop local convenience commercial activity centers structured around existing facilities that will service surrounding areas and thus conserve resources by minimizing transportation demand." The only other existing commercial along that stretch of highway is Joe's Smoke Ring, a few miles north of Evaro. The applicants feel because of the existing commercial activity that is already there, an expansion of commercial would substantially meet the Comprehensive Plan.

Another Land Use Goal of the plan specific to the Evaro area is that "additional development should not be encouraged until jurisdictional and land capability problems are resolved." While jurisdictional concerns have been temporarily addressed through a Memorandum of Agreement with the Tribes, a land capability analysis has not been completed. The Tribes are concerned with groundwater quality in the Finley Creek drainage.

Two other commercial RV parks have been approved under Missoula County Subdivision Regulations, Jim & Mary's RV Park and Jellystone RV Camp Resort. Jim & Mary's was zoned for general commercial and Jellystone Resort is within the Wye/O'Keefe Creek Area Plan where a designation of commercial and school/park is given for the property. They are both located close to a growing transportation/commercial facility hub.

The three major concerns that were raised for this area are: 1) wildlife habitat and conflicts with wildlife; 2) traffic; and 3) ground water.

1) The property is very close to a designated grizzly bear linkage zone but is not in the linkage zone. It is also immediately west of designated grizzly bear habitat that is found on tribal land to the east. In staff's discussions with the Tribes, the measures taken to concentrate the development on the front portion of property, along with other conditions, help mitigate wildlife concerns. The Tribes were satisfied that wildlife impacts would be mitigated.

2) The Tribes worked with MDT and the applicants to mitigate traffic impacts. The measures taken include closing the southern access to the property and building a northbound right turn deceleration lane. Currently there is a southbound passing lane that ends just to the north of this property. The MDT will be expanding and lengthening that passing lane past this property. A concern is that when southbound traffic is waiting to make a left turn into the Sheep Ranch Inn, they will be stopped in the expanded passing lane. High speed traffic coming up behind them would need to either stop or merge right. One of the mitigating measures proposed was to look at the exiting traffic to this site. The applicants have also proposed removing the mobile home currently located on the site. If the mobile home were removed, approval of up to 6 RV spaces would not create any additional traffic impacts.

3) A way to mitigate the ground water concerns included removing the existing mobile home, then approval of up to 6 RV spaces would not create any additional sewage disposal. Approval of between 6 and 9 spaces would depend on how the figures are looked at. If it were based on a 150-day season, up to 8 or 9 spaces would result in the same amount of sewage, however it is recognized that people could use this facility any time during the year.

Staff recommends approval of up to 6 spaces, with 11 conditions as noted. The Planning Board has recommended approval of 12 spaces in the Sheep Ranch Inn RV Park. The Planning Board made modifications to staff recommended conditions as follows: a) Delete Condition 1 (to allow only 6 spaces); and b) modify Condition 3 to pave the driveway but not pave and stripe the parking lot.

Ron Ewart, Eli & Associates, Developer's representative, was present, as were the applicants, Alan and Rosemary Howes. He stated they were in agreement with the Planning Board recommended conditions of approval. Alan and Rosemary Howes own the Sheep Ranch Inn and the bed and breakfast. The parcel is 23.5 acres and the businesses are located next to Highway 93. Most of the property is wooded with a creek and small pond. The area where the RV park is proposed is also near the highway on open ground that has a uniform grade of about 5%. The area of the RV park is about 1.5 acres and there will be no further development or any alterations on the remaining 20+ acres of the property. The area of the development is less than one-quarter of the entire parcel.

This park is small in comparison to other RV parks, one park near the Wye has 50 spaces and the other park has over 100 spaces. The location is clustered around an existing, well-established restaurant that has been there since approximately 1972. The applicants feel there is a good market for a few RV spaces at their location. It would increase their current business and possibly create a seasonal job and keep more economic activity in the Missoula area.

The existing driveway will be reconstructed, graded and regraded. The driveway width from the highway to the parking lot will be a minimum of 24 feet in width and will be paved. Movement of vehicles will be on one way streets, built to 15 feet in width. Each pull through space will have a picnic table, landscaping and individual hookups for water, sewer and electricity. There will be 26 feet of landscaped area between the spaces. All drives and parking areas on the property will either be paved or gravel coated with dust control. With the one way streets and pull through RV spaces there should be little or no need for backing motion in the park.

There will be two recreation areas designated in the RV park, one primarily for younger children and another for older children and adults, both landscaped in grasses, trees and shrubs. There are currently a few low evergreen shrubs along the driveway in front of the restaurant and additional landscaping will be planted along the frontage to meet the Primary Travel Corridors standards. The owner plans to attach a sign to the existing Sheep Ranch Inn sign and not put up another free standing sign.

There will be a much thicker series of planting along the south property line, to create a landscape buffer that will, upon maturity, create 75% opacity between the RV park and the three residential lots to the south. Planting would be on average 20 foot centers with thick, hearty, fast-growing trees. There are several trees already on the property, all of which would remain. There is a winding loop trail in the forested area that will be carefully managed and maintained.

There is good access to Highway 93, site distance to the south is over one-half mile and site distance to the north is approximately one mile. There are currently two approaches to the property about 300 feet apart. The north approach was permitted in 1975 and the south approach was permitted in 1984. It was originally planned to have the south approach an entrance only and the north approach an exit only, however the Tribes and MDT recommended in writing that the two accesses be combined into one. The southern access will be eliminated and the northern access will be improved and become the sole access to the property. There is another approach (to the Schulz property) directly across Highway 83.

For northbound traffic, there will be a deceleration lane that involves widening the shoulder of the road, the driveway approach and the width of the driveway. This will necessitate extending a large culvert and building up the shoulder.

Currently, southbound there are two lanes that merge into one lane just north of the access. This has been identified as a potential problem, with cars merging as they approach the property. According to MDT, the two southbound lanes will both continue south for miles before merging again into one lane. Work will begin this spring, well before the RV park begins operation, eliminating the merging problem.

There is also a concern that even with two southbound lanes, a vehicle sitting in the left lane waiting to make a left turn into the property would force other vehicles traveling south to stop behind the turning vehicle or merge into the right lane. Having two southbound lanes improves this problem, as opposed to one southbound lane that would force all vehicles to stop for the left turning vehicle. There is also a site distance of approximately one mile going south toward the property, allowing ample time to see a vehicle waiting to making a left turn. Having two lanes at this location would be a marked improvement in safety, but not a totally safe situation, which is the nature of highways.

Most of the property is forested providing cover for mammals and birds. To the east there is heavily timbered mountainous lands providing habitat for larger wildlife. The forested area of the property is wildlife habitat that will not be disturbed or changed. The area of the RV park is not within a residential interface zone as defined, although much of the remaining property is.

The area of the RV park is open, low grasses and near existing commercial businesses and the highway. Because of the proximity of the RV park to forested, mountainous reservation land where wildlife is abundant, it is important that visitors abide by rules designed to mitigate concerns inherent with this property and its location. The applicant is aware of these concerns and will distribute to each RV park visitor a brochure listing park rules. In addition, there will be a sideboard containing the brochure, explaining the rules and providing maps and other information about the property and surrounding area. The rules will cover, among other items, non-trespassing on reservation land to the east that is currently well fenced and posted. The brochure will inform people about wildlife/human interaction.

The area is served by Mission Valley Power and Blackfoot Telephone. All utilities will be placed underground. The nearest fire station is located at Joe's Smoke Ring, about two miles south, operated by the Arlee Fire Department. Law enforcement is provided by the Missoula County Sheriff's Department and the Confederated Salish and Kootenai

Tribal Law Rural Office in Pablo. Waste disposal is provided by Mission Valley Disposal of Ronan. There would be no impact on schools.

The spaces will be served by a shared water system from a new community well. Each RV space will have a sewer connection with one drainfield per two spaces. The RV park sanitation and water requirements will be carefully reviewed by the Missoula City-County Health Department and the Montana Department of Environmental Quality.

The property is unzoned in the County and covered by the 1975 Comprehensive Plan. The plan recommends the property be Open and Resource with a residential designation of one unit per 40 acres. This proposal can be found to be in substantial compliance with the 1975 Comprehensive Plan after examining a number of factors.

First, the Open and Resource designation seeks to protect areas of resource and to promote recreation. With the proposal, the resource areas, the approximately 20 acres of forested land, the creek and the pond, will be protected. Secondly, the business was in existence prior to 1975 but the plan did not recognize the existing commercial operation.

The plan may have been in error for not showing this existing commercial operation. The 1975 plan does offer brief comments regarding commercial activity that tends to support this kind of commercial facility as long as it is structured around existing commercial facilities. The plan does make a distinction between convenience centers as opposed to other types of commercial facilities.

Transportation demands will not increase due to this RV park, because vehicles are already going by the property, and some locals do come and eat at the Sheep Ranch Inn. This small RV park would be more of a convenient stop along the way than a destination. Sheep Ranch Inn RV Park would provide travelers a local place to pull in to, rest, eat and recreate. Many people would probably visit other local businesses and attractions to spend money. This is a clean, profitable business that will promote tourism.

The text of the 1975 plan does offer other considerations that would support this proposal. A lot has changed in the past 24 years since the plan was written. The plan does state that it must remain flexible to incorporate changing conditions and it should be used for a period of no longer than 15 years. All applicable factors need to be examined to do what is best for this property.

The condition to cut the number of spaces in half was due to the concerns that were raised; effects on wildlife, comp plan recommendation, effects on transportation and effects on ground water. The septic systems will be well away from the creek and the slope of the land is toward the west away from the creek. Due to the existing businesses, the water is tested frequently and has been found to be within acceptable levels.

The 12 spaces were proposed to boost existing business and generate additional income. Cutting the number of spaces in half may not be worth the cost, especially if the mobile home is removed. The suggestion to remove the mobile home was made to help this project along because 12 RV spaces would cover the lost rent.

There are significant costs involved with the changes to the access and driveway. The RV's will not stay more than a few days and mostly only during the summer, it is not intended as a permanent place to live. Alan and Rosemary Howes live on the top floor of the bed and breakfast, this property is their livelihood. They have agreed to plant hundreds of trees and do a lot of things to make this a real nice place.

Again, the applicants and developer are in agreement with all the conditions as recommended by the Planning Board.

Rosemary and Alan Howes came forward to answer questions.

Acting Chairman Evans stated one of the things suggested was the potential for replacing the shared drainfields with a dump station to allow removing sewage from the site. Has this been considered and what were their feelings about the option?

Alan Howes stated it has been considered and may still be a possibility versus the septic system. He had not done any investigation into the long term costs, but it is an option. The possibility of not doing a septic or dump station at all has also been looked at as there is a dump station within the legally required distance.

Acting Chairman Evans opened the public hearing.

Herschel Mays stated he is an adjacent landowner to the east. One of his concerns was just mentioned, using a dump station rather than a septic system, as this is an RV, short-term, seasonal park. He supported the use of a dump station. The creek also flows through his property and water quality was a concern with drainfields. Perk tests performed on his property passed for residential use but were not that good. Another concern about the stream involved fishing. That stretch of stream has barriers both to the east and west that restrict fish movement. He only allows his children to fish on the property. With intense fishery use, the native stock would disappear. His other real concern was recreational activities in the riparian zone. There is an abundance of wildlife in the area, deer, bear, etc. The riparian vegetation and wildlife may draw visitors outside the area onto his property. His area is currently fenced but not posted, it is open for people to use. How will trespassing and visitor use be controlled? His three major concerns include trespassing, the septic water quality/fishery issue and wildlife.

Commissioner Carey asked Mr. Mays what kind of fence he had?

Herschel Mays stated he had a 5 strand barbed wire fence.

Ed Janecek stated he was present representing George Keriuzzi, who is an adjoining property owner to the proposed subdivision. Mr. Keriuzzi has several concerns to the subdivision proposed, largely consistent with the previous speaker, including ground and surface water contamination that would result from septic systems in particular. He did not believe the stream ran through Mr. Keriuzzi's property although he does have an interest in maintaining its pristine

nature. That was his primary purpose in purchasing the property, along with the property's rural character and the wildlife habitat. If this subdivision is allowed, the rural nature and wildlife habitat will be degraded, along with the value of the property. The rural nature would not be able to be reinstituted after the fact. The subdivision as proposed also doesn't appear to comply with the Comprehensive Plan of one dwelling unit per forty acres. It also seems like an expanded commercial activity that is not generally contemplated. The trespassing aspects are also a concern, as well stated by the previous landowner. If the subdivision is approved, the only alternative Mr. Keriuzzi would have is creating his property in a similar commercial manner. That would further degrade the area, in violation of the intent of the 1975 Comprehensive Plan.

Paul Cimino stated he lived to the south of this proposal. He concurred with the two previous speakers. Being a small business owner he did not want to impede anyone's attempt to earn a living, especially in Montana. His concern, especially with having children in his home, would be to see some sort of permanent privacy fencing erected between the properties. Trees can be planted for beautification but it would be years before they would form any shield or boundary. That will be quite the site with that many RV spaces. The forested area is a bow and arrow archery range. The wildlife in the area have already mauled the decoys in the archery range. He sees this as attracting more wildlife, especially bears. Another concern is people wandering from this property to his own property. He has a fence around his property but it does not prevent persons or animals from crossing it. He did not see how families and kids out walking their dog could be restricted to this property only. He felt some kind of more permanent boundary would be in order, people will not obey signs. Another concern he had was the traffic, he suggested the Commissioners take a drive up that way and observe the traffic problems that exist. He did not see how this could be done without a left turn lane, not just an extended passing lane. He has seen people on numerous occasions pass a left turner on the left in the oncoming traffic lane. The traffic and conditions on Highway 93 are incredible, it is a battle on the road to pass slower moving vehicles.

Acting Chairman Evans stated that Department of Transportation visited with the Commissioners today. This spring they will begin work that will include a left turn lane there.

Alan Howes stated he wanted to address some of the concerns of his neighbors. The water quality issue is subject to debate, regarding the mitigation of removal of the mobile home versus impact of the new sites. Regarding fishing, all the waters on the reservation are governed by Tribal Fishing Regulations. Fishing is not allowed without a Tribal Fishing Permit. No fishing is allowed there now, including the private pond. The fish can be fed and food is provided, but no fishing is allowed. Regarding trespassing, it is a possibility that someone may trespass, however these concerns may be overrated. Most of those concerned with the trespassing issue are single family dwelling that are fenced in. The people who would be using the RV spaces would not be interested in visiting other people's yards, they would be there to walk the nature trail, feed the fish in the pond, just spend an evening on their way to or from Glacier. The park is not intended to be a 12 month operation or have long term stays. They would like to capitalize on the summer tourists, it is not intended to become some kind of subdivision for mobile homes. Everybody that drives Highway 93 knows there are bad problems. The state recognizes that, they are trying to work with the Tribes to come up with improvements. It is a widely recognized problem. Some of the things the State will be doing in the spring will help to mitigate some of the problems. The problems they experience during high seasonal traffic apply to nearly every property in this rural area. That there are slow moving vehicles on the highway are an everyday fact of life, drivers need to be aware of the dangers. The RV park projects 50% occupancy so the impact would be between 6 and 8 additional vehicles entering and exiting the highway per day, versus the loss of trips by removing the mobile home. The impact is minimal and the State's extension of the southbound lanes and the northbound deceleration lane will mitigate the problem.

Rosemary Howes stated she would like the Commissioners to visit the property as it was hard to visualize what was being explained. If they could visit the property, they would get a much better idea of what was going on. She stated they lived in the upstairs portion of the bed and breakfast, the downstairs had been remodeled to include the additional rooms and Finley Creek runs along the back. When they went to the Health Department to get the bed and breakfast license, they were informed that the existing septic would not be compatible. They had to build a big leach field and pump the septic to out in front of the restaurant. The point is this is their home and they do not want to do anything that harms Finley Creek or damages or destroys the wildlife habitat. They want to keep it as untouched and nice as possible and at the same time try to increase business a little. This operation would be quite seasonal. The entire property is well groomed and mowed, which is another reason she would like to invite the Commissioners to view the property. Also, in regard to the trash concerns, there is a walled-in, covered trash area that has been built to help mitigate wildlife interaction.

Acting Chairman Evans corrected her comment about the improvements to Highway 93. The Highway Department said there would be two lanes, one would be for passing on the right and one for left turns, but there would not be a separate left turn lane.

Ron Ewart stated the possibility of having a dump station was mentioned. He spoke with Tom Barger who said that could not be done. Tom is the only one he has spoken with so far and other discussions need to take place. There is a dump station at Joe's Smoke Ring but there is a drainfield for it. The idea would be investigated and would be a preferred method. If it is possible, it would be done. And technically people could use the dump station at Joe's Smoke Ring. The remaining 23 acres of this property include a loop trail through the forested area. It is wide and well marked, visitors would be instructed to stay on the trail. Any improvements to fences would also be done, to try and make sure everybody stays on this property.

Oby Schulz stated his parents own 11 acres directly across Highway 93 from this property. He is in the process of doing a family subdivision, he is trying to buy 4 acres from his father. He felt he knew what the Howes were going through. Perk tests on his father's property proved to provide excellent drainage. He felt the people who would be most concerned would be the people downstream from the septic system. It seemed like the neighbors were being awfully hard, there are valid reasons for all the concerns. He felt the Howes have agreed to help mitigate the problems a lot. He supported this project and everyone should consider the cost that will be incurred by the Howes. They are trying to comply as best they can.

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

Acting Chairman Evans stated she would like to find a way to allow the most use of their land and to answer the concerns that have been expressed. This is why she asked about the dump station, based on concerns from the Tribes and concerns about ground water. The dump station would be a way to eliminate ground water concerns and should be investigated. She asked Brian Maiorano about Finding of Fact Number 6 under "Effects on Local Services," it stated: "The existing mobile home that would be removed upon development is estimated to generate approximately trips per day." What was the number of trips per day?

Brian Maiorano stated it would be 10 to 11 trips per day.

Acting Chairman Evans stated she would like to find a way to allow maximum use of this land. If that requires the removal of the mobile home to allow the 12 spaces, as the Planning Board recommended, that is what she would agree to do. She had less concern about the traffic, due to the deceleration lane and the input from the Highway Department and local traffic planner recommendations. She would ask that whatever signage necessary be done so that people recognize they need to stop until there is a break in traffic. She agreed with the Planning Board recommendation that Condition 3 should be modified. She stated, for clarification, this would be summer only, no fishing would be allowed with signage stating that it was governed by Tribal regulations. There would be an effort made to post "No Trespassing" signs to adjoining properties. The Highway Department will be upgrading the highway, which they feel would be satisfactory and would not prevent this development.

Commissioner Carey stated he too hoped a way could be found to have a good tourist related business at their place. He had some very profound concerns, especially about the traffic situation. He has driven that road many times. Highway 93 is peculiarly dangerous somehow, it seems there are certain stretches that are particularly crazy, and in front of the Sheep Ranch is one of them. No matter how fast you go to pass on the uphill grade there is always someone else going faster, at about where the Sheep Ranch is. Having two lanes further on will help somewhat, but he was very uncomfortable with a family in an RV sitting in the passing lane on the hill waiting to make a left turn during heavy summer traffic. The road is too dangerous and this would add to the risk. There needs to be a way to mitigate that particular situation. He is also inclined to go with the staff recommendations on the conditions as opposed to the Planning Board's recommendations. He also had a question about the Comprehensive Plan and how relevant it was to their decision. He asked Colleen Dowdall to comment on the Conclusion of Law: "Removal of the existing mobile home (noted in Condition 2), along with other conditions, would mitigate the impacts of a commercial expansion smaller than that proposed."

Colleen Dowdall stated Brian Maiorano wrote the conclusion, but her assumption was that if the mobile home is gone, the 6 spaces (or something smaller than 12), will be okay, as opposed to the entire 12 spaces.

Commissioner Carey asked if the Planning Board's recommendation was at odds with the staff's.

Colleen Dowdall stated the Planning Board recommended approval of all 12 spaces and also dealt differently with the paving requirement for the parking lot.

Commissioner Carey asked if it was possible to make a motion that the applicants come back with a plan to mitigate the traffic dangers.

Acting Chairman Evans asked what the deadline was for this proposal?

Brian Maiorano stated the 60 day deadline was February 13, 1999.

Colleen Dowdall stated this is the part of the subdivision regulations and the law that is struggled with. If there is still an impact that has been identified that has not been mitigated, before the Board acts negatively, the applicant should be given the opportunity to mitigate the impact or bring back more evidence of the nature of the impact and how they can deal with it. She felt what Commissioner Carey is suggesting is in compliance with the requirement that a developer be allowed to mitigate impacts.

Commissioner Carey asked how to deal with the differences in the staff's and Planning Board's recommendations?

Colleen Dowdall stated they were both recommendations, they could use one or the other or they could pick something else. The Planning Board is strictly advisory.

Acting Chairman Evans stated the Board could tell the applicant they could have 6 spaces and keep the mobile home, or they could have 9 spaces and remove the mobile home, or whatever.

Ron Ewart stated that the Planning Board discussed reducing the proposal to 6 spaces and keep the mobile home to offset the loss of income from the other 6 spaces. The final outcome was to allow all 12 spaces and remove the mobile home.

Acting Chairman Evans asked if the Board needed the request of the developer to delay the decision.

Colleen Dowdall stated if the developer believes they can bring mitigation back by next week, then their permission for a delay is not needed. However, if they need more time to develop ideas on mitigation, it would be necessary for them to agree to extend the deadline.

Acting Chairman Evans understood the traffic concerns but asked how the applicant could be asked to mitigate a problem on a State highway. What are they expected to do?

Horace Brown stated the engineers for the State Highway Department could tell them if what the applicants are doing could take care of the problem.

Acting Chairman Evans stated she asked the Highway Department during their visit today and they said it would mitigate the problem.

Horace Brown stated they should know, they are the engineers and they should be able to build something that will fit the use as safely as possible. He could not add anything if they felt the two lanes will take care of the problem. As far as traffic goes, the drivers are not always normal and a certain few cause problems. A road cannot be designed to take care of those few drivers.

Commissioner Carey stated his understanding from the Highway Department, by a construction engineer who admitted he was not a traffic or safety expert, was the State would be lowering the risk by having two lanes but would not be eliminating the risk.

Horace Brown stated a traffic engineer should look at it to see what the actual risk would be if the lanes are extended.

Paul Cimino stated that at Jellystone the problem was mitigated by a middle lane for left turns. To just extend the two lanes past the Sheep Ranch Inn is not going to create a safe situation. The situation is already unsafe and would remain that way. The only safe way is to create a left turn lane.

Acting Chairman Evans stated the Highway Department engineer said an extra turn lane would cost approximately \$200,000. The likelihood of the applicant being able to provide that extra lane is not possible.

Herschel Mays stated most of the impact was southbound traffic, but there is a similar problem going northbound. It is on a downhill grade and the truck traffic would need a lot of room to stop.

Colleen Dowdall stated the applicant has dealt with the northbound traffic by providing the right turn deceleration lane.

Acting Chairman Evans stated that to tell this applicant they cannot do this should be a consistent policy on Highway 93; no one could do anything that would require crossing the road. She did not feel that was legal. She felt there may be some potential traffic problems but that should be the individual drivers' problem. Individuals have to take some responsibility for their own safety and habits. She did not feel she had a legitimate reason to say "No" to this applicant. She did have a legitimate reason to suggest certain things, but she did not have the right to tell them "No." She asked if the applicant and developer want to come back next week with some suggestions for mitigation.

Alan Howes stated that beyond building a right turn lane as suggested, it was financially ridiculous to assume that they should assume the task of making Highway 93 safe, it's financially not feasible and it makes them responsible for the drivers. There is no assumed right someone will be safe when they get behind the wheel of a car. The "reasonable and prudent" speed limit is an example. It is incumbent on the driver to maintain control of his vehicle and pay attention to where he is going, be it weather conditions, turning vehicles, etc. To assume the Sheep Ranch Inn would be responsible should someone not maintain control of their vehicle because someone wanted to make a left turn, is putting a burden on their business that doesn't exist. There are people turning there now and that will continue whether this is approved or not.

Commissioner Carey stated he agreed with Mr. Howes and with most of what Commissioner Evans said. What he is wrestling with is the obligation of the County Commissioners to the public safety. If they allow a condition to come into being that puts people who live or travel through this area at a significant risk of harm, that is a very important thing to weigh. Weighing the private interest, which they have and he promotes, with the public's interest and being able to safely travel a highway is what he is wrestling with. This is not his only concern either, he is also concerned about the difference between staff recommendations and Planning Board recommendations. He is also concerned about the Tribes not having the opportunity to conduct a carrying capacity study for the water. He has several problems with the project. He would vote to deny the project right now if he had to vote today. He was willing to keep the discussions open to see if there are some other things that can be done.

Acting Chairman Evans stated specific items that needed to be looked at should be given to the developer so they will know what to bring back to the next meeting.

Commissioner Carey stated the first item of concern was the left turn situation. He is also concerned about the differences in staff's and Planning Board's recommendations, he supported staff's recommendations. He would be open to more discussion, but right now he would support staff's recommendations. He had a problem with the Conclusion of Law regarding compliance with the Comprehensive Plan. Mr. Ewart has made some persuasive arguments for compliance. If those things can be addressed successfully, there might be some way to do this project. The County still would have the requirement to okay the mitigation plan for the left turn situation.

Ron Ewart stated he wondered what they could come back with. They have attempted, in every way, to address the traffic concerns, including the deceleration lane and two southbound lanes. He felt that was all that could be done with that. He had written a response to the Office of Planning and Grants to show how this could be in substantial compliance with the Comprehensive Plan. The wildlife, landscaping, Primary Travel Corridor, etc., have been address as well. He could not think of anything that had not been addressed to the point where it could go further. In most cases he would like to come back with a better proposal, but he did not see what could be done differently in this case. He wondered if there was some part that could be supported today.

Colleen Dowdall stated the Commissioners do not have more detailed information from a traffic engineer. The construction engineer from MDT was helpful, but acknowledged construction was his area of expertise and explained what would happen in the future. She suggested the developer could talk to the MDT traffic engineers and perhaps have them present, or have correspondence from them, to explain the requirements for additional traffic signalization or a left turn lane. If this is approved despite the traffic concerns, she would like testimony from experts that say the situation is okay, so if there is a problem, the County will have established that they did their job.

Horace Brown stated that the elimination of one access does improve safety.

Brian Maiorano stated the one discrepancy between staff's and Planning Board's recommendation is in Condition 3, regarding paving the parking lot. That was a recommendation from the Health Department. Their concern was that without striping people would park all over the lot and block easy access through to the RV spaces. He believed there were other ways besides paving and striping to mitigate that concern.

Acting Chairman Evans stated that action on this proposal would be postponed until Wednesday, February 10, 1999, and it would be put on the agenda first.

Other Business: Schramm Road Bridge Closure

Richard Herbel, President of Homeowners and Residents Association of Westview Park, stated that Mr. Lewis invited his group to meet with the Commissioners. The group would like to address the County Commissioners about a bridge using culverts.

Acting Chairman Evans stated that a box culvert would be everybody's choice if it can be done. Apparently there is some question as to whether there is enough right of way to do the work to put in a culvert. The attorney for the County and Mr. Lewis' attorney, and others who have interest in the land, are working together to try and come up with some solution before next Wednesday, February 10, 1999. The Commissioners do not wish to take away access off Schramm Road, but they also do not want travelers to fall into the creek. The bridge that currently exists is not a safe bridge. It is their responsible duty to say this is not a safe bridge. They are looking at a proposal that would provide a one lane bridge for a temporary period of time on the condition a way can be found to do so safely. This could lead to a brand new bridge, probably a culvert bridge, with guard rails and other amenities to make it safe. It is hoped that can be accomplished.

Richard Herbel stated that a mobile home park the size of Westview needs two ways in and two ways out. The Fire Marshall agrees it needs this type of access.

Acting Chairman Evans stated she agreed with them and would work toward that goal. That has been and will be discussed further with Mr. Lewis.

Richard Herbel stated he knew what Mr. Lewis' theory was, one access lowered crime.

Acting Chairman Evans stated there may be some middle ground and they would work on the situation.

Richard Herbel stated the residents were pretty mad about the situation.

Acting Chairman Evans stated she too has heard from some of the residents and she hoped Mr. Herbel would assure them the Commissioners were only interested in their safety. The Commissioners hoped to be able to give the residents a new bridge that would give permanent access that would be safe.

Richard Herbel asked if the County would gravel Wheeler so it was not muddy, since it is their only access now?

Acting Chairman Evans stated the road would be maintained minimally by the County. Two land use projects have been approved that will require the road be upgraded and paved by approximately June, subject to weather conditions. That will give residents a nice, new, wide, paved road.

Richard Herbel stated that road has historically turned to mud each year and there were concerns about emergency vehicles accessing the park.

Acting Chairman Evans stated some gravel has been used to improve the road.

Horace Brown stated the County has repaired two soft spots and would take care of any new ones that show up. They did not want to put down a lot of gravel that would be wasted when the new road is constructed. They will put down just what is necessary to make the road passable.

Acting Chairman Evans stated the County did not want to put down excessive gravel that would then have to be removed to upgrade and pave the road.

Richard Herbel wanted to know if there was a way to work with the County and Mr. Lewis to get two accesses to the park.

Acting Chairman Evans stated the Commissioners would do their best.

Michael Sehestedt stated he has been in negotiations with Mr. Lewis and his attorney. He thought Mr. Lewis was sincerely interested in getting the bridge open and replaced, he was just trying to find a formula that works for all. He is hopeful it will happen but there are no guarantees at this point, they are just talking. Wheeler Drive started as a trail, not a road. To get a second access to Westview Park, the Commissioners required dedication of Wheeler Drive as a public road. Ideally, it was hoped to have Schramm Road connect with Expressway, which will have a traffic signal. It does not look like that will be possible because of other land use decisions and the dealing with the Phillips family. When it became apparent that would not happen, as well as the lady who went off the bridge into the creek, the decision was made to close the bridge. Everybody at the County realizes there is a problem and they are trying to find something that will work for everybody. Mr. Lewis is working hard on behalf of the residents to fix the problem.

Richard Herbel stated Mr. Lewis has told the residents he will repair the bridge at his expense. But that will probably raise the rent for the residents.

There being no further business to come before the Board, the Commissioners were in recess at 3:20 p.m.

THURSDAY, FEBRUARY 4, 1999

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners traveled to Seeley Lake to meet with the Seeley-Swan Medical Center Board, tour the facility, and attend a dinner hosted by the Medical Center Board.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming MT Future Problem Solving c/o Don Harrington as principal for Warrant #25742, issued 12/3/98 on the Missoula County Student Funds #84 Fund in the amount of \$165.00, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Leslie Wozniak as principal for Warrant #022848, issued 1/21/99 on the Missoula County General Fund in the amount of \$74.84, not received in the mail.

ADMINISTRATIVE MEETING

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

Memorandums of Agreement -- Chair Kennedy signed five Memorandums of Agreement with the Missoula County Park Board for matching funds grants:

1. with Mount Jumbo West Little League for up to \$1,500.00, to be spent by March 1, 2001.
2. with Mount Jumbo West Little League for up to \$2,500.00 to begin construction of Mt. Jumbo Little League fields at DeSmet Park. This is a direct grant. (FY98)
3. with Mount Jumbo West Little League for up to \$2,500.00 in improvement funds for building fields at DeSmet Park. Funds must be spent by April 9, 2000. (FY98)
4. with Mount Jumbo West Little League/Hellgate Elementary School for up to \$1,500.00 in matching funds for upgrading ballfields. (FY98)
5. with the Upper Linda Vista Homeowners Association for up to \$2,100.00 in matching funds for park improvements. Funds must be spent by March 1, 2001.

Software License and Professional Services Agreement -- Chair Kennedy signed a Software License and Professional Services Agreement with Ross Systems for new accounting software. Total purchase price is \$365,061.20. License term of the Agreement is 20 years from this date. The documents were returned to Jane Ellis, Chief Financial Officer, for further signatures and handling.

Deed Documents -- Chair Kennedy signed a Subordinate Deed of Trust and a Deed Restriction Agreement with Kimberly Ann Walter for property located at 2140 Hummingbird Drive, Missoula, MT, for the sum of \$4,947.00 to provide down payment, closing cost, and/or mortgage reduction assistance. The documents were returned to Cindy Wulfekuhle in OPG for further handling.

Other items included:

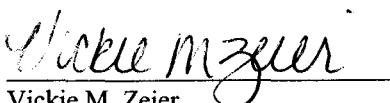
- 1) Commissioners Kennedy and Carey voted to counter an offer by MarWest (Robert Massey) for Lots 1 and 2 of Block 6 and Lot 2A1 of Block 8, Missoula Development Park. The counter-offer will be at 90% of list price with the same conditions.
- 2) Commissioners Kennedy and Carey voted to approve a \$10,409.59 expenditure from the District Court Contingency Fund for a report by Dan L. Wiley & Associates, Inc. regarding District Court quarters; an \$11,535.11 payment to St. Patrick Hospital for outpatient treatment for Youth Drug Court participants; and \$1,000.00 payment for a laptop computer for Judge Harkin.

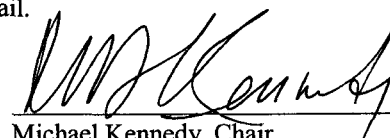
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, FEBRUARY 5, 1999

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

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Albertson's as principal for Warrant #023149, issued 10/8/98 on the Missoula County General Fund in the amount of \$851.01, not received in the mail.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, FEBRUARY 8, 1999

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

Monthly Reports -- Chair Kennedy examined, approved and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending January 29, 1999; the Report of the Clerk of the District Court, Kathleen Breuer, for the month of

January, 1999; and the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of January, 1999.

ADMINISTRATIVE MEETING

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

CTEP Funds Authorization – The Commissioners approved and signed authorization for the Montana Department of Transportation to use \$120,685 of CTEP funds for construction of a path in Seeley Lake. Authorization was also sent to Vaughn Anderson of Druyvestein, Johnson and Anderson to complete design and public meeting work in the amount of \$2,000.00. Both documents were returned to Horace Brown, County Surveyor, for further handling.

Supplemental License Agreement – The Commissioners signed a Supplemental License Agreement with the US General Services Administration, Public Buildings Service for lease of space in the Missoula Federal Building for the Missoula County Youth Detention unit. This Agreement changes item #6 – Consideration – to \$9,065.69. The Agreement was returned to Judge Larson's office for further handling.

Agreement – Chair Kennedy signed an Agreement with JTL Group, Inc. for removal and sale of gravel, and construction of trails on Tower Street Park land. Work will be completed by April 30, 1999. Missoula County will receive \$0.190 per cubic yard of gravel removed, and shall pay JTL \$5.00 per lineal foot of trails built. The Agreement was returned to Orin Olsgaard in the Projects Office for further handling.

Agreement for Maintenance – The Commissioners signed an Agreement for Maintenance of the Fort Missoula Park Complex Grounds by the City Parks and Recreation Department, for the period July 1, 1998 through June 30, 1999. Compensation shall be \$41,855.00. Specific maintenance services are noted in the Agreement.

Agreement for Maintenance – The Commissioners signed an Agreement for Maintenance of the Grounds at County Courthouse and Certain Nearby County Buildings, for the period July 1, 1998 through June 30, 1999. Compensation shall be \$22,470.00. Specific maintenance services are noted in the Agreement.

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

TUESDAY, FEBRUARY 9, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was in Boise, ID to attend a meeting of the Eastside Ecosystem Coalition of Counties (EECC).

ADMINISTRATIVE MEETING

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

Audit – The Commissioners reviewed and approved an Audit of the CDBG and HOME Programs conducted by Susan Reed, County Auditor. The Audit was forwarded to the Clerk and Recorder for filing.

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

WEDNESDAY, FEBRUARY 10, 1999

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

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated February 9, 1999, pages 2-33, with a grand total of \$179,956.54. The Audit List was returned to the Accounting Department.

Task Order – Chair Kennedy signed a Task Order to the Missoula County Master Contract with the Montana Department of Public Health and Human Services for HIV prevention and community planning services. Term of the contract is January 1, 1999 through December 31, 1999. Compensation shall be a maximum of \$61,895.00 for CY1999. The Task Order was forwarded to DPHHS in Helena.

PUBLIC MEETING -- February 10, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, Deputy County Attorney Colleen Dowdall 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 list in the amount of \$179,956.54. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Continuation of Hearing and Decision on: Sheep Ranch Inn RV Park (Arlee Area) - 12 spaces

Brian Maiorano, Office of Planning and Grants, presented an update. He stated that last week at the Public Hearing, the Sheep Ranch Inn RV Park was discussed. After hearing testimony and discussion, the remaining issues were whether or not the expanded commercial use was in substantial compliance with the Comprehensive Plan, whether or not ground water impacts could be mitigated to be in compliance with the Comprehensive Plan in relation to the concerns of the land capability analysis, and lastly whether or not impacts to traffic safety could be mitigated by either a reduced number of RV spaces or changes to the roadway or some combination of both.

Chair Kennedy stated the continuation was for the purpose of allowing Ron Ewart to discuss potential mitigation items and asked Mr. Ewart to present his discussions.

Ron Ewart, Eli & Associates, developer's representative, stated last week he made a presentation on all the various aspects of the park, how it will work and its amenities, and that only approximately 2 acres out of the entire 23.5 acre parcel will be use. The remainder of the parcel will remain in its natural resource condition. The first priority was to mitigate any issues that had come up at the previous meeting. They did do some redesigns based on those comments. The issues raised by MDT and the Tribes had to do with traffic safety and access. There were three things proposed to mitigate those concerns. The first included deleting the southern access, making the northern driveway the only access. This would also align with another driveway across the road. The second proposal entailed widen the exiting northern access, which would involve extending a culvert, putting in more fill and paving the access road coming into the property. Thirdly, they would construct a right turn deceleration lane into the property. Another thing that will be changed is there will be two southbound lanes as opposed to the existing merge situation, which was a concern of the Tribes. With those proposals and the impending change, the concerns that were brought to them by the Tribes and MDT were met. There were other concerns having to do with wildlife, trespassing and water quality. Water quality will be addressed by DEQ, unless it is proposed to not have septic on site. In that way, the water quality issue will have been addressed. He did an analysis of the traffic accident situation between Evaro and the County line, to confine the study to the frontage of the property. There were two accidents, one in 1996 and one in 1994. Both of those did not involve any injuries. One was caused by traveling too fast for conditions and the other was inattentive driving. He did not see any correlation between this particular location and any high rate of accidents. There are other areas on this road that show high rates of accidents, but they are not in this area. With these proposed changes it would be an improvement over the existing situation. A lot of people pull in now just so they can turn around. A lot less people will be turning around and there will be the right turn deceleration lane. In many respects the proposed changes will be good for the existing situation.

Chair Kennedy stated that in reading the minutes from last week, part of the concern that was expressed by the Commissioners, and also by public testimony, had to do with the southbound traffic turning left. Did Mr. Ewart have anything to add to what was presented last week with respect to mitigation of that particular issue of concern?

Ron Ewart stated it was a better situation to have two lanes, so one lane can act as a passing lane or a turning lane. There is another lane for people to go around in the event that a vehicle is stopped in the left lane, waiting to make a left, and there is up to one mile site distance. Someone could see well in advance if there was a left turning vehicle. He felt the two southbound lanes would be an improvement and construction will begin this spring.

The public hearing was opened.

Commissioner Evans asked both representatives from MDT to give their perception on the traffic situation and if they feel this proposal should be allowed.

Jim Weaver, Montana Department of Transportation, stated they have looked at this proposal. It is considered a change in use and would require a new access permit from MDT. It appears the proposal presented will address all the concerns and conditions that they will put on the new approach permit. MDT does intend to extend the passing lane in the spring, so it will be two lanes southbound and a single lane northbound. No passing will be allowed in the single lane direction. This proposal has been looked at from two standpoints, one is current regulations and law. It is also important to note that an Access Management and Corridor Preservation Plan is being drafted for all of Highway 93 on the reservation. That Plan is currently under development, with the Ronan to Polson area the current focus of attention. It appears the Sheep Ranch Inn access will meet both current regulations and will also be in compliance with the Access Management Plan, even though the plan is not final. With regard to the question raised about left turn access into the property, it doesn't appear this proposal will generate enough left turn access to require a left turn lane under either the current regulations and guidelines or under the tentative proposed Access Management Plan. To answer the Commissioners question, this does not appear to be any different than the situation that will exist in most places. There is not enough use to require a left turn lane and MDT could certainly live with it. Under the Corridor Preservation Plan, they are initially anticipating a need for an additional 40 feet of right of way. He would encourage the RV park to be set back far enough to allow for the additional right of way, if and when the highway does get improved. Additional right of way will be required on both sides of the highway, he was speaking particularly to the 40 feet on the east side of the highway in front of this property. The entire 40 feet may not be used, but has been identified for preservation. Darren Kaufman, traffic engineer, has done all the specific work on this. Detailed questions can be referred to him.

Chair Kennedy asked if the Access Management Plan for the highway covered the entire area from Evaro to Polson.

Jim Weaver stated that was correct.

Chair Kennedy asked if the Plan specifically addressed this kind of condition in terms of access? The developer made the assertion that the outside passing lane can be used also as a safe turning lane. He had some question as to the notion of using the passing lane as a turning lane. Had that particular situation been included in the overall Access Management Plan? Are these same kinds of conditions going to be allowed wholesale up and down the highway?

Jim Weaver stated the guidelines, which are in draft form, are going to specify a maximum or recommended spacing on private accesses. Those into commercial will be classified differently. He felt this proposal would meet the commercial criteria. Access will not be denied to anybody. They will be encouraged to use County road or public or alternate access if it exists. He did not believe an alternate existed in this case. Under the Plan, this access would be permitted.

Colleen Dowdall stated the concern that has been expressed is that currently the end of the passing lane is approximately adjacent with this property. There is a lot of acceleration to try and get by that last slower car before merging back into one lane. The fear has been expressed that if there is an RV in that lane waiting to turn left, it may create a hazard that would preclude approving this subdivision.

Jim Weaver stated that it was safe to say that under the existing situation, he would have a great deal of apprehension about the access. Without extending the truck climbing lane, with the racing to get past one more vehicle before merging at that point, it would cause him some concern. Extending the climbing lane the extra 1 to 1-1/2 miles would eliminate his concern.

Chair Kennedy stated this did not answer the question of whether or not the Access Management Plan had considered the use of the passing lane as a turning lane.

Jim Weaver stated that has not been addressed yet in the draft of the Plan. The Access Management Plan does not deal with lane configuration. It is dealing strictly with accesses onto and off of the highway, regardless of whatever ultimate lane configuration is chosen, a two-lane, three-lane, four-lane or perhaps five-lane.

Chair Kennedy stated that Mr. Weaver said the Plan will not deny access. Does this mean that in every passing lane, if there is proper spacing and site distance, MDT has no problem with left turning movements in this kind of situation?

Jim Weaver stated it did not mean that. If a particular land use or public access generates enough use, a left turn lane will be required.

Chair Kennedy asked how much use was enough use to require a left turn lane.

Jim Weaver stated there were two ways to look at the situation. The current department guidelines did not give an easy answer, it depends on the situation. What has been proposed as part of the Access Management (still highly tentative) is 10 left turning vehicles during the peak hour. This proposal would clearly not meet that requirement.

Commissioner Evans asked if that was 10 in one location?

Jim Weaver stated that was 10 on one access during the peak hour. He was not sure MDT was in complete agreement with the suggestion, the consultant has proposed it. There will be a lot of discussion to follow, the idea was just presented last week.

Chair Kennedy stated this proposal, if approved, would increase the left turn movement significantly, because of the number of spaces available. Would Mr. Weaver care to make a judgment as to whether that turning movement would be a safe turning movement.

Jim Weaver stated he did not want to make that judgment.

Chair Kennedy asked Mr. Weaver why not?

Jim Weaver stated that any time there is turning on or off a highway, that could be said to be less safe than no turning on or off the highway. The Access Management Plan is a compromise, there are two things to be done, a balance between mobility for the people to move from one spot to the other, and access to properties. That is the purpose of this plan, to develop and define that balance. If the only issue was safety, obviously there would be no accesses. One could drive from Missoula to Polson and not need to worry about anybody turning on or off the highway, that would be ultimate safety. That does not give a balance between mobility and access. Every time there is a left turn, there is some risk. It is all a matter of balance.

Chair Kennedy understood that balance was used to develop standards. In this case the left turn movement will increase. He inferred that Mr. Weaver thought those added movements would not be any less safe than the current situation. Was that an unfair inference? Should this be approved, there will be more turning movements. Because there will be more turning movements and it does meet the safety standard of accepting risk, it is not less safe than the current conditions.

Jim Weaver stated it is less safe, because there are more people turning left. He is saying that it is not an unacceptable reduction in safety. Every time there is an additional development and more people turning on and off the highway, you have, to some incremental degree, a less safe situation. He is not going to say it is not less safe. Every time there is development and more people turning on and off the highway, you have a less safe situation.

Darren Kaufman, District Traffic Engineer, MDT, stated that Martin Van Mil and he had an extensive talk about what can and may happen here. They talked about the distribution of trips either in or out, and they figured it could be split 50/50 (50 percent of the trips could come out of Missoula and 50% from the north, from Glacier Park). There are so many variable in the equation to determine accurately enough what the true impacts are, whether this would be any more unsafe than any other situation down the roadway. There are other access points further north down the road. He sees people daily making left turns and it is used as a left turn pocket for people traveling southbound, into either a County road or a private access.

Chair Kennedy asked Mr. Kaufman if he was a safety engineer?

Darren Kaufman stated his position was Traffic Safety. Safety was part of his position.

Chair Kennedy asked if he was a safety engineer?

Darren Kaufman stated his title was a District Traffic Engineer and safety was part of his job requirement.

Chair Kennedy asked if there was a separate safety designation?

Darren Kaufman stated there was not.

Chair Kennedy asked in terms of the safety, how does the state measure when a particular location, whether it's on a straight away or a curve, needs to have improvements based on safety?

Darren Kaufman stated there is a state wide program where accident clusters are looked at. They try to determine where the accident clusters are at. They look for a correctable accident trend and concentrate on those area where there are the highest problems.

Chair Kennedy asked if that meant that the state was always reactive? Does the accident have to occur before they make a decision as to whether or not an improvement ought to be made.

Darren Kaufman stated they cannot predict what will happen in all cases.

Commissioner Evans stated they could certainly predict, based on the configuration of a road, whether it is likely to cause accidents.

Darren Kaufman state that was correct and that was taken into consideration. Turn lanes are put in where they can and are justifiable by numbers and funding, as best they can. They cannot solve all problems, it is just a fact of life. There are some occurrences that pop up that are unknown to MDT. In the process of a safety analysis, when an accident cluster is identified, a benefit/cost ratio is done. The benefit is the actual improvement that would correct the accident problem and the cost is the actual cost of the improvement. That is then put on a statewide priority list. Depending on the funding for the year, the highest priority, highest benefit/cost ratio get looked at first.

Chair Kennedy stated that should this plan be approved, there would be traffic that would continue to be generated up to a level. At some level, some analysis would be done to indicate that perhaps some improvement had to constructed, based on warrants. Is that correct?

Darren Kaufman stated a lot of time they were not able to address those problems. The problems develop beyond MDT's capabilities in a timely fashion.

Commissioner Evans asked either Mr. Weaver or Mr. Kaufman to comment on a statement in the staff report. It says: "The Institute of Traffic Engineers Trip Generation Manual (5th Edition) is not specific about the amount of traffic generated by RV parks. OPG Transportation Planners conservatively estimate that each RV space would generate two trips per day, or a total of 24 trips per day for 12 spaces. Up to a total of 5 RV spaces would result in no net increase in traffic, assuming the existing mobile home is removed." Does it follow then that if 6 RV spaces are allowed and the mobile home is removed, it would generate two left turning motions into that road. Is that a correct assumption?

Darren Kaufman stated it depends on which direction they are coming from.

Commissioner Evans said two additional turns into the Sheep Ranch Inn.

Darren Kaufman stated they could be right turns or left turns, depending on their destination.

Commissioner Carey asked Mr. Kaufman if he had information on the volume of traffic currently passing by this location?

Darren Kaufman stated the weighted average annual daily traffic is 7,788.

Commissioner Carey asked how that was tied to peak time?

Darren Kaufman stated typically 10% to 15% of the total would be considered peak. In this area, the volume of traffic is directional, depending on the hour of day.

Commissioner Carey stated that would mean going north in the morning and south in the evening.

Darren Kaufman stated that was correct. The total given is for two way traffic. In the morning there may be a lot of southbound traffic, in the afternoon there may be a higher number going northbound. That also relates to turning movements.

Commissioner Carey stated that someone making a left turn would face a higher volume of traffic coming north at the peak hour.

Darren Kaufman stated that was correct. The peak hour could be anywhere from 5:00 to 6:00 p.m., or perhaps later into the evening. In his discussions with Martin Van Mill, the hours the RV units might be entering and exiting would be late in the evening, during off peak hours. If they are coming from Glacier Park, it may take 3 to 4 hours, depending on what they do in-between. The impact would not be as great.

Commissioner Carey stated in last week's testimony from residents in the area, the basic theme is that people drive like maniacs along there. Did Mr. Kaufman have any data on how fast people are going, especially during peak hours?

Darren Kaufman stated he did not have the information on hand. He suspected people drove above the norm, at least 65 miles per hour, and that may be directional based on traffic. Those in the single northbound lane may be going slower due to slow moving traffic that cannot be passed. Southbound traffic may average a higher speed because of the passing lanes.

Commissioner Carey asked if the traffic was going faster southbound?

Darren Kaufman felt that would be the case.

Commissioner Carey asked if Mr. Kaufman had any projections about the volume of traffic in the next three or four years?

Darren Kaufman stated he did not have that information, but it would be based on past projections.

Jim Weaver stated they have experienced traffic growth in the neighborhood of 4% to 5% per year for the last few years. They felt with growth that trend will continue at the high end but it is impossible to see into the future.

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

Commissioner Evans told Mr. Howes that Mr. Weaver mentioned they would need 40 feet of right of way on the east side of the road. Was he willing to grant that?

Alan Howes stated he was.

Commissioner Evans asked Mr. Howes if he was willing to open the RV park only after the highway is improved, possibly this spring?

Alan Howes stated he could not possible have construction completed before that anyway.

Commissioner Evans asked Mr. Howes if he was willing to have this a no dump facility so that visitors would not in any way be impacting the septic system or the ground water?

Alan Howes stated he was inclined to agree with that.

Commissioner Evans pointed out that the conclusions of the staff are that if the mobile home is removed and there are 5 RV spaces approved, that would result in no net increase in traffic. If 6 RV spaces are approved, that would be an addition of two turning movements. If 12 RV spaces are approved, that would be an addition of 24 turning movements, minus the 10 or 11 that would result from the removal of the mobile home.

Commissioner Evans moved, given the rest of the businesses on that road and the comments of the traffic engineer and district engineer from MDT, that the Board of County Commissioners grant approval of this subdivision contingent upon their granting 40 feet of right of way on the east side of the highway for the improvement of the highway, that they open their RV park only after the highway improvements are in and done, and that they do not have a dump site for the RV's, they have visitors use dump stations elsewhere, along with the other conditions that have been recommended by staff, based on the findings of fact and conclusions of law noted in the staff report.

Chair Kennedy stated he appreciated the offered motion but had a couple of comments. One has to do with the granting of highway easement. He thought highway easement and highway right of way is handled differently than it is in the County.

Commissioner Evans stated they would have to pay for it.

Chair Kennedy stated that solved his question and he did not know if it was appropriate for the Board to require the granting of that easement without compensation. The next item had to do with the analysis the staff did and one of the first issues that came to the staff was whether or not this was in compliance with the Comprehensive Plan. The Comp Plan said a couple of things that indicated it perhaps was not. The staff examined it from the standpoint of it meeting the general feeling of the plan, in other words is there general compliance if not specific compliance. The staff worked hard to attempt to see if it could meet the spirit of the Comprehensive Plan. He thought the difficulty was that for the most part, most of the access points from Evaro to Arlee are private access points with some commercial exceptions. Any time an additional non-residential access point is added, it is attracting non-resident use. Those non-residents create enormous concern, particularly in an area like this, because they are not familiar with the area or road and are generally preoccupied, particularly people driving RV's. This creates an introduction of a driver that isn't a resident driver and doesn't have resident savvy. The volume of those numbers of drivers has been increased substantially. Plus, the additional difficult, if not dangerous, turning movement has been added that creates hazard. That was discussed at length at the last meeting. There was a request, according to the minutes, to mitigate that. Part of the mitigation that was offered last week and was announced again this week was for only northbound traffic. There is no argument about that mitigation, no one is particularly concerned that it won't work and that it doesn't mitigate that problem. However, southbound was the area of concern and remains an area of concern. There hasn't been an additional offering about how that might be mitigated. An existing residence can be compared to an RV, but the problem is they are not the same. The proponent spoke of her travels back and forth to Arlee and having to make that same turning movement. She had difficulty and had to pay special attention sometime to make the left turn across traffic. People pass her on the right and are not attentive when she is attempting to turn into her place of business. She also described that on occasion she has had to pull over to the right hand side to allow traffic to pass to make sure it is safe for her to turn left into her place of business. He appreciates that resident savvy, a lot of people up there have it. That's not the same kind of savvy people have who visit the area for the first time. Many of the people who would be coming to an RV park are tourists, thinking about having fun and not thinking about traffic. They are more concerned with conducting their vacation business. That presents an enormous hazard in his mind. He felt the number of trips

were not equivalent, as if comparing "apple" with "orange." In his mind there is an unmitigated problem here. He was willing to continue to hear how that issue can get mitigated, but he has not heard it yet. He felt strongly that a known safety hazard could not be introduced. He heard Mr. Weaver of MDT say that when there are more movements they are less safe, so it is less safe. It is even more less safe because of the unfamiliarity of the people who are driving that area. He had a hard time with what had been offered to allow a positive vote on his part.

Commissioner Evans stated that MDT is planning to widen that road, so there is also an "apples and oranges" comparison, because there will be a wider road there. Whether it is called a passing lane or a left lane, there will be an additional lane. She believed one of the reasons people really get frustrated with government is the lack of consistency. When Jim & Mary's RV Park and Jellystone Park were approved, she did not remember this being an issue. The situation is exactly the same, if not worse, because of the much larger RV park approved at Jellystone and Jim & Mary's. If the Board considers denying these people the additional revenue they will gain from doing this project for something they have no control over, and it is no less safe than any of the other areas up and down the highway, they feed the perception that government is totally inconsistent. There is a motion on the floor.

Commissioner Carey stated he could not support the motion at this time. Of course he would like business people to make a profit on their business endeavors. To him that was not the issue in this case, because he did not know whether or not they would make any money. It is up to circumstances beyond their control. He is concerned about the public safety. His experience on that particular stretch of road is that it is already dangerous. While lengthening the two lanes will make it less unsafe, it still will present, in his view, a very hazardous situation for anybody trying to make a left turn, especially in the summer and especially with an RV. To him, on balance, it is introducing another element of risk to the public safety which he could not support at this time.

Chair Kennedy stated there was no second to the motion. There needs to be a discussion to allow additional time for potential mitigation.

Colleen Dowdall stated that was done last week, to offer the developer an opportunity to mitigate. What he did instead was attempt to suggest that there wasn't an impact that needed to be mitigated. The Board could ask again, or Mr. Ewart could ask for additional mitigation time. She asked that, if there is a motion to deny, the Board begin preparing some findings about the safety issue. They will have to make findings that it is a dangerous road and that this development will increase danger, within the criteria of the subdivision review, that supports turning this down. The difficulty the Board has with doing that is that the highway experts have told them that it is not dangerous. They will have to recite facts of their own to make those conclusions.

Chair Kennedy stated his interpretation of MDT personnel was that the standards by which highways are designed in this state accept an element of risk. This particular design, even though it isn't specifically addressed in the Access Management Plan that is under development from Polson to Evaro hill, isn't in conflict with it. He also heard them say anytime there is additional traffic movements, it becomes less safe. He did not hear them say this proposal was safe. The question was asked earlier whether anyone was willing to say it was safe. He has not heard that yet. He is willing to say it is not safe. A level of un-safety has been introduced that is problematic, including the testimony of MDT. Mr. Weaver said additional movements do create safety problems. He concludes the kind of safety problems that are going to result from this are not something that they need to approve.

Colleen Dowdall stated Mr. Weaver said each time a left turn is introduced, the level of safety decreases. He also said that this project did not cross the threshold that required mitigation of a left turn lane or anything like that. She wanted the Board to address those issues carefully in their findings.

Chair Kennedy was satisfied that could be addressed.

Commissioner Carey stated he was in agreement with Chair Kennedy's remarks and would therefore make a motion to deny this project.

Chair Kennedy seconded the motion. He stated there are several things about the subdivision that are okay, they are really not at issue. Virtually all of those have been discussed and resolved. The two that are remaining to be resolved have to do with the number of spaces and the traffic. As to the number of spaces, the Planning Board recommended allowing 12, the staff, based on their analysis, recommended a maximum of six. The maximum of six had to do with their attempt to allow this to meet compliance with the spirit of the Comprehensive Plan. Although he did not hear Commissioner Carey say so, all of those conditions, including the staff report, are things they are prepared to accept, except the issue of traffic safety. The traffic safety seems to be the last and remaining issue that is unresolved and unmitigated. Unless a way can be found to mitigate that, then the finding, as far as he is concerned, is that in the Board's judgment, based on the testimony, even from MDT, this is unsafe. This is based on the fact that there is a 4% to 5% increase in traffic per year, very high speed traffic that is induced by the improvements, northbound traffic that can occur at the peak evening time and people who would be accessing this would be unfamiliar with the road.

Colleen Dowdall stated that on Page 5 are the findings that are currently in the staff report. She believed that what Chair Kennedy said was that he could agree with all of the findings the staff has made, except the traffic ones. The roads issue is address on Page 5.

Commissioner Carey stated he still had a problem with the Conclusion of Law on Page 4: "Given the existing uses on the property, an expanded commercial operation does not substantially comply with the 1975 Missoula County Comprehensive Plan. Removal of the existing mobile home (noted in Condition 2), along with other conditions, would mitigate the impacts of a commercial expansion smaller than that proposed." He still had concerns and questions about that.

Chair Kennedy stated they could draw findings on that as well. The Board is mid-motion, but he would like to hear what Mr. Ewart had to say.

Ron Ewart stated he was trying to think of ways to mitigate that left turn. Three things came to mind, he is not an engineer but there were a lot of people who have good ideas. First would be a left turn lane; second, it might be possible to construct a turnout along the right hand side of the road. Those would take some money and fill. Another solution might be a "No Left Turn" state highway sign. People could go to Joe's Smoke Ring, a couple miles down the highway, and turn around. Turn lanes and widening will be taking place there. If more time is needed to think of ways to mitigate, he would like to do that. He would hate for this to go away just because of that one issue. There are other issues which have been covered as best they can. The southbound issue has not been addressed except to say that there will be two lanes, which could be interpreted different ways. He wanted to throw out those three additional ways that might mitigate the situation. The only economically feasible one might be the "No Left Turn" provision.

Chair Kennedy wanted to talk about what the effect of a denial would mean today and perhaps a course of action could be formulated. If this is denied today, it means that the project is rejected and it cannot be re-proposed for a year.

Colleen Dowdall stated that was not the case. That was only with rezoning. If the Board denies, they would have to reapply, go back to Planning Board and risk having the same action.

Chair Kennedy stated another option is to withdraw the application and hold it for hearing at some later time. Perhaps those mitigation efforts could be honed and may become acceptable.

Commissioner Evans stated another option would be for the Board to take no action today and give Mr. Ewart time for further attempts at mitigation, which she felt he was asking for.

Commissioner Carey was willing to withdraw his motion to deny.

Commissioner Evans moved that the Board of County Commissioners postpone action until they hear back from Mr. Ewart asking for further consideration.

Chair Kennedy stated he felt there was a problem with time limits. He thought the request really has to come from the developer. He felt they needed more than a week, they need to go back and think long and hard about this before it is re-noticed for consideration. It is up to the developer.

Ron Ewart stated they would be willing to grant an extension as long as necessary. They would like to consult with MDT about the options.

Chair Kennedy stated they were requesting an indefinite extension. They will come back to staff and set a hearing for some later time that is now unknown.

Ron Ewart stated they could do that or decide on a time, not next week, but another date. Would two weeks be reasonable.

Chair Kennedy stated the Board will not meet on February 24, 1999. They would be back after the first of March.

Commissioner Evans suggested they come back when they are ready.

Ron Ewart stated he would submit a letter to Brian Maiorano, but it would be good to have some kind of deadline.

Chair Kennedy suggested March 10, 1999. He stated the developer was requesting the Board postpone any decision on this until March 10, 1999.

Ron Ewart stated that was correct.

Chair Kennedy stated at that time the Board will reconvene the hearing as well. A letter from Mr. Ewart would be needed to confirm this action. All three Commissioners felt the subdivision has merit, that is not at issue, but safety is. They are concerned not only about this proposal but everyone else who it might affect. That has not been mitigated so far.

Chair Kennedy stated there were other people in the audience but there was no other business to come before the Board. He asked if there was any other public comment.

Angelica Thornton, KECI, asked if the Commissioners would be speaking about Schramm Bridge?

Chair Kennedy stated they could make a comment. The hearing that was scheduled in District Court for today had been postponed. The situation is still being worked on and it was felt it would be resolved.

An unidentified audience member asked if there was a hearing on the bonds for the Mental Health Center.

Chair Kennedy stated that hearing was next week.

There being no further business to come before the Board, the Commissioners were in recess at 2:25 p.m.

THURSDAY, FEBRUARY 11, 1999

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

In the afternoon, the Commissioners, Chief Financial Officer Jane Ellis, and members of the Budget Team met with Paul Sepp and representatives of Elmore and Associates for the annual Audit Exit Interview.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Missoula City Parks and Recreation Department to increase public awareness of Alliance activities in Missoula, funded with a Juvenile Justice Grant. Value of the Agreement is \$5,000.00. Term of the Agreement is October 1, 1998 through September 30, 1999.

Bargain and Sale Deed – The Commissioners signed a Bargain and Sale Deed with the Montana Department of Transportation for sale of Lot 15, Block 56, WJ McCormick Addition, City of Missoula, for right-of-way for the Orange Street Bridge project. Total compensation is \$36,750.00.

Resolution – The Commissioners signed Resolution No. 99-007, a resolution relating to Missoula County Airport Tax Increment Industrial Infrastructure District; authorizing the expenditure of the unexpended proceeds of the Series 1997 bonds for Development Park infrastructure improvements project.

Agreement – The Commissioners signed an Agreement with the Montana Department of Transportation for 1998 Air Quality Equipment (2 sweepers and a flush truck). Missoula County's match will be \$40,978.51. The Agreement was returned to Horace Brown, County Surveyor, for further handling.

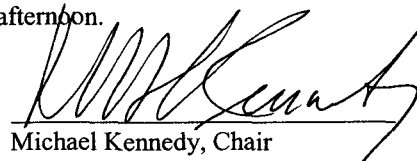
Amendment to Loan Agreement – The Commissioners signed an Amendment to Loan Agreement with Nutritional Laboratories to change the loan repayment schedule so that the first payment is due March 1, 1999. Amount of the Loan is \$260,000, term is 5 years, and the interest rate is 6%. The Amendment was returned to Cindy Wulfekuhle in OPG for further handling.

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

FRIDAY, FEBRUARY 12, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, FEBRUARY 15, 1999

The Courthouse was closed for the Presidents' Day holiday.

TUESDAY, FEBRUARY 16, 1999

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

Plat – The Commissioners signed the Amended Plat of The Fly Inn, for the purpose of voiding the common area and private access easement, located in the NW1/4 of Section 1, T16N R15W, PMM, Missoula County, a total net and gross area of 7.0 acres, with the owners of record being The Fly Inn, LLC - Robert H. and Allison M. Thorne.

Plat – The Commissioners signed the plat for The Fly Inn, Lot 2, a subdivision located in the NW1/4 of Section 1, T16N R15W, PMM, Missoula County, a total gross and net area of 3.4 acres, with the owners of record being The Fly Inn, LLC.

ADMINISTRATIVE MEETING

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

County Identification/Action Forms and Letter – The Commissioners signed County Identification/Action Forms and a letter to the Addictive and Mental Health Disorders Division for the County's Alcohol and Other Drug Treatment and Prevention Services Plan for the next four years. The documents were returned to Peggy Seel in OPG for further handling.

Contract Amendment – Chair Kennedy signed Amendment Number Three to a Contract with the Montana Department of Public Health and Human Services for a statewide tobacco use prevention and control program. Performance of the Contract will begin December 1, 1997. Services required by Section 4A1 must be completed by November 30, 1998, and services required by Section 4A2 must be completed by May 31, 1999. Total reimbursement may not exceed \$24,400.00. The Amendment was forwarded to Montana Department of Public Health and Human Services in Helena.

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

WEDNESDAY, FEBRUARY 17, 1999

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

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated February 17, 1999, pages 3-41, with a grand total of \$1,659,480.20. The Audit List was returned to the Accounting Department.

PUBLIC MEETING -- February 17, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, County Clerk and Recorder/Treasurer Vickie Zeier, County Surveyor Horace Brown, Deputy County Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall.

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 list in the amount of \$1,659,480.20. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Schulz Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a request to create a family transfer parcel by dividing Tract 2, COS 3548, into two single family residential tracts.

Gary G. and Lindsay Schulz 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 11.32 acres in size located near the Sheep Ranch Inn off Highway 93. The Schulz's propose to create two parcels; one 6.32 acres in size and one 5 acres in size. One of these parcels will be transferred to their son, Obadiah Schulz.

The applicants purchased the property in 1980. In 1988, the original parcel was divided and this 11 acre parcel was created by the use of the Occasional Sale exemption to the Subdivision and Platting Act. Originally a parcel of almost 18 acres, Tract 2 was the Remainder of that Certificate of Survey. Tract 1 was transferred to a subsequent purchaser.

The Schulz's have 5 other children but do not intend to transfer any other property to them at this time.

According to the records kept by the Missoula County Surveyor, the applicant has used the following exemptions to the Subdivision and Platting Act: Occasional Sale Exemption - 1980 (parcel located elsewhere in the county); Occasional Sale Exemption - 1988; and Boundary Relocation Exemption - 1988.

The property is located on the Flathead Reservation. The Confederated Salish and Kootenai Tribe was contacted but no comment was received.

Gary Schulz was present and came forward to answer questions.

Chair Kennedy stated that under this exemption, the Board was allowed to ask questions to determine if the subdivision regulations are being evaded. Sometimes those questions can be personal. The Board is acquainted with this property as the Schulzs recently appeared before the Board on another matter. There were no questions from any of the Commissioners.

Gary Schulz stated he was giving this property to his son.

Commissioner Evans moved that the Board of County Commissioners approve the request of Gary G. and Lindsay Schulz to create a family transfer parcel by dividing Tract 2, COS 3548, into two single family residential tracts, for transfer to their son Obadiah Schulz, in that it does not appear to be an attempt to evade the Subdivision Act. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Kennedy stated this was a public hearing and apologized for overlooking this step in the process. He opened the public hearing. There being no comments, the public hearing was closed.

The Board of County Commissioners ratified the vote on the Schulz Family Transfer on a vote of 3-0.

Hearing: Proposed Issuance of Economic Development Revenue Bonds for the Western Montana Mental Health Center Project (Office and Service Facility Building) - 1300 Block of Wyoming Street

Michael Sehestedt, Deputy County Attorney, presented the report.

This is a hearing on whether or not to issue Industrial Development Revenue (IDR) Bonds for the Western Montana Mental Health Center. The Mental Health Center has requested issuance of IDR Bonds to fund construction of a consolidated office building and other improvements.

The Board of County Commissioners, by Resolution No. 99-004, duly adopted on January 21, 1999, called a public hearing on a proposed project and the issuance of revenue bonds therefor under Title 90, Chapter 5, Part 1, Montana Code Annotated, to finance all or a portion of the costs of acquiring land for and designing, constructing, furnishing and equipping thereon, an office and service facility containing up to 31,000 square feet in as many as three separate buildings for the Western Montana Mental Health Center, which will be owned by Western Montana Mental Health Center, a private non-profit Montana Corporation. The project will be located at the 1300 block of Wyoming,

Missoula, Montana. The revenue bonds shall be issued in the maximum aggregate face amount of \$2,500,000, as authorized by the Act to defray the costs of the Project and to pay for the costs and expenses incident to the issuance, sale and security of the Bonds.

There is an application before the Board for the issuance of Industrial Development Revenue (IDR) Bonds. These are a form of pass through financing, under which the party for whom the bonds are issued obtains the benefit of a tax exempt financing rate. As a matter of law, however, Missoula County is not, and cannot be, obligated to pay the bonds should the party for whom they are issued default. The people who lend the money to the project, as a matter of law, look solely to the project for repayment. The purpose of this hearing is for the Board of County Commissioners to determine whether or not it is in the public interest to finance this project using this pass through method of financing.

Paul Meyer stated he was Executive Director of Western Montana Mental Health Center, a not-for-profit corporation that services 13 counties in Western Montana, headquartered in Missoula at Building T-9 at Fort Missoula. This proposal is the culmination of a six year process to consolidate office space in the community. They have looked at sites including the Fox Theater site, the Warehouse Mall, Fort Missoula, the Staninger property and the Economy One Motel site. The property chosen was the Staninger property which is located behind Plum Creek, bordered by Idaho and Wyoming Streets, in the 1300 block. It is a reasonable parcel of land to work with. The programs that will be located at this site include the SHARE House, Turning Point, Stepping Stones, Riverhouse and the Children's Network. They intend to have the SHARE House replacement facility constructed by the fall of 1999. These programs are currently housed in rental space throughout the city. The existing services that will remain at their current locations include Regional Administration, Stephen's House multiple school sites and Residential Housing Projects. There are a wide range of services provided to clients through different programs. Based on the first six month expenditure pattern, the expenses for WMMHC total \$5,443,002 in Missoula County. Eighty percent of those expenses are in salaries and benefits. Having a consolidated facility would make it convenient for clients and economize their operations. The bonds would cover acquiring the land, architectural costs in planning the new facility and actual construction costs. When all the mental health programs are relocated, the Riverhouse facility will be sold and proceeds would help buy down the total mortgage costs.

Chair Kennedy stated the value of the grant for the SHARE House would be in addition to the \$2.5 million, so the overall project cost is approximately \$3 million over a three year period. Was that correct?

Paul Meyer stated that was correct.

Chair Kennedy stated that WMMHC expected to have the SHARE House operating on this site by the end of the year.

Commissioner Evans asked when they expected to break ground.

Patty Kent stated that they have just met with the architects. Construction documents should be finalized in the next 30 days. They hope to break ground by July 1 at the latest.

Commissioner Carey asked Ms. Kent how the neighborhood has reacted to this proposal?

Patty Kent stated the neighborhood has not yet heard about the proposal. She is working to coordinate a meeting with any neighborhood councils affected. A meeting regarding the bike path is also being discussed.

Chair Kennedy opened the public hearing.

Peg Shea, Program Director, Turning Point, stated there is a time constraint for the establishment of a new SHARE House. It makes sense for the SHARE House to be a separate building but located relatively close to the other facilities on the site. In the three years at the present location, SHARE House has only had two instances requiring police intervention. This indicates the facility should not cause a major difficulty in the new neighborhood. The system works well as all patients are medically stable when in the home. It is a home-like atmosphere and the patients treat it as their home. The disruption to the neighborhood is minimal. The child care facility located across the street from the current location would write a letter of support for the new location. Turning Point currently has approximately 4,500 square feet in their current location and are at maximum capacity for services. The plan is to increase services based on demand for services by 30% to 40% in the next three years. Turing Point is currently open from 8:30 a.m. to 10:00 p.m. and a 7-day clinic is anticipated. The same is true at the Stepping Stones facility and to an extent, Riverhouse as well. This project allows WMMHC to think about the future and what kind of environment they want for their clients. They want to fit in with the neighborhood and avoid having a big, ugly, boxy office building. They anticipate separate entrances and waiting spaces, a pleasant appearance and contained parking that is not visible. They have been pleased with architect Jamie Hoffman regarding site planning. The plans are sensitive to people who would use the facility, work at the facility and live in the neighborhood.

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

Commissioner Evans stated she was pleased to support this. She felt facilities such as this are critical to any community and the number of people helped by WMMHC clearly illustrate how important they are to the community.

Commissioner Carey stated he was pleased as well to support the project. He was glad to hear they were thinking along the lines of integrating the buildings in the neighborhood and involving the neighbors. He wished WMMHC well in this effort.

Chair Kennedy stated he was pleased as well. It had taken a long time to get to this point. He is grateful to the Legislature that they decided to make this mechanism available. Although there is no obligation on the part of the County, there is a determination to assist WMMHC. That is a compliment and acknowledgment of the fine work they do.

Commissioner Evans moved that the Board of County Commissioners approve the project and authorize the issuance of IDR Bonds in the amount of \$2.5 million, as they are in the best interest of the community, and that the Chair be authorized to sign whatever documents are necessary to complete the transaction. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Michael Sehestedt added for the record that the notice published indicated the address of the project as the 1300 block of Wyoming Street. The fact that there has been no neighborhood reaction might be taken as an indication that the neighborhood is not alarmed or upset by this project.

Consideration of: Mari-Lynn Subdivision (2 lot Split on El Toro Lane) - 1 Mile North of the Wye

Nancy Heil, Office of Planning and Grants, presented the staff report.

The applicant, Lynn Davis, is requesting approval to divide a 4.04 acre parcel into 2 lots, each 2.02 acres in size. The property is legally described as Tract 3-B, COS 4057, NE 1/4 Section 16, T14N, R20W. The property is located on Highway 93 at El Toro Lane, approximately one mile north of the Wye. It is unzoned. The 1979 Wye/O'Keefe Creek Area Comprehensive Plan Amendment designates Rural Transition Residential land use with a density of one dwelling unit per 5 acres.

Tract 3 was created in 1978 through COS 1677, known as the Meadows Properties, and is subject to the Meadows covenants. Tract 3B, a 4.06 acre parcel, was created in 1979 through COS 1846. COS 4057, filed in 1992, depicts a retracement survey reflecting adjustments to the Highway 93 right-of-way and shows Tract 3B as a 4.04 acre parcel.

Access is provided via Highway 93 and El Toro Lane. There are no existing structures on the property. The surrounding land uses are primarily single family residential. Individual wells and septic systems will serve the lots.

The Comprehensive Plan also states that "limited development may be possible at a density of one dwelling unit per acre if the basis of need, environmental quality, impact on public services and facilities and impact on the designated districts and neighborhood units are favorably addressed." Staff has concluded that the proposal substantially complies with the goals of the Comprehensive Plan if the conditions are imposed and the recommendations are followed.

Proposed Lot 3B-2 would access from El Toro Lane, a privately maintained road within a 60 foot public right-of-way. The road is graveled to a 26 foot width. Proposed Lot 3B-1 could use an existing approved access from Highway 93, a shared access with Lot 3C to the south. There is also a 20 foot wide private access easement running along the eastern boundary of Lot 3B-1 which benefits Lot 3A to the north. This access has been granted and recorded and there was an additional access granted between Lots 3D and 3E to the south of the property.

Staff has recommended that a driveway easement 27 feet wide be included on the southern boundary of Lot 3B-2 to provide the owner of Lot 3B-1 the option of accessing from El Toro Lane, as noted in Condition 3 in the staff report.

Highway 93 is a Primary Travel Corridor as defined by the Subdivision Regulations. The proposed plat shows a 50 foot setback from the property frontage along the highway. The applicant stated the right of way will be kept weed free and trees and shrubs will be planted at 30 foot intervals along the setback line. Condition 6 requires the applicant to file a development agreement stating the lot owner will comply with the Primary Travel Corridor standards.

Condition 5 requires a development agreement that if any of the driveways exceed 150 feet in length that they meet certain standards. Condition 4 requires the County Surveyor to review and approve site drainage plans prior to plat filing.

There are no pedestrian access facilities in the area near the proposed subdivision. The proposed plat includes the waiver of the right to protest an RSID/SID for improvements to El Toro Lane, including pedestrian walkways or bikeways, as noted in Condition 1.

There is a school bus stop located at the corner of El Toro Lane and Highway 93. Staff recommended that a pedestrian access easement also be included along the southern boundary of Lot 3B-2 to allow pedestrians from Lot 3B-1 access to El Toro Lane.

The subdivision is served by the Frenchtown Rural Fire District. There is a station located about 1 mile away. Scott Waldron, Fire Chief, has stated that the impact fee of \$100 per new lot to enhance the water supply to serve the area would be required.

The property generally slopes to the west at grades ranging from 6% to 10%. The property currently has grasses and knapweed on it, however, William Otten at the Weed District stated the subdivision would cause no significant new ground disturbance and did not recommend a revegetation plan at this time. He did recommend that the developer/owner continue to mow the knapweed until the lots are sold.

A call has been received from an adjacent property owner who had some concerns about what type of housing would be on the property and whether the new property owners would be required to follow the existing covenants, which are the Meadows Covenants. The caller also had some concerns about the siting of any new septic systems with respect to existing wells. The Health Department will be reviewing the site design and placement of any new wells and septic systems and there are separation requirements for that. The existing Meadows Covenants would follow with the land, and except for the covenants there are not any restrictions on the type of housing that would be on the property.

Staff is recommending approval of the subdivision, based on the findings of facts in the staff report and subject to the eight recommended conditions in the staff report.

Lynn Davis, the applicant, was expected to be present today, but has failed to appear. Mr. Davis is not using a developer's representative for this project.

Chair Kennedy asked for public comments.

Bob Ayre, 10865 El Toro Lane, stated he has been a homeowner/resident for approximately 5 years in the area. One of his concerns was regarding the easements and the creation of any kind of a loop road that would run into El Toro Lane, because it is a dead-end lane. His other concern was the type of housing that would be allowed. There is a challenge in court, through the Homeowners Association, on a modular home that was put in the area. The modular is not on El Toro Lane but is visible from his place. It was placed basically as a challenge to the covenants. The house is still there although it appears to be vacant and the matter has not been resolved in the courts to date. He did not want a loop road so young kids could drive through. A contractor lives at the end of the road who keeps the road in excellent condition. The residents of the area all contribute to the cost of maintenance.

Commissioner Evans stated a loop road was not indicated on the plat.

Nancy Heil stated the concern might be the requirement for the easement to go from El Toro Lane to benefit Lot 3B-1 along the edge of the property. That could be of concern if it were ever connected all the way through to the highway, but it was unlikely.

Commissioner Evans stated it was also unlikely the Highway Department would give any more access to Highway 93.

Bob Ayre stated he was looking for some assurance that his investment would not be degraded by this situation. His other principal concern was the type of housing that will be allowed. There has already been a challenge to the covenants. He could live with the modular home, but it was placed against one of the more major points in the covenants. The difference between a stick house and a modular home, no matter how nice it may be, is significant. Modular homes are taxed differently. He did not want his or his neighbors property to be degraded by this type of situation.

Chair Kennedy asked Colleen Dowdall to explain the authority, or lack thereof, of enforcing covenants.

Colleen Dowdall stated covenants are essentially a contract between property owners and the County does not have the ability to ensure that new owners will comply with those covenants. Landowners, who are also subject to those covenants, are under the obligation to do their own enforcement. The County would not be imposing any additional requirements or enforcing that part of the existing covenants.

Chair Kennedy stated the only the authority the County would have is authority that would flow within zoning, if it existed, and the regulatory process. The covenants are not something the County gets involved with, that is strictly between the residents.

Bob Ayre stated the only problem he saw is that it puts the County in the position of unleashing a possible monster and not being able to control it. He was not a regular attendee at Commissioner meetings and judged the Commissioners were professionals, voted in by the public, and knew what they were doing. The only way they can operate is by public input and this was his small piece of that process.

Nancy Heil stated that the subdivision looks primarily at the division of land rather than what would actually go on the land. This is in an unzoned area of the County. There is nothing in the Subdivision Regulations which would allow the governing body to place restrictions on the type of housing that would go on a piece of land once it was subdivided. Mr. Ayre's recourse was among the other parties to the covenants.

Bob Ayre stated his recourse would be to follow their covenants and take legal action if they did not like what was happening. There is no way to delay action on this subdivision through the Association.

Chair Kennedy stated again that the County did not enforce covenants, that is strictly a separate contract. The County is bound only by the rules of subdivision, which is a division of land and has nothing to do with the construction upon the land, except for the conditions imposed for the subdivision itself.

Commissioner Evans suggested Mr. Ayre contact Mr. Davis and ask what he intended to do there. That could ease his concerns.

Nancy Heil stated Mr. Davis was at the administrative meeting yesterday and was planning to be here today. She had not heard from him today regarding his absence. She has also not spoken directly with him about what kind of housing he is planning.

Commissioner Evans moved that the Board of County Commissioners approve the Mari-Lynn 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.

Chair Kennedy stated there was a comment from Bill Otten in the staff report that there was no need to address revegetation for now. He was wondering, in light of the recent discussions about a weed free future, if a condition requiring revegetation should be added.

Commissioner Carey stated that would interest him. Would that be in addition to the staff's recommendation about the roadways?

Chair Kennedy stated that was correct. During yesterday's discussion any disturbance was mentioned. He informed Colleen Dowdall about the new group that has been formed, "Citizens for a Weed Free Future," headed by Dusty Deschamps. The group challenged the County to do what they say they would like to do in their overall vegetative

management plan. One of the things the group suggested they do is to make sure any new subdivision has a revegetation condition. Part of the discussion involved whether this would cause any legal problems.

Colleen Dowdall stated she would not like to have a blanket statement that would go in every subdivision, because there will be occasions where it isn't identified as a problem. This subdivision has been identified as a place that has weeds but Bill Otten wasn't concerned about the disturbance enough to require revegetation. A condition can be formulated to be used when appropriate. On larger subdivision where the Weed District has identified a problem, a revegetation plan had to be submitted and approved by the Weed District. She was not sure how to address it on this subdivision, or if they even wanted to.

Commissioner Evans asked Nancy Heil what the existing residents have done in the area, have grass been planted or has the area been left in its natural state?

Nancy Heil stated from her field observations and what Mr. Davis has told her, it seems there is a pattern on the larger lot were about half the lot was mowed and under control. The back half of the property would be less weed managed. Mr. Davis mows regularly on his property. There is a significant knapweed problem on this property and staff relied on Mr. Otten's recommendation to not require a revegetation condition. On other subdivisions, a noxious weed management plan has been required, to be approved by the Weed District prior to plat filing.

Commissioner Evans stated she would like to have everyone take care of their weeds, but when the County's weed manager says nothing needs to be done here and then the Board says something does need to be done, would Mr. Otten enforce the condition. She did not like to require a condition with no means of enforcement. She would be happy to include a statement on the approval paperwork that it is the law that people take care of their weeds.

Chair Kennedy stated the question was whether or not to impose a condition on this particular lot and he understood from the other Commissioners that would not be something they would want to do.

Commissioner Carey stated Commissioner Evans' suggestion was a good idea, to at least make some reference to it. The Board will have to start raising awareness of the problem, as well as doing something on their part, but it was inappropriate to do on this particular proposal. He would, however, like to see it referenced somehow for this proposal.

Commissioner Evans suggested that in the letter of approval a paragraph be added. It could be worded to say: "While we are not requiring any weed management plan, we would like to bring to your attention that noxious weeds do need to be managed by state law." That is still embarrassing as the County does not manage their own problem. The statement in the approval letter would at least mention the problem.

Colleen Dowdall stated she did not have any problem with added such a statement to the approval letter.

Chair Kennedy called the question. The motion carried on a vote of 3-0.

Mari-Lynn Summary Subdivision Conditions of Approval

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to El Toro Lane, including installation of pedestrian walkways, sidewalks, 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 staff recommendation.*

2. The plat shall show El Toro Lane as a public right-of-way per Resolution 90-027. *Subdivision Regulations Articles 5-2(3), 3-2 and County Surveyor recommendation.*
3. The plat shall include a 27 foot wide private access and pedestrian easement to benefit Lot 3B-1 along the southern boundary of Lot 3B-2. *Subdivision Regulations Article 3-2(1)(E), 3-2(5) and staff recommendation.*
4. Grading and drainage plans for the site shall be reviewed and approved by the County Surveyor prior to plat filing. *Subdivision Regulations Article 3-4(2) and County Surveyor recommendation.*
5. The applicant shall file a development agreement, subject to County Attorney approval, that states that driveways in excess of 150 feet in length shall have approved turnaround for fire apparatus, a minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches. *Subdivision Regulations Article 3-2(6) and staff recommendation.*
6. The applicant shall file a development agreement, subject to County Attorney approval, stating that Lot 3B-1 shall comply with the Primary Travel Corridor Standards. The agreement shall be filed prior to final plat filing. The overall landscaping design concept shall be approved by OPG prior to plat filing. *Subdivision Regulations Article 3-14 and staff recommendation.*

7. 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 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 Article 3-7(2) and staff recommendation.*

8. The developer shall contribute \$100.00 per new lot to the Frenchtown Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District Recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:15 p.m.

Following the public meeting, Chair Kennedy signed Resolution No. 99-008, a resolution relating to a project on behalf of the Western Montana Mental Health Center and the issuance of Economic Development Revenue Bonds to finance the costs thereof.

THURSDAY, FEBRUARY 18, 1999

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:

Submittal Letters – The Commissioners signed Continuation Proposal Submittal Letters and Signature Pages for the County's three victim assistance programs; VOCA, STOP VAWA, and the County Attorney Pilot Project Crime Victims' Advocate. All documents were returned to Leslie McClintock in OPG for further handling.

Extension – The Commissioners approved a 60-day extension for Platinum Court Summary Subdivision, making the new filing deadline April 23, 1999, with a letter to Ron Ewart of Eli and Associates.

Shoreline Construction Permit – The Commissioners approved and Chair Kennedy signed a permit for Jon and Anne Bertsche to replace an existing dock on Big Sky Lake. The permit was returned to Brian Maiorano in OPG for further handling.

Resolution – The Commissioners signed Resolution No. 99-009, a Budget Amendment for District Court in the amount of \$8,129.00 for FY99.

Inspection Addendum – Chair Kennedy signed an Inspection Addendum for John C. Schulte for the property at 315 and 315 ½ West Pine Street, agreeing to repair the brick chimney and investigate/remove possible underground storage tank and trees around foundation.

Letter of Intent – The Commissioners accepted a letter of intent (subject to changes) from Woodmont Corporation to purchase 3085/3095 Stockyard Road. The letter detailing changes in terms and conditions was returned to John Coffee at Lambros Real Estate for further signatures and handling.

Other items included:

- 1) The Commissioners granted permission for the Gallery Association for Greater Art to reproduce a Paxson painting in the Courthouse depicting Lewis and Clark.

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

FRIDAY, FEBRUARY 19, 1999

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

Extension to Option Agreement – The Commissioners signed an Extension to Option Agreement with Wesmont Builders for a 16 day extension for contingencies 3(b), 3(c) and 3(d), which expires at midnight on March 15, 1999. The Extension was returned to Paul Webber, CAO, for further handling.

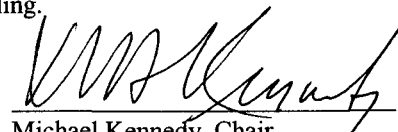
Releases of Easement – The Commissioners signed two Releases of Easement:

1. releasing to the Missoula County Airport Industrial District all interest, right and title to the easement granted by Sunlight Development Company and recorded at Book 323 of Micro Records, Page 129.
2. Releasing an easement recorded at Book 161 of Micro Records, Page 1070.

Both documents were returned to Michael Sehestedt, Deputy County Attorney, for further handling.

Task Order – Chair Kennedy signed a Task Order to the Missoula County Master Contract with Montana Department of Public Health and Human Services for Fetal, Infant, Child Mortality Review coordination services. Term of the Task Order is October 1, 1998 through September 30, 2000. Maximum amount payable is \$59,000.00. The Task Order was returned to the Health Department for further handling.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, FEBRUARY 22, 1999

The Commissioners did not meet in regular session. Commissioners Carey and Kennedy were in Helena attending the MACo Midwinter Meetings and the Governor's DES Conference February 22-25. Commissioner Evans was out of the office all day February 22 and until noon on February 25.

TUESDAY, FEBRUARY 23, 1999

The Board of County Commissioners did not meet in regular session.

WEDNESDAY, FEBRUARY 24, 1999

The Board of County Commissioners did not meet in regular session. The Weekly Public Meeting scheduled for February 24 was canceled, as two of the Commissioners were out of town.

THURSDAY, FEBRUARY 25, 1999

The Board of County Commissioners did not meet in regular session.

FRIDAY, FEBRUARY 26, 1999

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

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated February 23, 1999, pages 2-?, with a grand total of \$249,651.12. The Audit List was returned to the Accounting Department.

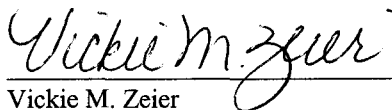
Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Brenda Ashmore as principal for Warrant #1060 issued 2/12/99 on the Missoula County General Fund in the amount of \$70.49 now unable to be found.

Plat -- The Commissioners signed the plat for Big Waters Ranch, a three-lot subdivision located in Sections 8 and 17, T15N R14W, PMM, Missoula County, with the owner of record being Wildlands, LLC.

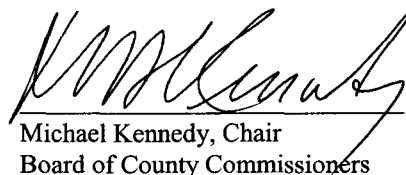
Task Order -- Chair Kennedy signed a Task Order to the Missoula County Master Contract with Montana Department of Public Health and Human Services for Health Department Coordination with FAIM Coordinators. Performance schedule is July 1, 1998 through June 30, 1999. Maximum compensation is \$40,000.00. One original and one copy were forwarded to Montana Department of Public Health and Human Services in Helena.

Amendment to Services Agreement -- Chair Kennedy signed an Amendment to Services Agreement with MSE-HKM, Inc. extending the performance period to June 30, 1999 to cover additional services relative to the Sunset West Water System Improvement Project, Missoula County RSID No. 8458. The Amendment was returned to Cindy Wulfekuhle in OPG for further handling.

Subordination of Mortgage -- Acting Chairman Barbara Evans signed a Subordination of Mortgage with John M. and Lisa Brown for Lot 7, Block 14, West View, in Missoula County, Montana. The document was returned to Cindy Wulfekuhle in OPG for further handling.



Vickie M. Zeier
Clerk & Recorder



Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MARCH 1, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending February 28, 1999.

Resolution – The Commissioners signed Resolution No. 99-010, a resolution to rezone 6080 Lower Miller Creek Road from C-RR1 (residential) to C-RR2 (residential), subject to conditions.

TUESDAY, MARCH 2, 1999

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:

Memorandums of Agreement – The Commissioners signed two Memorandums of Agreement:

1. with the Montana Natural History Center, to obtain information for the City-County Floodplain program and increase public understanding of wetlands and floodplain regulations. Value of the Agreement is \$23,515.00. Duration of the Agreement is 24 months, commencing on March 2, 1999.
2. with the Watershed Education Network, to obtain information for the City-County Floodplain program and increase public understanding of wetlands and floodplain regulations. Value of the Agreement is \$16,735.00. Duration of the Agreement is 24 months, commencing on March 2, 1999.

Both Agreements were returned to Brian Maiorano in OPG for further signatures and handling.

Professional Services Contract – The Commissioners signed an Amended Professional Services Contract with James Ouellette, DDS, to increase the number of treatment hours covered in this contract with Partnership Health Center. Performance schedule is July 1, 1998 through June 30, 1999, for up to 100 hours. Compensation shall be a maximum of \$10,000.00.

Agreement – Chair Kennedy signed a Standard Form of Agreement Between Owner and Architect with Architects Design Group for remodeling at 301 West Alder – the City-County Health Department. Compensation shall be \$20,030.00. One original was returned to ADG, and one to the Health Department for copies and recording.

Resolution – The Commissioners signed Resolution No. 99-011, a resolution to adopt the Missoula County Personnel Policies and Addenda, superseding all other Personnel Policies and Amendments.

Professional Services Contracts – The Commissioners signed four Professional Services Contracts for HIV prevention work with the Missoula City-County Health Department, each with a performance schedule of March 1, 1999 through December 31, 1999:

1. with Outspoken – compensation shall be up to \$1,500.00.
2. with the HIV/AIDS Education and Prevention Council of Ravalli County – compensation shall be up to \$4,000.00.
3. with the Blue Mountain Clinic – compensation shall be up to \$1,070.00.
4. with The Jeannette Rankin Peace Center – compensation shall be up to \$2,000.00.

All Contracts were returned to the Health Department for further signatures and handling.

Other items included:

- 1) The Commissioners approved a Counter Offer to Michael Marbut for Lots 1, 2, 3, 4, 9, and 10 of Block 13, Missoula Development Park. Marbut selected Alternative 2, with a price of \$955,869.00.
- 2) The Commissioners reviewed and approved Auditor Susan Reed's review of the Jail Pharmacy costs. It was forwarded to the Clerk and Recorder for filing.
- 3) The Commissioners approved a 310 Application by Mountain Water Company for repair of a water main in the vicinity of 521 Hartman Street, Missoula, MT, with a letter to Arvid Hiller, Vice President of Mountain Water Company.

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

WEDNESDAY, MARCH 3, 1999

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

Audit List -- Commissioners Kennedy and Carey signed the Audit List, dated March 2, 1999, pages 2-44, with a grand total of \$297,884.57. The Audit List was returned to the Accounting Department.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Boise Cascade as principal for Warrant #339608, issued 12/2/98 on the Missoula County 2220 Fund in the amount of \$274.50, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Maureen Trevathan as principal for Warrant #20994, issued 1/19/98 on the Missoula County General Fund in the amount of \$50.00, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Linda Anderson as principal for Warrant #21374, issued 3/19/98 on the Missoula County General Fund in the amount of \$300.00, not received in the mail.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of February, 1999.

PUBLIC MEETING -- March 3, 1999

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

Public Comment

Bob Snodgrass stated he was a representative of the Neighborhood Councils. At a recent meeting of the Neighborhood Councils, the issue of school closure and the effects it would have on all the neighborhoods in Missoula was on everyone's mind. It has also been on the agenda of many neighborhood council meetings and in general with the citizens of Missoula. He was here to ask the Commissioners to form a Blue Ribbon Commission. The "Missoula Schools Future" Commission feels that the City of Missoula is in a serious situation that threatens the very livability and future livelihood of the city. School closures will affect every neighborhood and the community. The School Board is grappling with an issue that may be bigger than they can handle; it is a very difficult decision. The proposal he is presenting is to form a commission to study all the things that are going to affect this city in years to come. The School Board is proposing not one school closure, but three schools. These three schools are all in the central core of the city. There are so many variables and things that will impact the community if these schools are closed. It may also affect the long range planning for the future of Missoula. The Neighborhood Councils are asking the Commissioners and City Council to take action to form this Schools Future Commission.

The "Missoula Schools Future" Commission proposal by the Community Forum of the Neighborhood Councils of Missoula states:

Purpose: Create a joint school/citizen/government commission to study the financial and structural challenges facing the Missoula County Public Schools Elementary District and propose budgetary and program measures to respond to those challenges. The Commission charge is to evaluate the role of elementary schools in the life of the community in the areas of: 1) long-range planning for public education, 2) community vitality and affordability, 3) safety and security for everyone in the neighborhood, and 4) financial impacts to city, county and taxpayers. The charge would also include addressing the range of alternatives, including the current proposal to close three schools, other proposals from School Board members, the alternatives proposed by the School Closure Alternatives Committee, and other long-term, restructuring approaches, e.g., K-6, K-8, and magnet schools.

Overriding Principles: 1) Commitment to offer the best possible education for all Missoula children -- including small classes, small schools and parental involvement as integral to delivering programs. 2) Neighborhood vitality is dependent on the continued existence of neighborhood elementary schools. 3) The health of the community as a whole depends on the integrity of its neighborhoods (Growth Management Themes Document).

Need: The school closure versus program debate has polarized the Missoula community. There is fundamental disagreement over the need to close schools at this time. Many parents and neighbors have challenged the financial management practices and demographics behind the administration scenarios that propose as the only option either school closure or program elimination. Local governments have weighed in because of the cost to the community and the growth management implications of closing in-town schools. Some Board members prepared alternative budgets that were not discussed during the decision process.

Missoula needs an independent assessment that can bring a shared understanding of the complex issues involved in the elementary education debate and help shape alternatives that can bridge the existing polarization.

Who: MCPS Board people, city government people, county government people, parents and neighbors. Resources Needed: Staff time for coordination and research, copying, mailing and lots of volunteer hours.

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 list in the amount of \$297,884.57. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Bid Awards: Three (3) Slide-In Sanders (Road Department) and Three (3) Reversible Truck Snowplows (Road Department)

Chair Kennedy read the reports.

Bids for Slide-In Sanders (Material Spreaders) (Bid # 99-02-02) were opened February 22, 1999, with the following results (Single Unit Price Only): Ameri-Tech in the amount of \$8,383.00, Western Plains Machinery in the amount of \$9,150.00, Critzer Equipment in the amount of \$8,136.00, Pierce Manufacturing in the amount of \$7,600.00, Kois Brothers in the amount of \$8,479.00, and Northwest Peterbilt had no bid. The Road Department recommends awarding the bid to Pierce Manufacturing for three (3) Slide-In Sanders for a total amount of \$22,800.00.

Bids for 11' Reversible Truck Snow Plows (Bid # 99-02-01) were opened February 22, 1999, with the following results (Single Unit Price Only): Ameri-Tech in the amount of \$6,091.00, Western Plains Machinery in the amount of \$5,900.00, Critzer Equipment in the amount of \$5,104.00, Washington Auto Carriage in the amount of \$6,574.00, Pierce

Manufacturing in the amount of \$4,580.00, Kois Brothers in the amount of \$5,635.00, and Northwest Peterbilt had no bid. The Road Department recommends awarding the bid to Pierce Manufacturing for three (3) Truck Snowplows for a total amount of \$13,740.00.

Commissioner Evans asked counsel to verify that the bids met all requirements and there was no discussion needed to award the bids to Pierce Manufacturing.

Michael Sehestedt stated to the best of his knowledge there were no exceptions noted in the bid opening report.

Commissioner Evans moved that the Board of County Commissioners award the bid for three (3) Slide-In Sanders to Pierce Manufacturing in the amount of \$22,800.00 as recommended by the Road Department, and award the bid for three (3) Truck Snowplows to Pierce Manufacturing in the amount of \$13,740.00 as recommended by the Road Department. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Joint City Council-County Commissioners Hearing: Proposed Amendments to City-County Subdivision and Zoning Regulations

City Council members present included: Mayor Mike Kadas, Council President Chris Gingerelli, Council Vice President Jim McGrath, Myrt Charney, Jack Reidy, Larry Anderson, Lou Ann Crowley, Dave Harmon, Andy Sponseller, Tracey Turek, Scott Morgan, Lois Herbig and Jamie Carpenter.

The amendments are proposed to implement the "Planning for Growth in Missoula County" themes developed by the Missoula Growth Management Task Force during work sessions from 1994 to the present. This is a hearing of the Board of County Commissioners and the Missoula City Council to hear amendments proposed to the following documents: 1) proposed revisions to the County Subdivision Regulations; 2) proposed revisions to the City Subdivision Regulations; 3) proposed revisions to the County Zoning Resolution #76-113; and 4) proposed revisions to the City Zoning Ordinance, Title 19, M.M.C.

There will be another hearing of the Board of County Commissioners and the Missoula City Council to hear further public testimony at the regularly scheduled meeting of the City Council on Monday, March 8, 1999, at 7:00 p.m. in the Council Chambers of City Hall.

Barbara Martens, Office of Planning and Grants, presented the staff report.

There are four proposals being presented today, two for zoning and two for subdivision regulations, both City and County. The process that was undertaken to get to this point began with a Growth Management Task Force formed in 1994. While recognizing the need to plan for future growth and development in the community, the Commissioners joined with the Mayor, the City Council, the Chamber of Commerce and neighborhood networks to form the Growth Management Task Force. There is also a representative from the Planning Board on the Task Force.

The Task Force drafted a Themes Document that suggested goals and objectives, guiding principles and action steps for consideration as the community planned for growth. There were 10 tools that were proposed along with recommendations from the stakeholders through the scenarios planning process. Six of these tools were to be used to develop the regulatory changes which are presented today.

Those six tools included sensitive land overlays, quality development standards or design standards, regulatory incentives and density bonuses, impact fees, a designated urban service area and adequate public facilities and concurrency. In order to reflect these themes, the Growth Management Task Force developed and recommended changes to implement these tools.

Over the last two years, over 200 public agencies and private groups have been mailed notices and invited to attend workshops to review the proposed changes. The staff has held over 30 workshops with this Technical Review Committee, each meeting lasting from three to five hours. The Technical Review Committee then forwarded recommendations to the Growth Management Task Force. The Task Force looked at the recommendations, made changes and forwarded the proposal to the Missoula Planning Board.

The Planning Board held its first hearing March 31, 1998 and continued on April 21, 1998. After the April hearing, the Planning Board decided to form an Ad Hoc Committee which was made up of three Planning Board members and others from the community. This Ad Hoc Committee had 19 workshops, meeting each Friday for about five hours over a six-month period. Overall during the last two years there have been approximately 50 workshops held on the proposed changes. The Planning Board did hold two additional hearings, one on July 14, 1998 and the last on October 27, 1998.

The Planning Board recommended approval of the changes to both the City Council and the County Commissioners with no changes being made by the full Planning Board to what the Ad Hoc Committee had recommended. After these changes went to the City Council and the County Commissioners, joint hearings were held between the two governing bodies, the first on December 2, 1998 and the second on December 7, 1998.

After those two hearings, the two governing bodies formed a Conference Committee where they met on a weekly basis for the last two-month to go through all the recommended changes. From this Conference Committee, they reviewed and approved to send forward the proposals that are presented today. The Committee, by forwarding the proposals to these public meetings, allows the document as a whole to be reviewed and comment received.

The two implementation tools being looked at today are zoning and the subdivision review process. These are one of the ways to implement the community goals and objectives. Currently, City and County Subdivision Regulations serve the following functions. One is that they require local approval based on certain findings of fact. Those findings include things like the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and

the public health and safety. The other thing the regulations look at are how subdivisions are designed. As a result, subdivision regulations can have a major influence on how the city or county looks and functions.

Subdivision regulations influence the design of a subdivision, preserve the unique character of a neighborhood through the layout of streets, lots, roads and blocks. There is a dedication of parkland. Sensitive lands such as steep hillsides and riparian areas can be protected. The ability to provide services to the development can be looked at.

Zoning codes are another tool on how these goals can be implemented. In general, the function of zoning is to specify where certain kinds of land uses can occur and set standards on how development takes place. Examples include diversity of housing types, conserving unique characteristics of neighborhoods, maximum building heights, setbacks and hillside designs. These can all be addressed through zoning.

One of the proposed changes is a new standard for neighborhood notification. The proposal would require early neighborhood notification. After an initial meeting with a developer about doing a subdivision, the next step would be to go to a neighborhood association or community council. There would be a 15 working day notice to the group to get together for a meeting. This would be an opportunity for the developer to sit down during the beginning stage with the neighborhood to talk about the design of the project. This gives the neighborhood a chance to influence the design of the project, although the final decision on whether the project is approved or denied would stay with either the Council or the Commissioners. There would also be a requirement that posters be placed within 300 feet of the property and also notice be sent to residents within 300 feet of the property prior to the neighborhood meeting.

Another change recommended was density bonuses. This amendment would provide an opportunity for a density bonus that would allow developers to increase the density over what the current zoning allows or the Comprehensive Plan suggests. Requests for density bonuses would include the requirement that the developer work with the neighborhood at the early stage. The density bonus proposal is suggested to be allowed in areas designated as primary urban growth area which is described in the 1998 Update to the Urban Area Comprehensive Plan. It would only be allowed in areas that are zoned 8 dwelling units per acre or less.

Each bonus would allow a density increase of a specified percent over the base zoning allowance, but it could not exceed 50% of what the underlying density allows. For example, if the zoning is two dwelling units per acre and the developer received a density bonus, the most allowed would be 3 dwelling units per acre, no higher. The density bonuses would not be available to subdivisions which are located in zoning districts that had 80% buildout of the capacity for residential units, based on the underlying zone. This would be determined by looking at the number of residential units allowed per acre by the zone, estimate the total acreage of the developed and developable land, and look at the number of existing residential units or the number of units approved, but not yet constructed, through recently platted subdivision.

The first of the bonuses proposed is if 75% of the residential dwelling units are on land which have separate legal descriptions, all of these would allow a 20% density bonus with a cap of 50% maximum. A second density bonus is 50% of detached single family dwelling units where the building footprint does not exceed 900 square feet of ground floor living area. The third bonus is that housing meets the need of low to moderate income households for a minimum of 15 years. The fourth is approved cluster/open space development. The fifth is adaptable use of historic buildings and structures approved by the City-County Historic Preservation Officer. The sixth is approved neighborhood commercial within the development or connection to public sewer. All of these could allow a 20% increase up to a 50% maximum.

In general, some of the other changes that are proposed for subdivisions in the street and road section, it would allow a greater flexibility in street width and right of way than what is currently in the regulations. There are standards proposed for alleys. There are standards for how to provide circulation not only within the boundaries of the subdivision, but makes a meaningful connection to adjacent subdivisions. There are revised standards for lots and blocks and also grading and drainage.

There are changes to the parks and open space section, a purpose statement has been added and criteria on how the parks and open space dedication is weighed.

There is a section on hillside design standards. Hillside design standards are proposed for land that is 10% or greater in slope. There is also a proposed slope density approach, where as the slope increases the density would decrease. There are ways to bring the density back up to what underlying zoning allows by clustering, smaller building footprint, connecting to sewer, etc.

There is a section on cluster development standards. These standards are proposed to allow modifications to lot size and width, setbacks and the parks and open space requirement. It would permit a grouping of structures, reduce the length of streets and utilities and maximize open space. This process as proposed would be handled administratively and there are four different types of cluster developments proposed in the draft.

General changes to zoning include more flexibility in the standards that are proposed. There are ways to increase height allowance in a district by 20% by using a 7 in 12 pitched roof. By putting residential over commercial could increase the height allowance by 20%.

There are also changes in setbacks. If the original front yard setback in an area was 10 feet and it had changed to a 20 foot setback, adding an addition or building on a vacant lot would allow up to a 10 foot setback if it meets the established building line that the other homes on the block have, without having to go through the variance process. That type of flexibility is also suggested for side and rear setbacks.

There is a change recommended for front porches. This would allow an encroachment of up to 8 feet into the front yard setback for a front porch, as long as the steps were not any closer than 4 feet to the property line, again without having to go through the variance process.

Colleen Dowdall stated that some of the comments that have been received from the public include some technical reading of submittal requirements. It has been pointed out that some of the submittal requirements don't make sense in the places where Planning is requesting submittals. Submittal requirements are broken down to those required for preliminary plat and those required for final plat. Within that, they are broken down into whether they are required as a plat submittal, something that has to be shown on the plat, or as a supplement to the plat. The document has been read carefully by experts to help point out places where inappropriate submittals may have been requested. Changes have been prepared that would amend the proposal before the governing bodies in ways that are not substantive. These changes could be provided prior to Monday's meeting to see if they wish to amend the current proposal or these changes could begin the process with Planning Board and be completed in that fashion. If it is done through Planning Board, a policy statement or attorney opinion would be needed that says some of the submittals needs to be interpreted in a way that makes sense, that inappropriate submittals are not being required.

Chair Kennedy stated that as far as Colleen Dowdall was concerned, these technical submittal requirement changes are not substantive. If that is the case, it seems appropriate to have them to review prior to Monday's meeting.

Colleen Dowdall stated she would like the governing bodies to read these changes and make their own judgment as to whether they are substantive. There are two areas that have been discussed a lot that she was not as comfortable with in terms of whether they are substantive or technical. If they wish to move forward with these before Monday, that can be done.

Chris Gingerelli stated if Colleen Dowdall could provide a copy of those to the City Clerks Office by Friday morning, then City Council members could get them in their packets to review over the weekend. It would be a waste of time for this to go all the way back to the Planning Board.

Mayor Kadas asked that the amendments be made available to the public as well, so that they can be commented on prior to next Monday's meeting.

Steve King stated the elements are not substantive, they are talking in one broad sense of broadening the requirements. The supplementary information that is required for major subdivisions is being recommended to be applied to summary subdivisions. Unstable land forms, high ground water issues, all of the new supplemental information that was discussed for major subdivisions is also proposed for minor subdivision. In his mind that is a substantive change that was not previously discussed. However, there was a meeting with the developers representatives and they acknowledged the value of having these. He did not want to trivialize this change.

Colleen Dowdall stated that at this point it is a matter of interpretation. Some feel these requirements apply to summary subdivision and some feel they do not. It is one of the areas she had some concerns about.

Chair Kennedy stated that Barb Martens did a good job in speaking about the chronology of this process. It is also important to note that more than five years ago the community embarked on this effort to re-examine growth in Missoula. Through a public participation process as described by Barb, came to general agreement that certain changes needed to be made. This process establishes the agreement that there is and that is needed in order to achieve the goals in the overall documents and particularly the Themes Document that was adopted by both the City and County. The purpose is to come to agreement and acceptance of these rules that allow achievement of those goals. The rules need to be looked at from the standpoint of being supportive of what the goals are that are to be accomplished in Missoula and not suppressive of anyone rights. That is an important comment, because the regulatory process is sometimes viewed as being suppressive, when it is exactly the opposite. It is supportive of what the community desires. There will be an second meeting on Monday, March 8, 1999, with the City Council and County Commissioners at the regular Council meeting at 7:00 p.m. in the Council Chambers. The public is invited to testify at this meeting as well. The meeting today is strictly to hear the comments the public has and may include questions. Staff will take note of the questions and at the end of the public testimony they will be addressed if possible. If some of the answers are unknown today, they will be brought to the City Council meeting on Monday evening.

Gerard Berens stated he was speaking as President of the Target Range Homeowners Association. He read from a letter to the City Council and County Commissioners.

"The Board of the Target Range Homeowners Association wishes to voice its strong objection to the proposed density bonuses in the County resolution now under consideration. We in the Target Range area would like to maintain the semi-rural nature of our community. The density bonus being proposed is at direct variance to the desires of our community. The reasons for our opposition are many fold. They are:

The Missoula amendment to Zoning Requirements is a schizophrenic document. It promotes goals and objectives which are mutually exclusive and in one major way, namely higher density bonuses, completely negates other sections, such as the promotion of open space.

On Page 19 of the document, the cluster development is promoted with these objectives:

'(A) Provide efficient use of land while substantially preserving wildlife habitat, viable agricultural land, historic features, open space, scenic views, natural drainage systems or other desirable features of the natural environment, which enhances our quality of life.'

'(D) Create or enhance neighborhoods with distinct identities, a sense of community, and access to open space and other neighborhoods.'

'(F) Provide open space areas for conservation or agricultural purposes, or passive and/or active recreational areas for use by residents of the development and where specified, the larger community.'

Each of these objectives are a fitting description of the Target Range area as it now exists. Our community has open space, agriculture, wildlife, recreation opportunities, scenic views and a diversity of low density housing types which are not found in other areas of the valley. However, the proposed high density bonus system will undo all that which you seek to promote and which the Target Range residents seek to preserve.

The increased density will dramatically and negatively alter the environment of the community. By changing an area which is primarily developed as one acre homesites (the area's current density is approximately .69 dwelling units per acre) into a high density area of three per acre, the community we all enjoy will be dramatically and negatively changed forever. By example, because of the rounding formula in your proposal, a 2.6 acre site will now have 8 units on that type of site, where presently it has one unit.

Higher density urban areas have higher crime rates. The latest statistics I had generated from the Attorney General's Office for 1996, and I noticed in today's paper the 1997 statistics are out. The 1996 statistics from the State Board of Crime Control show that all high density areas have crime rates which are well above the statewide average. I'm speaking here of crime rates. It's a priority that the more people you will have, the more crime you will have. What we are having here is the case where if you have one and one, you no longer have two, you have three. The rates of crime go up in urban higher density areas. Montana city crime rates are higher than their surrounding County crime rates, throughout the state. Increasing the community's density will bring increased crime, loss of property and security, and the concomitant increase in sheriff and insurance costs. This point was recently demonstrated by the University Homeowners Association study of higher crime rates attributable to increase occupancy in their area.

The increased density will not reduce the trend toward urban sprawl to the Bitterroot Valley, which is an expressed goal of the Growth Management Plan. Higher density will accelerate it. Home buyers who desire 1, 5, 2 or 10 acre homesites will buy them where they exist. Increasing the density of the Target Range area will force this homeowner market segment to locate in the Bitterroot Valley and other surrounding, low density valleys. Increasing our community's density by fiat will not decrease that home buyer segment which desires more land. It will shift them to other more remote locations which will increase longer distance drives. To prevent longer distance drives is another goal of Growth Management.

The increased density will dramatically increase traffic and congestion in our area. Adding thousands of automobiles and vehicle trips will cause a transformation of our relatively uncongested streets where people walk, ride horses, walk llamas, jog and cycle. It is not hard to fathom why the Blue Mountain Clinic chooses to conduct its annual race through our area. What is your plan for infrastructure costs associated with the increased density? And I would ask that our questions be answered in writing. If you would like our questions, I'll submit them to you.

The 80% rule, which is part of the density bonus, will take away development rights from those who develop last or from those who choose to maintain a low density property. The granting of higher density development rights to the first who apply will be at the expense of those who choose to maintain a low density lifestyle.

The Missoula Valley is best served by a diversity of densities. The existing pattern of higher density in the city moving to more lower densities in proportion to the distance from the city center is empirical evidence of the desires of the community. Those who choose to move to a close in, higher density area (i.e., the University), can do so. Those who desire the rural aspects of the Target Range area also want the opportunity of choice. Not all members of the community want to be forced to live in a high density area.

The Target Range community would like to vote on the proposed changes. Any change that affects the Comprehensive Plan, the community character and its environment, should be voted upon by the individual communities. Those communities which desire higher density can choose it. Those who do not should also have a choice. If the proposed changes are what is best for the community and the majority of the community support those changes, what harm can a public vote cause? Why are you afraid of the public's conformation or denial of your decision? If the plan cannot pass the muster of the will of the people, it should not be enacted.

We, the members of the Target Range Homeowners Association, voice our opposition to the proposed density bonuses. We want the County Commissioners to exclude our community from this proposed change.

In the event the County Commissioners choose to ignore the strong feelings of the people who live in the community, we petition for a vote in the Target Range Area to affirm or deny these dramatic and negative changes to our community.

In January, the Target Range Homeowners Association raised serious written objections to the proposed density increase. We have yet to receive a response from the Council or the Commissioners. In our letter, we raised questions regarding the negative impact on such things as the quality of life, increased crime rates and the creation of greater, and not lesser, urban sprawl, and our right to a vote on this issue.

Given the lack of a response from the Council and the Commissioners and the absence of proposed measures to mitigate the above impacts, we can only conclude there is neither a plan nor a desire to provide solutions for the problems created by these proposed density changes.

What is the Commissioners' response to the 900 families of Target Range who have moved here to enjoy the quality of life found in a semi-rural area? After the Council and the Commissioners have ruined the area, in our view, are you telling these long time residents to move to the Bitterroot Valley to get back the rural quality of life? How are you planning for infrastructure costs due to higher traffic? Are you telling these residents that they will just have to put up with increased crime? If they enjoy viewing wildlife, are you telling them to take a drive to the country?

Don't thwart our community's desire to preserve open space, 4H animals being raised by our children, horse rides, cycling and jogging on uncongested streets, walking llamas down the road, foxes in the fields, deer roaming our yards, by ruining our community with a plan to manipulate our semi rural area to fit your (and others) false prototype of a community. In essence, don't force your standard of living upon us."

Chair Kennedy stated that if Mr. Berens would provide his written questions, then they will make sure he receives answers to them.

Wally Sept: "2103 33rd Avenue. Commissioners, Council people and Planning members, I want to second the motion that Gerry Berens just got done with. I was a charter member of the Target Range Homeowners Association, which still exists, and there is no reason to think in terms of a neighborhood council to penetrate our area in hopes of usurping the rights of the Homeowners Association. The Target Range bylaws state that we preserve the area in a semi rural condition of the first rate. We do not want that to change. Let me say that again, we do not want that to change. Based upon the recent Supreme Court decision overturning CI-75, and thereby disregarding 100 years of statutory experience, doesn't mean that the citizens of Missoula will concede to defeat in this zoning matter. I would hope that the joint council would listen to what the people have to say for a change without following the Supreme Court's example. Past performance of the City Council has won them the reputation of proceeding with a pre-determined agenda and the people, in the process, be damned. There is presently good reason to believe that the City Council and the County Commissioners are walking in lock step on this rezoning and there is no reason for it. While spreading the welcome mat of public participation, citizen testimony appears to be heard more as a hurdle to be overcome than to promote the testimony to alter change or disregard the pre-determined agenda included in the Comprehensive Plan, which, by the time the Comprehensive Plan is all over, said and done with six years from now, it won't even begin to look like what it really is now. And, because of that alteration, it will be rendered worthless and at the very least intrusive. If this is untrue, then why would the city officials hire an individual from outside of the state to train newly elected public officials on how to overcome public sentiment. As representatives of your respective wards and districts, public sentiment should be reflective of the citizenry and ultimately reflected in your respective votes. Preparatory enabling legislation is on the legislative agenda in Helen, via House Bills 91, 96 and 97. If passed, the city and the county can then subsequently waltz into a area, change the zoning as long as there is a public hearing heard, with little or no publicity regarding the negative impact, but meeting all the necessary legal requirements. The testimonials are then limited to two minutes, generally, in the best interest of time. The implication is, "Why don't you just shut up and go along with the flow and by doing so, we can get back to implementing our plan." Citizens have come to distrust your decision because you are doing to us what we feel you should be doing for us. That is protecting our right to do what we want to do with our property and not what you plan to dictate to us to do with our property. The plans have had minimal input from the citizens because you have begun with an end result in mind. Those of us in Target Range want to remain semi rural. One home per half acre is sufficient and infill is unnecessary. The zoning is fine just the way it is."

Sara Busey: "I was a member of the Ad Hoc Committee that worked on the regulation changes. I've reviewed the changes that you've made and found them very, they are positive improvements that will help, especially the hillside development. I like the way you changed the bonuses from 25% to 20%. I think you've done a good job and again, speaking for the League of Women Voters, I think it's been an open process every step of the way. Thank you."

Ron Ewart: "I live at 5201 Skyview Drive. First, I just want to extend my gratitude to the Commissioners, the Council, the staff, the various committees, and all the people that spent a lot of time working on these. I know they have been thought out very well. I've been attending meetings with the Technical Review Committee with the Builders Association. I know they do have some questions, I think there will probably be more of them on Monday night. All I would like to do is ask two quick questions that I never really have been able to get an answer to. First of all, when would the regulations come into effect? The reason I ask this, I have some projects that are in various stages and for example, one of them right now, I turned it in for certification, got it back with a list. I've completed the list and am getting ready to turn it back in so if this gets approved Monday night, do I start all over again? To me, I think that once at least turn it in for certification, then you should at least be in the hopper because you wouldn't want to have to start over again. My other questions has to do with the neighborhood notification. I believe that's a really good idea. I've always felt that there should be a requirement that you meet the neighbors for all developments so that they know what's coming up so they're not coming off of rumors and so on. My question has to do with how do you get the names and addresses for the 300 feet. At OPG they have a computer program, it all pops right up. But we don't have access to that because it's sort of a personal thing. So what we have to do is spend a lot of time going through the GO codes and plat books and it takes a lot of time. And then OPG goes ahead and does it anyway. So I was just wondering does OPG generate that list in the map or do we do that and then, of course, when do the regulations kick in, at what stage. Lastly, I just want to say, off the cuff sort of, I believe in the concepts of growth management. I believe that the more people that live in the urban service area, the more efficiently we can extend services to them, the more kids we can have in our schools, and so on, so long as the infrastructure is in place and that most of the concerns of the neighbors are met and so on. Thank you."

Sue Spanke: "I'm here representing the Air Quality Advisory Committee. We want to support the regulations and amendments which reduce the potential bad impacts of development on air quality. Particularly we want to support the bike lanes, the pedestrian access, the paving requirements, the bus stops and the hillside densities. We are really concerned about hillside sanding and the requirements for mitigation. We hope you'll make one small but very important addition. Due to the nature of mountain valleys, one of the number one planning considerations will be, and must always be, the maintenance of air quality. I'm looking at the County plan but I also am referring to anything in the City plan that goes along with it. In 1-3, Purposes and Intent, the importance of air quality is alluded to in Number 8, but we feel that just as the other health and safety goals are explicitly listed, maintenance of healthy air quality must also be. We suggest the insertion, after Number 9, of the following -- 'These regulations are also intended to promote the protection of public health through continued improvement of air quality' -- or something along those lines. Also, just a small note. On Page 27 of the County plan, regarding new subdivision road paving within the Air Stagnation Zone, the number of residences that can be served by unpaved roads should be changed from three to two, and that would make it consistent with the existing air pollution regulations. I have a letter from the advisory council, the important stuff on the back is what I just said. I also would like to make a personal comment on a different subject which is in a County plan where so much of our land is rural and many of the subdivisions will be in rural area, I'm really concerned that there's not enough emphasis on preserving wildlife resources. I see that habitat is mentioned in several place, briefly, in passing in hillside development and in passing in riparian development. When I saw Travel Corridors, I thought, "oh, that's how the deer get down to the riparian areas," but it meant roadways and automobile travel corridors. So, I just believe that as we build more and more developments in rural areas it's very important that

we're protecting the travel corridors and calving areas, etc., and I hope that all the rural developments will be reviewed for their impact and anything in critical areas will actually be reviewed by biologists in the same way timber sales are so they can be designed in ways that have the least impact."

The letter from the Air Quality Advisory Committee reads as follows:

"The Air Quality Advisory Council is an advisory committee to the City-County Air Pollution Control Board and the Environmental Health Department. Appointed by the Board, the Council is made up of scientists, consultants, citizen representatives and an industry representative. The Council reviewed the proposed changes to the subdivision regulations and made comments at the Planning Board's public hearing on March 31, 1998, with the knowledge of the Air Pollution Control Board. Upon further review, the Council offers these additional recommendations. (These recommendations do not necessarily reflect the view of the Air Pollution Control Board).

The Air Quality Advisory Council commends the Office of Planning and Grants for the tremendous work they've put into rewriting the subdivision regulations. The proposed regulations address many issues relevant to air quality, such as non-motorized transportation, circulation designs and hillside development. As Missoula grows, it will become increasingly important to ensure that people can use other forms of transportation besides single-occupancy vehicles. The way a community is designed can have a tremendous effect on how convenient and enjoyable other modes of travel are. New regulations requiring pedestrian access ways through the ends of cul-de-sacs and circular or looped streets is a good example of how a development can take initial steps to encourage non-motorized travel.

Circulation patterns, such as requiring blocks when possible, limiting the length of the blocks and discouraging cul-de-sacs can encourage non-motorized travel, but will also allow cars to take the most direct route to a collector or arterial, thereby reducing vehicle miles traveled.

Development on hillsides impact the air shed more than those on relatively flat ground. Vehicles have to work harder going up hill, resulting in increased tail pipe emissions. They have to use the brakes more going downhill increasing tire wear emissions of particulate matter. Even more significant are the emissions from road dust, as cars create small particulate when traveling on corridors that have been heavily sanded. Reducing densities on hillsides can minimize the number of cars traveling over heavily sanded roads.

The Air Quality Council supports regulations which reduce the air quality impact of developments. The Council recommends the County Commissioners and City Council consider the following additional changes:

1. Section 1-3 Purpose and Intent (Page 6 in the County regulations): Add under "To support the purposes of MCA 76-3-102, these regulations are also intended to promote:"
 10. The protection of public health through the continued improvement of air quality.
2. Subdivision Design Standards, Article 3 (Page 27 in the County regulations, G(4)): Change the unpaved roads within the air stagnation zone shall not serve more than two (2) ~~three (3)~~ homes to make it consistent with existing Missoula City-County Air Pollution Control Program Regulations.

Thank you for considering these air quality-related recommendations. --Bruce Ammons, Chair, Missoula Air Quality Advisory Committee"

Judy Smith: "I want to be very thankful for all the hard work that's gone into these documents and also be very thankful for being near the end of our process of putting this plan in place for the community. I want to comment a bit on Page 81 and 82, which is the neighborhood involvement language. First to say that I, again, appreciate the effort that's gone into this particular language in trying to meet the needs both of the folks who live in the neighborhood and also the folks that are proposing developments so that those discussions can go forward in a positive, constructive manner. As I'm sure you know, these kinds of discussions are things that many of us have looked forward to actually having written specifically in the plans. With this in mind, again, I am positive about this language. I think this is the kind of meetings that can be very helpful both for neighborhoods and for developers. We've had several of these meetings now in the last few weeks with our neighborhood councils and feel like those meetings are going well. Last night we had one and last week we had one. It is good that you have put in community councils, neighborhood councils and neighborhood associations, because in some ways there are three types of entities here. I understand community councils might be in the County area, but within the city itself we have neighborhood councils and neighborhood associations. It seems to me we need to perhaps mention both of those here in the language. Here on Page 81 we have discussion of how developers will be meeting with neighbors before they actually submit the application to get input from the neighbors and on Page 82 we have councils and neighborhood associations and again I think we need to specifically have community councils and neighborhood councils here, as well as neighborhood associations, to actually then review the applications and give input for possible recommendations to the decision making bodies. Both of those kinds of meetings are now happening, as I say, within neighborhood councils and I feel those are going quite well. So again, I want to thank folks for working with all of the neighbors in getting this kind of language in the plan, I think it will be very helpful and encourage all of us to use them for awhile. The first few times we try these meetings may be challenging. I know the last meeting we tried to have it took several weeks to have that meeting so I appreciate that 15 working days that's in here. But I think we'll all get better in being able to streamline those meetings as we go forward. Thank you."

There being no further public comment, Chair Kennedy asked if Barb Martens was prepared to answers some of the questions today.

Barb Martens: "To respond to Judy, if I'm understanding you, correct me if I'm not. In the City regulations it talks about neighborhood councils and neighborhood associations and individuals. In the County draft it will reference neighborhood associations, community councils and individuals. I think it's covered.

I guess as far as the neighborhood notification, the 300 foot issue that Ron Ewart brought up, right now the way it's proposed it would be the applicant who would do those, but maybe there is some discussion and maybe Cindy (Klette)

may want to respond, to where we could be of assistance, our office, to help generate that list. We could talk about that further and maybe have a clearer answer for Monday as far as the specifics of how that might work."

Colleen Dowdall: "Barb has asked me to address when the regs go into effect, because she has asked me to address it before and I haven't. The reason I haven't is because she and I don't agree, and we agree on everything. We are struggling with that. Barb has Jim Nugent on her side however so Jim and I need to talk."

Mayor Kadas: "Colleen, I wonder if it wouldn't help, rather than having the attorneys argue with each other what the interpretation ought to be, is if we just explicitly stated what it is and say something that these will go into effect on such and such a date and any application that has been filed prior to that date proceeds under the old rules, or something to that."

Colleen Dowdall: "We agree that we can do that, what we can't agree on is what part of the application is the beginning of the application. If you've done a pre-app and then told these are the regulations that you'll be operating under, you'll need to do this and you'll need to do that, but you don't bring your application in for certification as an actual application until after the regs are adopted, the question is then are you under the new regs. I think there's possibilities for compromise. My concern is that people will come in on the pre-app under the old regs but then really have to start over with a new pre-app once the regs are adopted. I favor that if you've had a pre-app, you under the old regs but Barb and Jim and just about everyone else in the world believes that it should be certification."

Mayor Kadas: "I think it will be important to make that clear in the regulations rather than leaving it up to someone's interpretation. I would ask that by Monday we have language from staff that makes it clear one way or another."

Wally Congdon: "We had a question on an old problem that seems to rear its head on occasion which was the issue of density transfers amongst parcels of property either owned by one individual or multiple persons. We were unaware, or at least we could not find in some of the first drafts, whether or not that question was addressed in the drafts at this point in time, what the rules on that would be. I haven't had a chance to inquire of Barb about it but several persons actually talked to me yesterday and fired up me when I said I don't but I would ask."

Chair Kennedy: "Thank you Wally. That is actually a fairly complicated question and rather than answer it now what I'd really prefer the staff to do is to prepare an answer and have it in a written form so that the City Council and the Commissioners can enjoy that at the next meeting."

Colleen Dowdall: "It's a very simple question, we haven't addressed it. We've used the words but we have not set up the mechanism."

Chair Kennedy: "I understand. At the same time we have employed the concept and I think it is important that we address it in some fashion because if the question came up today, it perhaps will come up next Monday, and we know that it will come up at some future time. So, at least, I think we need to address what the feeling is on it from a technical staff standpoint."

Colleen Dowdall: "I just have to tell you the reason it hasn't been addressed is because it's a huge issue. We haven't done the research on it that's necessary to either bring you language or to tell what the issues are. To do that by Monday I don't think is possible."

Chair Kennedy: "Okay, thank you. I think that this is one of the good reasons to have public comment is to find out things like this. Clearly it's before us now and clearly we have to do something about addressing it. It may be premature to ask that that be done by Monday, obviously it is. But it's brought before us and I appreciate that Wally, very much, thank you."

Wally Congdon: "Can I add one thought. The way the question was asked to me was in respect to the issue of the density bonuses that were talked about earlier today. And the question was phrased in the perspective of if you were transferring density from one property to another, would that be tied in to, or somehow regulated by, the question of the density bonus rule that's proposed and was talked about earlier."

Chair Kennedy: "I believe they are separate because we have dealt with transfers prior to this regulatory process. Again I think we need to deal with that and thank you for your question. Is there anything else that anyone would like to say, make comment on or ask questions about. Then I'd go to the City Council."

Lois Herbig: "Mostly, there were statements made by Mr. Sept and Mr. Berens. I am concerned that we didn't reply to Mr. Berens. If I got the letter, it certainly got lost and I don't know if he expects answers from each one of the Council people. Do I need to ask him that question. And also maybe ask the Commissioners why there was no response to his letter."

Chair Kennedy: "Okay, I think this, that in the overall process that we are engaged in, which is receiving public commentary, clearly that is one and clearly it needs to get addressed. I think the problem we always face is if we address it before all of the public comment is in, there is a suggestion that maybe there would be some adjustment in the overall proposal that the public gets to comment on. It seems more appropriate that everyone has the same document to make comments on, then we can examine those comments, including Mr. Berens' letter, and decide how they are going to be addressed, or if some of those items, in fact, have been addressed and need to be clarified. I apologize that no answer was forthcoming immediately. At the same time, I believe that we now are on a track where all of those answers will be given in due time."

Colleen Dowdall: "If we are looking at a January 25, 1999 letter from Mr. Berens, I'm assuming that's the one, and essentially it doesn't ask any questions. It makes statements in opposition to these regulations. I would believe then that it was testimony that we received in the middle of public hearings process."

Chair Kennedy: "Okay, that notwithstanding, I think we are going to be receiving written comments from Mr. Berens and we can be assured that, and the general population can be assured, that all of the questions that were posed and all

of the comments made, will be addressed or at least explained. That is part of our process. We take them seriously and we will do that."

Chris Gingerelli: "I just wanted to briefly address some of the comments that both Mr. Berens and Mr. Sept made in more of a general way and then specifically respond to a comment that Mr. Sept made. First of all with regard to density, I think that there are many elected officials, if not most elected officials in Missoula, who are very sympathetic to a lot of the points that you've made about densities in rural and semi rural areas. These are issues that have been difficult for all of us. What we've been in is essentially a five year learning process ourselves about the realities of a burgeoning population in Missoula County and how we, as elected officials, can help to effectively manage that population in terms of rising costs for infrastructure, and so on. In no way would I want anyone to leave the room feeling that at least, certainly, the City Council, and I think this can probably be said for the County Commissioners as well, have approached those problems cavalierly at all. Most of us live in Montana because we love rural areas and we understand your concerns there. It's been a difficult process but we have spent five years on this process, and as Barb said in the beginning of her comments, there have been scores and scores of public meetings where we have received a variety of comments from a variety of segments of the public. The feeling that we may not be listening I hope is meliorated by the fact that we have been listening and we have been trying to take into account a lot of different points of view. Mr. Sept, you said that you worried that the City Council has a pre-determined agenda and I do for sure want to respond to that, because as Council President and somebody who has been a Council member for over seven years, I really don't think that's accurate and I certainly would encourage you talk to individual council people. We have 12 different personalities, we represent different parts of the city. Certainly there will be agreement on some issues and disagreement on others, even within the Council itself. I think we've really tried to proceed here in good faith. We haven't had any pre-determined agenda, we've tried to listen to the public. But we did have unanimous agreement on the Comprehensive Plan and the Themes Document. That's something that I would encourage anyone who hasn't read to read, particularly the Themes Document, because it was a long process where we took a lot of things into account and I think it more accurately than anything else sets the stage for where we are trying to move with managing growth. I hope that's helpful. Thank you."

Jack Reidy: "I don't know who Mr. Sept is referring to that was hired to indoctrinate the Council. Nobody indoctrinates me, you should know that. I don't think we have any person that tries to do that, I've never been approached by anybody or talked to by anybody to do such a thing. I try to be fair with whoever I deal with and honest with whoever I deal with. I kind of take it as a slap in the face because I don't think we hire people to tell us how to do any of our business when it comes to dealing with the public."

Andy Sponseller: "If I could, I have a couple of questions for Mr. Sept and Mr. Berens. I'm a little bit confused about what it is the outcome might be that you find desirable in your neighborhood. I understand from our staff presentation, from your comments, that the reality there is that the buildout will pretty much be at one per acre. My question to you is this: When your neighborhood is built out to one per acre from stem to stern, will you in fact be happy with the nature of your neighborhood? I think that when I drive through the Target Range anyway, the part that seems desirable about it is that there is horse pasture here and there and there is some meaningful open space within your neighborhood. When it gets built out to one per acre though, at least from my viewpoint, that won't be true anymore, it will just be kind of a homogenous one per acre. My question is to you: Is that really what you find acceptable? And then my second question is this: If you like the way your neighborhood is now, then what could we do? Because really we have been working here for a long time, all different kinds of groups of people in this community, trying to figure out how we can maintain meaningful open spaces in neighborhoods like your. If you have a way to do that that's different than what we have in the Comp Plan and in these regs, I really wish you'd tell us about how we can maintain those meaningful open spaces and neighborhood character and still have development in our community as well. Those two questions."

Chair Kennedy: "Let's do this. The purpose of this meeting is to have really a one way exchange, that is from the public to the people who have to make judgment on these plans. It is not a forum for debate. At the same time, one of our Councilmen asked a question and I will honor a response, but I think that we need to cut it off after that, because again, we really want to hear from you, we don't want to have a debate. So Gerry, if you'd like to."

Andy Sponseller: "Mr. Chairman, if I could. If Mr. Berens and Mr. Sept would like to respond to my questions on Monday, and I assume that they will be at that hearing as well, maybe that would be the proper forum to do that. I just felt like those were legitimate questions given all the work we've put into this effort and I think they need to be answered."

Chair Kennedy: "Actually that sound better, but again, Gerry, if you want to respond, I'll give you the floor."

Gerard Berens: "Short response now. We understand that the community will receive some infill at its current zoning and Comprehensive Plan levels. Our sense of the community is that that is what they would like to maintain. What this document will do will alter that. There are some in the community that choose to live on one house per two acres, one house per three acres. Those folks that choose to do that will allow development at three per acre, because until it's developed at 80% of the current level, this three per acre type of development would be allowed to occur. Another disturbing pattern that is occurring is that we're getting clusters of eight per acre with the remaining land being left open for now. Andy, your proposal to permanently restrict the surrounding land that was in my estimation pooh-poohed is exactly the type of thing that we worry about. We don't want Brookside to reoccur here, where land is clustered then there is surrounding land that is supposed to be forever dedicated as park and open space and then there is the second and third bite at the apple, to go ahead and develop out this land that the community thought was part of a cluster and part of an open space forever. We feel that there is this never ending onslaught of changes in the development pattern to make more higher dense, if there is such an expression. And to take away the semi rural character that we enjoy. All the things I wrote here and talked about are things that occur on a regular basis in our community. Mr. Kennedy knows that from the people that walk horses by his property. And we'd like to maintain that. And I think as this pattern, and you put three per acre next to somebody and they have one per acre, what they are going to do, if they don't like it, they are going to leave and somebody else is going to take it over and then they're going to get three per acre and you cause this never ending change. And basically that's depriving rights from the next door neighbor who chooses to be one per three acres and if you have three on one acre, you're taking away the rights

from the one that is staying on one per three acres. I think that's an assault on the quality of life that people are seeking out there. Thank you."

Chair Kennedy: "Thank you, Mr. Berens. We'll probably expect you to expand on that on Monday night. Is there any other comments that anyone would like to make, either from the public or the City Council or the County Commissioners. If not, then I'll close the public hearing and thank you very much for coming and we'll see... Yes, Jim, one last comment here."

Jim McGrath: "I wanted to remind my colleagues on Council that we will have a finance meeting at 4:00 p.m."

Chair Kennedy: "We'll see you all Monday night."

There being no further business to come before the Board, the Commissioners were in recess at 2:45 p.m.

THURSDAY, MARCH 4, 1999

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:

Standard Agreements – Chair Kennedy signed two Standard Agreements with the Montana Department of Transportation, Traffic Safety Bureau:

1. to purchase two radar units to aid speed enforcement efforts. Total amount shall not exceed \$3,790.00.
2. for a grant to fund Selective Traffic Enforcement Patrols by overtime officers. Total amount shall not exceed \$10,000.00.

Both Agreements were returned to Don Morman in the Sheriff's Department for further handling.

Budget Transfer – The Commissioners signed a Budget Transfer for the Sheriff's Department (Youth Detention), in the amount of \$10,870 for Youth Transportation.

Main Extension Contract – The Commissioners approved and signed a Main Extension Contract with Mountain Water Company for public water service to the Missoula County Detention Center. \$107,264.02 shall be paid (from Jail Project budget) to cover cost of distribution facilities. Effective date of the Contract #490 shall be December 30, 1998. The Contract was returned to Paul Webber, CAO, for further signatures and handling.

Other items included:

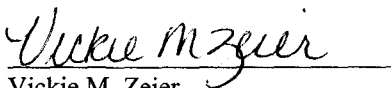
- 1) The Commissioners approved a one year extension to the listing contract with Lambros Real Estate for the Lennox, Stockyard Road, and Mullan Road properties.

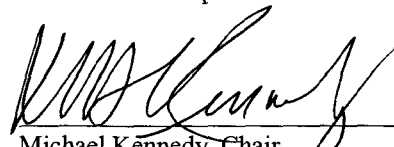
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, MARCH 5, 1999

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Evans attended a Judicial Standards Commission Meeting at the Russell Smith Courthouse. Later in the forenoon, all three Commissioners participated in the dedication and grand opening of the new Partnership Health Center.

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending February 26, 1999.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MARCH 8, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans went on an Economic Development Visionary Bus Trip to Spokane, WA, hosted by the Missoula Chamber of Commerce. In the evening, Commissioners Carey and Kennedy attended the Joint City-County Hearing regarding the proposed amendments to the City-County Subdivision and Zoning Regulations, held at the City Council Chambers.

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of February, 1999.

TUESDAY, MARCH 9, 1999

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:

Application for Federal Assistance – Chair Kennedy signed an Application for Federal Assistance for a COPS Technology Grant to fund the Missoula County Mobile Data System project. Estimated Federal funding will be \$718,000.00. The Application was returned to Don Morman in the Sheriff's Department for further handling.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Missoula Job Service for the Welfare to Work Program, which provides employment and training. Participant is paid by the administering agency (Missoula Job Service). The Agreement was returned to Marie Pruitt in Personnel for further signatures and handling.

Memorandum of Understanding – The Commissioners signed a Memorandum of Understanding with the Montana Department of Transportation and Ravalli County to fund the Lolo Pathway to Florence. Missoula County will pay \$206,500.00 – 5.94 miles, and Ravalli County will pay \$93,500.00 – 2.69 miles. Commissioner Evans did not sign.

Other items included:

- 1) The Commissioners approved the appointments of Bernie Rhodes and Jeff Crews to the Florence Carlton Cemetery Board.
- 2) The Commissioners discussed a proposal to create a new position of Telephone Services Supervisor for the PBX system, and to increase the scope of services with the contractors who presently provide some telephone and radio services. Bob Schieder would be retained as a consultant for 6 hours per week.
- 3) The Commissioners reappointed John Spangler to the Planning Board through December 31, 2001.

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

WEDNESDAY, MARCH 10, 1999

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

Audit List – The Commissioners signed the Audit List, dated March 9, 1999, pages 2-33, with a grand total of \$113,328.85. The Audit List was returned to the Accounting Department.

PUBLIC MEETING -- March 10, 1999

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

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 list in the amount of \$113,328.85. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Spethman Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described on Tract A-1 of COS 2896, located in the south one-half of the south one-half of Section 27, Township 12 North, Range 20 West, PMM, Missoula County, Montana.

Cynthia Spethman 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 3.93 acres in size and is located in Lolo off Cherokee Lane. Cynthia Spethman proposes to create an approximately 1.9 acre parcel for transfer to her adult son, Kynan G. Spethman, for use as a single family residence.

The history of the parcel is as follows: In 1979 Parcel A was created by Duane Spethman by use of the occasional sale exemption. In 1983 Parcel A-1 was created by Cynthia Spethman by use of the occasional sale exemption.

Cynthia Spethman was present and came forward to answer questions.

Chair Kennedy stated this was a part of the law that allowed the Commissioners to ask unusual and personal questions, different from subdivision review. The Commissioners could ask these questions to determine if this transfer was an attempt to evade subdivision regulations. He had no questions and asked if the other Commissioners had any questions for Cynthia Spethman.

Commissioner Evans stated she had no questions.

Commissioner Carey stated he had no questions.

Chair Kennedy 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 Cynthia Spethman 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: Creation of Rural Zoning District and Rezoning of Primrose Heights (224 acres of Mocassin Lane, west of Deschamps Lane)

Consideration: Adler Acres (5 Lot Residential Subdivision) - Mocassin Lane

Nancy Heil, Office of Planning and Grants, presented the staff report.

Carl Saunders, represented by Eli & Associates, is proposing the creation of a special zoning district (Section 6.06 - Primrose Heights Rural Zoning District) for a 224 acre parcel. The district would allow some residential development while retaining over one half of the land in agricultural production.

The property is located southwest of Mocassin Lane and approximately one mile west of Deschamps Lane. The property is north of Mullan Road and northwest of Primrose Drive. It includes Tracts 1 and 2 of COS 4835 in Section 30 and 80 acres in the N1/2 NE 1/4 Section 31, T14N, R20W. A 300 foot wide Montana Rail Link (MRL) right-of-way is located between Tracts 1 and 2 of COS 4835. The MRL right-of-way is not part of the zoning district. An abandoned railroad bed is located in the southern portion of the property. Portions of the Grass Valley Irrigation Ditch run through the property south of the abandoned railroad bed. A small area of 100 year floodplain is located along a portion of the southern property boundary. There is more floodplain area that is located between Mullan Road and the property.

Most of the property is currently unzoned. Approximately 19 acres south of the abandoned railroad bed are zoned C-A3, which allows a maximum residential density of one dwelling unit per 5 acres. Adjacent land south of the property is zoned C-A3. Adjacent land to the north, east, and west is unzoned.

The property is currently used for agricultural production. Large agricultural parcels with some residential uses are located adjacent to the property. Residential tracts 5 acres and smaller are also located in the vicinity, for instance along Meadow Drive and Grass Valley Drive located west of Deschamps Lane, in the Western Farms area, and south of Mullan Road.

There are three distinct areas within the zoning district that are proposed. Area 1, the northeast 16 acres of the property, is proposed for residential development at a density of 1 dwelling unit per 3 acres. The Adler Acres Summary Subdivision, currently under review, would divide Area 1 into 5 lots 3-4 acres in size. It is accessed from Deschamps Lane to Mocassin Lane. The railroad divides this parcel from the rest of the applicant's land, making access difficult and irrigation unfeasible. This area is relatively flat and currently under dryland agricultural production. It has been cultivated in barley and the applicant stated he will seed with crested wheat grass to minimize the potential for weed infestation after development.

Area 2 is located across the railroad trench from Area 1. At 127.62 acres in size it is the largest area in the zoning district and the most productive agricultural land on the property. It would remain in agricultural production. It is generally gently rolling with some soils classified as Grass Valley silty clay loam. There would be only one residential use permitted on that 127.62 acres.

Area 3, the southern 80 acres in Section 31, would allow clustered residential development at a maximum density of one dwelling unit per 2.2 acres. Approximately 30-50 acres of Area 3 would be developed into 38 1/2 to 1 acre tracts. The access to this property would be from Mullan Road to Primrose Drive. Primrose Drive is currently located within a 30 foot easement. Area 3 is elevated about 100 feet above the land around Mullan Road. The southern portion of Area 3 is relatively hilly and poorly drained. Some of the houses that would be in Area 3 would be visible from Mullan Road and Deschamps Lane looking west. An irrigation ditch runs through a portion of Area 3, as well as a small portion of the floodplain. There is a draw in the far southeast portion of those 80 acres that the applicant has said does not currently convey drainage flows that may be graded as part of the road system. The abandoned rail bed, located in the southern portion of the property north of the irrigation ditch, may be partially used for the road system at a later subdivision. The northern part of Area 3 is gently sloping and more constrained for septic use and road building by soil texture than slope. A woody draw in the central portion of Area 3 will be conserved for wildlife habitat. The rest of the land would remain in agricultural production. There will be some design issues that will need to be addressed at a subsequent subdivision review. One of them would be acquisition of additional easement and improvements on Primrose Drive. The fact that Primrose Drive crosses the floodplain may create the need for a secondary access. Circulation within Area 3 would have to be addressed and there would need to be detailed grading and drainage plans, setbacks from the abandoned railroad bed, etc., during subsequent subdivision review. The design of septic or wastewater facilities will have to be carefully analyzed.

The Comprehensive Plan for this area designates Open and Resource space with a density recommendation of one dwelling unit per 40 acres. This designation is primarily to protect the agricultural resource. The proposed overall density for the entire property would be approximately one dwelling unit per 5 acres, with at least 127 acres retained in agriculture. OPG has concluded that the proposal substantially complies with the goals of the Comprehensive Plan because it conserves a large tract of land in agriculture, the residential use is clustered off of agricultural and other sensitive resource lands, and placed on the less sensitive and more accessible land. Clustered development and retention of these large agricultural lots is generally consistent with the Growth Management Themes Document adopted by the County.

Staff has also concluded that the proposal for the zoning district only complies with the Comprehensive Plan if development can proceed without compromising water quality. NRCS has expressed some concerns about the soil types with respect to septic and the Water Quality Control District also has concerns about possible contamination of ground water. There are some wells on Meadow Lane that do have some elevated levels of nitrate.

The County recently signed on to the Clark Fork River Voluntary Nutrient Reduction Program (VNRP) which recognizes the impact of septic on the Clark Fork River. The Water Quality District stated it would only support the density proposed if the applicant limits impacts to water quality through alternative technologies to remove nutrients from the wastewater, such as land application. The District recommended that some sort of a binding commitment be included. Generally, sanitation would be reviewed during subdivision, however, Standard No. 5 in the Zoning district for Area 3 states that some sort of alternative technology may be required during development, but generally the Health Department will be addressing if there is a need for that.

Chapter 5 of the Missoula County Zoning Resolution provides for the establishment of special districts in order to promote proper and rational development of the community. Missoula County recognizes that certain types of complex, special uses may be better served by the creation of a special zoning district tailored to meet specified needs, problems, and qualities of the development.

The purpose of rural zoning districts (Chapter 6) is to establish districts "wherein compatible uses of land may be located and grouped to create, protect, or maintain a living environment for the citizens of rural Missoula County. Rural zoning districts are created to stabilize and protect the land uses and to allow a maximum degree of latitude with these regulations to promote residential harmony, conduct gainful business, and contribute to the development of a sound economic base for the rural areas of the County of Missoula. It is the purpose of these classifications to coordinate growth with physiographical criteria, to more efficiently and economically design, install, and maintain the size and capacity of physical and public service facilities to adequately and permanently meet needs resulting from a defined intensity of land use, and to provide for the health, safety, morals, prosperity, and well-being of the rural community at large."

Staff has recommended approval of the zoning district with some additions, including the inclusion of a Noxious Weed District Plan, a setback in Area 2 for housing livestock, some different language in the intent statement and that the height for buildings be 30 feet, not 35 feet as proposed, making it comparable with C-A3 and surrounding zoning districts. There are also some suggested grading standards in Area 3 and alternative wastewater nutrient removal technology.

The Planning Board met on February 16, 1999 and voted 8-0 to recommend approval of the zoning district. There were a number of concerns raised by the public at Planning Board and in calls to OPG. One of the main concerns was the potential for ground water contamination to other residences in the area, including across Mullan Road. Another one was the possibility, in the event the Area 3 subdivision went in, of increased traffic on Mullan Road. Improvements and increased traffic and easement acquisition on Primrose Drive were raised by the public. Both flooding and the need for bridges across the irrigation ditch were also raised.

Chair Kennedy asked Colleen Dowdall about the change to Section 3C General Standards, No. 5, which states: "5. In order to protect water quality, development may be required by the Health Department or governing body to use wastewater nutrient removal technology." In looking at the response from the Health Department, they recommended against approving the zone unless there was a binding commitment to utilize wastewater nutrient removal. He wanted to know if the language was sufficient?

Colleen Dowdall stated this was discussed at great length and she believed the Health Department understood that the zoning was not the place to impose those kinds of restrictions. If a density like this was approved, in terms of zoning, subdivision may still be difficult because of those restrictions.

Nancy Heil stated the Health Department had some language that stated development at that density might require alternative use. However, it was not determined what density might not require alternatives. That was another reason for leaving the language as it is.

Chair Kennedy stated he was reading in the report that the Health Department would not support the zoning unless, and it had nothing to do with density.

Nancy Heil stated that was a conversation she had with Jon Harvala.

Jon Harvala, Missoula Valley Water Quality District, stated he understood the question was the difference between what their letter said and the final recommendation adopted by the Planning Board. Any subdivision that is proposed in that area will need to go through non-degradation review by the state and his office, including sanitation and subdivision review. The language as proposed is sufficient to meet the concerns. They wanted to put the developer on notice that this area has demonstrated some sensitivity to ground water contamination and the ability of septic systems to function adequately. Developers could need to do some additional engineering work in this area at the proposed density.

Chair Kennedy stated a concern he had goes beyond ground water to the VNRP. The non-degradation rules don't really address VNRP, and he had a concern that the Water Quality District's review would not address it either.

Colleen Dowdall stated Jon Harvala's original comments did discuss VNRP.

Chair Kennedy was wondering if the Health Department would review a future subdivision not just in terms of ground water effects, but also surface water effects.

Jon Harvala stated the VNRP document makes a commitment by the County to look at those issues, but has not been made into regulations or standards or design review criteria yet. On balance, the agricultural zoning is preferred from a VNRP standpoint. Preserving the large tract of land in agricultural use has some advantages; protecting the ground water and adopting some of the concerns in the VNRP.

Ron Ewart, Eli & Associates, developer's representative, was present, as was Carl Saunders, the applicant. At least 125 acres of the property will remain in actual zoned agricultural and open space, possibly up to 160 acres, depending upon the final design. Phillip Maechling was enthusiastic about the proposal, he felt it would be a model for saving agricultural ground. Part of the area is zoned at one unit per 5 acres, the rest is unzoned. In the surrounding area there are lots of various sizes, large lots and several 5 acre lots. This proposal would not be like the conventional development that has taken place over the past several years. The proposal is under the guidance of the 1975 Comprehensive Plan. One of the planning objectives for this area (the Hellgate Planning Area) "is to cluster residences so as to preserve agriculture and open space." That is what they are trying to do here, protect the agricultural resource. They are several issues that must be worked out for the southern part of the property, where the 38 homes (maximum) are proposed. They are also asking for approval of Adler Acres, which is a part of this zoning district. Adler Acres is across the railroad tracks, accessed by Mocassin Lane. It is detached from the rest of the property, making it not profitable for agricultural operations. Some issues have also been worked out with Horace Brown. There are some issues with the Health Department that they will be working out. Beyond that, there have not been any concerns from any other agencies. He felt this is a good proposal, a lot of thought has gone into it. Carl Saunders, the owner of the property, has farmed the ground for 19 years.

Chair Kennedy stated there were two proposals here, one for the zoning and one for the subdivision subsequent to the zoning. He asked Colleen Dowdall if they should be taken one at a time.

Colleen Dowdall stated that when the Commissioners make a motion, they should be done one at a time. She did think it was okay for people to address both in their testimony. Adler Acres was a minor subdivision and did not require a public hearing. The public hearing was only needed on the zoning district.

Chair Kennedy asked Ron Ewart if he had anything further to add on the Adler Acres Subdivision?

Ron Ewart stated he did not at this time, but was available to answer questions.

Nancy Heil stated she did not give a summary of Adler Acres, assuming it would be done after the hearing and decision on the zoning district. She would want to give more detail on Adler Acres when the Commissioners were ready to consider it.

Chair Kennedy stated their understanding of zoning and subdivision may be different from the general population who isn't associated with it every day. He thought Colleen Dowdall's idea to hear testimony on both was a good one. If Nancy would like to make her presentation on Adler Acres, then the Commissioners would take testimony on both projects.

Nancy Heil, Office of Planning and Grants, presented the staff report for Adler Acres.

The applicant, Carl Saunders, is requesting approval to divide a 16.17 acre parcel into 5 lots, ranging from 3 to 4.06 acres in size. The property is located southwest of Mocassin Lane approximately one mile west of Deschamps Lane. The property is legally described as Tract 1, COS 4385, SE 1/4 Section 30, T14N, R20W.

The property is located within the proposed Primrose Heights Rural Zoning District, but is currently unzoned. Three distinct areas within the zoning district are proposed. The Adler Acres subdivision comprises Area 1, the northeast 16 acres of the zoning district, and is proposed for a residential density of 1 dwelling unit per 3 acres. Area 2, 127.62 acres in size, the most productive agricultural land in the zoning district, would remain in agricultural production. Area 3, the southern 80 acres, would allow clustered residential development at a maximum density of one dwelling unit per 2.2 acres. The overall density for the entire zoning district would be approximately one dwelling unit per 5 acres. The 1975 Missoula County Comprehensive Plan designates Open and Resource land use with a density of one dwelling unit per 40 acres.

The Adler Acres property is currently under dryland agricultural production. A Montana Rail Link right-of-way forms the western boundary of the property and divides the property from the rest of the applicant's land, making access difficult and irrigation unfeasible. Surrounding land uses are agricultural and residential.

Access to the subdivision would be provided via Mocassin Lane to a new private road, Mocassin Trail. Mocassin Lane is a County maintained road that is graveled to approximately 20-22 feet. The road forms a 90 degree bend, the County Surveyors Office has requested as a condition of approval that there be a "T" intersection there for public safety. There is also a variance request for road width on Mocassin Lane, to be allowed to stay at the existing 20-22 foot width. Staff is recommending approval of the variance, with the condition that an RSID waiver for future improvements to Mocassin be required.

There would be a new private road serving the five lots called Mocassin Trail. The applicant originally proposed to provide a 40 foot easement along the eastern property boundary which would line up with the existing Mocassin Lane easement. Based on comments from the Surveyor's Office, the applicant amended the proposal to include a 54 foot easement along Mocassin Trail, which would end at a cul-de-sac. Mocassin Trail would be paved to a 24 foot width using recycled asphalt. There would be a cul-de-sac located at the southern boundary of Lot 3. Lots 4 and 5 would be served via a 27 foot access easement, which would have a private driveway serving both of those lots. There is a road maintenance agreement included in the proposal.

The applicant has requested a variance from walkways or pedestrian facilities at this time, there is a waiver of the right to protest an RSID for improvements to Mocassin Lane. Individual well and septic systems are proposed. Proposed covenants are attached to the staff report. NRCS and the Health Department stated some concerns about the ability of drainage on those sites.

Frenchtown Rural Fire would serve these lots and there would be the \$100.00 per lot impact fee required. Montana Fish, Wildlife and Parks noted that the subdivision does include some habitat for deer and smaller mammals and birds. They recommended some measures to minimize conflicts with wildlife. The proposed covenants do include some of

those measures. The Weed District recommended that a Noxious Weed Management Plan be developed for the entire zoning district and also that a revegetation plan for this subdivision be required, as noted in the conditions.

There is the railroad right-of-way that runs along the western boundary of the property. It is a 300 foot right-of-way, the railroad itself is much lower than the surrounding land. There is a 50 foot rear yard setback (from the property line) that would be required by the proposed zoning district. It is likely the homes would be built even closer to Mocassin Trail. There is a barbed-wire fence that separates the property from the railroad right-of-way. MRL has stated that the fences are owned and maintained by them with no adjacent property owners leasing the outer right-of-way, to keep livestock out of the right-of-way. They suggested some additional fencing to prevent livestock incidents and deter trespassing. The proposed covenants include a statement prohibiting altering the existing fence. The railroad is a possible route for the Yellowstone Pipeline, which would be located on the far western boundary of the railroad right-of-way, at least 300 feet away from anything in Area 1.

Staff is recommending approval of the two variances as well as Adler Acres subdivision, subject to conditions. One of the conditions is that the Primrose Heights Rural Zoning District become effective prior to plat filing. The other conditions relate to roads and road maintenance and RSID waivers, the revegetation plan and the \$100.00 per new lot to the Fire District.

Chair Kennedy stated the paving requirement in the subdivision regulations pre-dates the use of reconstituted asphalt, which are not necessarily equivalent. There is no objection to the use of reconstituted asphalt, as long as the result is similar to what is required by the regulations.

Ron Ewart stated the big difference was whether or not the recycled asphalt was hot mixed. Carl Saunders knows how to apply the mixture to make it good.

Chair Kennedy stated there is an issue in Target Range currently where the recycled asphalt on a trail has failed. If this is approved and then fails, it is not okay, it will have to be remedied using conventional means.

Horace Brown stated the Road Department requires 5 inches of loose material before it is compacted, when used in place of a hot mix.

Chair Kennedy opened the public hearing on both the proposed zoning district and Adler Acres Subdivision.

Florence Jones, 11950 Mullan Road, stated her comments were regarding using Primrose Drive as a main entrance to the clustered subdivision in Area 3.

Allan Jones, husband of Florence Jones, stated his wife had prepared some photos of the land involved showing the creek and surrounding areas.

Florence Jones stated the photos were of the surrounding area and area immediately adjacent to Primrose Drive. She wanted to show the area was very flood prone and had been for 100 years. She also presented a hand-drawn map of the area showing the neighboring properties. Their property was adjacent to Mullan Road.

Allan Jones stated they were really concerned about the floodplain and the road. It was explained at the Planning Board they might have to build up Primrose to get it out of the floodplain, so emergency traffic was accessible. As LaValle Creek is noted for flooding, they were concerned that if the road were lifted in any way it could change the flow of the water during the flood period. The ground there is very flat and flooding is their main concern.

Florence Jones stated that Primrose is plowed so Martha Watkins has access to her ranch. Otherwise it is used by the farmers to move cattle and do haying. It is just a ground level, one lane, dirt road through the pasture land. The bridge is a 12 foot plank bridge over LaValle Creek. The power lines run on the west side of Primrose Drive. Primrose Drive regularly floods during the spring runoff. There is concern that if the road is built up to form any kind of dike, the area residents to the west and south would be flooded. In 1997 when there was heavy spring runoff, Martha Watkins had to be evacuated from her ranch because of high water. They also pumped water day and night from their residence for over a month. There is great concern about flooding in the area, especially in high runoff years, but also in normal years. If the road were built up they would like to know who would be responsible for building and maintaining the bridge, would it be the County or the developer? There is a brush thicket along the creek that has become a protected safety area for a long-eared owl that the Audubon Society and University use to study. That thicket is directly to the west of the existing bridge. There is also concern about the Grass Valley French Ditch to the south of the area. The ditch is 4 to 5 feet deep during the summer and cut right out of the hillside. There is a 20 to 30 foot drop into the ditch, which is not a family friendly situation. There is also a block-long, 36 inch culvert that goes down the hillside with a grate over it which would not keep a child out of it. The railroad also borders the north end of the development. There are a lot of concerns about making this a development for families. Many of the surrounding physical features are not safe for children.

Allen Remington stated his property adjoins Adler Acres and Martha Watkins is his mother-in-law. He read from a letter prepared by his wife, Mary Ann Watkins Remington: "As adjacent property owners to the Primrose Heights Rural Zoning District, we wish to clarify the bolded portion of the following paragraph found on the bottom of Page 2 of the proposal summary: ***There are also two other secondary accesses which could be used in the event of an emergency if for some reason Primrose Drive were cut off to traffic as shown on the secondary access map in the packet. The owner and applicant currently uses these two accesses to reach his property. One of the accesses comes off a private lane from Mullan Road and the other comes off Mocassin Lane to the North.***' There is NOT currently a road or any plans in the future for a road off of the proposed 38 lot clustered subdivision of Primrose Heights (south of Montana Rail Link) through our property connecting to Mocassin Lane. To our knowledge, Mr. Saunders has never used this non-existent road to access his property. Mr. and Mrs. Richard Watkins moved to the adjacent property to the east of Primrose Heights in 1939. Mrs. Watkins continues to reside there. After so many years of tranquillity and distance from neighbors, it is disturbing to have a clustered subdivision next door. If the zoning request for Primrose Heights is approved, we would ask the covenant agreements with the future property owners of the subdivision include

strict clauses regarding respect for the property, privacy and quiet of others and adherence to 'no hunting' and 'no trespassing' postings. --*Martha E. Watkins, E. Allen Remington and Mary Ann Watkins Remington*" To get to Mrs. Watkins property there is a gate by Primrose Drive. Mr. Saunders wants to propose a road to the left and Mrs. Watkins road goes to the right. Her lane continues to her house and through the fields to Mocassin Lane. It is a farm road and they did not want anyone using it, even in an emergency.

Chair Kennedy asked Horace Brown if those were public right-of-way?

Horace Brown stated there was 15 feet of right-of-way on Primrose Drive to the bottom of the ditch. The County does not maintain the road.

Carl Saunders, 13690 Mullan Road, stated he was the applicant asking for the zoning district. To respond to Mr. Remington about the two accesses that he has never used. One of them goes across a neighbor's land (Marvin Jette) and through his yard, in the event of an emergency as far as evacuation of people off the top of the hill.

Nancy Heil stated there is a map in the Primrose Heights packet showing the roads.

Carl Saunders stated there was a road with a bridge across the Grass Valley French Ditch and across the Frenchtown Ditch. It is a road he uses to take hay out to Mullan Road. He has a utility easement that runs down the old railroad right-of-way to Mocassin Lane. This is how the power company comes in and reads his meters.

Chair Kennedy asked which access Mr. Saunders was speaking of which accessed Mrs. Watkins land.

Carl Saunders stated the road was on the 127 acres in Area 2. This road would be an emergency evacuation only, not open and necessary to be maintained. The easement will be there if the subdivision is done. There is a gate on Mrs. Watkins property that he has used to bring cattle back but that was not intended to be used for emergencies. If an emergency route did go through Mrs. Watkins land and back to Primrose Drive, it would not accomplish anything. He has farmed the land for about 19 years and Mrs. Watkins has been a good neighbor, as have others in the area. He will continue to farm the land. He had leased it in years past but was given an ultimatum to buy it or somebody else would divide it. He felt his division was better than to have the entire acreage broken up into five acre tracts. He made the decision to proceed to try and make this work and pay for the property so he can continue to farm.

Jack Gillespie stated he has lived in Mallard Estates for about 25 years. His concerns, like the others, is ground water contamination. Another concern he had was the clustered housing, would Carl Saunders heirs, or whoever took over the property, have the same desire to farm that land or will that 127 acres turn into one acre lots. Ground water, the schools and Mullan Road itself, which is one step short of "Detroit City," were his concerns.

Robert May stated his sister-in-law owns the land (50 acres) adjacent to Primrose Drive by the turn to Mrs. Watkins land. As Mrs. Jones said about the flooding in 1997, that 50 acres of land was not able to be farmed that whole year, it was all under water. That is on the river side of Primrose Drive down to the Old Milwaukee right-of-way. It was under water the entire spring because the siphon under the Old Milwaukee right-of-way was plugged off. As Mrs. Jones said there is quite a difference in elevation where the road goes to Mr. Saunders place, 4 wheel drive is required, even during the dry times. He lives on Harper's Bridge Road so he is downflow of the water from the septic systems. There have been lots of problems. He has a neighbor who had to put in some new type of septic. His concern was mainly ground water contamination.

Carl Saunders commented on the hill that was of some concern. There is a railroad fill on the old abandoned track that is about 75 feet in depth. The actual bottom of the swale that would be accessed with a road is about 10 feet below the bank of that ditch. All of the fill would be coming out of there putting the road in. That steepness of the hill will be removed when the road is put in place.

Florence Jones wondered if there would be the possibility for the main access road to be farther west instead of using Primrose Drive? It is an easy access to the Old Milwaukee railroad bed which goes directly below the development area. That road bed is firm and already in place. It is a longer road area and could be more costly, but it would be a better access because it would not disturb the creek or the ditch. She was also wondering about what type of sewer program would be used, would it be individual septic or a community system?

Chair Kennedy stated there were two things happening today. One is a proposal for zoning and on part of that property, should it be approved for zoning, there is a portion north of the tracks which is considered for subdivision. Many of the questions that are being asked today are really subdivision questions. The access to the southerly part of the property is a subdivision question that presents an enormous barrier to the developer of the land. Should it be zoned today, that land would have to undergo substantial review before any subdivision out there is approved. This is how the process works. Mrs. Jones question was not addressable today and won't be until and if the zoning first happens. Were there any other comments anyone would like to make before the Commissioners discuss these proposals? It was his understanding that Mr. Saunders did not currently own the property.

Carl Saunders stated he had purchased the property.

Chair Kennedy asked if the purchase was conditioned upon approval of the zone or the subdivision cluster on the southern portion of the property?

Carl Saunders stated it was not.

Chair Kennedy stated that was an important issue because he did not want it understood that should the zoning be approved that it means he has a right to develop upon the southern land. There are enormous barriers that need to be overcome for that to happen.

Carl Saunders stated he was well aware of that. The reason this is being approached at the same time is that when he went to OPG with the five lot subdivision they suggested they would approve it if he set the agricultural land aside. He was not willing to do that because he is not sure whether he is going to get the subdivision done or not off Primrose Drive but he wanted the right to do it. In order to get OPG on his side for this 5 lot subdivision, they wanted some agricultural land set aside. That is why the zoning is being done at this time.

Chair Kennedy stated in the event the zoning is not approved, would Mr. Saunders pursue zoning for the 5 lots.

Carl Saunders stated he would not, he would come in as a minor subdivision review without the zone.

Chair Kennedy stated when there is zoning there is always the question as to whether or not zoning constitutes development rights. Some people think yes, other say it depends upon meeting the conditions of subdivision review.

Colleen Dowdall stated the zoning for this area permits a certain density, it doesn't require it but allows it in the event the property can be developed. One of the conditions of subdivision review is that it complies with zoning. Mr. Saunders could bring in a development that is less dense than 38 homes or he could bring one in configured differently, as long as it is within the area that permits the density. Subdivision review is the creation of parcels of land, the lines on the map. That is not guaranteed by a zoning. There are lots of zoned areas in Missoula and Missoula County that could not support development. Those are the rules. Zoning needs to be looked at from a land use aspect, whether this is a good use of the land. When it gets to subdivision review, the criteria are looked at as asked by state law, such as effects on water quality, legal and physical access, etc.

Chair Kennedy stated that Mr. Saunders made the comment that the zoning that included the agricultural land was an agreement with OPG. He asked Nancy Heil about that?

Nancy Heil stated she would not call it an agreement. Mr. Saunders came in originally with a proposal to divide that 16 acre parcel into five lots, only talking about that one parcel (the 16 acres of Adler Acres). At the time of pre-application discussions with Ron Ewart, Phillip Maechling, Mr. Saunders and herself, it was noted this was located in an area that is designated by the Comprehensive Plan as one dwelling unit per 40 acres. In discussions if OPG would be able to support this more dense development, it was not sure it would be supportable. At that time they were not talking about the southern 80 acres, just Area 2. A proposal would be more supportable if the other agricultural land were included and conserved as agricultural.

Carl Saunders stated that it was in no way a coercion thing or anything, it was a suggestion made.

Chair Kennedy stated a question remained. What would be the consequences of not zoning the land?

Nancy Heil asked if his question was the consequences of not zoning it in terms of Adler Acres?

Chair Kennedy stated he was talking about the entire parcel. If it is not zoned, what is the consequence?

Nancy Heil stated Adler Acres would have to be revisited.

Chair Kennedy asked about the area south of the tracks, the remaining larger portion remaining unzoned?

Commissioner Evans asked how many houses could be built on the unzoned land?

Nancy Heil stated it would have to be evaluated as proposals came in. That is an area that is designed by the Comp Plan as one dwelling unit per 40 acres, except for the very southern 19 acres that is already zoned C-A3, but a portion of that is within 100 year floodplain. What the zoning gives is some guidance and some rules about what and how development would happen there.

Colleen Dowdall stated it would also eliminate Area 2, the protection of the agricultural land. The reason that has evolved as a condition or as a request to include that is in order to find Comp Plan compliance. It is not the only way to find Comp Plan compliance. The reason for the one per 40 designation was to protect agriculture. If someone wants to develop this land and be in compliance with the Comprehensive Plan, one way to do that is develop it one per 40, but another way to do it is to develop the land protecting the agricultural land.

Chair Kennedy stated this is about a 229 acre parcel and one per 40 would give no more than 6 units. This zone will allow 38 units on one side and 5 on the other side. Going from 6 to 43 has been achieved by saying Comp Plan compliance can be reached by clustering and preserving agricultural land. He could not understand what would happen if it isn't zoned. Does the land go out of agricultural use? Does it get chopped up into five or six 40 acre parcels? What happens to it?

Colleen Dowdall stated that is precisely what the possibility is. One of things that has been found pretty clearly is that developing land in locations like this, at 5, 10 or 20 acre parcels, is not the most efficient use of the land.

Chair Kennedy stated the Comp Plan is talking about 40 acre parcels.

Colleen Dowdall stated she was talking about if it was not zoned, and there are four, five, six development rights, it is entirely possible that would be divided, even a 40 acre parcel, but a farmer cannot make a living on a 40 acre parcel. If the zoning is done, that is what is gained. If the zoning is not done, when someone buys one of those 40 acre parcels, they can come in and ask for zoning, and it could eventually be divided up in that manner.

Chair Kennedy stated everything is subject to rezoning. This process is completed, then Mr. Saunders goes through subdivision and he builds out the 43 houses. He has a zone that preserves agricultural land but there is nothing to prevent that from being rezoned for high density development.

Colleen Dowdall stated that it would have to pass through the public hearing process, action by the Board of County Commissioners and the protests of the other residents of the district.

Commissioner Evans stated it reminded her of Butler Creek, which wasn't good.

Chair Kennedy stated he had a concern about the surrounding property. This is not the only parcel in that area.

Carl Saunders stated that was one of the things staff addressed as they were trying to set some sort of precedent for how to develop surrounding parcels of agricultural land. It would be unreasonable to think this area would not go through some sort of transition in the next 20 years.

Chair Kennedy stated he appreciated the fact the agricultural land was trying to be protected and Mr. Saunders proposal. He thought it was great and liked the notion of doing that, particularly the clustering part. He was trying to examine all the other things that might happen as a consequence of this, should it be approved. He asked Horace Brown about Primrose Drive, the territorial extent was not known but it was known that it is a substandard road and easement. If this is zoned and there is a subdivision proposal, because of what has been heard and could be proven, that would not be the place for a road. What will be done, will the road be moved?

Horace Brown stated there is not enough right of way there to build the road to meet subdivision requirements.

Chair Kennedy stated he was talking about a physical problem of flooding. If it turns out this road is not usable, is up to Mr. Saunders to come up with an alternative access route that is acceptable?

Colleen Dowdall stated that any subdivision has to have both legal and physical access. In the regulations, physical access is defined as meeting County road standards, whether it is a private road or a County road.

Chair Kennedy stated that was the answer he wanted. This means that if this road can't meet County road standards, and it doesn't in width or easement and probably flooding right now, is there anyway this subdivision can require the County's participation in a new location for a public right of way to that property?

Horace Brown stated he would not think so.

Colleen Dowdall stated absolutely not.

Commissioner Evans stated she was concerned about the potential flooding on the road, and the potential of building the road up. She did not want another flooding problem that the County has approved, it did not look good.

Carl Saunders stated that is his only legal access to his property. The flood conditions are about 4 or 5 feet, he has walked it in his hip waders to about his knees when it flooded the last time. Part of the problem was that the Grass Valley Ditch was in danger of being flooded out and losing its banks, so all the flood gates were opened to dump the water into LaValle Creek.

Commissioner Evans asked if he purposely flooded his road?

Carl Saunders stated that was correct, to save the ditch the road was flooded. The 12 foot bridge on the road is not adequate to handle LaValle Creek at flood stage, it would need to be considerably wider. The road itself forms the dike that backs the water up. It definitely needs to be addressed. That is why it was proposed to build the road up, but widen the access and allow more water to flow through, not leave the 6 foot wide opening that is there in the 12 foot wide bridge that allows water to back up and flow over the road.

Chair Kennedy stated it could be that if the zoning is approved and Mr. Saunders comes in with a proposal like that, the Commissioners may not agree with it. They may say that is not good enough, they have heard the evidence and looked at the scientific data. If the road is built up, it will make a bigger mess than already exists because of the dam effect of the road. It may be necessary to go somewhere else to provide access to the subdivision.

Carl Saunders stated there really isn't another spot for access to the property other than an easement across Marvin Jette's property, which has not been pursued. His problem was that he proposed to pave the road all the way to Mullan Road. In the present location it is about 3/4 of a mile, the other way would be about 3-1/2 miles. Rebuilding Primrose Drive leaves him a lot more flexibility to do what the Commissioners are asking.

Chair Kennedy stated that may be a problem for him.

Commissioner Evans asked if the SCS (NRCS) had anything to say about the road since a water course was involved.

Colleen Dowdall stated the SCS (NRCS) would have a say at the point where the road would have to be built. That review would come at the time subdivision review was presented for this section of the land in terms of access. If Mr. Saunders presents this subdivision and the Commissioners don't approve the physical access, the subdivision would have to be turned down.

Chair Kennedy stated he was concerned because of the situation at Glen Eagle. It was learned through the process that under certain circumstances isolated parcels of property have condemnation rights in order to provide access. He was concerned about denying access to property.

Colleen Dowdall stated they were not denying access. Mr. Saunders has rights of access now to his farmland. Legal access and physical access for purposes of subdivision review are something else.

Nancy Heil stated that at the time of additional review of the road, there would be a floodplain permit required during construction. She believed that one of the requirement was if the road were proposed to be elevated, it would need to

be demonstrated that would not cause an increase in flood elevations of one half foot to properties upstream. There is another regulatory mechanism for this process as well.

Horace Brown stated that was his comment as well, even if the road was built up, it would need structures for the water to run under the road so it would not raise the floodplain more than half a foot, per the Soil Conservation District (or whatever they call themselves now).

Commissioner Evans stated the proposed Adler Acres was nowhere near the floodplain.

Nancy Heil stated Adler Acres is not, but the proposed access to Primrose Heights is.

Chair Kennedy stated one had to go through the floodplain to get there.

Colleen Dowdall stated one did not have to go through the floodplain to get to the Adler Acres Subdivision. Primrose Drive only affected the area within the zoning district.

Nancy Heil stated there were two different possible subdivisions. Adler Acres subdivision, the 5 lots, is accessed from Mocassin Lane and is neither in the floodplain nor accessed by a road that crosses the floodplain. The floodplain consideration comes in if the southern 80 acres of the site were zoned and Primrose Drive were used as an access. That access crosses the floodplain, there is a small finger of the floodplain that is on the southern portion of the southern 80 acres, which is indicated as a no build zone in the zoning proposal.

Commissioner Evans asked Ron Ewart if he could answer any questions posed by the audience.

Commissioner Carey stated the underlying quid pro quo was the 127 acres devoted to agriculture. He asked Mr. Saunders if he had given any thought to how that might still be farmed 10, 20, 30 years from now.

Carl Saunders stated Ron Ewart had suggested a conservation easement which he would not be opposed to. He intended to keep it as agricultural land as long as he was alive.

Chair Kennedy stated there may be an advantage to him to pursue a conservation easement with a different zone.

Carl Saunders stated he felt it may be worth more money as time passed, conservation easements are pretty new.

Chair Kennedy stated there was a monetary value to him to pursue a conservation easement.

Commissioner Evans stated the only way an agricultural covenant could be removed with through a vote of the County Commissioners.

Colleen Dowdall stated he was not requesting an agricultural covenant, he was requesting agricultural zoning. If it is zoned, the conservation easement would add to the security of the residents in the area who want to see it remain agriculture. It would not be up to the Board of County Commissioners 20 years from now, it would be subject to the conservation easement. It would take away the monetary benefit to Mr. Saunders, because he wouldn't get a tax break on land that is already zoned without any development rights. The trade is development rights in return for conservation.

Commissioner Evans stated that since it is unzoned, or one per 40, the potential of a lot of return is low to start with.

Ron Ewart stated most everything has been addressed as best they can at this point. The alternate emergency accesses have been addressed, the bridge would have to be approved by the County Surveyors Office, the floodplain permit through NRCS, the grade to the property can be kept acceptable, etc. There are a host of issues that need to be worked through and some scientific study needs to be done. He believed this was a good proposal.

Chair Kennedy told Mr. Saunders about the informal policy the Commissioners started to look at roads for inclusion into the County roadway system. Right now the probability is that Primrose Drive, if ever pursued under subdivision, would be a private road, and he would be responsible for operation and maintenance.

Allen Remington stated they built next to Adler Acres three years ago through the process of a 10 acre Family Transfer from his mother-in-law. They were told at that time they could not build more than 2 houses on the 150 acres without rezoning. He also asked if Mr. Saunders was planning on stick-built homes or mobile homes.

Chair Kennedy stated that was really an issue for a different time, although there were some requirements under the proposed zone.

Nancy Heil stated there were no restrictions in the proposed zoning district that relate to the type of housing that is allowed, whether it be stick-built, manufactured or modular.

Chair Kennedy stated that zones have their own restrictions that sometimes have to be by agreement of the people involved in the surrounding areas. In this particular zone, there won't be any restriction with respect to the kind or type of housing that might get constructed in the area, other than what happens during subdivision review.

There being no further comments, Chair Kennedy closed the public hearing.

Commissioner Evans stated she appreciated the need for mobile home sites. She asked if there was any reason that a prohibition for mobile home could not be in the covenants?

Nancy Heil stated Mr. Saunders could have covenants that prevent mobile homes but it was not something the County could require. The subdivision review would look at the division of land into lots, not the kind of structures that are placed on the land.

Chair Kennedy asked if this could be turned into a special zoning district with that requirement?

Colleen Dowdall stated there has been one Montana Supreme Court decision that discourages zones that restrict mobile homes. Part of that decision discussed whether the community adequately provides for mobile homes within their zoning. There are provisions in the County zoning that restrict mobile homes to parcels in certain zones that are five acres or greater. That has not been enforced, because of the Supreme Court decision, for at least the last 11 years.

Chair Kennedy told Mr. Remington if he was interested in pursuing that, he could begin examination of the overall zoning rules in Missoula County to find ways to make sure that if it allows for certain zoning in certain areas then perhaps it can disallow them in other areas. Until that is done, the Commissioners would not pursue it, the resources were not available.

Commissioner Carey asked Mr. Saunders what the price range was he had in mind?

Carl Saunders stated the homes would be modular or manufactured homes on permanent foundations for both proposed subdivisions.

Commissioner Carey asked what they would market at?

Carl Saunders stated it would be between \$90,000 and \$120,000, property and improvements.

Commissioner Carey stated Mr. Maechling talked about the opportunity to do some creative design work in the clustering.

Carl Saunders stated they had given it a lot of thought, a lot would depend on the sanitary restrictions, having a community sewer system and what not. That is in the future however.

Commissioner Evans moved that the Board of County Commissioners approve the zoning of the property located southwest of Mocassin Lane and approximately one mile west of Deschamps Lane, north of Mullan Road and northwest of Primrose Drive, described as Tracts 1 and 2 of COS 4835 in Section 30 and 80 acres in the north one-half, northeast one-quarter, Section 31, T14N, R20W, excluding the Montana Rail Link property, be zoned to the Primrose Heights Rural Zoning District, as shown in Attachment A and subject to the recommended conditions.
Commissioner Carey seconded the motion.

Commissioner Evans stated she believed the public benefited by this zoning because the land is kept in agricultural open space that would likely be lost otherwise.

Chair Kennedy stated he is currently drafting a letter to the Target Range people that talks about what zoning does and does not do. It is largely the same issue. The community agrees among itself to live by certain rules in order to achieve a greater good in the quality of life. Sometimes elected officials have to make judgments as to which course to take. The course taken here has been closely negotiated and gone through scrutiny of the technical staff at OPG and through the volunteer citizen board. Even with all that work, the Commissioners still had questions to be resolved before they could make a judgment on it.

Chair Kennedy called the question. The motion carried on a vote of 3-0.

SECTION 6.10 PRIMROSE HEIGHTS RURAL ZONING DISTRICT

A. Intent

This district recognizes the need for an alternative to traditional large lot rural zoning. This district is intended to provide standards which promote a rural residential/ agricultural lifestyle through designation of areas for agriculture and open space and areas for quality, moderately-priced clustered housing.

Exhibit A shows the boundaries of three distinct areas within the district as described below.

AREA 1: ADLER ACRES SUBDIVISION

The intent of the district for this area is to provide single family residential lots of a manageable size for those interested in a semi-rural lifestyle.

1B. Space and Bulk Requirements

Maximum Residential Density	One Dwelling Unit per 3 acres
Minimum Lot Size	3.0 acres
Minimum Lot Width	One third (1/3) average depth
Minimum Required Yard	- Front 50 feet
	- Side 50 feet
	- Rear 50 feet
Maximum Building Height	30 feet

1C. General Standards

See Supplementary Regulations - Chapter III

All development shall comply with a Noxious Weed Management Plan for the District.

1D. Permitted Uses

- 1. Single Family Dwelling.
- 2. Accessory Buildings and Uses.

AREA 2: AGRICULTURAL AND OPEN SPACE PARCEL

The intent of the district for this area is to provide a relatively large, contiguous, and agriculturally viable parcel of land chiefly for continuation of agricultural use. One single family home may be permitted on the parcel.

2B. Space and Bulk Requirements

Maximum Residential Density	One Dwelling Unit per 125 acres
Minimum Lot Size	125 acres

This lot is not divisible for development purposes.

Minimum Required Yard	- Front	50 feet
	- Side	50 feet
	- Rear	50 feet

Maximum Building Height	30 feet
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Any accessory building used for raising and housing livestock shall not be nearer than:

One hundred (100) feet to any place of human habitation under separate ownership or on a separate lot.

One hundred (100) feet from any draw or watercourse.

Fifty (50) feet to any property line.

2C. General Standards

See Supplementary Regulations - Chapter III

All use shall comply with a Noxious Weed Management Plan for the District.

2D. Permitted Uses

- 1. Agriculture and Open Space.
- 2. Single Family Dwelling.
- 3. Accessory Buildings and Uses.

AREA 3: CLUSTERED HOUSING, 80-ACRE PARCEL

The intent of the district for this area is to provide for single family homes in a clustered manner so as to make efficient use of infrastructure, to preserve the main draw in the central area for wildlife habitat, to preserve natural drainage systems, to allow for aggregate agricultural use of the remaining land in the area and the district as a whole, and to allow housing to be concentrated on sites that are outside of sensitive land areas.

3B. Space and Bulk Requirements

Maximum Residential Density	One Dwelling Unit per 2.2 acres
Minimum Lot Size	One half (1/2) acre
Minimum Lot Width	One third (1/3) average depth
Minimum Required Yard	- Front 25 feet
	- Side 15 feet
	- Rear 25 feet

Maximum Building Height	30 feet
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All buildings shall be set back 50 feet from draws or watercourses.

3C. General Standards

See Supplementary Regulations - Chapter III

In addition, the following development standards shall apply:

1. No building in Area 3 shall occur in the floodplain, the central draw, the southeast draw, or the area along the Grass Valley irrigation ditch as shown in Exhibit A. Road construction may occur in the southeast draw.
2. Primary and accessory buildings shall be constructed only on land with an existing slope of less than 25%.
3. Disturbed slopes greater than 10% shall be graded to accomplish the following:
 - a. Cut and fill slopes shall have continuous slopes that reflect the forms and shape of surrounding topography.
 - b. At the intersections of manufactured and natural slopes, contours shall be curved to blend with the natural slope.
 - c. Man-made slopes may exceed a ratio of 3:1 only if significant environmental characteristics of a site are preserved or the need for extensive cut and fill is substantially reduced.
 - d. All graded or disturbed areas shall be permanently revegetated with native plants, fire-resistant vegetation, or other plantings in accordance with a Noxious Weed Management Plan.
4. All development shall comply with a Noxious Weed Management Plan for the District.
5. In order to protect water quality, development may be required by the Health Department or governing body to use wastewater nutrient removal technology.

3D. Permitted Uses

1. Single Family Dwelling.
2. Accessory Buildings and Uses.

Commissioner Evans asked if staff could explain to the audience what other reviews were necessary for this subdivision before it could actually be built, such as water, septic, roads, etc.

Nancy Heil stated first and foremost would be the review by the Health Department for sanitation. There is a condition of subdivision approval that the roads, both Mocassin Trail and the "T" intersection, specifications and engineering plans be approved by the Surveyors Office. Those improvements are to be done on the public portion by the time of plat filing, if there is an improvements guarantee. There are no riparian resources on the site. A weed management plan and revegetation plan have to be in place before plat filing. Those are the main concerns.

Horace Brown stated they would have to waive the rights to protest an RSID on Mocassin Lane and sometime in the future the road would have to be rebuilt according to County specifications.

Commissioner Evans stated there would be review of that road, he can't build it to suit himself, it will have to be built to County specifications and the Surveyors approval.

Nancy Heil stated the RSID waiver is a condition of subdivision approval.

Commissioner Evans asked Nancy Heil to briefly tell the audience what the conditions of approval are for Adler Acres.

Nancy Heil stated there are two variance requests, one is to not provide sidewalks or pedestrian walkways in the subdivision. There is a requirement in the Missoula County Subdivision Regulations that all subdivisions provide walkways or some sort of pedestrian facilities in the subdivision. The applicant has requested a variance from that primarily due to the fact that this is in a fairly rural location and Mocassin Trail is a fairly short roadway that will only serve these five lots. There is also a requirement the applicant file a waiver of a right to protest an RSID for improvements for Mocassin Lane that could include pedestrian walkways in the future. At such time as improvements to Mocassin Lane were done, if it were determined that a separate walkway were needed, that would be done at that time.

Commissioner Evans stated they would not be able to protest that RSID, their signature has, in essence, been approved for that.

Nancy Heil stated the subdivision regulations require that Mocassin Lane be a 24 foot surface. The other variance request is to allow Mocassin Lane, right now, to stay at the existing 20-22 foot surface width, again contingent on the waiver of the right to protest an RSID at a later time, so one applicant is not bearing the entire cost of improvements to Mocassin Lane. There are seven Conditions of Subdivision Approval. Condition 1 is that the Primrose Heights Rural Zoning District become effective prior to plat filing. After today, there will be a notice for a 30 day protest period for the zoning. Condition 2 relates to the RSID waiver for pedestrian facilities. Condition 3 states that road engineering plans and specification for improvements to Mocassin Lane and Mocassin Trail be approved by the County Surveyors Office prior to plat filing and also that grading, drainage and erosion control plans for the roads and site be approved by the County Surveyors Office prior to plat filing. Condition 4 is that a road maintenance agreement for Mocassin Trail be approved prior to plat filing to insure that Mocassin Trail, a private road, is maintained and there is emergency vehicle access at all seasons of the year. Condition 5 is another RSID waiver to protest future public sewer and water systems if they ever become available. That is to assure that if in the future those services are available the lot owners at that time waive the right to protest and agree to be a part of any RSID. Condition 6 is that a revegetation plan for disturbed sites and a noxious weed management plan be approved by the Weed Board prior to plat filing. Because of the noxious weed problem there is in the County, there is a concern that as ground is disturbed for roads and development that there be mechanisms in place to deal with the problem. Condition 7 is that the developer contribute \$100.00 per new lot to the Frenchtown Fire District, to allow the fire district to purchase large diameter hoses and

watertenders to serve the subdivision, because there are no hydrants or community water system they would be able to hook up to.

Commissioner Evans stated a concern of Mr. Holden was that one of the proposed roads goes right through his home. He did not want that to happen. Could staff make sure that it is in the record that the width of one of these roads does not go through Mr. Holden's house.

Chair Kennedy stated Mr. Holden's concern did not affect the Alder Acres subdivision, it concerned Primrose Drive.

Nancy Heil stated his concern did not relate to Adler Acres, it relates to the southern 80 acres.

Commissioner Evans moved that the Board of County Commissioners approve the two variances for Adler Acres Summary Subdivision, based on the findings of fact set forth in the staff report, and approve Adler Acres 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.

1. The Primrose Heights Rural Zoning District shall become effective prior to plat filing. *Subdivision Regulations 3-1(1)(B) and staff recommendation.*
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 improvements to Mocassin Lane, including installation of pedestrian walkways, sidewalks, 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, County Surveyor recommendation.*
3. Road engineering plans and specifications for improvements to Mocassin Lane and Mocassin Trail shall be approved by the County Surveyor's Office prior to plat filing. Grading, drainage, and erosion control plans for the roads and for the site shall be approved by the County Surveyor's Office prior to plat filing. *Subdivision Regulations Article 3-2(5), staff and County Surveyor recommendation.*
4. A road maintenance agreement for Mocassin Trail shall be approved by the County Attorney's Office prior to plat filing. *Subdivision Regulations Article 3-2(1)(I)(1), staff recommendation.*
5. 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 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 Articles 3-1(1)(D), 3-7(2) and staff recommendation.*
6. A Revegetation Plan for Disturbed Sites and a Noxious Weed Management Plan shall be approved by the Missoula County Weed Board prior to plat filing. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
7. The developer shall contribute \$100.00 per new lot to the Frenchtown Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District Recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

THURSDAY, MARCH 11, 1999

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Commissioner Kennedy traveled to Polson to attend a Regional Juvenile Detention meeting.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Gerry Geske, Missoula Area Education Cooperative MEA, as principal for Warrant #30670 issued 12/10/98 on the Missoula County General Fund in the amount of \$354.40 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming the Foster Grandparents Program as principal for Warrant #12311 issued 3/10/97 on the Missoula County General Fund in the amount of \$15.00 now unable to be found.

ADMINISTRATIVE MEETING

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

Resolution -- The Commissioners signed Resolution No. 99-012, a resolution of intent to zone property described as Tracts 1 and 2 of COS 4835 and the N ½, NE ¼ of Section 31, T14N, R20W, PMM, as the Primrose Heights Rural Zoning District, subject to conditions.

Resolution -- The Commissioners signed Resolution No. 99-013, a Budget Amendment for the Sheriff's Department, in the amount of \$13,790.00, for the 1999 STEP/MIP and Radar Grants.

Contract – The Commissioners signed a Contract with Montana Electronics Co., Inc. for 911 equipment maintenance. Term of the Contract is 39 months, commencing on April 1, 1999.

Amendment and Addendum to Option Agreement – Chair Kennedy signed an Amendment of and Contingency Release Addendum to Option Agreement with Wesmont Builders-Developers, Inc. for Reserve Parcel B in the Missoula Development Park.

Other items included:


- 1) The Commissioners approved award of a contract for Tax Deed Title Searches for the Clerk and Recorder's Office to Western Title and Escrow (sole bidder). Per parcel cost of \$60.00, with a \$25.00 hourly rate for complex searches.

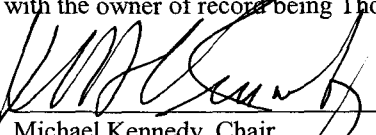
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, MARCH 12, 1999

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, and Commissioner Kennedy traveled to Helena to attend the Legislative Session.

Plat and Improvements Agreement – The Commissioners signed the plat and subdivision improvements agreement and guarantee for Van Ostrand Subdivision Lot 2, a subdivision plat located in the SE1/4 of Section 34, T12N R20W, PMM, Missoula County, Montana, a gross area of 4.43 acres, with the owner of record being Thomas Mercer.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MARCH 15, 1999

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

Plat – The Commissioners signed the plat for McCool Addition, a 2-lot subdivision of Lot 5, Block 3, Linda Vista, located in the NW1/4 of Section 12, T12N R20W, PMM, Missoula County, a total area of 0.94 acres, with the owners of record being Richard and Linda McCool.

Plat and Improvements Agreement – The Commissioners signed a plat and subdivision improvements agreement and guarantee for Rowe Acres, Lot 1, a subdivision located in the SW1/4 of Section 25, T13N R20W, PMM, Missoula County, with a net lot area of 4.48 acres, with the owner of record being David Arthur Holy.

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

TUESDAY, MARCH 16, 1999

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Gart Sports as principal for Warrant #52645 issued 11/25/98 on the Missoula County 84 (MCPS) Fund in the amount of \$144.93 now unable to be found.

ADMINISTRATIVE MEETING

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

Change Orders – Chair Kennedy signed Change Order #2 with JTL Group, Inc., for the Missoula Development Park - Phase 2 – Street Improvements, adding Bid Alternate #2, at a cost of \$62,847.00. Completion date is August 10, 1999. He also signed Change Order #4 with Embe Contracting, Inc., adding Bid Alternate #2, at a cost of \$77,677.00. Completion date is July 1, 1999. The Change Orders were forwarded to Vaughn Anderson at DJ&A for further signatures and handling.

Change Order – Chair Kennedy signed Change Order #1 with JTL Group, Inc., for the Missoula Development Park – Phase 2 – Sanitary Sewer Improvements, to address the redesign of Curlew Loop into two cul-de-sacs. Contract price is decreased by \$24,940.45. Completion date is July 19, 1999. The Change Order was forwarded to Vaughn Anderson at DJ&A for further signatures and handling.

Service Agreement – Chair Kennedy signed a Service Agreement with Williams Communications Solutions for Nortel telephone system maintenance (a half-time resident technician). Term of the Agreement is 3 years, commencing on April 1, 1999. Service fee is \$50,000.00. The Agreement was returned to Bob Schieder in Communications for further signatures and handling.

Main Extension Contract – Chair Kennedy signed a Main Extension Contract with Mountain Water Company for the Missoula Development Park – Phase 2, a 12" water main extension in East Harrier. Cost of the Contract is \$32,183.00. Effective date of Contract is February 23, 1999. The Contract was returned to Orin Olsgaard, Projects Coordinator, for further signatures and handling.

Resolution – The Commissioners signed Resolution No. 99-014, Granting an Agricultural Use Covenant to Plum Creek Timber, for a 7 acre parcel described as a portion of COS 4289, to be transferred in fee simple to the YMCA for use as a summer day camp.

Other items included:

- 1) The Commissioners approved an increase in Sheriff's Fees for Civil Process, effective January 1, 1999. The document was returned to Sheriff Chase for further handling.

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

WEDNESDAY, MARCH 17, 1999

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

Audit List -- Commissioners Carey and Kennedy signed the Audit List, dated March 16, 1999, pages 3-44, with a grand total of \$1,100,890.56. The Audit List was returned to the Accounting Department.

The Commissioners reviewed and approved a review of the Motor Pool and a review of the Supplemental Security Income Program (SSIT). Both were forwarded to the Clerk and Recorder for filing.

PUBLIC MEETING -- March 17, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, County Clerk & Recorder/Treasurer Vickie Zeier, Deputy County Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall.

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 list in the amount of \$1,100,890.56. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Public Comment

None.

Hearing: McCue Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 7-A-2 of COS 3652.

Michael R. and Gregory S. McCue 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 acres in size and is located in the Mullan Road area off Windemere Drive. The applicants propose to create two approximately five acre parcels for transfer to their mother.

The history of the parcel is as follows: 1976 - Creation of a 20 acre tract; 1984 - Relocation of a boundary; 1989 - Creation of this 10 acre parcel by use of the occasional sale exemption.

The applicants purchased the property from Margaret Newman as evidenced by a Notice of Purchasers' Interest dated May 17, 1996. The property is currently held in ownership by the applicants and their respective spouses, pursuant to that same Notice of Purchasers' Interest.

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

Gregory McCue was present and came forward to answer questions.

Chair Kennedy stated this was a part of the law that allowed the Commissioners to ask unusual and personal questions, different from subdivision review. The Commissioners could ask these questions to determine if this transfer was an attempt to evade subdivision regulations. He asked if Mr. McCue's mother intended to live on the property.

Gregory McCue stated that was correct.

Chair Kennedy stated her name was missing from the request and asked her name.

Gregory McCue stated her name was Diane Hollinger.

Chair Kennedy had no further questions. Commissioner Evans and Commissioner Carey had no questions as well.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the family transfer parcel for that parcel describe as Tract 7-A-2 of COS 3652, for Michael R. and Gregory S. McCue, for transfer to their mother, Diane

Hollinger, in that it 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: Amending Resolution to Revise Number of Members on Seeley Lake Solid Waste Management District Board

Michael Sehestedt, Deputy County Attorney, gave the report.

The Board of County Commissioners by resolution under the state statutes some years back established the Seeley Lake Solid Waste Management District which operates the transfer station and other facilities for refuse disposal in the Seeley Lake area. At the time it was created, it provided for a seven member board. Last fall the Commissioners received a letter from the current board requesting amendment of the resolution to reduce the number of board members from seven to five. The stated reason for the change was that it was difficult to fill board position and difficult to obtain a quorum with a seven member board. They felt a board of four full-time residents and one part-time resident would be easier to work with.

The Board of County Commissioners is free to make these changes in the composition of the board if it is deemed in the public interest. The only limitation is the board cannot have less than three members and it must consist of an odd number of members. Beyond that, the Commissioners are free to make decisions as they deem best. Notice was published in the Missoulian and Seeley Swan Pathfinder.

Pat Swan Smith, Clerk for the Refuse District, stated one of the members of the board was to be one of the County Commissioners, however it was hard for one of them to attend the meetings in Seeley Lake. An additional request was to eliminate that portion of the resolution as well.

Chair Kennedy stated when the board was created there were seven members named by the Board of County Commissioners and one of those members was a County Commissioner. The reasoning at the time was that it was a new district and there was a strong feeling that during the early stages of operation, there needed to be a County presence. The successful operation of the district suggests they can do a fine job without County involvement, so there is not a continuing need to have a member of the Board of County Commissioners on that board.

Chair Kennedy opened the public hearing. There being no comments the hearing was closed.

Commissioner Evans moved that the Board of County Commissioners amend the resolution creating the Seeley Lake Solid Waste Management District Board to reduce the number of members on the board from the current seven to five, and that a member of the Board of County Commissioners is not required, and that the board consist of four full-time residents and one part-time resident. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing - (Planning & Zoning Commission): Variance Requests - Zoning District #4 (Michael Rubie)

Barbara Martens, Office of Planning and Grants, presented the staff report.

Michael and Vickie Rubie are requesting three variances from the requirements of Zoning District #4 in order to construct a single family home and sport court on property on Lupine Road in Pattee Canyon.

The applicants are requesting three variances as follows:

1. A variance from the hillside design standards which state that lots shall have a building site for primary and accessory buildings with an existing slope of less than 25%. A portion of the building site for the proposed single family home has a slope of 61.3%.
2. A variance from the 18 foot maximum wall element height of the modified building height method (Resolution #95-005) which states that individual wall elements may not exceed 18 feet unless an offset of not less than 1/3 of the largest adjacent wall element is provided. A wall element is defined as any individual wall or continuous element of a building on one plane. Wall elements adjacent to grade shall be measured from the lowest existing grade to the underside of the eaves. The maximum height of some of the wall elements appears to be approximately 25 feet.
3. A variance from the maximum impervious material coverage requirement of 10,000 square feet. The total square footage of the sport court is 7,200 square feet. The total square footage of the footprint of the single family home is 4,425 square feet, for a total of 11,625 square feet of impervious material coverage.

Current zoning of the property is citizen initiated Zoning District #4 which was originally established in 1957, revised in 1972, and amended by Resolution Number 97-089 on September 2, 1997 with the stated purpose of retaining the canyon's (Pattee Canyon) character as a beautiful, rural, substantially natural setting with low-density residential development.

The Rubies wish to construct a single family home and a sport court on the property. The property contains an existing well on the east side of the parcel. The septic system site is proposed in the west portion of the property with an existing road in between. The existing road will be utilized to access the home site. This road was constructed years ago. The applicant has stated that the road access does not extend beyond this parcel.

The Surveyor's Office has not indicated any problem with using the existing road for access. Rural Fire has met with Michael Rubie at the building site. Their concerns regarding access and wildland interface building practices have been addressed. Rural Fire does not oppose the variance request if the agreed upon conditions are met by the applicant. These include grade and turn around area which are met by the proposal, and 16 feet of hard surface all weather road with vertical clearance of 13.5 feet. The steepest part of the parcel (over 25%) is at the edge of this road.

The west side of the property abuts a steep hillside. The parcel contains mature trees which will shield the home from Lupine Road and Pattee Canyon Road.

The location of the existing well, existing road and septic system site appears to preclude location of the home and sport court on another site on the parcel. The Health Department has done soils testing and site visits to verify that the location of the septic system meets Health Department code regulations. Due to slope of the parcel and current well location, it appears that location for septic is limited and may not be allowed at any other location.

A cross section of the building site shows the steepness of the slope of the parcel with the foundation of the home superimposed onto the slope. The overall slope of the property is approximately 21%. However, approximately 15% of the proposed construction footprint for the home is on a slope greater than 25%. The 61.3% slope area is a short fill slope from the existing old access road. The natural slope of the site is less than 25%. The Uniform Building Code will require engineered design for the footings and foundation, retaining walls greater than 4 feet high, wind analysis for unbraced exterior walls over 10 feet high, and cut and fill specifications. A steep slope break requires, by Code, engineered slope stability analysis. Building permits could not be issued without the engineering report and specifications required.

The impervious material coverage on the parcel will exceed the maximum 10,000 square feet (excluding the road) allowed by the zone. The sport court is 7,200 square feet and the proposed home contains 4,425 square feet for a total coverage of 11,625 square feet. The maximum impervious material coverage requirement is meant to minimize runoff by allowing absorption of water into the ground on the site. The applicants propose an underground French drain system and grading to control the additional drainage volume. Staff has concerns that this site is too constrained for the sport court to be built at the location shown on the site plan. Grading goes onto the adjacent property to the east and appears to cross the existing road on that property. An easement has been obtained from the adjacent property owner (Mr. Rubies' mother) to allow the grading. There may be drainage across the adjacent property to the east. The applicant indicates that control of additional drainage volume may be accomplished through one or more of the following ways: analysis of the capacity of existing soils conditions and drainage courses; constructed wetlands; revegetation of constructed embankments; on site grading. No specific soil profile or drainage and erosion control plan for this proposed development has been submitted by the applicant. If the sport court was to be approved, a grading, drainage and erosion control plan should be approved by the County Surveyor prior to construction.

Landform grading is also required in Zoning District #4. Landform grading is defined as a contour grading method that creates artificial slopes with curves and varying slope ratios in the horizontal plains designed to simulate the appearance of surrounding natural terrain. Graded contours shall be curved to blend with the natural slope. Based on the topographic site plan submitted by the applicant, it is staff's opinion that the current grading plan does not comply with this standard.

The man made slope at the sport court exceeds a ratio of 3:1. It is a 2:1 slope. Slopes may exceed a ratio of 3:1 only if significant environmental characteristics of the site are preserved or the need for extensive cut and fill is substantially reduced. It is staff's opinion that the proposal does not meet this requirement.

The plans for the home show that the absolute height of the structure (from lowest finished grade to the peak of the roof) is 34 feet. Zoning District #4 allows a maximum height of 30 feet. However, Resolution #95-005 allows the owner to select either the absolute height measurement method explained above, or to chose the modified height measurement method. Modified height uses existing grade which is shown on the elevation drawings. A building envelope is measured as 30 feet (the maximum height) plus 3 feet, or 33 feet. No portion of the home may exceed this envelope. The applicant has demonstrated that the proposed home will meet the requirement for the building envelope. However, when using the modified method of height measurement, individual wall elements measured from existing grade to the underside of the eaves of the structure cannot exceed 18 feet. Some portion of the individual wall elements measure more than 18 feet, with 25 feet being the tallest portion of the walls. Most of the wall elements are broken up by decks and meet the requirement.

The applicants have demonstrated that all development standards of Section VI of Zoning District #4 can be met with the exception of impervious material coverage, slope above 25%, landform grading of disturbed slopes, and man made slope exceeding 3:1, specifically at the sport court.

The development guidelines of Section VII (variances) have also been addressed by the applicants. The existing road will be utilized and areas disturbed by construction will be revegetated. Wildfire prevention guidelines such as fire rated roofing material will be utilized. The applicants have discussed their landscaping plans with a local landscape company and should follow the vegetation reduction guidelines found in Attachment C of Zoning District #4.

The Pattee Canyon Homeowners' Association has indicated that it is in favor of Mr. and Mrs. Rubies plans for their home and sport court as shown in the attached letter. In addition, several neighbors in the area have also shown that they are in favor of the plans as presented by the Rubies.

The Building Division has stated that Division's concerns would be engineering and design to justify steep slope requirements of the Uniform Building Code. Drainage at the footings of the proposed home will be evaluated to see that moisture is directed away from the foundation of the home.

The Office of Planning and Grants recommends approval of the variance to allow a portion of the proposed home to be constructed on a slope in excess of 25%. The Office recommends approval of the variance to allow some of the individual wall elements to exceed the maximum of 18 feet. The Office recommends denial of the variance to the maximum 10,000 square feet of impervious material coverage. Staff recommendation is based upon findings of fact in the staff report.

Two conditions are recommended:

1. The construction comply with all building codes as determined by the City-County Building Division.

2. If the Board approves the request to vary from maximum impervious material coverage, the applicant shall submit a grading and drainage plan for approval by the County Surveyor's Office prior to issuance of the building permit.

Chair Kennedy stated there are two actions to be taken, one is by the Planning and Zoning Commission. He suspended the meeting of the Board of County Commissioners and convened the meeting of the Planning and Zoning Commission, which includes the Commissioners and the County Clerk and Recorder/Treasurer Vickie Zeier.

Michael Rubie stated since this was citizen initiated zoning, the Commissioners should understand his history in Pattee Canyon. He has been a resident of Pattee Canyon off and on since 1969. He and his wife Vickie have been residents in their current location, which is next to the proposed building site, for 12 years. They have an in depth understanding of the character of the canyon and an appreciation of why the Homeowners Association and Citizen Initiated Zoning were formed. The zoning was updated in 1997 so that not every house built in Pattee Canyon had to be approved by the Commissioners. Minimum standards were wanted to save time for the Commissioners and the Planning Board, as well as the Landowners Association. If there were variances, they wanted to make sure they conformed to the canyon's character and what they were trying to accomplish with the zoning. The intent was not to show a hardship existed, but what the homeowner was going to do fit into the character of the canyon. He has spoken with the Landowners Association and they have unanimously supported all three variances. The variance for the slope over 25% has been supported by both the Pattee Canyon Landowners Association (PCLA) and OPG. Where the house will sit benefits everybody. The variance for wall height has also been supported by both the PCLA and OPG. The variance for the 10,000 square foot impervious surface has been approved by the PCLA, but OPG does not approve the variance. In the packet there is a letter from the PCLA, a letter from the neighbor most affected and a petition signed by various neighbors approving the three variances. He felt his request was within the spirit of the zoning. The house is up against a mountain side, there are mature trees in front of the house and sport court. It is his goal to have this project invisible to the neighborhood and create privacy for himself. Many other existing houses in Pattee Canyon would need these three variances. They have received approval from their neighbors and the Homeowners Association. They have hired environmental scientists to review the project to make sure it is being developed as environmentally friendly. They have hired geotechnical engineers to review the project and have received their approval. He respectfully submitted his proposal to the Commissioners for approval of all three variances.

Gregory Kennett, Ecosystem Research Group, stated he would address the drainage on the sport court. He also presented a memo to the Commissioners. The two major concerns for the sport court are the drainage and the slope. He would address the drainage and his associate, Michael Dworsky, would address the slope. In speaking with staff a number of time, part of the concern was hardening of the watershed and increased runoff. The runoff can be addressed in several ways, however Mr. Rubie wanted to get the variance before completing the engineering work so he asked to have some suggestions presented before spending money on a more detailed engineering plan. The square footage of the tennis court has been looked at as well as the 50 year, 6 hour precipitation event is. That means what rainfall event would be exceeded once in 50 years. For a design value it is a 1.5 inch event in six hours. The greatest event in Missoula is 100 years is 1.9 inches in 24 hours. That would yield 1.5 inches of rain on 7,200 square feet. What would happen to that drainage? According to the percolation rates of the native soils on the site, they will perk between 2 and 6 inches per hour. Assuming 4 inches per hour was reasonable. In looking at the drainage of the tennis court, they were looking at how much area will be needed to absorb the worst case event. It would require about 3.75 feet buffer on each end of the court to handle that volume of water. They have suggested a 4 foot area on each end of the court, not on the longitudinal sides, but the short ends, which will keep the drainage on site, it won't go off into the area where there is an easement. They felt this and other ways (constructive wetlands, French drains, etc.) would be reasonable to address drainage. Before Mike went to the expense of getting this designed, he wanted to receive the variance, so he was presenting some conceptual ideas to support the request for variance.

Michael Dworsky, Ecosystem Research Group, stated he was a civil engineer who has been involved with the engineering aspects of this project. He wanted to address the 2:1 slope versus the 3:1 slope. The 2:1 slope was put into this project to balance the quantities based on the excavation required for the structure. The tennis court was set at an elevation and the 2:1 slope was established to basically balance the quantity so a lot of material did not need to be brought in. The 3:1 slope would encroach about another 20 feet onto the adjacent property and would require a significant amount of infill. He also pointed out the native materials on site are good material for constructing this 2:1 slope. In terms of soils, it is considered a low erosion potential. Designing the sport court to drain along the long side would keep the drainage from the impervious layer off the fill slope that would impact the adjacent property.

Chair Kennedy asked Mr. Dworsky about where the impervious layer was.

Michael Dworsky stated the impervious layer was the surface of sport court itself.

Chair Kennedy opened the public hearing before the Planning and Zoning Commission. There being no comments, the public hearing was closed.

Chair Kennedy had some questions that either of the technical experts could address. He appreciated the rainfall data and also understood, as an engineer, that is not necessarily related to runoff. It's clear that greater runoff can be gained should a lower intensity storm happen over a shorter period of time. Getting 1 inch in 15 minutes would create more damage due to runoff, and the steeper the slope, the more runoff would be created. This is important here because there is a safety factor of 4 to 3.75, not very much. It makes the assumption the design point will happen evenly over the entire hour and that is not an accurate assumption as that is not likely to happen. In his opinion that factor of safety is not adequate. The site will incur runoff. Has this factor been examined and how would it be addressed?

Gregory Kennett stated the 25 year, 1 or 2 hour event is less than an inch of precipitation so the native soils should be able to handle it.

Chair Kennedy stated there was experience in the Linda Vista area a couple of years ago. There was a significant event that occurred in about 5 minutes and even though the soil was represented to have a similar capability, there was enormously high runoff. The runoff occurred at substantially lower intensities over an hourly basis than would be

expected. There is recent experience suggesting the data presented is insufficient to prevent the runoff that they are concerned about to adjacent property and off site.

Gregory Kennett stated he has experienced the same 5 and 10 minute events and agreed that they are the most erosive. His purpose was to demonstrate that in all likelihood, a 50 year, 6 hour event, or most every event, the native soils on site, just by the slight drainage, will address those concerns. Mike Rubie has said he wants to do whatever it takes to make sure he doesn't exacerbate drainage to a neighboring site. They are trying to show this is generally close enough to address runoff to obtain the variance. The site plan may incorporate an even better water drainage plan as part of the building permit. Their charge was to just present the fact that this is doable without impacting adjacent properties.

Chair Kennedy stated the steeper the slope, the closer to impervious the slope becomes, due the characteristics they have been discussing. One of the reasons for the flatter slope is to reduce the runoff coefficient. By increasing the slope, the impervious surface has been increased by some percentage. That is a staff concern and it also concerns him. Mr. Dworsky said the 2:1 slope resulted from balancing volumes. Had it been considered balancing the volumes by gaining that additional material by lowering the construction? Even with the 2:1, it is encroaching on adjacent property. Since the decision has been made that it is allowable, it seems there should be some consideration to expanding the slope, not importing fill, but lowering the structure.

Michael Dworsky stated he understood Chair Kennedy was speaking about lowering the tennis court and carrying the 3:1 to balance the quantities. Unfortunately the elevation it is set at now already requires about a 7 foot retaining wall. By lowering the court it would increase the height of the retaining wall. He did not see a problem with that from an engineering perspective, but it is getting kind of tall. He felt the court could be lowered another five feet and carry the 3:1 in reasonable quantities.

Commissioner Evans stated that what was proposed appears to be a permanent drainage modification or mitigation. She was aware of the mess at Linda Vista but the reason was because there were areas under construction and a good share of the yards were placed on top of plastic causing the water to run under them, or other steps of a temporary nature. The problem was cleaned up within three days. The problem was not of a permanent nature. By putting the drainage on two ends of the sport court it looks as if the problem will be dealt with on a permanent basis. Is that correct?

Gregory Kennett stated that was not a design figure, they were trying to show they thought there were several ways to do this and show that in the report. A relatively simple way would be the 4 feet on each end of the court that appears to closely handle a 50 year event, for the purpose of gaining this variance for Mr. Rubie. This would be a reasonable act. Through landscaping, etc., other things will be done to increase the drainage capabilities if this variance is granted. What they want to communicate to the Commissioners is that there are many ways to solve this problem, a final design has not been completed, but it does show that a variance is feasible.

Chair Kennedy stated he was present during the zoning process in this district and it took some time to complete. The reason was because everyone had an opinion about what was best for that area. The reason behind zoning is to establish guidance for those who live there and who might move there later to have some basics in terms of lifestyle. The whole notion of zoning is to establish some permanence of what people can expect over a reasonable period of time. When there is a project that doesn't meet the zone it is not automatic to yield and grant variances, otherwise it dilutes some of its purpose. That's very important to the people who promoted the zoning and remains important in County policies on all zoning issues. The artificial slope does a couple of things. The drawing presented shows substantial trees and shrubs and in the document it shows there is substantial fill that covers the road, which are in conflict with each other. He did not see how there could be fill and trees. His sense is that all of the trees and screening won't be there. Could that be explained?

Michael Rubie stated there are old growth trees that follow the road, from 30 to 50 feet high. The proposal is to keep them the same to hide the area from the neighbors and keep it as invisible as possible. There may be some sort of excavation activity but any areas disturbed will be put back as they were.

Chair Kennedy referred to Mr. Dworsky's contour map which seemed to him to be in conflict with Mr. Rubie's statement. Those trees are probably evergreens and cannot sustain any fill. Yet, the documents presented show fill all the way to the road, which is well beyond where the trees are, which is problematic. This needs to be accounted for on the contours. The contour line is being moved 15 feet which causes substantial fill there.

Gregory Kennett stated the blueprint is the house as laid out with the existing condition and the drawing are what it would require once it was installed. He didn't think there was meant to be any conflict there, that is how the architect drew it up.

Chair Kennedy stated he understood that. When the fill is built it will encroach onto adjacent property and will encroach past the trees which will kill the trees.

Gregory Kennett stated Chair Kennedy was correct, those trees along that area would have to come out.

Chair Kennedy stated that was a conflict from what Mr. Rubie said. He wants to preserve the trees but Mr. Kennett is saying they will come out. Which is correct?

Gregory Kennett stated he was not sure, but Mr. Rubie's intention was to save any and all trees possible. If construction and fill will choke the trees or they are in the way of construction, they will have to be removed. Pictures were presented to show the proposed construction site and where trees might need to be removed.

Chair Kennedy stated that concerned him for several reasons. The first is that in reading the document there was a representation that screening was a component of the project. When the Homeowners Association recommended the variance they felt this structure would be screened and in fact, unless there is something done differently, it won't be screened. He felt if the Homeowners Association were re-asked the question knowing there wouldn't be any screening their response might be different.

Michael Rubie stated he had all the officers of the Landowners Association walk the property and showed them what he would be doing, with the construction site staked out. He did not believe they had any incorrect assumptions as they all walked through the site and he had been very open with them. If there are trees that have to come down, they will be replaced. His intent is to keep as much screening as possible. He hasn't looked at every way to accomplish this because he did not want to go to the time and expense of hiring engineers before the variance was granted. This was to show that this could be done and allow the variance requests. If the Commissioners grant the variances, Mr. Rubie will complete the project in a manner that is consistent with the character of the canyon.

Chair Kennedy stated no one doubted that.

Michael Rubie stated Chair Kennedy's inference was the Landowners Association was given wrong assumptions and that is false.

Chair Kennedy stated he noticed the printed material which they have to base their judgment on seemed to be in conflict. He was trying to resolve the conflict. Mr. Rubie testified earlier he wanted to maintain the trees, then it was discovered that can't happen, now he is hearing that if trees are removed they will be replaced. He is seeing and hearing inconsistencies and needs to sort it out.

Commissioner Carey stated that the January letter from neighbors cites a couple of times that mature trees will hide the court. What Mr. Rubie was saying was that during the walk through the neighbors understood there would be trees left after the work was complete.

Michael Rubie stated there would be mature trees on both sides of the court that would hide it from different angles. There would not be any clear cutting, they would retain as many trees as possible. If some needed to be thinned, they would be replanted. The trees may not be right in front of the court where there would be some slope, but they would keep as many trees as possible.

Commissioner Carey wanted to be reassured that the neighbors letter was based on the walk through.

Michael Rubie stated they had walked the property, the site is staked out, they know where everything goes. He did not know how better to get his neighbors involved.

Commissioner Carey asked if the staff could give their reaction to what has been presented in terms of the slope. Has this discussion reassured the staff that the problem can be addressed.

Barbara Martens stated the biggest concern about the impervious surface coverage and the slope is that if it increases runoff that might adversely affect the neighbors or go into the creek. The proposal addresses a lot of those concerns. Most of the concerns are regarding the runoff and its impact.

Commissioner Carey stated this was quite technical. He wondered how to get the more technical advice needed.

Commissioner Evans stated one of the things that provides that advice is nearly everything is contingent upon approval by some technical review, such as the Surveyor's Office, to approve grading and drainage plans. If specific guidelines are set approving these variances then the Surveyor's Office will check the plans to make sure that is accomplished. In looking at the letters in the proposal and remembering what the citizens wanted, Clemens Work was the president then and is now and he supports this project. The last revision of the zoning regulations was to take out things that were totally unspecific, giving people the benefit of the doubt, to allow them to do things but not harm the canyon. Mr. Work supports these variances and she trusted him to not allow things that would harm the canyon.

Commissioner Carey stated he was reassured by Mr. Rubie's testimony that the neighbors understood about the trees, but did they get some review of the drainage. It is not referred to in the letter.

Michael Rubie stated drainage was not reviewed, other than the impact it would have on the neighbor most affected. That neighbor understands and is in favor of it and would use the sport court, as she is a relative. He did not believe that was a concern, but it was not specifically addressed. Sometimes the zoning and doing the project right don't necessarily meet, there may be some conflicts. He was more concerned about being a good neighbor, hiding the structures and being sensitive to what's around there.

Commissioner Evans stated that the grading and drainage goes onto the adjacent property to the east and appears to cross the road on that property. An easement has been obtained from the adjacent property owner, Mr. Rubie's mother, to allow the grading. Allowing drainage of various kinds onto neighboring property is allowed in many situations, such as septic systems. If the person affected is willing to provide an easement it should be allowed and is not out of the realm of what the Commissioners routinely do.

Chair Kennedy stated there are two issues with respect to drainage. The first one has been addressed with the easement as Commissioner Evans pointed out. The other one has to do with the technical aspect of drainage. It has been the policy of this Board for some time to state that the result of development should not increase the flow from the site other than what previously existed nor should it decrease the quality of the water. The people downstream should not be harmed and the quality of Pattee Creek should not be degraded any further. In this situation the impervious area and the slope make it impossible to keep drainage on the property. Once the water hits the court it gets degraded and then it is immediately conveyed off the property to somewhere else. That problem needs to be addressed. He was asking how that would be addressed.

Gregory Kennett stated that without taking time to do some more analysis, he felt it could be addressed as part of a variance condition. All they tried to do today was show that this was reasonable and handleable, without further engineering study. The question can't be answered without further study.

Chair Kennedy stated the water would apparently flow onto land that belongs to a relative of Mr. Rubies and he has procured an easement. He asked Mr. Rubie if it would be possible to obtain easement for containment to address the problem, such as a swale or some condition of approval that required addressing that, that he could deal with?

Michael Rubie stated the main thing was balancing the hiding of it versus the zoning. He was interested in doing this project the right way. He wanted to do the project in a reasonable way that is good for both him and the canyon.

Chair Kennedy stated the staff takes a technical approach to this, based on a lot of things that not everyone understands. They make decisions and recommendations based on lots of things, but mainly technically oriented. The staff report recommends against approval of the last variance on impervious area because in their judgment it could not be made to meet the requirements of the zoning district. He was inclined to support the staff, but at the same time felt there might be a way to mitigate the problem, although he did know what that way might be.

Commissioner Evans stated that if a condition of Variance 3 was that a satisfactory grading and drainage plan must be submitted and approved by the County Surveyor's Office and that the water must be kept on site or on the land adjoining where there is an easement for drainage, would that assuage their concerns.

Barb Martens added that there was some concern of staff about the land form grading and the cut and fill. The cut and fill could be addressed in the grading plan, as could the land form grading if it's possible to do more of a natural look to it. It would be something that the Surveyors Office would have to review to make sure it could be met, because OPG staff would not have the expertise to know for sure if the drainage was adequate.

Chair Kennedy felt there were two components of that, the Surveyor might understand and work with the other part of it, OPG has to work with the contours, etc. If there was such a condition it would have to be subject to the approval of both departments.

Commissioner Evans moved that the Planning and Zoning Commission approve the first two variances for Michael and Vickie Rubie, 1) to vary from 25% maximum slope and 2) to vary from wall element height of the modified building height method, as recommended by staff based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 4-0.

Commissioner Evans moved that the Planning and Zoning Commission approve the variance request for Michael and Vickie Rubie, to vary from the 10,000 square foot maximum impervious material coverage, based on the condition that the applicant submit a grading and drainage plan for approval by the County Surveyor's Office prior to issuance of the building permit and that the water plan will include retaining of the water on either their own property or the property next door of Mrs. Rubie for which they have or will obtain an easement.

Commissioner Carey offered an amendment to the motion. Under the recommended conditions, it was also required that the construction comply with all building codes as determined by the City-County Building Division.

Chair Kennedy asked Commissioner Evans if she included subject to OPG's approval as well?

Commissioner Evans stated that was fine.

Chair Kennedy stated the motion is to approve the variance subject to building codes, subject to approval of plans by the Office of Planning and Grants and the Surveyor's Office. He asked Barb Martens if she had any problems with that in regards to mitigating the question she had that led to staff's recommendation for denial.

Barb Martens stated that was fine. She asked about keeping the drainage on site or within the easement, she did not know if that would be a problem or if it just can't be released any faster than what was normally present prior to construction.

Commissioner Evans stated that was her intent. Water was going to escape from everybody's land but it should not escape at any greater flow than it currently does.

Chair Kennedy added the water should also not be any lower quality, which may have to happen by way of an easement on adjacent property. Before he called the vote, he wanted to be clear about what OPG will review. They will review everything, including the contour issue which has not been talked about much, perhaps that needs to be discussed, the screening issue, the slopes, the drainage, etc. Their review will be comprehensive, not just the drainage.

Commissioner Evans stated that was not accurate.

Chair Kennedy stated then that they needed to start over on the motion.

Commissioner Evans stated her motion was addressing Variance Request 3, for the impervious materials coverage. The staff has already addressed all those other things, or it wouldn't be before the Board. She accepted Commissioner Carey's amendment to include the building inspection requirements. The variance has to do with impervious surface and that was the only part of this motion that she had put forth. The remaining items, to approve or not approve the subdivision, is in the next motion.

Colleen Dowdall stated there was no subdivision, just the three variances.

Commissioner Evans stated that was true.

Chair Kennedy stated on the issue of the slope contours, as Barb Martens spoke to that, and asked how that would get addressed?

Barb Martens stated they have spoken about making less abrupt curves and cuts than what they have shown now, trying to give a more natural appearance. Just trying to avoid quite so an abrupt of a cut and fill area.

Chair Kennedy stated perhaps they needed to act on the variance and then consider the conditions that might address the issues of the screening and so on.

Commissioner Evans stated that would be fine.

Commissioner Carey seconded the motion.

Vickie Zeier asked for a repeat of the motion before they voted.

Chair Kennedy stated the motion is, rather than deny, to grant the request for a variance from the 10,000 square foot maximum impervious material coverage, subject to plans submission and approval by the Office of Planning and Grants and the Surveyor's Office, and the building codes. The question was called. The motion carried on a vote of 4-0.

Chair Kennedy stated next was the subdivision.

Commissioner Evans stated they were just told there is no subdivision.

Colleen Dowdall stated there were just the three variances and they were done with this matter.

Commissioner Evans stated the only matter left was the Board of County Commissioners accepting the recommendation of the Planning and Zoning Commission.

Chair Kennedy stated then it could not be dealt with.

Commissioner Evans stated it could be dealt with in a friendly way with the Rubies.

Chair Kennedy adjourned 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 Planning and Zoning Commission to approve the three variances from the requirements of Zoning District #4 for Michael and Vickie Rubie. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

1. The construction comply with all building codes as determined by the City-County Building Division.
2. If the Board approves the request to vary from maximum impervious material coverage, the applicant shall submit a grading and drainage plan for approval by the Office of Planning and Grants and the County Surveyor's Office prior to issuance of the building permit. The water plan will include retaining water on site or the property next door for which they have or will obtain an easement. Water cannot be released any faster, nor in any lower quality, than what was normally present prior to construction.

Commissioner Evans stated Mr. Rubie understood the concerns of the people in the canyon and he had the same concerns. As a friendly request she asked Mr. Rubie to look at grading, forming and drainage plans and make them satisfactory to the folks who live in the canyon. That was a friendly request only, there was no legal backing attached.

Consideration: Hooker Addition (4 Lot Summary Subdivision) - Southeast of Potomac

Nancy Heil, Office of Planning and Grants, presented the staff report.

Edward Hooker, represented by Territorial Engineering, is requesting approval to split a 455.47 acre parcel into two 20 acre lots, one 39.25 acre lot, and one 146.22 acre lot, leaving a 230 acre remainder. The property is located southeast of Potomac on Hole in the Wall Road and Washoe Road. The property is accessed via Hole in the Wall Road and Washoe Road.

Lots 1, 2, and 3 are proposed as single family residential lots. Lot 4 (146.22 acres) includes an existing home, ranch buildings, and horse operation. This lot will be retained by the Hooker family and operated as a horse/dude ranch. The applicants do not have plans to subdivide the remainder at this time. Proposed covenants are included with the application packet. An amendment to the proposed covenants is included as an attachment to the staff report.

The property is unzoned. It is located within an area designated by the 1975 Missoula County Comprehensive Plan as Open and Resource with a density of one dwelling unit per 40 acres. Overall density of the proposal is one dwelling unit per 56 acres. Adjacent land to the west is designated as rural low density residential land use with a density of 1 dwelling unit per 10 acres. The overall density of the proposal complies with the land use designation of the Comp Plan and other goals of the Plan.

Proposed Lots 1 and 2 are lightly forested. Those lots would access from Hole in the Wall Road. Proposed Lot 3 has a forested bench in the southern portion. The northern portion includes more open pasture and hay land. Lot 3 could access from either Hole in the Wall Road or Washoe Road. Proposed Lot 4 is open pasture and hay land south of Washoe Road. The existing home and ranch complex on Lot 4 use an existing access from Washoe Road. North of Washoe Road the land is more hilly and timbered and is used for a limited amount of pasture. A private access to Lubrecht Forest is located in the northeast corner. The remainder parcel is hilly and timbered.

Hole in the Wall Road is County maintained within a 60 foot right-of-way. The graveled width varies from 20-22 feet. The applicant is not proposing improvements to Hole in the Wall Road. The applicant has requested a variance for road width to the existing condition. Staff is recommending approval of that variance request.

Washoe Road is County maintained within a 60 foot right-of-way, running north from Hole in the Wall Road then east. The Washoe Road right-of-way crosses Lot 4. The graveled width generally varies from 20-22 feet along the property frontage. Washoe Road narrows to 16 feet before crossing a 15 foot wide bridge over Union Creek near the northeast corner of Lot 3. The homesite for Lot 3 is expected to be located in the southern portion of the lot; therefore no additional use of the east-west section of Washoe Road or the bridge is anticipated. The applicant is not proposing improvements to Washoe Road. The applicant has requested a variance for road width for Washoe Road as well and staff is recommending approval of that variance request.

Fred Crisp, Project Engineer in the County Surveyor's Office, stated that the bridge on Washoe Road was recently rebuilt. There is no posted load limit, so the bridge would be able to support any vehicle that is legal on state highways. According to the County Surveyor's Office, the bridge meets the 40,000 pound design load required by the Greenough Potomac Fire Department.

The fire district chief provided some written comments on the proposal that recommended some standards related to driveways and addressing. Staff has recommended that those be incorporated into the proposed covenants.

There may be some area of high ground water on the property. The applicant stated that additional surface runoff is expected to be retained on site. Condition 1 does require that drainage plans be approved by the Surveyor's Office prior to plat filing.

The Subdivision Regulations state that no single lot shall be divided by an existing right of way. The applicant has requested a variance from that requirement and staff is recommending approval of that variance request. An additional requirement of the Subdivision Regulations is that no lot have an average depth greater than 3 times its average width. The applicant has requested a variance request from that requirement for Lot 4. Staff is recommending approval of that variance request. The final variance request is for provision of pedestrian walkways in or near the subdivision. This is in a very rural area in the Potomac Valley. Staff is recommending approval of that variance request also.

Individual well and septic systems are proposed to serve each lot. There has been some high ground water testing that has been done on the site. The test sites all passed the 6 foot separation requirement that is required by the Health Department for standard field installation.

The fire department is requesting an impact fee of \$100.00 per new lot to enhance the water supply. The fire department also recommended some standards related to wildland residential interface that are addressed in the proposed covenants.

Union Creek, Washoe Creek, and an unnamed tributary run through Lots 3 and 4. Riparian vegetation is scattered along the creeks. Some riparian-like vegetation is also located in the northern portions of Lots 1 and 2. The proposed covenants include a Riparian Resource Management Plan. This plan restricts access to Lots 1 and 2 to one driveway each and tries to minimize impacts to any of the lower or wetter areas on that site. The plan also indicates a 200 foot wide riparian resource area along the live creeks in Lots 3 and 4 and prescribes a 10 foot no-mow buffer strip on each side of the streams in Lots 3 and 4 to allow the riparian vegetation to continue.

Staff has recommended some additions to the Riparian Management Plan, essentially to include more description and some provisions to minimize disturbance of the existing vegetation. The area does provide a variety of wildlife habitat. Deer, black bear and mountain lion can all be expected to occasionally use the site. Fish, Wildlife and Parks recommended some additions to the covenants and staff has incorporated those as recommendations in Condition 6.

There are utility easements located within the rights of way of Hole in the Wall Road and Washoe Road. The Missoula Electric Coop did request some additional easement. After consultation with the Attorney's Office, staff finds the proposal does meet the requirement for the provision of utility easement.

Staff is recommended approval of all 5 variance requests and approval of the subdivision based on the findings of fact in the staff report and subject to the conditions in the staff report.

Tim Wolfe, Territorial Engineering, developer's representative, was present, as was Jodie Hooker. He had no additional comments or changes beyond Nancy Heil's presentation. He had a question on Condition 4, the \$100.00 per lot fee to the fire department. Would that mean \$300 for the 3 new lots or \$400 for all 4 lots in the subdivision.

Chair Kennedy stated it would be \$300 on the new, additional lots.

Tim Wolfe stated the Riparian Management Plan amendments had been discussed with Nancy Heil. There were no real problems that could not be worked out, but he wondered if there was something that could be added to address a conflict between OPG and the Hookers as to who would resolve the conflict. He did not anticipate any problems but there was a difference of opinion in the description of the livestock watering area, due to the horses. He did not want to have to fence off the creek and other items of that nature. Could a mediator be provided for rather than give OPG complete control?

Nancy Heil stated it was not staff's intention to suggest the creeks be fenced off. There is a mention in the plan that livestock does use the creeks. More description of how many and how often, what portions of the creek, any off site watering available could be added. It was agreed there would be more discussion on this item. She suggested if there was something that OPG and the applicant did not agree on, these could be discussed with the Commissioners or ask for an interpretation from the Attorney's Office.

Chair Kennedy stated that the Riparian Management Plan is not very old, however it does pre-date other things that will ultimately take precedent, such as the Bull Trout Recovery Plan in this area. There will be some designations of different waterways that are considered Bull Trout habitat. Should this be one of those areas, then those conditions would apply. As a horse owner himself, this is a contentious issue, at the same time horse owners have to be

concerned about who lives downstream. That is one reason the Riparian Management Plan is important. Horses are not kind to the land. Hopefully there won't be any contentions, at the same time there needs to be an understanding that the riparian plan protects this landowner and all downstream landowners, as well as the resource that belongs to everyone.

Tim Wolfe stated he agreed with Commissioner Kennedy's statement. If there was an idea that could not reach a compromise, the way the condition is stated is that OPG will have the final say.

Chair Kennedy stated there were appeal mechanisms to everything they did. In this case he could appeal to this Board and if he received no satisfaction, then he could appeal to District Court. The regulations are meant to give general guidance and requirements and it was hoped the situation would not get to that point.

Commissioner Evans stated that since the Riparian Management Plan has been required there have only been a couple of instances where there was some disagreement.

Chair Kennedy stated for Colleen Dowdall's benefit that Mr. Wolfe has a question about the Riparian Management Plan in Condition 5. If there was a conflict between what they think is adequate and what OPG thinks is adequate, how does that get mediated

Colleen Dowdall stated the Board of County Commissioners would have the ultimate say.

Chair Kennedy stated he told Mr. Wolfe that, then further appeal would be through the court process. Commissioner Evans had stated there have not been any disagreements in that regard.

Tim Wolfe stated he did not anticipate one here either, but he was curious about how a conflict would be handled.

Commissioner Kennedy asked Jodie Hooker if she had any comments.

Jodie Hooker stated she did not have any comments.

Commissioner Carey asked if subdivisions of this nature would be happening on a regular basis in this part of the County, bigger holdings such as this?

Tim Wolfe stated the answer was yes and no. He was wondering if this was the biggest lot ever created in Missoula County, the 147 acres. There is a need for larger ranches that are intact, up by Ovando and Helmville there is a moratorium on creation of lots less than 160 acres. Around Potomac there seems to be a demand for 20 acre and 40 acre lots to offer some seclusion.

Commissioner Carey asked if any formal study had been conducted to determine demand.

Tim Wolfe stated nothing formal had been done, his information was based on discussions with residents, Realtors and landowners.

Commissioner Carey asked if these sites would be considering large, expensive homes.

Tim Wolfe stated that was what was hoped for. There are covenants that restrict mobile homes. That particular area is adjacent to the old Jordan Ranch that was subdivided in the '70's. There are already a lot of 10 to 20 acre tracts close by with a variety of homes there.

Chair Kennedy stated that not everyone knew what the territorial extent of 20 acres meant. Land that is undulating and natural is chopped into artificial lots that are dimensionally correct, but the land is not looked at that way. He was wondering if a better approach might be to look at land not in terms of numbers but look at the land in terms of what they want and define that territory. That might be a better way to divide the land as someone might want a small grove of trees just across an artificial boundary line. When land is artificially divided, it is done in a way that isn't the best for the people who want to live on that land. The straight lines on a plat may interfere with the natural topography.

Jodie Hooker stated that the lines on some of these lots were somewhat irregular to incorporate the lay of the land. The natural surroundings were included in the division of the 40 acre lot.

Tim Wolfe stated he agreed with Chair Kennedy's comments about division of land. When he does subdivisions of this type, he tries to incorporate certain geographic boundaries in the layout of the lots. They had spent a lot of time with this particular subdivision and had revised it four times, it had been well thought out.

Commissioner Carey moved that the Board of County Commissioners accept the staff's recommended motions and approve the five variance requests, (a variance from Section 3-2 for Hole in the Wall Road to vary from the required 24 foot width to the existing width; a variance from Section 3-2 for Washoe Road to vary from the required 24 foot width to the existing width; a variance from Section 3-2(5) to not provide sidewalks or pedestrian walkways in the subdivision; a variance request from Section 3-3(1)(D)(2) that states that no single lot shall be divided by an existing right of way; and a variance from Section 3-3(1)(E) that states to no lot shall have an average depth greater than 3 times its average width) based on the findings of fact in the staff report, and approve Hooker Addition Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

1. Drainage plans for the site shall be approved by the County Surveyor's Office prior to plat filing. *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 Hole in the Wall Road and Washoe Road including paving and installation of pedestrian walkways based on benefit, which may be used in lieu of their signature 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 depicted herein." *Subdivision Regulations 3-2 and County Surveyor recommendation.*

3. 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 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 Article 3-7(2) and staff recommendation.*

4. The lot owner shall contribute \$100.00 per new lot to the Greenough Potomac Rural Fire District prior to plat filing. *Subdivision Regulations Article 3-7(2) and Greenough Potomac Fire Department recommendation.*
5. The Riparian Management Plan shall be amended to include more description of the type and location of the riparian-like vegetation in Lots 1 and 2; provisions to minimize disturbance of existing riparian or riparian-like vegetation; description of livestock watering areas; and the intent of allowing more riparian vegetation to be established along the creeks in Lots 3 and 4. The Plan shall be reviewed and approved by OPG prior to plat filing. *Subdivision Regulations Article 3-13 and staff recommendation.*
6. The proposed covenants shall be amended to include the driveway and address requirements of the Greenough Potomac Fire Department. The covenants shall be amended per MFWP recommendations to state that homeowners accept responsibility for living with wildlife and are responsible for protecting their vegetation from damage, confining pets and properly storing garbage and other attractants; that the developer is obligated to inform homeowners of the potential problems associated with the occasional presence of bears, mountain lions, deer, etc. and that the artificial feeding of wildlife is prohibited. The proposed covenants shall be amended to remove the statement that the governing body is deemed to be a party to the covenants. The covenants shall state that the sections addressing wildlife, fire standards, and riparian management shall not be changed or deleted without approval of the governing body. The covenants shall be approved by the County Attorney's Office and OPG prior to plat filing. *Subdivision Regulations Article 3-2(6)(E), 3-13, 4-1(12) and Montana Fish Wildlife and Parks and staff recommendations.*

There being no further business to come before the Board, the Commissioners were in recess at 3:00 p.m.

THURSDAY, MARCH 18, 1999

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:

Professional Services Contract – The Commissioners signed a Professional Services Contract with Janet Bush for research and writing a chapter for the Montana Child Care Provider Handbook. Funded by the Healthy Child Care Montana Project grant. Performance schedule is March 10, 1999 through May 30, 1999. Compensation shall be \$1,500.00. The Contract was returned to the Health Department for further signatures and handling.

Budget Transfer – The Commissioners signed a Budget Transfer for FY99 for District Court in the amount of \$2,756.00 for a Grant Tech. position.

Resolution – The Commissioners signed Resolution No. 99-015, a Budget Amendment for District Court for FY99 in the amount of \$4,000.00.

Other items included:

- 1) The Commissioners approved payment of \$12,558.00 to Missoula Correctional Services for the Pretrial Supervision Program. The issue was referred to Paul Webber, CAO, to determine where funds will come from.
- 2) Commissioners Evans and Carey approved a Counter Offer to Four S. Corporation for purchase of Lot 2A1, Block 8, Missoula Development Park. The Counter Offer was returned to John Coffee at Lambros Real Estate.
- 3) The Commissioners considered the name Big Sky Park for the park complex at Tower Street. They referred the issue back to the Park Board for consideration of another name.

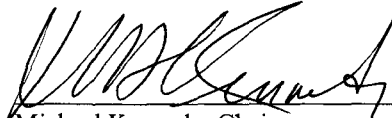
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, MARCH 19, 1999

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioner Carey served as a judge at the County Spelling Bee held at Hellgate Middle School.

Resolution – The Commissioners signed Resolution No. 99-016, a resolution creating Rural Special Improvement District #8840, for fire hydrant utility and maintenance of five fire hydrants for the Sweetgrass Addition at Maloney Ranch Phase I, Missoula County, Montana.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MARCH 22, 1999

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

TUESDAY, MARCH 23, 1999

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners attended an Informational/Public Comment Meeting regarding the proposed zoning amendments and the effect on the Target Range area. The meeting was held at Target Range School.

ADMINISTRATIVE MEETING

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

Lease Agreement – The Commissioners signed a Lease Agreement with Mount Jumbo West Little League for use of the ballfields at the old County Shops parcel for four months. Rent shall be \$1.00. Term of the Agreement is April 1, 1999 through July 31, 1999. The Agreement was returned to Paul Webber, CAO, for further signatures and handling.

Services Agreements – Chair Kennedy signed two Services Agreements:

- (1) for Smoke Control System Commissioning/Testing with MW Consulting Engineers for commissioning and testing of the smoke and fire alarms in the new jail. Cost shall be \$12,500.00 plus \$1,600 expenses, from the jail budget.
- (2) for HVAC systems balancing for the new jail. Cost shall be \$32,776.00, from the jail budget.

Both agreements were returned to Paul Webber, CAO, for further signatures and handling.

Budget Transfers – The Commissioners signed two Budget Transfers for the Health Department, transferring \$39,004.00 from Traffic Safety 98-99 to Traffic Safety 99-2000; and \$80,239 from WIC 99-2000 to WIC 98-99.

Proclamation – The Commissioners signed a Joint City-County Proclamation declaring April 12-16 as Radio Reading Service Week.

Other items included:

- 1) The Commissioners approved a request for support in the amount of \$500.00 for advertising for the “Week of the Young Child.”
- 2) The Commissioners approved an amendment to Tony Staber’s agricultural lease at the Development Park.

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

WEDNESDAY, MARCH 24, 1999

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

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated March 23, 1999, pages 2-36, with a grand total of \$273,106.90. The Audit List was returned to the Accounting Department.

Modification of Agreement – Chair Kennedy signed Modification No. 1 of Agreement 290039 with the Montana Department of Environmental Quality for a federal grant application to construct wastewater treatment works for the Golden West area of Missoula, changing the due date for the draft facility plan to May 31, 1999. The Modification was forwarded to DEQ in Helena.

PUBLIC MEETING -- March 24, 1999

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

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 list in the amount of \$273,106.90. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Meeks Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in COS 1726, Section 19, T14N, R20W.

Debbie Jo and Marty R. Meeks 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 acres in size located off Western Farms Road. The Meeks propose to create two parcels, approximately 5 acres in size, for transfer to the parents of Debbie Jo Meeks, Jim and Mary Jo Manley.

The history of the parcel is as follows: Tract 15 of COS 1595 was created in 1976 by the LaCasse family, using the exemption from subdivision review for the creation of parcels greater in size than 20 acres. Tract 15 was divided into three parcels in 1978 by Louise Stiegler by use of the occasional sale and the family transfer exemption. Tract 15A was the family transfer parcel.

According to the records kept by the Missoula County Surveyor, the applicant has never used the exemptions to the Subdivision and Platting Act.

Debbie Jo Meeks was present and came forward to answer questions.

Chair Kennedy stated this was a part of the law that allowed the Commissioners to ask unusual and personal questions, different from subdivision review. The Commissioners could ask these questions to determine if this transfer was an attempt to evade subdivision regulations. He had no questions for her.

Commissioner Evans asked if she did indeed plan to give this land to her mother.

Debbie Jo Meeks stated that was correct.

Chair Kennedy 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 for family transfer for Debbie Jo and Marty R. Meeks for that parcel described in COS 1726, Section 19, T14N, R20W, for transfer to Debbie Jo Meeks parents, Jim and Mary Jo Manley, 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.

Consideration: Tall Pines Summary Subdivision (2 lots) - Nine Mile Area off River Run Road

Nancy Heil, Office of Planning and Grants, presented the staff report.

The applicant, Vicki Siciliano, is proposing to divide a 20 acre parcel into two 10 acre parcels. The property is located in the Ninemile area, approximately 1/2 mile west of the Ninemile interchange along River Run Road. There is currently one home on the property, which is occupied by the applicants. Access to proposed Lot 7A will be provided via an easement through Lot 7B. The property includes steep slopes in the northern and western portions of the site. The Clark Fork River forms the western boundary of the property.

The property is unzoned. It is within an area designed by the 1975 Missoula County Comprehensive Plan as Open and Resource with a density of one dwelling unit per 40 acres. Parcel sizes in the area range from 5 to 20 acres. Adjacent parcels are 10 to 15 acres in size. The overall density of the proposal is one dwelling unit per 10 acres. There are no build zones shown on the plat on slopes that are greater than 25%. The riparian resource area along the Clark Fork River will be protected through a management plan that is included in the application packet.

Condition 2 also requires a development covenant addressing measures to reduce human/wildlife conflicts. Staff has found that the proposal substantially complies with the goals of the Comprehensive Plan.

The property is accessed from the Ninemile exit of I-90 to River Run Road, which is a gravel road within a 60 foot easement that is privately owned and maintained by the River Run Road Homeowners Association. The surface width varies from 18 to 22 feet generally, with 2 foot shoulders. There is one section of the road north of the property that is a little narrower, about 15 feet wide, but it does have shoulders to 20 feet wide for about 150 feet. The road passes through proposed Lot 7B near its eastern boundary. The applicant has requested variances for road width and on-site paving. Staff is recommending approval of those variances requests.

The existing home on Lot 7B is served by a 12 foot driveway that is approximately 800 feet long that ends in a turnaround. Proposed Lot 7A will be served by a new driveway which shares the existing driveway for about 410 feet then branches off to the north. The shared portion of the driveway and that portion which branches to the north are proposed to be located within a 30 foot easement. The applicant has requested a variance from the requirement that that be a 54 foot easement. Staff is recommending approval of that variance request.

There is also a driveway maintenance agreement included with the application. Staff has recommended some additional language be included. That is noted as Condition 6. The applicant has stated that additional surface runoff is expected to be retained on-site and Condition 1 requires the County Surveyor review and approve the drainage plans before plat filing.

There are no pedestrian facilities in the proposed subdivision. The applicant is not proposing to provide walkways along River Run Road, however they are proposing to provide a walkway easement through Lot 7A to allow access from Lot 7B to the river.

The existing house is served by an individual well and septic system. The new lot will also be served by an individual well and septic system.

Scott Waldron of the Frenchtown Rural Fire Department stated the property is in an area prone to wildland fire and it's very important that lot owners construct and landscape the homes in a manner that reduces the risk of fire. The new home should be set back from any steep grades or hillsides. Scott Waldron also stated that a \$100.00 per new lot water supply fee would be required, as noted in Condition 4.

The property includes a portion of the Clark Fork River. The 100 year floodplain extends in about 5 to 60 feet from the western property boundary and there is a steep bank that extends another 50 feet east of the floodplain. All of that is shown as a riparian no improvement area. There is an abandoned railroad bed that is located above the river bank. The application includes a Riparian Resource Management Plan. William Otten at the Weed District stated the lot is infested with knapweed and that a revegetation plan for disturbed sites would be required and approval of that plan is included as Condition 5.

Staff is recommending approval of the three variance requests and approval of the summary subdivision, subject to the six conditions that are noted in staff report.

John Kellogg, Professional Consultants, Inc., developer's representative was present. He appreciated staff's efforts in preparing this recommendation. Vicki Siciliano is in agreement with the proposal. The proposal is also in conformance with the covenants of River Run Ranches and in keeping with the character of the area. Vicki Siciliano had some serious health problems and could not be here today, but he and Rick Robinson were here to represent her. The would answer any questions the Commissioners may have.

Chair Kennedy stated the revegetation plan was for areas of land disturbance. He was unclear as to the extent of the weed control plan, did it cover both lots, the improved area, what did they had in mind?

Nancy Heil stated the requirement from the Weed Board was a revegetation plan for disturbed sites. Her understanding was that would include roads or homesite construction.

Chair Kennedy asked John Kellogg if that was his understanding as well and was there any intent to do anything beyond that?

John Kellogg stated there is a cleared area that is anticipated to be used as the new homesite that has knapweed on it. Use of landscaping around the new site should diminish the knapweed in that area. However, to the east of the existing structure there is a broad area of knapweed that stretches back to River Run Road which would require extensive use of herbicides to control. There are no plans to address that problem with the exception of along side the driveway.

Chair Kennedy asked if the floodplain only intruded on Lot 7A?

Nancy Heil stated that was correct.

John Kellogg stated the floodplain is in a very narrow area along the west boundary, down at the bottom of the slope. It is a very steep slope dropping down from the old railroad bed.

Chair Kennedy asked for public comments. There being none, the public comment section was closed.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(1)G of the Missoula County Subdivision Regulations that requires all new subdivisions to have paved streets and roads; the variance request from Section 3-2(3) for River Run Road to vary from the required minimum surface width of 24 feet to the existing condition; and the variance request from Section 3-2(1)1 to vary from the required driveway easement width of 54 feet to 30 feet, 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 Tall Pines 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.

Chair Kennedy commented on the work that Nancy Heil and John Kellogg did together on this project. There was not a lot of need for the Commissioners to go over things because those questions were properly answered prior to this matter coming before the Board. He appreciated the work they both did on this proposal.

1. Drainage plans for the site shall be approved by the County Surveyor's Office prior to plat filing. *Subdivision Regulations Article 3-4.*
2. The applicant shall file a development covenant to include the following provisions addressing human-wildlife conflicts, wildland residential interface standards, driveway construction and riparian management:
 - A. Domestic pets are to be kept in a contained area to avoid wild animal harassment.
 - B. Pets shall be fed indoors and pet food shall be stored indoors.
 - C. Garbage shall be stored in well sealed containers and inside storage units.
 - D. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use.

- E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged.
- F. All garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement.
- G. Compost piles shall be enclosed in a container.
- H. The brochure, "Living with Wildlife" shall be distributed to all lot owners.
- I. Apiaries may attract species such as bears and should be avoided. Before an apiary is located on a lot, the owner of the bee hive(s) should first contact the Department of Fish, Wildlife and Parks to discuss their plans and how to best avoid wildlife conflicts.
- J. A minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches shall be provided for any driveway over 150 feet, to be approved by the Frenchtown Rural Fire District.
- K. Turnarounds for fire apparatus shall be provided for dead-end driveways in excess of 150 feet, to be approved by the Frenchtown Rural Fire District.
- L. The new residence shall be set back from steep slopes at a distance to be approved by the Frenchtown Rural Fire District.
- M. The property owner shall create a defensible space for fire protection purposes as approved by the Frenchtown Rural Fire District. 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 as 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.
- N. Only Class A or B fire-rated roofing materials shall be used for any new construction.

The Riparian Resource Management Plan shall be included in the development covenant. The development covenant shall be filed prior to plat filing. *Missoula County Subdivision Regulations Article 3-1(1)(B), Article 3-1(2), Article 5-1(5)(H), Article 3-2(3)(C), 3-2(6)(E), Article 4-1(12) and Frenchtown Rural Fire Department and staff recommendations.*

3. 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 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 Article 3-7(2) and staff recommendation.*

- 4. The developer shall contribute \$100.00 per new lot to the Frenchtown Fire District. Evidence of contribution shall be presented to the Office of Planning and Grants at the time of plat filing. *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District recommendation.*
- 5. 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.*
- 6. The driveway maintenance agreement shall state that the shared driveway shall be maintained so that it is accessible to emergency vehicles year round. The maintenance agreement shall be approved by the County Attorney's Office prior to plat filing. *Subdivision Regulations Article 3-2 and staff recommendation.*

Decision: County Subdivision Regulation Amendments and Amendments to County Zoning Resolution No. 76-113

Chair Kennedy commented on the public meeting held at Target Range last evening. There was a lot of commentary on a lot of issues. One comment the Commissioners made was that no matter how late it was made, public comment is always important to them and is always taken into consideration prior to the time a decision is made. Under the circumstances they find themselves in today, between the meeting last night and now, they have had insufficient time to review that commentary and look at the complete document, which was presented to them just a few minutes ago. The Commissioners need to acknowledge those two things and defer action on this matter for one week. He hoped the Board would support doing that. Deferring the decision a week doesn't mean nor should it be concluded, that there would be a change. It means they will take the time to review the comments from the public, but also to review in total what the proposal is so they can make an informed decision next week. This is a dynamic process, it was always meant to be and will remain so. Any time a regulation is found to not allow them to achieve the goals they want, or does not have the desired outcome, they have the ability to change it. It is not cast in concrete. Sometimes governments pass rules and then there is a time that passes to see how effective they were in achieving their goals. If the results are acceptable the rules carry on. If not, then adjustments and changes can be made. They have found that some of the results of the original regulations don't comply with the desired outcome so there are some needed changes. With the Board's agreement, he would like to postpone decision for one week and asked for comments from the other Commissioners. This is not a public hearing, however the Commissioners want to hear what the public has to say and he would allow time for that today.

Commissioner Evans stated she had nothing to say at this time except that she will review the proposed amendments and hoped to vote on them next week.

Commissioner Carey echoed Commissioner Evans comments.

Chair Kennedy stated the decision would be delayed until next Wednesday, March 31, 1999. He then asked for public comment.

Ross Best stated the City and County growth management efforts have been going on for years. He had not been involved in that process and this was the first time he commented on these final stage proposals. He generally supports what the City Council and County Commissioners are trying to achieve. He strongly supported limiting growth, putting growth closer to the center of the city, annexation, etc. He was not here as an adversary to what the Board was trying to achieve. He did have some concerns about how they were going about it. The first had to do with notice. It appeared to him, at least in the density bonus provision, a new zoning district was being created. Under Montana law, Section 76-2-205, when the two public hearings were held on this proposal, notice should have been given of the boundaries of the proposed district. He looked at the notice and there were no boundaries given. That led to the second problem, which is that no one seems to know what the boundaries are. He felt this was a real problem, beyond problems it causes for notice requirements. It is a problem of fairness to those concerned about whether they will be affected. It is a problem of fairness to people in the Target Range area who may be trying to solicit signatures for a protest. He felt it was essential that there be clearly defined boundaries that everyone could understand. The third area of concern was that it appears that the boundaries would change in the future without further action by the Commissioners, because the boundaries seem to be linked to city sewer lines and future city sewer plans. That leaves uncertainty about where this is going. It also leaves a problem of what he perceived as delegation of County zoning authority to the City. If the County boundaries are determined by something the City does, then the County is letting the City do their zoning to some extent. He was also concerned that when future adjustments take place there will not be proper opportunity for public participation because it was not clear if the County would be holding hearings on these changes. It was not clear how residents of the outlying areas would be allowed their statutory protest rights. He was not an expert on zoning but had looked at the notice statute closely. He believed there was notice problem and boundary problem. He encouraged the Commissioners to look into these concerns and if necessary do things in conformance with the statute.

Gerry Berens, President of Target Range Homeowners Association, thanked the Commissioners for attending the meeting Tuesday evening. They received quite a reaction to what they perceive as increases in density in the area, and the planned infill and growth. He felt there was a uniform reaction from the community. One long-time resident told him it was highly unusual to go to Target Range and not have half the community on one side fighting with the other half on the other side. The reaction is not always as unified as it was last night. There were people from all political persuasions. Many of those people he had never seen attend a meeting before. One man even stopped repairing cars to attend the meeting. It was a very unusual turnout for the people of the area. He hoped the Commissioners took that into consideration, this is not just the rabble-rousers from Target Range, and not discount what occurred last night. He felt the Board got a sense that the community wants to retain its character. Part of the Comprehensive Plan, and these plans, talks very fervently about the need to preserve and protect community identities and the separate neighborhood identities like the University District. The Target Range folks are taking that to heart, it is a deep concern to them. He felt a way to solve this problem is to create, along with these amendments, a zoning district for Target Range that respects the nature of the community. They have their own school. They have Dale's Dairy and would welcome an expansion of commercial in the area. They have an identity they are trying to maintain. They feel that identity is a positive alternative to folks that want to live in the City and they would like to preserve it. By creating a special district for them, whether it be citizen started or initiated by the Commissioners, there would be a consensus. The Target Range community already has high density in it and they feel they are contributing to the City and to the need for affordable housing. Community Hospital is part of the Target Range community. The University Square Apartments are part of the Target Range community. They feel there is already some high density housing in the community properly located near community services. There is also the rural aspect of the community they would like to preserve. They would like to have a zone that would create an identity for the community and exempt them from infill and the thrust from the City. Given the community participation evident last night, this could be accomplished rapidly. In the spirit of what Mr. Kennedy calls this dynamic process, as opposed to amending it after it is fait accompli, it is suggested the Board delays action and makes the changes before the action occurs. This would allow everyone to work together toward what is good for their community as opposed to going down an adverse path. He is willing to spend whatever time is necessary to work toward finding another solution.

Don Stinger, 245 North Davis Street, stated he was speaking today as a member of the Neighborhood Network, representing Orchard Homes and part of the Target Range area. He is not here in opposition to anything, just as an interested observer. He is a resident of Missoula County as he is reminded every spring when his tools and equipment are taxed. Reserve Street divides the area he represents on the Neighborhood Network, about half the citizens are in the City and half are in the County. There is a great more of the area that is in the County than the City however. There are 16 groups represented and Target Range Homeowners are one of them as is the Orchard Homes County Life Club. Orchard Homes was annexed as part of the City but the process was fought vigorously all the way. He became active in land use issues before annexation. He wanted to remind the people from Target Range that they can protest these zoning changes. When the City does annex, they go to the closest County zoning. There were a lot of problems in the Orchard Homes area because there were a lot of special districts. It made a lot of people unhappy by making the zoning 4 dwelling units per acre. He felt the City-County Health Board was enforcing the zoning as they will not allow any additional dwellings in the Target Range and Orchard Homes areas because it is unsewered. The City is working to put in the sewer across Reserve Street which will open the Target Range area for more development. He was also upset with Mayor Kadas for supporting Senate Bill 96, which raises the percentage to protest a change in zoning. There are several members of the Neighborhood Network that are not happy with the bill. It would eliminate the super majority of the City Council and allow for only three-fifths of the voting members to pass a measure. He thanks the Lord every morning for the 4 acre cornfield bordering his property and hoped it would stay that way. It probably would not and it could someday allow as many as 24 homes on it.

David McEwen stated he sincerely hoped a delay today will lead to meaningful and productive compromises and discussions tomorrow.

Bill Dahlgren, 2008 37th Avenue, thanked the Commissioners and staff for attending the Target Range meeting last night. He appreciated their continued willingness to listen and review this issue. He wanted to share some observations and opinions. It was clear to him at the meeting that there was an overwhelming majority saying they don't want annexation and they don't want density. Commissioner Kennedy said at the meeting that current provisions of the zoning don't provide protection of the unique characteristics of the neighborhood that exist out there. He looked forward to this process continuing, if it is the Board's intent to give those residents protection for that unique neighborhood environment they have. As it currently stands, the document doesn't offer that protection and it needs to be changed. If the new documents don't provide that protection of unique neighborhood, then those documents proposed need to be fixed and amended. He looked forward to the Board continuing to listen to the neighborhood's concerns. He hoped the Board would give that large group of voting constituents out there what they want for their unique neighborhood.

Chair Kennedy asked for further public comment. There were none. He thanked everyone for their comments and stated the Board would take all of those comments into consideration.

Commissioner Evans asked Colleen Dowdall to respond to the comments by Ross Best from a legal perspective. Was there indeed a problem that needed to be fixed?

Colleen Dowdall stated she was willing to look at the issue but in her opinion a new zoning district was not being created. The density bonuses and the design standards that accompany them apply in every zone until the 80% buildout point has been reached and it is within the primary urban growth area. It is an implementation of the recommendation of the Comprehensive Plan but it does not create a new district, it simply creates the opportunity for someone to meet the design standards for achieving those density bonuses and having it approved by the Commissioners.

Commissioner Evans stated that as she said last night, she has mixed emotions on the density question. She has had people tell her they need to build a place for a mother or grandmother on the back of their lot. This is very difficult under the current rules. She did not like to tell people "no" on something like that. She has also had people tell her they need to sell a piece of land to put a child through college. She felt that was legitimate. Growth cannot be stopped. She did not believe it was even legal to attempt to limit growth. Where to send growth might be legal, but she had some problems with telling people where they have to live. She has never agreed with putting a line around the city and telling people they have to live within the line. She sympathizes with what the people are saying but government can't always give them everything. Some tough decisions have to be made sometimes. As mentioned at the meeting last night, the Fort Missoula plan has been brought up again to look at. She had no problem with looking at it but could not and would not look at it until after the County budget is done. The budget will be a very tough process this year. That would delay looking at the Fort Missoula plan until at least September of this year. She would be willing to look at the plan as long as it meets the legal requirements and fair requirements that takes some of the burden that an entire community should take. She understood the concerns of the citizens, but there are concerns they may have they don't know they have yet. They may want to build a house for grandma, they may want to sell a piece of land to send a child to college. She would like the rules to be flexible enough to do that. At the same time she did not want to force growth on anyone. It is not an easy route to take. She just received the final copy of the documents and will read them before next Wednesday. She could not say how she will vote on them. There is always the capability of changing something that is not liked.

Commissioner Carey stated he was encouraged by the spirit of cooperation he has heard. He felt that could be built on. It is not a matter of dictating anything to anybody. As he said last night, it is about balancing the public interest and private interest. That is the reality as far as he perceived it. He hoped the timetable was realistic, as long as the matter of the budget was still to be done. That didn't mean the people in Target Range can't come up with some proposals, and perhaps have staff help in the process. He felt everyone could move forward particularly when they were interested in working together.

Chair Kennedy stated that usually the people who are affected most can't know and understand the depth of these proposals because they are busy with the daily aspects of their lives. A proposal is made by a development interest without any outside input until it is presented to the Office of Planning and Grants. OPG then starts to learn about it while the developer is way ahead. OPG does their work and becomes familiar with it then takes it to the Planning Board. The Planning Board then starts over, learning what the developer and OPG now know. After that process, it comes to the Commissioners and their learning curve begins. That is a lengthy process. By the time there is the second opportunity for public input, after the Planning Board, it comes to decision time. Lots of roads have been crossed by the time the Commissioners get to the decision point and lots of potential problems get addressed. An example of this process was the subdivision that was approved at today's meeting. Citizens, because they are busy taking care of their families and lives, depend upon those in government to do what they can to respond to their needs. That is an exceedingly difficult job. Going to a meeting like last night's is not fun, but they do the best they can to satisfy the needs and goals of the community and establish a course and develop tools in order to accomplish what the community generally wants. It simply is not possible to satisfy every need that everyone has. It requires compromise, or give and take, and to examine what is received from regulatory changes to see whether it makes the change worthy. Those on the front line have to make that judgment and are prepared to make that judgment. That doesn't mean it is always agreed with. A City Council member who voted against the document said at the same time he was glad that the document passed, which was an interesting comment. The message was there were things in the document that concerned him enough that he felt he needed to vote against it as a message it wasn't completely acceptable, at the same time acknowledging it was mostly better than if the document wasn't passed. Having a plan that works well that decisions can be made by really is a Comprehensive Plan. It isn't regulation. Regulation can be passed, but it is better to have a sense as to what the entire area really ought to look like, and that is what Target Range ought to do. A strong Comprehensive Plan is needed for the area. When the plan is in place, it makes it more difficult to go against the plan when decisions get made. An example is the Board of Adjustment. If the Board of Adjustment has a strong Comprehensive Plan, it makes it more difficult for them to go against the plan. It is important to understand planning really is a way to define the future in a better way than the regulatory process. That needs to be strongly encouraged and done.

Commissioner Evans asked the citizens from Target Range to get a copy of the rules from Special Zoning District #2. It was a very different zoning district based on the permits idea. She asked them to look at that document. It was extremely different but it might be something that could work for them.

Chair Kennedy stated the Commissioners were about ready to recess but asked if there were any other comments based on what they had just said.

Ross Best wanted to responded to Colleen Dowdall's comments. She said the density bonuses and design standards would apply in every zone until it reached 80% buildout, within the urban growth area. This appeared to him that in certain areas, such as Target Range that are zoned at a certain level, this is opening the possibility that within the urban growth area boundaries, there is the potential for more. He is not a property owners, but this is the kind of thing that an opponent of density bonuses would have to look at carefully because it appears to him that within that area it is changing the zoning of the area. And it appears to him that a zoning area is being creating, establishing within some indefinite boundaries different rules that are going to apply. He is not an expert on zoning and would be willing to discuss this further with anyone.

Chair Kennedy stated that counsel said this issue may require additional examination and she is willing to do that. She is not saying no, she is saying that right now this is her feeling on the issue. He thanked Mr. Best for bringing it up and it would be examined further.

There being no further business to come before the Board, the Commissioners were in recess at 2:25 p.m.

THURSDAY, MARCH 25, 1999

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:

Schedule A – The Commissioners signed Schedule A and a Maintenance Plan with the Forest Service for exchange of road maintenance on certain roads in Missoula County. The documents were returned to the Surveyor's Office for further handling.

Warranty Deed – The Commissioners, as the Missoula Airport Industrial District Board, signed a Warranty Deed to the Montana State Board of Investments for land in the Missoula Development Park (Nurture's option property). The Deed was returned to Paul Webber, CAO for further handling. The document will be recorded pending receipt of money from the State.

Other items included:

- 1) The Commissioners reappointed Mike Halligan and Les Rancourt to the Larchmont Golf Course Board, through March 31, 2002.

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

FRIDAY, MARCH 26, 1999

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

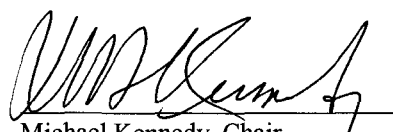
Plat – The Commissioners signed the plat for Osprey Heights, a major subdivision located in the SE1/4 of Section 21, T13N R20W, PMM, Missoula County, a total subdivision area of 32.46 acres, with the owners of record being Eric and Cheryl Hefty.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Crystal Wood as principal for Warrant #60269 issued 3/5/99 on the Missoula County MCPS Payroll 78-42 Fund in the amount of \$45.14 now unable to be found.

Special Use Permit and Assurance of Compliance – Chair Kennedy signed a Special Use Permit with the USDA, Lolo National Forest, for the Missoula County Sheriff's Department to use 152 square feet, or 2/3 of the Law Enforcement Office in the Seeley Lake District Office. Fees shall be \$119.00 for land use, and \$300.00 for use of Government-owned improvements – due January 1 of each calendar year. He also signed an Assurance of Compliance with the Department of Agriculture. The forms were returned to Jane Ellis, Chief Financial Officer, for further handling.

The Commissioners appointed Allison Handler as an alternate member of the County Weed Board, filling John Rimel's unexpired term through December 31, 2001.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MARCH 29, 1999

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

Resolution – The Commissioners signed Resolution No. 99-017, a budget amendment for the Auditor's Office, in the amount of \$25,769.00 for the Drug Control – System Improvement Grant.

Letter and Signature Page – The Commissioners signed a letter and signature page for a grant in the amount of \$35,000.00 for replication of the Porter Project in the District Alternative Learning Center, to provide opportunities for service learning, participation in non-academic projects, and increased interaction with adult mentors. The documents were returned to Peggy Seel in OPG for further handling.

TUESDAY, MARCH 30, 1999

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:

Memorandum of Agreement – The Commissioners signed an Amendment to the Memorandum of Agreement with Family Basics/WORD, amending the value of the agreement to \$13,205.00. Agreement terminates on June 30, 1999.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with Big Brothers and Sisters to continue the mentoring program at CS Porter Middle School. Value of the Agreement is \$1,000.00. Duration of the Agreement is from March 10, 1999 through June 30, 1999.

Professional Services Contract – The Commissioners signed a Professional Services Contract with the Missoula AIDS Council for HIV prevention activities – funded by DPHHS. Compensation shall not exceed \$26,142.00. Performance schedule is March 15, 1999 through December 31, 1999. The Contract was returned to the Health Department for further signatures and handling.

Standard Audit Contract – Chair Kennedy signed a Standard Audit Contract with Elmore & Associates, PC, for a financial statement audit of Missoula County. Audit period covered by the Contract is July 1, 1998 through June 30, 2001. Compensation shall be \$60,000.00 for the initial audit, and subsequent audit fees shall be negotiated. The Contract was forwarded to the Department of Commerce, Local Government Services Bureau in Helena for signature.

Contract – The Commissioners signed a Contract between the Missoula County Road Department and Jensen Paving, Inc. for CMAQ paving of streets and alleys in East Missoula, the Upper Rattlesnake, and Fort Missoula. Compensation shall be \$568,120.58. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Tri-Party Agreements – The Commissioners signed three Tri-Party Agreements with the State of Montana and Montana Rail Link for grade crossing signals at: the railroad crossing west of Frenchtown (US DOT 091 412L), the railroad crossing at Deschamps Lane (US DOT 090 447J), and the railroad crossing at McQuarrie – west of Clinton (US DOT 060 389J). All three were forwarded to MDT in Helena for signatures and further handling.

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

WEDNESDAY, MARCH 31, 1999

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

Audit List -- Commissioners Carey and Kennedy signed the Audit List, dated March 30, 1999, pages 2-34, with a grand total of \$735,631.16. The Audit List was returned to the Accounting Department.

PUBLIC MEETING -- March 31, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey, County Surveyor Horace Brown, County Clerk & Recorder/Treasurer Vickie Zeier, Chief Civil Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall.

Chair Kennedy announced that the decision on the County Subdivision Regulation Amendments and Amendments to County Zoning Resolution No. 76-113 has been postponed until April 14, 1999. If anyone was present for that agenda item, they could be excused or could stay for the rest of the meeting, it was their choice.

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 list in the amount of \$735,631.16. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Awards: 12 Golf Carts and 1 Triplex Mower (Larchmont)

Bids for 12 Golf Cars for Larchmont Golf Course were opened at 10:00 a.m. on March 15, 1999, with the following results: Johnson Distributing in the amount of \$39,084.00 and Masek Golf Car Company in the amount of \$39,240.00.

Staff recommends the bid be awarded to Johnson Distributing in the amount of \$39,084.00 as the lowest and most responsive bidder.

Bids for a Triplex Mower for Larchmont Golf Course were opened at 10:00 a.m. on March 15, 1999, with the following results: Midland Implement in the amount of \$23,166.00; Farwest Equipment Co. in the amount of \$19,252.56 and Polfus Golf & Turf in the amount of \$17,000.00. Staff recommends the bid be awarded to Polfus Golf and Turf in the amount of \$17,000.00 as the lowest and most responsive bidder.

Bill Galiher, Manager of Larchmont Golf Course, stated they would like approval for the 12 golf cars to replace 8 golf cars, and approval of the mower. They kept 4 of the old cars to maintain a 40 car fleet. Eight of the older golf carts have been sold.

Chair Kennedy asked if these items were in the Larchmont budget?

Bill Galiher stated they were and all the bids were within that budgeted amount.

Commissioner Evans moved that the Board of County Commissioners approve the bid for 12 Golf Cars to Johnson Distributing in the amount of \$39,084.00 as the lowest and most responsive bidder, as recommended by staff, and approve the bid for a triplex mower to Polfus Golf and Turf in the amount of \$17,000.00 as the lowest and most responsive bidder, as recommended by staff. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Traffic Line Paint (Surveyor)

Bids for 1,500 gallons of yellow paint and 3,000 gallons of white paint for roadway striping were opened at 10:00 a.m. on March 22, 1999, with the following results: Columbia Paint - yellow at \$5.89 per gallon + white at \$5.15 per gallon for a total of \$24,285.00 and Morton Paint - yellow at \$7.80 per gallon + white at \$6.96 per gallon for a total of \$32,580.00. Staff has recommended the bid be awarded to Columbia Paint in the amount of \$24,285.00 at the lowest and most responsive bidder. The bid is within the budgeted amount for this item.

Chair Kennedy stated this is a recurring purchase each year. Some time ago the County adopted a non-toxic paint policy. He asked the Surveyor if this paint complied with the policy and the Surveyor stated that it did. The budget for this item is \$35,000.00 and the bid is for \$24,285.00.

Commissioner Evans moved that the Board of County Commissioners approve the bid for 1,500 gallons of yellow paint and 3,000 gallons of white paint for roadway striping to Columbia Paint in the amount of \$24,285.00 as the lowest and most responsive bidder, as recommended by staff. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Frey Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in 132 Book of Deeds, Page 603 and Book 15 Micro, Page 1486 less Clark Fork Estates.

Clifford and Opal Mae Frey have submitted a request to create four parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current west parcel is approximately 30 acres and the east parcel is approximately 40 acres in size, located off Mullan Road. Mr. and Mrs. Frey propose to create four parcels ranging in size from five acres to one acre for transfer to their 3 sons and one daughter. The Freys have no other children.

The history of the parcel is as follows: The parcel of land has been in the ownership of the Frey family since it was patented. This 70 acres is what remains in the family ownership.

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

Clifford and Opal Mae Frey were present. Their son Dale Frey came forward to answer questions.

Chair Kennedy stated this was a part of the law that allowed the Commissioners to ask unusual and personal questions, different from subdivision review. The Commissioners could ask these questions to determine if this transfer was an attempt to evade subdivision regulations. He asked if the children would be living on the property after it was deeded to them.

Dale Frey stated they will be. He had been living in his grandparents house for 20 years. A brother has plans to build a three-bedroom house on his parcel. The sister has plans to build a small house for a summer home and brother Fred lives on the ranch now.

Chair Kennedy asked if there were any plans to build for some other purpose, such as resale.

Dale Frey answered no and stated this has been in the family for three generations. He has two sons who hopefully will be doing something with the land as well.

Commissioner Evans stated the Freys have previously developed land through the subdivision process as required. They have been good stewards of the land and she saw no reason not to grant this transfer.

Chair Kennedy 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 Clifford and Opal Mae Frey 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.

Hearing: Porter Family Transfer

Colleen Dowdall, County Attorney's Office, presented the staff report.

This is a consideration of a request to create three family transfer parcels and a remainder by dividing that parcel described as Tract A-1 of COS 3695.

George R. Porter has submitted a request to create 3 parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is twenty acres in size located near Turah off Turah Road. Mr. Porter proposes to create three one acre parcels on the northwest portion of the property, and a 17 acre remainder, for transfer to his children: Christy Marie, age 23; Robin Lyn, age 20; and George Robert Porter III, age 16.

The history of the parcel is as follows: COS 3259 to create a parcel of 52 acres, exempt as a parcel greater than 20 acres by Champion International in October, 1985. COS 3695 to create a parcel of 20 acres, exempt as a parcel greater than 20 acres by Champion Realty Corporation in October, 1989.

Mr. Porter acquired the parcel from Champion Realty Corporation by Bargain and Sale Deed in October, 1989.

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

George R. Porter was present and came forward to answer questions.

Chair Kennedy stated this was a part of the law that allowed the Commissioners to ask unusual and personal questions, different from subdivision review. The Commissioners could ask these questions to determine if this transfer was an attempt to evade subdivision regulations. He asked if Mr. Porter's intent was for the three children to build on the property.

George Porter stated they would probably put trailers on their property.

Colleen Dowdall reminded the Commissioners and Mr. Porter that the parcel for the minor will need to be transferred to him in trust.

George Porter stated he had spoken with a lawyer and that would be done.

Chair Kennedy 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 George R. Porter to create three one acre 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.

Continuation of and Decision on: Sheep Ranch Inn RV Park (Arlee) - Postponed from 3/17/99

Brian Maiorano, Office of Planning and Grants, presented the a brief update.

The brief synopsis is that this has been continued several times by request of the applicants. A couple of issues they were trying to resolve was the concern about ground water pollution by the Tribes, which they have presented mitigation which would resolve that, which involves no on site disposal of sewage. The second concern was traffic safety mostly involving left turning movements either from the subdivision or from Highway 93. The applicants have presented several mitigation measures, such as a partial right turn bay heading north and a consolidated access point. They have also offered several other additional mitigations after it was suggested that those were not adequate. They have suggested things such as not advertising southbound traffic or not allowing left turns from or into the property. They have now requested that the Board make a decision on this based on the mitigations they have offered.

Chair Kennedy: Thank you. Ron, would you like to make a presentation?

Ron Ewart: If it pleases the Commissioners, I'd like to take about three minutes and run through some of the issues.

Chair Kennedy: We don't mean to limit you, I just was limiting the staff presentation. We understand you may have new information to us.

Ron Ewart: I have an entire presentation I could go through, the whole project, but I won't do that. Again, you've seen this drawing already. I think you understand the mechanics of it all and how we're protecting the resources and all those kinds of things. I'll just now talk about some of the agency comments and some of the issues at hand. We've closely examined all the concerns brought about by the various agencies who reviewed this RV park and we are proposing measures to take care of or at least to sharply reduce their concerns. From the beginning we wanted to mitigate concerns of the Confederated Salish and Kootenai Tribes. The Tribal Council chairman articulated to us four concerns in his agency review letter: ground water in the Finley Creek drainage, trespass onto tribal lands, potential human/wildlife conflicts and access from Highway 93. Regarding ground water, we originally proposed to use shared septic systems but are now proposing not to have any septic systems if that would help his proposal, and an RV would simply use a dump station at another location, such as Joe's Smoke Ring. This should totally alleviate the concern of ground water contamination due to new septic. Regarding trespass, the letter suggested no use of trails on tribal lands and that the

subject property be fenced and posted. We are proposing to implement the measures and the conditions of approval would require implementation of them. Regarding wildlife, the tribal letter, and also a letter from the Montana Department of Fish, Wildlife and Parks, suggests way to lower human/wildlife conflicts. These measures will also be implemented as proposed. The tribal letter expressed concern about the two existing accesses, that they should be consolidated into one access. A separate letter from the tribal transportation planner also expressed concern about the need for access consolidation. That letter also went on to express the need for a northbound right turn decel lane and about the fact that the two southbound lanes currently merge near the frontage of the subject property. All three of these concerns will be mitigated with consolidation of the accesses, construction of a right turn decel lane and in that the merge lane will be no more will the continuance of the two lanes southward this spring. For these reasons we feel therefore that we've mitigated the tribes concerns. Another issue that we knew early on, we had to satisfy, or another agency, would be the Montana Department of Transportation. We met with the district transportation traffic engineer and the maintenance chief last December, prior to official submittal. We went over the three requirements stated in their agency review letter which were that: 1) The two existing accesses must be consolidated; 2) a northbound right turn decel would be constructed in accordance with MDT standards; and 3) a new approach permit would need to be obtained from MDT that would require not only the aforementioned items but also a wider driveway access, approach flare and an extended culvert. We've agreed to these conditions. Another issue that had arisen at the Commission level, that had not been brought up prior, which is that left turns by RV's into the park may not be safe. We've heard personally from three officials of MDT on this matter, Martin Van Mil, District Construction Engineer, Darin Kaufman, District Traffic Engineer, and from Jim Weaver, District Administrator and chief official of this office. I was not at the Commissioner meeting where Mr. Van Mil was in attendance but I understand that he did not articulate serious concerns about the traffic situation with the RV park as proposed. We heard from Mr. Kaufman and Mr. Weaver, who also did not state there would be serious concerns. I would like to refer to Mr. Weaver's March 2nd letter, which I feel is important, where he states that: *"In our opinion, the left turning traffic into the proposed RV park does not create an unreasonable safety problem. I base this conclusion on several factors. First the site distance and geometrics at this location are good, at least they will be after we extend the turning lane this spring. Secondly, our criteria for requiring turning lanes will not be met by the traffic generated by the RV park. Lastly, we draw on experience from a similar situation at the Jellystone RV park near I-90. This much larger RV park does not have a left turn lane even though Highway 93 traffic is much heavier, there are no reported accidents at this site. I would like to offer one other potential idea to reduce concerns about left turning traffic. If your client agreed not to advertise, sign for or encourage southbound traffic to use the park, it could significantly reduce left turn traffic and perhaps the safety concern."* We are in agreement with the recommendation of approval and the recommended conditions of approval from the Missoula Consolidated Planning Board. They did spend a lot of time and had a lot of discussion on the proposal. The Board believes that we met all of the regulations and the subdivision review criteria. In fact, if you so choose, we could add a couple conditions that there would be no signage for the RV park facing northward for southbound traffic and that there would be no additional septs on the site. We've already agreed to removing the existing mobile home in order to lessen the density, Comp Plan and ground water concerns, so long as there would be 12 spaces. Therefore, with this proposal there could be less septic effluent than there is with the current situation. We've met all of the subdivision review criteria for RV parks to include primary travel corridor standards. We've not had to request a single variance to the regulations. We show that this proposal can be found in substantial compliance with the '75 Comprehensive Plan. We've shown how we will meet or highly alleviate all concerns voiced by all reviewing agencies. Finally, Allan and Rosemary propose the 12 RV spaces because they wanted to boost their existing business and generate a little extra income. This RV park will be small. A nice looking mobile home, which brings in rent money, will be removed. Actually, the mobile home is the only part of their property that brings in year round guaranteed income. They have hardly rented a room at their Bed and Breakfast since October and the restaurant business drops off sharply during at least half the year. Here we have a chance to help a small business, a family, and in just a small way, the economy of Missoula County. Again, we are in agreement with all of the conditions of approval as recommended by the Planning Board and no variances to the subdivision regulations are requested. Thank you.

Chair Kennedy: Thank you Ron. Are your clients here? Would you like to say anything at all?

Allan Howes: My wife and I own the Sheep Ranch and I feel that Ron has pretty well summed up our feelings on the situation.

Chair Kennedy: Okay, thank you. Is there anyone else out there who would like to make a comment? Thank you. Is there discussion of the Board?

Commissioner Carey: Ron, how do you respond or would you respond to Captain Frellick's opinion that only a left turn bay would allow for safe turning movements?

Ron Ewart: Well, we did consider that but we feel that it's not economically feasible partly because of the side slopes on either side of the road, it would require an incredible amount of fill and also I don't feel that that would be, I mean nothing you could do would make it safe. Nothing really is safe, it's levels of safety and I feel that Jim Weaver was very careful in using the word "safe." So I don't think it would make it safe, it would make it safer, but I'm afraid it would be economically impractical. Thank you.

Chair Kennedy: Commissioner Evans, do you have any questions?

Commissioner Evans: Not a question, just a comment that Captain Frellick's letter says that his comments come from a law enforcement background but he is not a traffic engineer and therefore can only draw on his experience and that it's his opinion that only the Department of Highways will ultimately be able to prescribe the appropriate answer to the questions. And the MDOT has said that they would have, that it isn't 100% safe, nothing is 100% safe, but that they do not feel a left turn lane is an absolute requirement, and these are my words. And I think that they felt there was no reason to deny this subdivision.

Chair Kennedy: I think that these kinds of decisions, of course, are particularly difficult because you get conflicting opinion as to what is, what should be used when we make a judgment to either pass affirmatively or negatively on a particular proposal. Clearly when it was presented to the Planning Board, the Planning Board, after a lot of discussion, had some opinion that they would pass it on to us with a recommendation to approve. But prior to that the staff examined

this carefully and worked hard with the client to achieve the compliance with the Comprehensive Plan because on it's face it did not, and through some process were able to establish conditions under which it would meet the intent of the Comprehensive Plan and I think that the discussions that were held between the owner's representative and the staff were good. The ground water issue is a serious one there and will become more serious over time and, as far as I'm concerned, that's satisfactorily mitigated. We have no quarrel with that and we like that part of the proposal. In terms of the trespass, obviously it met the scrutiny of the tribe in terms of adding a fence and signs there and we applaud that. That was a concern also of ours. The wildlife question seems to have been answered although we have to recognize that any new development always displaces habitat no matter what it is and we can't always do what we hope to do to achieve good, peaceful coexistence with wildlife, but I think that proposal was a good one. In terms of the accesses is where we have profound disagreement. That disagreement is not only with the designers of highways but also with the recommendation that came from the planning staff. So we have a situation where we're asked to approve a proposal that adds a different dimension to an existing condition out there and we have to make a decision as to whether or not that is, in itself, worthy of consideration. The one thing that sticks out to me when we examine this is that that highway is not truly a safe highway and we found that in that 12 mile stretch, if you look at the statistics that we've developed, or discovered, not developed, but discovered, that on the 12 mile stretch between Evaro and Arlee, since 1993 to 1998, that's only a five year period, there were 268 vehicles involved in accidents and 16 of those vehicles were involved in fatal accidents. So we can't underscore the importance of examining safety when we make a decision like this and that has created a problem for us in having to continuously delay a decision on this kind of a process because we felt at the outset that the initial proposal did not satisfactorily mitigate that concern. Since we find ourselves today having to make judgment as to whether or not it does, and what we noticed is, is that all of the other areas seem to be mitigated in a way that are acceptable to us except this one and we still are there because, in my mind, I don't see an additional offering on the part of the proposer that mitigates that particular problem in that area. The staff looked at different ways on how we could approve this and one of the ways was, of course, examining that, the possibility of that left turn passing lane heading south. Absent any other alternative, we're frustrated as to whether or not one exists, but absent that it doesn't appear to be something that we could approve. So it looks like that may be a condition and I'd ask, if it is, that that motion be made, if it's not, we need more discussion on it before we act.

Commissioner Carey: I have a question. In making a motion do I need to cite the findings of fact?

Chair Kennedy: Yes you do, because they are your findings.

Commissioner Evans: They're our attorney's findings.

Commissioner Carey: Well, how do I do, well I'd like to cite the additional findings of fact contained in the March 31st memorandum from Brian Maiorano.

Colleen Dowdall: The proposed motion is on Page 2 of his memo from today and it says, "based upon the findings of fact and conclusions of law," I would put "in the staff report and in the memorandum offered today." And then when we prepare the findings to go out with the letter, we'll in turn incorporate them.

Commissioner Carey: Okay, thank you. I'd make that motion that the Board of County Commissioners approve the Sheep Ranch Inn RV park for 12 spaces based on the findings of fact and conclusions of law in the staff report and in the memorandum dated March 31st from the planner, Brian Maiorano, and the amendments made to those conditions, subject to the conditions in the staff report and the amendments made to those conditions.

Chair Kennedy: Okay, so the staff report had how many conditions?

Brian Maiorano: The staff report had 11 conditions. You might want to put in for the record these ones listed.

Chair Kennedy: So there are 11 conditions, plus condition number 12 and 13.

Commissioner Carey: Yes, on Page 2 of the March 31st memorandum.

Colleen Dowdall: And then you would delete Condition 1 of the staff report which was that it be limited to 6 units and you would modify Condition 3, if you desire, to recommend what the Planning Board recommends, or to impose what the Planning Board recommended.

Commissioner Carey: Condition 3 being, that, okay.

Colleen Dowdall: That the approach to Highway 93 and the RV park driveway be paved.

Commissioner Carey: Yes, I'd make that part of the motion.

Commissioner Evans: I would like to second your motion and I will for discussion's sake and I appreciate what you're trying to do. Probably going to vote against the motion even though I seconded it because in essence it's an approval that's a denial. There is, in my mind and what we've been told, no way for the applicant to put in a left turn lane and so what we're giving is an approval that's a denial and I don't feel good about that, so I'll probably vote no on your motion but I appreciate your thoughts.

Commissioner Carey: I would just say that over time perhaps there is a way to find some means to do the left turn bay. For me it's an opening.

Chair Kennedy: And I think, against a difficult decision, I would also add though that in the 10 years of discussion on improvements to Highway 93 North, a subject of discussion is the access or the limitation of access proposals that have gone back and forth up there. And one of the reasons for that is that the number of uncontrolled accesses that exist now along that entire route that create serious safety hazard as traffic increases. So, it's a problem that even though we may impose this condition today, isn't going to automatically solve all the safety problems on Highway 93. At the same time, it might serve notice that we acknowledge the seriousness of safety issues up there and we just need to go forward and do the

best we can. So, with that, is there any further discussion? Then again, the motion is to approve subject to the 11 original conditions, the 2 additional conditions, elimination of one of the original, Condition 1, and modification of Condition 3.

Colleen Dowdall: To require paving of the parking lot and access onto Highway 93.

Chair Kennedy: Okay. Is there any further discussion? All those in favor signify by saying "Aye."

Commissioner Carey: Aye

Chair Kennedy: Aye. All those opposed?

Commissioner Evans: No, even though I support your subdivision. And I'd like my comments on that verbatim, please, Patty.

The motion carried on a vote of 2-1 (Commissioner Evans opposed).

1. The existing mobile home on the property shall be removed and its sewage treatment system permanently disabled.
2. The owner must make improvements to the Highway 93 approach and RV park driveway required by the Montana Department of Transportation. The driveway must be paved to facilitate smooth traffic movement. All internal roads and RV spaces must be improved to meet Article 3-11 (3.F) of the Subdivision Regulations. *Comments from Montana Department of Transportation, Confederated Salish & Kootenai Tribes, and the Missoula City-County Health Department and Subdivision Regulations Article 3-11(3.F).*
3. A development agreement shall be entered into which requires that fencing, landscaping, signage and other construction shall be consistent with the Primary Travel Corridor standards and the Recreational Vehicle Park standards. *Subdivision Regulations Article 3-14(3.A) and 3-11(4.F).*
4. The lot owner shall file a document of record waiving the right to protest the improvement of Highway 93, including installation of pedestrian walkways or bikeways, based on benefit, which may be used in lieu of 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 Article 3-2, and staff recommendation..*
5. The owner shall post the property boundaries that abut Tribal lands to prevent trespass of campers without a Tribal Recreation Permit. *Recommendation of the Confederated Salish and Kootenai Tribes.*
6. 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. 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 Article 3-7(2), and staff recommendation.*
7. The Arlee Fire District shall approve the provision of water for firefighting purposes. *Subdivision Regulations Article 3-7(2).*
8. The owner shall enter into a development agreement to implement the following to prevent wildlife/human conflicts:
 - a. A centralized bear-proof dumpster shall be used.
 - b. Outdoor grills must not be left outside when not in use.
 - c. Appropriate signs and educational materials must be given to patrons of the RV park. These materials must be approved by the Confederated Salish and Kootenai Tribe Wildlife Program. *Recommendation from Confederated Salish & Kootenai Tribes.*
9. A revegetation plan for areas disturbed during construction must be approved by the Missoula County Weed District. *Recommendation from Weed District.*
10. Upon discovery of cultural artifacts at any time during construction, the applicant or contractor shall notify the Confederated Salish and Kootenai Tribes Preservation Office of such discovery and allow sufficient time for the Tribes to determine appropriate handling. *Subdivision Regulations Article 4-1(12), and recommendation of the Confederated Salish and Kootenai Tribes.*
11. No on-site disposal of sewage is allowed for any RV spaces.
12. A southbound left turn bay to serve the subdivision must be constructed on Highway 93.

Decision: County Subdivision Regulation Amendments and Amendments to County Zoning Resolution No. 76-113

Chair Kennedy announced at the beginning of the Public Meeting that the decision on this item would be postponed until April 14, 1999.

Consideration: Krupp Subdivision for Lease or Rent (1 Dwelling Unit) - 12 miles west of Seeley Lake

Allison Handler, Office of Planning and Grants, presented the staff report.

The applicants, Uwe and Valerie Krupp, are requesting approval to add one dwelling unit to an 80 acre parcel where one dwelling unit currently exists. The property is located 12 miles west of Seeley Lake.

The property is unzoned. The Seeley Lake Area Comprehensive Plan Amendment, which applies to this area, does not specify where certain activities or residential densities should occur. It does in a general way discuss the need to protect natural resource values, minimize conflicts between humans and wildlife and reduce the threat of wildland

fires. Since the Comprehensive Plan is general with regard to residential densities and land uses, staff compared this proposal with surrounding land uses and parcel sizes. Surrounding properties appear to be similar in size. Parcels in the nearby Eagle Point Development are 10 and 20 acres in size, but properties immediately adjacent to the proposed subdivision are larger, varying from 80 acres to entire sections (640 acres). Activities on adjacent parcels include residential uses, ranching and timbering. Staff concludes that the uses and density on this parcel, two dwellings on 80 acres, or one dwelling to 40 acres, are compatible with surrounding land uses and densities. The proposal is generally in compliance with the Comprehensive Plan if the recommended conditions are followed.

The property has two approaches, one via Cahoon Ranch Road from the south, which provides legal access, and one from Beaver Creek Road and the westside bypass road from the northwest. The second access crosses lands that are owned by Plum Creek, the state and private landowners. The applicants use this road as their physical access because it is the shorter and more direct route.

Staff identified three issues regarding this property. The first concerns a large wetland in the center of the property, nearly 40 acres in size. This is a wet meadow devoid of trees which is fed by an intermittent stream. Vegetation at the edges of the meadow, where water tends to pool, is primarily composed of willows, alders and cottonwood. The regulations call for a Riparian Management Plan to be submitted which will describe the vegetation of the area of riparian resource, access to and through the area and restoration or protection of the area. Recommended Condition 4 addresses that requirement.

The second issue of concern is the fact that the dwellings are located in the wildland/residential interface, where wildland fire is a risk and the potential for human/wildlife conflict exists. The property is not located within a fire district. The Seeley Lake Rural Fire District has stated, in a memo handed out today, that they will provide fire protection service and they will bill the owner of the property for such services. They have recommended the property owner erect road and address signs for the property. Staff has recommended Condition 1 to address fire risk reduction and to minimize conflicts between humans and wildlife. Within Condition 1, staff has recommended the installation of a residential sprinkler system in the new dwelling for firefighting purposes. The applicant has asked for a variance from the requirement to install a residential sprinkler system. Staff has recommended denial of the variance request because fire protection by the Seeley Lake Fire District, at a distance of some 12 miles on narrow dirt and gravel roads, may not be timely. At Planning Status meeting on Monday, March 29th, it was suggested that since the driveway to serve the new house is quite long, approximately one-quarter mile in length, that a second turnaround be provided for fire apparatus and the applicant's representative is amenable to that suggestion.

The third issue of concern, which relates to the second issue, is access. The property is served by two road, neither of which meets County standards for surface width or easement width. Cahoon Ranch Road is approximately 15 to 18 feet wide. Beaver Creek Road is about 16 feet wide. The applicant has requested a variance from road and easement width standards and staff recommends approval of that variance request. Overall, staff recommends approval of the subdivision with four conditions.

Gary Lewis, applicant's representative, was present. The applicants, Uwe and Valerie Krupp, were not present. He stated he is an excavator in the Seeley Lake area. They would like the variance on the sprinkler system due to the cost and undue hardship to put it in. They will be using a well for a water source and was not sure of the gallonage of the well yet, which could increase the cost even more. If the well was not sufficient, a tank or ground water source would be required to feed the sprinklers which would be costly. It would be the only house in the area with sprinklers. The other required conditions were not a problem.

Chair Kennedy asked why the owners had not appeared at the meeting?

Gary Lewis stated Mr. Krupp is a hockey player and was not around. Mr. Krupp asked him to get the project going so construction could begin this spring, in fact construction would start next week. He asked for the subdivision so he could have a second sewer system. Mr. Krupp runs sled dogs and has a dog team that is stationed on this property. He has a dogboy (someone to care for the dogs) and would like to keep the existing cabin on the property for the dogboy's house. Their purpose for the subdivision was to get the second septic permit for the new house so the existing house did not have to be destroyed.

Commissioner Evans stated that when the Board met with Mr. Lewis recently and discussed the proposed need for the sprinkler system, they were told it would cost in excess of \$20,000, because it is a log home which complicates installation and there is no ready source of water to charge the system. It was suggested that a letter from the fire chief be presented indicating what the fire district would need in order to provide fire service. That letter has been submitted.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from the Subdivision Regulations Article 3-2(3) to vary from the required roadway easement and surface width, based on the findings of fact and subject to the conditions in the staff report, and approve the variance request from Subdivision Regulations Article 3-7(1) regarding installation of a sprinkler system in the new dwelling for fire protection, based on the findings of fact and subject to the conditions in the staff report. Commissioner Carey seconded the motion.

Chair Kennedy commented that the overall cost information presented is largely anecdotal and he questioned it. They have some experience as to the overall cost of sprinkler systems and he felt \$20,000 was extremely high. Someone who builds in an area like this, regardless of cost, has to recognize the concern is not just for the house and individual property owner, but also for the entire area. He would hope that in Commissioner Evans motion she might reconsider and withdraw the variance from the sprinkler request. He felt it was needed in the area, it was important. It is not the only one in the area, there was another subdivision approved recently that required them, near Double Arrow, and also one near Seeley Lake. This is found to be a satisfactory mitigation.

Colleen Dowdall stated that the criteria usually used for sprinkler system is because it would be difficult for fire protection due to the grade of the roadway. That was the situation in Double Arrow where sprinkler systems were required.

Chair Kennedy stated Double Arrow also had reasonable access, paved or decent width, short roads. This is a variance request on an roadway that is about 14 wide, very long and not maintained. There is a remoteness factor that needs to be considered. Also, a narrow width and the fact that it is not in a fire district needs to be considered, even though the fire district said they would respond. They will respond, if they are able, and the 12 mile distance is a long time. This is one of the areas that needs to be seriously considered for on site fire protection. He suggested that be done, it is a recommended condition of approval by the staff and he hoped Commissioner Evans would reconsider the motion.

Commissioner Evans stated she was not willing to reconsider her motion because she believed the remoteness of the location was what these people wanted. She did not feel the Board should insist on things that make it impossible to live there. She had no reason to distrust the \$20,000 figure quoted by Mr. Lewis, especially with a log house that likely does not have dual walls. Mr. Lewis also mentioned that it would be difficult, if not impossible, to have a water source for the sprinkler system. She was not willing to force things on people that are not possible for them to do. They did get a letter from the fire department which the Board had asked for. Her motion stands as she made it.

Commissioner Carey stated he was willing to vote against a motion he seconded. He asked counsel if a homeowner, by virtue of cost consideration or whatever, lets a fire start on their property which then spread to public forest, are they liable for the costs incurred in fighting the fire?

Colleen Dowdall stated that State and federal agencies have assessed fees for fighting fire to private landowners and even to individuals traveling through the forest who were careless in starting a forest fire.

Commissioner Carey asked Mr. Lewis how far away the nearest neighbor was?

Gary Lewis stated it was approximately 2 to 3 miles to the existing house on the Cahoon Ranch.

Commissioner Carey asked Mr. Lewis if the homeowners fully appreciated that there was a strong possibility that the house would burn down before the fire department could arrive? Is that a risk they were aware of?

Gary Lewis stated he felt they were well aware of the risk. He added that the greatest risk of fire would probably be forest fire, the sprinklers would do no good, and it would be answered by State and forest fire fighters, not the fire department. They plan on making a defensible fire area around the house and there will be outdoor hydrants around the house which most wells can supply.

Chair Kennedy asked if there was any further discussion on the motion to go with the staff recommendation of approval of the variance for roadway width and go against the staff recommendation of denial of the variance for sprinkler. He called the question.

The motion carried on a vote of 2-1 (Chair Kennedy opposed).

Commissioner Evans moved that the Board of County Commissioners approve the Krupp Subdivision for Lease or Rent, based on the findings of fact and subject to the conditions in the staff report, with the exclusion of Condition 1-A. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

1. A development covenant shall be filed, subject to OPG and County Attorney approval, to include the following items related to mitigation of fire department access and to minimizing potential wildlife conflicts, and regarding wildland residential interface standards:

Fire mitigation:

- A. Turnaround for fire apparatus shall be provided for dead-end driveways in excess of 150 feet, to be approved by the Seeley Lake Rural Fire District. *Missoula County Subdivision Regulations Article 3-2(3)(C), 3-2(6)(E) and staff recommendation.*
- B. An address sign shall be provided for the new lot in conformance with the standards of the Seeley Lake Rural Fire District. *Missoula County Subdivision Regulations Article 3-1(1)(F) and Seeley Lake Rural Fire District 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 as 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. *Missoula County Subdivision Regulations Article 5-1(5)(H), Missoula County Subdivision Regulations Appendix VII, and staff recommendation.*
- D. Only Class A or B fire-rated roofing materials shall be used for any new construction. *Missoula County Subdivision Regulations Article 5-1(5)(H) and staff recommendation.*

Wildlife and wildland residential interface standards:

- E. Domestic pets are to be kept in a contained area to avoid wild animal harassment.
- F. Pets shall be fed indoors and pet food shall be stored indoors.
- G. Garbage shall be stored in well sealed containers and inside storage units.
- H. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use.

- I. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged.
 - J. All garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement.
 - K. Compost piles shall be enclosed in a container.
 - L. Apiaries may attract species such as bears and should be avoided. Before an apiary is located on a lot, the owner of the bee hive(s) should first contact the Department of Fish, Wildlife and Parks to discuss their plans and how to best avoid wildlife conflicts.
 - M. The brochure, "Living with Wildlife" shall be distributed to all lot owners. *Missoula County Subdivision Regulations Article 3-1(1)(C) and staff recommendation.*
- The covenants shall also state that these covenants shall not be amended without prior approval by the governing body. The covenants shall be recorded with the County Clerk and Recorder and approved by OPG prior to final plat filing. *Missoula County Subdivision Regulations Article 3-1(1)(C), 3-1(1)(F), 3-2(6)(E).*
- 2. The lot owner shall file a document of record prior to plan filing waiving the right to protest a future RSID 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 Article 3-7(2), and staff recommendation.*
 - 3. The lot owner shall file a document of record with Missoula County waiving the right to protest the installation of pedestrian walkways on the site or along Beaver Creek Road, based on benefit, which may be used in lieu of signatures on an RSID petition. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land. Such document shall be filed prior to final plan filing. *Subdivision Regulations Article 3-2, and staff recommendation.*
 - 4. The applicant shall submit a riparian management plan, including a drawing indicating the location of riparian vegetation, which addresses protection of the riparian area from livestock grazing and development. The riparian management plan shall be approved by the Office of Planning and Grants prior to final plan filing. *Subdivision Regulations Article 3-13.*

There being no further business to come before the Board, the Commissioners were in recess at 2:20 p.m.

THURSDAY, APRIL 1, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending March 31, 1999.

ADMINISTRATIVE MEETING

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

Contract – The Commissioners signed a Contract with Montana Electronics Co., Inc. for radio equipment maintenance for the Sheriff's Department. Term of the Contract is 39 months, commencing on April 1, 1999. The Contract was returned to Don Morman in the Sheriff's Department for further signatures and handling.

Colposcopy Provider Contract – The Commissioners signed a Colposcopy Provider Contract with Dr. J. Paul Ferguson for breast and cervical cancer screening services. The Contract extends the prior contract to include the period of service beginning July 1, 1998 and ending July 30, 1999. The Contract was returned to the Health Department for further handling.

Resolution – The Commissioners signed Resolution No. 99-018, a resolution to amend the filing requirement for Certificates of Survey and Plats.

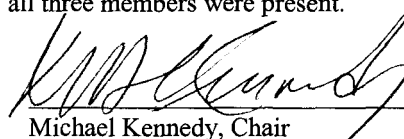
Area Agency on Aging Designation – Chair Kennedy signed a form designating Area XI Agency on Aging as the agency to serve Missoula County for FY2000 through 2003. The form was forwarded to the Office on Aging in Helena.

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

FRIDAY, APRIL 2, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, APRIL 5, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, and the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of March, 1999.

TUESDAY, APRIL 6, 1999

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

ADMINISTRATIVE MEETING

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

Addendum to Agreement – The Commissioners signed Addendum A to a Memorandum of Agreement with Thomas Carter dba Technical Contracting reflecting a decrease of \$20.00 per month in phone charges because of the purchase of a cellular phone.

Addendum – The Commissioners signed an Addendum to a Buy-Sell dated December 3, 1998 with John C. Schulte for property located at 315 and 315-1/2 West Pine, Missoula. Seller agrees to give Buyer an \$800 credit to repair the chimney, at time of closing. The Addendum was returned to John Coffee at Lambros Realty.

Addendum – The Commissioners signed an Addendum to a Buy-Sell dated April 10, 1999 with Four S Corp. for Lot 2A1, Missoula Development Park, Phase 2, Missoula, Montana. The Addendum is for an extension until April 12, 1999 at 1:00 pm to secure Buyer's Board of Directors approval and signatures. The Addendum was returned to John Coffee at Lambros Realty for further handling.

Shoreline Permit – The Commissioners approved and Chair Kennedy signed a Shoreline Permit for Brad Talcott, on behalf of Charles Olson, to install a dock and shoreline trail on Placid Lake, Lot 43, South Tracts Phase I. The permit was returned to Brian Maiorano for further handling.

Other items included:

- 1) The Commissioners reappointed Jim Van Fossen for a 3-year term on the Larchmont Golf Course Board (through March 31, 2002).

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

WEDNESDAY, APRIL 7, 1999

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

Audit List – The Commissioners signed the Audit List, dated April 6, 1999, pages 2-32, with a grand total of \$231,426.60. The Audit List was returned to the Accounting Department.

Consent to Sublease – The Commissioners signed a Consent to Sublease for American Legion Post #27 to sublease Cregg-Lindborg Field to Mountain Baseball LLC. Copies of the relevant documentation are available in Clerk and Recorder's office.

Grant Documents – Chair Kennedy signed two grant documents from the Board of Crime Control for programs run by Missoula Correctional Services:

1. Pretrial Supervision Program – Grant total \$62,834.00; duration July 1, 1999 through June 30, 2000.
 2. Misdemeanor Supervision Program – Grant total \$40,304.00; duration July 1, 1999 through June 30, 2000.
- Both documents were returned to Missoula Correctional Services for further handling.

PUBLIC MEETING -- April 7, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Barbara Evans, Commissioner Bill Carey and Chief Civil Attorney Michael Sehestedt.

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 list in the amount of \$231,426.60. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Consideration: Forest View Summary Subdivision (3 lots) - Highway 93 South

David Loomis, Office of Planning and Grants, presented the staff report.

He stated that due to the unusual nature of this subdivision, he would like to take a few minutes to discuss it. This is a two-lot subdivision located on Highway 93 South at Cochise Drive on the west side of Highway 93 South. The site characteristics are that it is a forested, pretty steep hill, about 40 degree slope, pretty steady. Cochise Drive goes up the hill through a series of switchbacks. Cochise Drive is accessed off Highway 93, on the site plan the gray road is flat. Where that gray road ends, the flatness ends and the steepness begins. Cochise is not to County standards and neither are the driveways. About three-quarters of this project, on the north half, is zoned C-A3, one dwelling unit per five acres. The other one-quarter on the south is unzoned. The comprehensive plans that pertains to this area, on the north three-quarters, is the 1998 Urban Plan Update which recommends residential at a low density of about one dwelling unit per 40 acres, the south one-quarter is the 1978 Lolo Land Use Plan, which recommends residential at one dwelling unit per 10 acres. Three-quarters of this property is zoned C-A3. Zoning compliance permits have been issued for both houses that exist. Lot 1, the northerly lot, is proposed as five acres, it was issued in 1997 and the house has been installed. Lot 2 is 2.95 acres on the southerly portion. That zoning compliance permit was issued in 1998 and a mobile home has been installed there. Two issues to discuss are access and the exact same related issue is fire and fire access. Access is from Highway 93 South off Cochise Drive, which is a County road. Cochise is paved to about 22 feet up to almost the property to the end of the grade, the first switchback. Cochise is less than County standards throughout the rest of the length, from the first switchback to the second switchback to the top is within a prescriptive type easement, probably reflecting an older road pattern from many years ago before Cochise was extended up the hill at a later time to access other properties. The driveway access to these two houses is about three-quarters up Cochise and it is a very sharp right hand turn. The driveways are not up to standard and are not likely to reach standard because of the steep slopes. Lot 1, on the north portion, is about 780 feet from Cochise. It is basically a single track, not graveled, about 6 to 7-1/2 feet wide within an 11 to 8 foot clear space, between the cut and fill portion. There is a level place for a single track where smaller vehicles can get to both houses. Lot 2 has a secondary driveway that accesses down to the mobile home which is located straddling the section line. Its driveway characteristics are about the same. It's single track and there is no turnaround, just room for a couple of vehicles. Lot 1, on the northerly half, does have a wider space and an actual three-point turnaround area next the unit where a vehicle, a standard car or truck, can make a three point turn around. One of the key issues, as addressed in a letter dated April 2, 1999, from Missoula Rural Fire District, is their ability to get to the property. Bill Lindstrom is here to speak to that as well. There is some opportunity for driveway improvements. Width, or anything else, have not been specified, because staff feels that because of the steepness of the slope, there is a high chance of destabilizing these steep slopes if there are too many cuts to make driveway improvements. Staff is not sure and has recommended in Conditions 2 and 3 that the responsibility be assigned jointly to the Surveyor's Office and Fire Marshall of the Rural Fire District to work out the level of improvements that can best be accomplished on this site. In the variance section, staff has determined that eight of the 11 requests are valid and have findings to recommend approval of the eight variances. The variances reflect what a difficult fit this is and how difficult it is to meet standards, because no standards can be met. But given that this is an existing situation and there is no public purpose to be gained from denying it, staff felt the Board could approve it with Conditions 1, 2 and 3, which would bring it into conformance with the requirements.

Commissioner Evans stated the staff report shows 11 variance requests and David stated staff was recommending approval of eight.

David Loomis stated of the 11 requests, three are not needed and explained in the findings. In the recommendations it is noted for variances 1 through 5 and 7 through 9 to be approved.

Nick Kaufman, WGM Group, developer's representative, was present. He stated he was representing Earl Pruyn who is the owner of this property. The original applicant was Ken Barnhart from K3 homes. Mr. Barnhart visited WGM around September 1, 1998 and wanted to do a subdivision on Cochise Drive. He had said he had a piece of property with two mobile homes on it and wanted to subdivide it. Nick wanted to know when the permits had been received and was told they had been received in the last couple years. He told Mr. Barnhart that could not be done in Missoula County, you could not put two mobile homes on a single piece of property. Mr. Barnhart said again that he had received the permits. After research, he did indeed have the drainfield permits and the permits for the homes and the homes are already there. Nick suggested going through the subdivision process and see what happened. David Loomis has presented the history and he put the dates of the permits on the map. There was a Certificate of Survey done around 1994 by Tim Wolfe at Territorial Engineering for the Nelsons. The Nelsons built the home to the north, which had a 1994 permit. They sold the remainder of that COS, the Nelson's home was on Tract 1 and the two other mobile homes were on Tract 2. The Health Department had given drainfield permits at the time the COS was done for three dwelling units. Subsequently, the zoning compliance permits were obtained. It was obvious, after mapping, that a number of variances would be needed. He was pleased that of the original 11 variances requested, 3 were not needed. This is an unusual situation. He has spoken with the fire department and service providers. After reading Mr. Lindstrom's most recent letter, he asked Mr. Lindstrom to be present today to address any concerns the Board may have. This is inside the building jurisdiction. Part of the property is zoned. Zoning compliance permits have been issued. Health Department permits have been issued. Mr. Dunauer, who is living in one of the units, would like to own the land. He could not see how the public good, health, safety and welfare can be benefited by leaving these as rental units. Owner occupied would have the people taking better care of the land and viewing it as an investment.

Chair Kennedy asked David Loomis about the letter from Bill Lindstrom. It came in rather late in the process. In the last paragraph of the letter Mr. Lindstrom made a recommendation and he wondered if that could be made a condition. What would his conclusion be?

David Loomis stated there was no subdivision reason given, there might be other public purposes served by adding this condition. It was not included because the letter was received late in the process. If the Commissioners wanted to add it as a condition, that was their option.

Chair Kennedy stated it was unfortunate that this got to this point, but it kind of happens because of the way permits are issued. The Board agrees it should go forward, but at the same time he is concerned about subsequent development. He asked Mr. Kaufman how his client would feel about adding this condition.

Nick Kaufman stated he had not had a chance to speak with his client about this letter as he had just received it this morning. Certainly a condition like that would improve the subdivision. If his client has a legitimate problem they could come back before the Board for modification of the condition. He could not think of a reason not to have this as a condition. If someone buys the property, they will want to protect their investment and they may want to upgrade in the future. At the time of upgrade they would need to go through the same zoning compliance permit process. If the wording were changed somewhat, to: "If these homes were ever damaged beyond 50% of their value, or replaced, that prior approval be given by the County Surveyor or the Rural Fire Department," it would allow those two agencies not currently included to make comments and assist the property owners in making it better. He would be more comfortable with that language.

Chair Kennedy asked about maintenance of Cochise Drive. He had been told that maintenance stopped at the end of pavement but on the plat presented he noticed there was some indication that the road is maintained above the property.

Nick Kaufman stated the reason that note was included was that he remembered a sign above the property that said "End of County Maintenance." He may be incorrect however.

David Loomis could not verify that for sure without Horace Brown's confirmation, but he recalled an End of Maintenance sign as well. Between the first and second switchbacks, the road is maintained but it is in this prescriptive easement, it was never perfected. It was his understanding that as Cochise was extended up the hill in later years, a full 60-foot easement was put in place and County maintenance was applied. The County may or may not maintain just that segment leading into the driveway at the second switchback.

Commissioner Evans asked Michael Sehestedt to address the legality of the suggested additional condition.

Michael Sehestedt stated it is standard language in zoning for non-conforming uses. He did not feel it would be unlawful to condition replacement of these structures if something happens to them. This will be approved with certain variances because it isn't practical, given what is there now, to mitigate those problems. If these improvements go away as a result, it would be desirable to see they are replaced with some conditions that would be imposed if this were reviewed without improvements. He believed it is lawful to impose this kind of condition. He felt it should be worded so that there would be some definition as to what the review would include and that the condition is being imposed to mitigate access and development on slope issues.

Commissioner Evans stated she had a problem with including improvement or upgrading the property without review. If they felt the review would result in a negative answer, they would do nothing. She did not have a problem with improving the road or access.

Michael Sehestedt stated the upgrade would include structural upgrades, not when they wanted to paint or hang a flower basket.

Nick Kaufman stated to keep Mr. Lindstrom's language: If these homes were ever damaged beyond 50%," then say, "or if the use is replaced, the buildings are replaced," because they are mobile homes and modulars. It is conceivable they could be replaced with stick built homes. His intent in trying to modify Mr. Lindstrom's letter was to say: "If these homes were

every damaged beyond 50%, or if the units are replaced, then they require approval of the Rural Fire Department and County Surveyor."

Chair Kennedy stated that when a letter like this is received, it really gets their attention. He would like Mr. Lindstrom to restate his concerns about this. He did not usually express his concerns in this fashion indicating this area was exceptional.

Bill Lindstrom agreed this was out of character for his review process. When he looked at it, it was difficult for him to commit firefighters to a situation like that. The driveway access to one of the units is narrower in some parts than the wheel width on his watertenders. If he commits people in there, they also have a problem getting them back out, compounded by the surrounding wildland that could catch on fire and trap them there. He might have gotten a little carried away when he thought about committing his people to the situation, which precipitated him writing the letter. There are probably hundreds of situations like this throughout the County, but this was the only one he had been asked to review. He thought he would be remiss if he did not state what he felt.

Chair Kennedy stated this would likely get approved and questioned if they wanted to add a new condition. It seems like if there is a fire that does damage or if the structures are replaced, there needs to some consideration to making certain improvements.

Bill Lindstrom stated that when he wrote the last paragraph of this letter, he did not have the answers, however, if it was in writing then it could be discussed.

Nick Kaufman had envisioned viewing the area and road with Mr. Lindstrom and, at a minimum, decide where to widen the road so he could get his firefighting equipment into it. Near the home permitted in 1996 and 1997, there is fill slope on Cochise Drive and cut slope for the turnaround. He thought that could be widened by about 8 feet and fill back about 6 feet and get a better turnaround, and then widen the road so it can accommodate fire trucks. That is part of Condition 2 of the subdivision now. If the Board includes the extra condition suggested, then if these homes are ever replaced or damaged, there is another level of review for fire safety. But immediately there would be some improvements to the driveway and turnaround.

Commissioner Evans asked how many houses there were further up on Cochise Drive.

Nick Kaufman stated his best guess would be more than five homes, but he did not know for sure as he has not driven those roads.

Bill Lindstrom stated his best guess would be maybe three or so.

Commissioner Evans stated Mr. Lindstrom's main concern was not Cochise Drive, but the driveway into the property. Was that correct?

Bill Lindstrom stated there were some places on Cochise Drive (including the first switchback) that were quite narrow, but manageable and not a big problem. The angle of the approach to the property is prohibitive, the fire trucks would have to go past the entrance, turn around and then go into the property from the other direction. He is recommending his people never commit themselves too much past the first house, if they can get that far.

Chair Kennedy asked about having the trucks back into the property.

Bill Lindstrom stated that was a distinct possibility, he would leave that to the engineer operating the equipment. If they tried to commit themselves to the other house, the only way to come out would be backwards. That narrow a road surface, particularly in the winter, would cause the trucks to be over the cut of the road.

Commissioner Evans asked if the access from Cochise to the private road could be changed to make it better.

Nick Kaufman stated that could be looked at. He felt it could be done but it was a matter of cost, dirt moving and grade, it is a 40% slope. Again, that is part of Condition 2 to meet with Horace Brown and the fire department to see what can be done.

Chair Kennedy stated it was on the contour so it was probably cut in as economically as possible.

David Loomis stated because of the slope and radius needed, and the cut slope on the uphill side, it would probably take an engineered cut and fill operation with some kind of crib walls and other devices to get a significant turning radius at that point. He felt the likelihood of that improvement happening was slim to none.

Commissioner Evans moved that the Board of County Commissioners approve all the requested variances, 1 through 5 and 7 through 9, acknowledging that variances 6, 10 and 11 are not required. 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 Forest View Summary Subdivision, based on the findings of fact and conclusions of law in the staff report, subject to the conditions in the staff report, with the addition of Condition 4: "If these homes were every damaged beyond 50%, or if the units are replaced, then they require approval of the Office of Planning and Grants, the Missoula Rural Fire Department and the County Surveyor's Office." Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Nick Kaufman stated he really appreciated staff's work on this, and especially Bill Lindstrom's work and his attendance today on such short notice.

Forest View Summary Subdivision Variance Requests:

1. A variance request from Article 3-1(2) and 3-3(1)(B) of the Missoula County Subdivision Regulations, to vary from the prohibition on building on slopes in excess of twenty-five percent (25%).
2. A variance request from Article 3-2(1)(G) of the Missoula County Subdivision Regulations, to vary from the requirement that all new subdivisions be served by paved roads.
3. A variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations, to vary from the requirement to have a 54-foot wide private driveway easement.
4. A variance request from Article 3-2(3) of the Missoula County Subdivision Regulations, to vary from the requirement to have a 24-foot wide paved road.
5. A variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations, to vary from the requirement to have road grades less than ten percent (10%).
6. Variance request not needed (Article 3-2(4) to vary from the requirement to have curbs and gutters).
7. A variance request from Article 3-2(5)(A) of the Missoula County Subdivision Regulations, to vary from the requirement to install pedestrian walkways.
8. A variance request from Article 3-3(1)(H) of the Missoula County Subdivision Regulations, to vary from the prohibition on through lots.
9. A variance request from Article 3-5 of the Missoula County Subdivision Regulations, to vary from the requirement that utilities be installed underground.
10. Variance request not needed (from Article 3-14(3)(A)(1) to vary from the requirement to maintain the highway right-of-way and keep it weed-free).
11. Variance request not needed (from Article 3-14 to vary from the Primary Travel Corridor Standards).

Forest View 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 shall constitute the assent of the owners to any future RSID for upgrading Cochise Drive, based on benefit, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening, drainage facilities and dust control, and may be used in lieu of their signatures on an RSID petition.”
2. The design and improvement of the driveways serving both Lot 1 and Lot 2 shall be approved by the Missoula Rural Fire District and the County Surveyor.
3. A sign shall be posted at the entrance to the drive to the subdivision cautioning large vehicles to the limits of the driveway width and the lack of turnarounds. The location and language of the sign, including the property addresses, are to be approved by the Missoula Rural Fire District.
4. If these homes were every damaged beyond 50%, or if the units are replaced, then they require approval of the Office of Planning and Grants, the Missoula Rural Fire Department and the County Surveyor's Office.

There being no further business to come before the Board, the Commissioners were in recess at 1:56 p.m.

THURSDAY, APRIL 8, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was in Portland, OR to attend and ICBEMP meeting. In the forenoon, Commissioners Carey and Evans participated in a Leadership Missoula class being held at the Florence Hotel.

Proclamation – The Commissioners signed a Joint Proclamation with the City of Missoula, proclaiming April 11-17, 1999 as Library Week at the Missoula Public Library.

Notice of Hearing – Acting Chairman Barbara Evans signed a Notice of Hearing on a request for tax incentives for Culligan Water Conditioning. The hearing was set for April 28, 1999 at 1:30 pm in Room 201 of the Courthouse.


Board Appointment – The Commissioners appointed Chuck Gibson to the Local Emergency Planning Committee to fill the unexpired term of Mike Kopitzke through January, 2000.

FRIDAY, APRIL 9, 1999

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the morning, Commissioner Kennedy gave the welcome at the Lolo Traveler's Rest Design Workshop being held at the Lolo Community Center. Commissioners Carey and Evans were out of the office all afternoon.

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending March 31, 1999.


 Vickie M. Zeier
 Clerk & Recorder


 Michael Kennedy, Chair
 Board of County Commissioners

MONDAY, APRIL 12, 1999

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Carey and County Surveyor Horace Brown traveled to Seeley Lake and met with area residents regarding road issues; later in the evening, they attended a Seeley Lake Community Council/MDT meeting regarding Highway 83, held at the Seeley-Swan High School.

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

TUESDAY, APRIL 13, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was in Polson attending a Juvenile Detention Regional Budget meeting, and returned to the office late in the afternoon.

ADMINISTRATIVE MEETING

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

Encroachment Permit – The Commissioners signed a Missoula County Encroachment Permit for George O. Read of 426 Speedway, Missoula, MT to encroach along the Alley of Block 26 adjacent to the East Half of Lot 22 and Lots 23-24 of East Missoula Addition. Permit is effective for a period not to exceed 10 years, renewable at the option of Missoula County.

Consortium Agreement – The Commissioners signed a Consortium Agreement reauthorizing the Balance-of-State Workforce Investment Area Consortium of Counties. The purpose of the Consortium is to provide workforce investment activities. Financing shall be through grants under the Workforce Investment Act. The Agreement was forwarded to Montana Job Training Partnership, Inc. in Helena.

Grievance Denial Letter – The Commissioners concurred with Steve Johnson, Personnel Director, in denying a grievance filed by the Montana Federation of Teachers, MFT, AFT, AFL-CIO regarding union dues. A letter was sent to Todd Lovshin, Field Representative.

Resolution – The Commissioners signed Resolution No. 99-019, a resolution to zone unzoned property and rezone property from C-A3 (residential) to the Primrose Heights Rural Zoning District, subject to conditions. The property is described as Tracts 1 and 2 of COS 4835 and the N1/2 NE1/4 of Section 31, T14N R20W, PMM, excluding Montana Rail Link Property.

Proclamations – The Commissioners signed two Proclamations:

1. a City-County Proclamation declaring the month of May, 1999 as WIC Month in Missoula County.
2. a City-County Proclamation declaring April 22, 1999 as Carol Graham Missoula Volunteer Day.

Grant Award – Chair Kennedy signed a Grant Award acceptance sheet from the State of Montana Board of Crime Control to continue the Missoula Youth Drug Court. The grant total is \$46,679.00, and the duration is July 1, 1999 through June 30, 2000. The document was returned to Brenda Johnson in District Court #3 for further handling.

Certification – Chair Kennedy signed a Certification Regarding Environmental Tobacco Smoke and Debarment, Suspension, Ineligibility and Voluntary Exclusion for the Partnership Contract. The Certification was returned to Peggy Seel in OPG.

Certification of Acceptance – Commissioner Evans signed a Certification of Acceptance for County Maintenance for Titmouse Lane. Limits of acceptance are .099 miles. (Located in El Mar Estates Phase I – Supplement No. 2) The Certification was returned to the County Surveyor.

CTEP Sponsor Forms – The Commissioners signed as sponsor for three CTEP projects:

1. A project built in conjunction with the safety project in Seeley Lake, and attached to the pathway built on Airport Road with ISTEAF funds.
2. A project to fund bicycle and pedestrian trails and bridges on Hwy. 93 South from Lolo to Florence, MT.
3. A project to overhaul historic streetcar #50, which ran from Missoula to Bonner in the 1920s.

Amendment – The Commissioners signed an Amendment to Lease Agreement with Loris Staber for lease of agricultural property at the Missoula Development Park, extending the lease to October 31, 1999.

Other items included:

- 1) The Commissioners approved a proposal from Horizons, Inc. for phase I photogrammetric services for Missoula County, for 24.5 sections, at a total cost of \$8,011.25. The letter was returned to Horace Brown, County Surveyor.

- 2) The Commissioners approved the name "Big Sky Park" for the Tower Street Park Complex, based on the recommendation of the Stewardship Committee; however, it is not yet designated as a park in the statutory sense.
- 3) The Commissioners decided to retain Bob Schieder as the County's Technical Manager, and will also hire two new full-time positions – one as Bob's assistant, and one for Info. Systems.
- 4) The Commissioners reappointed Allen Chaffin to the Seeley-Swan Cemetery Board for a 3-year term, through April 30, 2002.

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

WEDNESDAY, APRIL 14, 1999

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

Audit List – The Commissioners signed an Audit List, dated April 12, 1999, pages 2-20, with a grand total of \$58,297.70; and an Audit List, dated April 13, 1999, pages 2-35, with a grand total of \$1,023,779.47. Both Audit Lists were returned to the Accounting Department.

PUBLIC MEETING – April 14, 1999

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

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 two weekly claims lists in the amount of \$58,297.70 and \$1,023,779.47. Acting Chairman Evans seconded the motion. The motion carried on a vote of 2-0.

Decision: County Subdivision Regulation Amendments and Amendments to County Zoning Resolution No. 76-113 (Postponed from March 31, 1999)

Acting Chairman Evans stated that the decision on the Subdivision Regulation Amendments and Amendments to County Zoning Resolution No. 76-113 had been postponed to May 5, 1999.

There being no further business to come before the Board, the Commissioners were in recess at 1:31 p.m.

THURSDAY, APRIL 15, 1999

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans participated in the "Favorite Poems Reading" held at the Missoula Public Library.

Plat – The Commissioners signed the plat for Hooker Addition, a minor subdivision located in the E1/2, E1/2 of Section 21 and in the NE1/4 of Section 28, all in T13N R15W, PMM, Missoula County, a total gross area of 225.47 acres, with the owner of record being Edward E. Hooker.

ADMINISTRATIVE MEETING

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

Maintenance Contract – Chair Kennedy signed a maintenance contract with Otis Elevator Company for maintenance of 4 elevators. Contract price is \$691.67 per month. Term of the Contract is 5 years. The Contract was forwarded to Otis Elevator Co. for signature.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Gregg Potter for grounds maintenance at the Historical Museum at Fort Missoula. Performance schedule is April 15, 1999 through October 15, 1999. Compensation shall not exceed \$6,000.00.

Resolutions – The Commissioners signed three Resolutions:

1. Resolution No. 99-020, a Budget Amendment for District Court's JAIBGA Grant expenditures in the amount of \$161,470.00, and revenue in the amount of \$79,485.00.
2. Resolution No. 99-021, a Budget Amendment for the Health Dept. in the amount of \$2,445.00.
3. Resolution No. 99-022, a Budget Amendment for the Health Dept. in the amount of \$5,000.00.

Extension – The Commissioners approved a 90-day extension of the final plat submittal for Phillips Industrial Lots Summary Subdivision, making the new filing deadline July 22, 1999, with a letter to Ron Ewart of Eli and Associates, Inc.

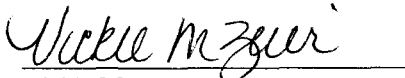
The minutes of the Administrative Meeting are on file in the Commissioners Office.

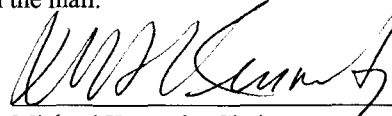
FRIDAY, APRIL 16, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Carey attended a Mental Health Board meeting in Superior, and Commissioner Evans was out of the office all day.

Application for Issuance of Replacement Warrant – Acting Chair Carey approved an Application for Issuance of Replacement Warrant naming Jenny Watkins as principal for Warrant #61091, issued 3/19/99 on the Missoula County MCPS Payroll Fund in the amount of \$94.55, not received in the mail.

Application for Issuance of Replacement Warrant – Acting Chair Carey approved an Application for Issuance of Replacement Warrant naming Casey Miller as principal for Warrant #61607, issued 3/26/99 on the Missoula County MCPS Payroll Fund in the amount of \$222.34, not received in the mail.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, APRIL 19, 1999

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Joyce Palmer as principal for Warrant #103215 issued 3/26/99 on the Missoula County Clerk of District Court Trust Fund in the amount of \$1,200.00 now unable to be found.

Extensions – At a departmental meeting with the Office of Planning and Grants, the Commissioners signed three Extension letters:

1. for a 6-month extension of the final plat submittal for Alloy Court Summary Subdivision, making the new filing deadline October 8, 1999, with a letter to Ron Ewart of Eli and Associates, Inc.
2. for a 6-month extension of the final plat submittal for Mimosa Place Preliminary Plan Subdivision, making the new filing deadline September 25, 1999, with a letter to Ron Ewart of Eli and Associates, Inc.
3. for a plan amendment to a 24 space configuration instead of the 28 spaces approved for New Castle Court Subdivision for Lease or Rent, with a letter to Tim Wolfe of Territorial Engineering and Surveying, Inc.

TUESDAY, APRIL 20, 1999

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:

Professional Services Contract – The Commissioners signed a Professional Services Contract with Neil Consultants, Inc. for preparation of a CDBG application on behalf of the East Missoula Sewer District. Contract performance shall be completed by May 26, 1999. Compensation shall not exceed \$4,500.00. The Contract was returned to Cindy Wulfekuhle in OPG for further signatures and handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Terry Kendrick to provide facilitation for the Region V-South Regional Advisory Committee on HIV Prevention meetings. Performance schedule is April 5, 1999 through December 31, 1999. Compensation shall be up to \$1,000.00. The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract – The Commissioners signed a Professional Services Contract with the City of Missoula, the Missoula Redevelopment Agency, and Shapins Associates for neighborhood planning and zoning services for the Missoula Urban Renewal II District. Performance schedule is March 30, 1999 through July 31, 1999. Compensation shall not exceed \$15,000.00, of which, \$5,000.00 shall be from MRA, and \$10,000.00 from the City of Missoula (OPG funds).

Full and Final Release of Claims – The Commissioners signed a Full and Final Release of All Claims between Missoula County, Mineral County, and Montana Rail Link, for costs stemming from the train derailment and related chlorine spill near Alberton, MT on April 11, 1996. Settlement sum is \$295,000.00. The release was returned to Jane Ellis, Chief Financial Officer, for further handling.

Other items included:

- 1) The Commissioners approved a plan to complete sewer design for Reserve Parcel B in the Missoula Development Park for Perry Ashby of Wesmont Builders/Developers. Mr. Ashby will front the sewer design costs, which will be reimbursed by the County in one of two ways:
 - a. If the rezoning of the area is successful, credit equal to design will be issued on the purchase price;
 - b. If the rezoning is not successful, reimbursement will be made at such time that the property is developed in the future, or four years from now, whichever is earlier.
- 2) The Commissioners voted to settle a compensatory time claim from Orin Olsgaard consistent with past policy and according to computations provided by the Personnel Office.

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

WEDNESDAY, APRIL 21, 1999

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

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated April 20, 1990, pages 2-45, with a grand total of \$323,404.00. The Audit List was returned to the Accounting Department.

Contract -- The Commissioners signed a Contract with Rick Agard Excavating for sewer improvements at the Lewis and Clark Trailer Court in Clinton. Compensation shall be \$15,018.00. All work shall be completed within 30 calendar days from this date.

PUBLIC MEETING -- April 21, 1999

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

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 list in the amount of \$323,404.90. Acting Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Award of Contract: Sewer System Upgrade at Lewis & Clark Trailer Court in Clinton

The PCI Engineering firm has a contract to operate this system. Basic service has been at \$200 per month for several years. There have been several unsuccessful attempts to make expedient repairs to the dosing tank that splits the effluent to two separate drainfields. This contract will replace that tank. This bid was \$8,000 lower than the next lower bid, due to low overhead, no employees and the business operating out of the owner's home. An engineer will inspect the work at appropriate stages.

The costs will be charged to the Lewis and Clark RSID which will be able to cover the costs with some of the funds coming from next year's assessment.

Three contractors submitted proposals to PCI to perform the work: Rick Agard Excavating in the amount of \$15,018.00; Johnson Brothers Contracting in the amount of \$23,084.00 and Keeney Construction Co. in the amount of \$30,547.00. PCI has recommended Rick Agard Excavating in the amount of \$15,018.00. This estimate also includes a \$3,000.00 cost overrun that may not be needed.

Jason Rice representing Professional Consultants Incorporated (PCI) was present to answer any questions the Commissioners might have.

Commissioner Evans moved that the Board of County Commissioners approve and sign the contract to Rick Agard Excavating in the amount of \$15,018.00. Commissioner Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Gonstad Subdivision for Lease or Rent (2 units) - Clinton

Allison Handler, Office of Planning and Grants, presented the staff report.

Suzanne and Greg Gonstad are requesting approval to add one dwelling unit to a 2-acre property where one dwelling unit currently exists. The Gonstad property is located in Clinton on Wallace Creek Road, just upstream of Wallace Creek Estates. The property is unzoned. The 1975 Comprehensive Plan designated this area for residential land use with a density of 2 dwellings per acre. The property is used for residential purposes and adjacent land uses are also residential.

There are currently two approaches to the property. There is a driveway that serves the existing house and a driveway in a 60-foot easement that crosses the western half of the Gonstad property. That driveway serves two properties to the south. Wallace Creek flows west across the property, angling southwest after passing through a culvert under the second driveway. There is a narrow riparian zone that follows along the creek, mostly cottonwoods.

The Gonstads have one house on the property. They are requesting approval to add one additional house downstream from the culvert, downstream from the existing house as well. A new driveway for this home would extend from the existing driveway that serves those two properties to the south of the Gonstad property. The driveway that currently serves those two properties, the Sears and Tabers families, would be considered a private road for the distance that it would serve all three dwellings, the new Gonstad house and the two existing houses.

The applicants have requested two variances, one is for the paving of Wallace Creek Road, which is scheduled (and in progress) for the spring of 1999; and one variance for road width of the private road that serves the new dwelling. Staff recommends approval of both those variance requests.

Staff considered several issues in making their recommendation to approve this subdivision. There were several issues with regard to the roads. Missoula County Subdivision Regulations require that local roads that serve rural subdivision have a 60-foot right of way and a 24-foot paved width. The applicant has requested to vary from the requirement to pave

Wallace Creek Road since that paving is in progress. Staff is recommending approval of that request and the County Surveyor has stated that the applicant will not be asked to contribute to the cost of paving.

The private access lane serves three or more dwelling and would be considered a private road and has to meet County road standards for surface width and easement width. For the distance that private access road would serve all three dwellings, it would be considered a private road and have to be paved to a distance of 20 feet from its intersection with Wallace Creek Road, once Wallace Creek Road is paved. The applicant has asked for a variance from the width of that road and staff is recommending approval of that variance.

On the site plan the County Surveyor indicated that the private road would have to intersect with Wallace Creek Road at a 90-degree angle, so there is some reconfiguration that will have to occur.

The second issue is with regard to pedestrian access. Pedestrian walkways are being installed along Wallace Creek Road adjacent to the Wallace Creek Estates Subdivision as a condition of approval of that subdivision. In this case, the Gonstads have not proposed walkways. The regulations do require that walkways be installed and staff feels it would be appropriate at some point in time to continue pedestrian walkways along Wallace Creek Road. In this case, staff recommends the applicant waive the right to protest an RSID for installation of pedestrian walkways on Wallace Creek Road.

The third issue has to do with the effects on the natural environment. Wallace Creek flows across the property. The creek bed is approximately 5 feet lower in elevation than the rest of the property, and varies from 10 to 15 feet across. It flows through a 48-inch culvert under the private drive that serves the Sears and Taber properties to the south. There is a narrow area of riparian resource and staff is concerned about protecting the creek, the riparian area and the house from any potential flooding. There was a flood event in 1997. North of the creek the property gains a few feet in elevation. That portion of the property that is north of the creek and downstream from the culvert remained dry during the flood event in 1997. The Missoula County Conservation District has monitored the area during flood events and worked with homeowners to protect the creek from erosion and to protect properties from flood damage. Staff has recommended the new home site be located on the upland portion of the property, on the bench away from the creek, to reduce potential disturbance to the creek and impacts to the riparian area and also to protect the new homesite from potential flood events.

Staff recommends approval of both variance requests and approval of the subdivision for lease or rent subject to the 7 conditions in the staff report.

Suzanne Gonstad was present and available to answer any questions the Commissioners might have.

Acting Chairman Carey 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 Article 3-2(1)(G) of the Missoula County Subdivision Regulations requiring that new subdivisions be served by paved roads, based on the findings of fact and subject to the conditions in the staff report; approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations regarding the width of private roads, based on the findings of fact and subject to the conditions in the staff report; and approve the Gonstad Subdivision for Lease or Rent, based on the findings of fact and subject to the conditions in the staff report. Acting Chairman Carey seconded the motion. The motion carried on a vote of 2-0.

Gonstad Subdivision for Lease or Rent Conditions of Approval:

1. The applicant shall record a document waiving the right to protest participation in an RSID/SID for the installation of pedestrian walkways on Wallace Creek 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 depicted therein. *Subdivision Regulations Article 3-2(5), County Surveyor and staff recommendation.*
2. The applicant shall record a document waiving the right to protest participation in an RSID/SID for the installation of a community or municipal water system or sewer system at such time that such a system is available. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land depicted therein. *Subdivision Regulations Article 3-7(2) and staff recommendation.*
3. The lot owners shall contribute \$100.00 per new dwelling unit to the Clinton Rural Fire District prior to plan filing. *Clinton Rural Fire District recommendation.*
4. The applicant shall pave the private access road providing access to the new dwelling a minimum of twenty (20) feet back from Wallace Creek Road. Plans for driveway design and dimensions, and paving of the private access road, shall be approved by the County Surveyor and the Clinton Rural Fire District prior to plan filing. *Subdivision Regulations Article 3-2(1)(I), 3-2(1)(K), 3-2(6) and 3-7(2); County Surveyor recommendation.*
5. The County Surveyor shall approve the name and posting of a road sign for the private access road. *County Surveyor recommendation.*
6. The applicant shall submit a riparian management plan, including a drawing indicating the location of the new dwelling, the location of riparian vegetation and the location of 100-year floodplain. The riparian management plan shall address protection of the riparian area from development, including erosion control practices during home construction. The riparian management plan shall be approved by the Office of Planning and Grants prior to final plan filing. *Subdivision Regulations Article 3-13.*
7. The new homesite shall be located on the upland bench as proposed in the submittal.

Consideration and Approval: Resolution Authorizing Issuance of Restated and Amended Note to Reflect Reduced Interest Rates on Bonds (Blue Mountain Clinic, Inc.)

Michael Sehestedt, County Attorney's Office, presented a background.

Industrial Development Revenue Bonds had been previously issued in the form of a note to rebuild the Blue Mountain Women's Clinic in 1995. They bore interest based on interest rates at that time of 7%. The interest rates generally have fallen. The principals to the bond agreement, Blue Mountain Clinic and First Security Bank, have engaged in negotiations and have agreed to a lower, variable interest rate, which is lower for now. They are requesting the Commissioners approve a bond resolution that modifies the prior approval to allow a different interest rate. The action here would be to authorize the Chair to sign the resolution relating to the Economic Development Revenue Note for Blue Mountain Clinic, authorizing issuance of restated and amended note to reflect change in interest rate calculation.

Commissioner Evans stated she had a problem with variable interest rates.

Michael Sehestedt stated he did, personally, as well. However, it was a deal point that the parties have agreed to.

Commissioner Evans asked if the County was held in any fiduciary responsibility?

Michael Sehestedt stated the County was not responsible. This was a typical IDR bond issue and Exhibit A states: "This note is not a general obligation of the County, but rather a special, limited obligation of the County and shall not be payable from nor charged upon any funds of the County other than the revenues under the loan agreement ..." This is not a County charge or responsibility.

Commissioner Evans asked if this was a pass-through for the County?

Michael Sehestedt stated it was an absolute pass-through, with no responsibility to the County.

Commissioner Evans moved that the Board of County Commissioners approve the reduction in interest rate from 7% to a rate equal to 250 basis points above New York Prime and authorized the Chair to sign the resolution. Acting Chairman Carey seconded the motion.

Michael Sehestedt noted that interest would not vary monthly, there would be a fixed rate until April 1, 2001, with other interest adjustment dates in 2004 and 2007.

The motion carried on a vote of 2-0.

Other Business

Michael Sehestedt stated the Commissioners had received a letter from Sid and Judy Wills regarding Bear Creek Road. He had met with the Wills' and would like to arrange a trip to view the area with himself, County Surveyor Horace Brown, one of the Commissioner and the patrol operator to talk about what has been done and what can be done to avoid disagreements with the Wills.

Acting Chairman Carey asked if the Wills were very upset.

Michael Sehestedt stated they were upset and concerned but did not appear to be angry. They have been fighting with the County about this for a couple of years and thought the problem had been solved. It now appears to have become a problem again. He would arrange a trip to the location to view the area, but a meeting with the Wills' was not anticipated.

There being no further business to come before the Board, the Commissioners were in recess at 1:50 p.m.

Following the public meeting, the Commissioners signed Resolution No. 99-023, a Resolution relating to economic development revenue note for Blue Mountain Clinic, Inc. project, to reflect a change in the interest rate calculation.

THURSDAY, APRIL 22, 1999

The Board of County Commissioners met in regular session; all three members were present. During the day, the Commissioners met with two government classes from Big Sky High School; and late in the afternoon, Commissioner Evans attended a reception for the Inland Marketing Group from Spokane, WA, sponsored by the Chamber of Commerce and held at the Carousel.

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 with Bill Wilmot to facilitate a process to improve the OPG work environment. Performance schedule is April 13, 1999 through June 30, 1999. Compensation shall not exceed \$4,000.00.

Resolution – The Commissioners signed Resolution No. 99-024, a release of restrictions for Tract 3, COS 2472, lifting the sanitary restrictions.

Professional Services Contract – Commissioners Carey and Kennedy signed (Commissioner Evans opposed) a Professional Services Contract with Dagny Krigbaum to work with the County's historic preservation officer to complete portions of the University Area Survey and to assist in preparation of a document necessary to nominate that area as a National Register Historic District. Performance schedule is April 27, 1999 through June 21, 1999.

Compensation shall not exceed \$2,500.00. The Contract was returned to Cindy Wulfekuhle in OPG for further signatures and handling.

Revised Glen Eagle Agreement – The Commissioners approved and signed the Revised Glen Eagle (Grant Creek Heights) Agreement. This Agreement will reduce litigation expense and exposure, and may reduce the deficit in RSID 411 or clear encumbrances on subdivision. The Agreement was returned to Hal Luttschwager, Risk Manager, for further signatures and handling.

Other items included:

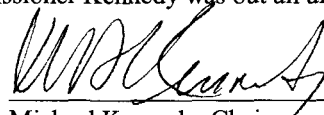
- 1) The Commissioners approved a grant in the amount of \$15,000.00 to the Missoula Housing Authority to help them continue operation of the Shelter Plus Care Housing Program for the period October 1999 through December 2000. Funds are from the CDBG Program Income funds.

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

FRIDAY, APRIL 23, 1999

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, and Commissioner Kennedy was out all afternoon.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, APRIL 26, 1999

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

Plat and Development Agreement – The Commissioners signed the plat and development agreement for Mari-Lynn Subdivision, located in the NE1/4 of Section 16, T14N R20W, PMM, Missoula County, a gross and net area of 4.04 acres, with the owners of record being Lynn H. and Marilyn J. Davis.

Condition Amendment – At a departmental meeting with the Office of Planning and Grants, the Commissioners approved a request to amend Condition 4 of the Platinum Court Subdivision to state: "A fire hydrant shall be installed by the developer along Alloy South in a location to be approved by the Missoula Rural Fire District prior to issuance of a building permit." A letter was sent to Ron Ewart, Eli and Associates.

TUESDAY, APRIL 27, 1999

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 – The Commissioners signed an Agreement between the Missoula City-County Health Department and the Frenchtown School District for public health nurse services. Effective dates are August 1999 through June 2000. Compensation shall be \$34,297.00.

Extension Letter – The Commissioners approved a 6-month extension of the final plat submittal for Platinum Court Summary Subdivision, making the new filing deadline October 23, 1999, with a letter to Ron Ewart of Eli and Associates, Inc.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Patchchole Ojo to develop a curriculum for instruction of youth detained in the new juvenile detention facility. Performance schedule is April 26, 1999 through October 29, 1999. Compensation shall not exceed \$22,500.00.

Resolution – The Commissioners signed Resolution No. 99-025, a budget amendment for District Court in the amount of \$21,225.00.

Other items included:

- 1) The Commissioners approved a request for transfer of 10 sewer connections from Holts to be used for a 9-unit subdivision by Pete Pettersen on Lakeside Drive in Lolo.

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

WEDNESDAY, APRIL 28, 1999

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.

Audit List – The Commissioners signed the Audit List, dated April 27, 1999, pages 2-36, with a grand total of \$281,646.98. The Audit List was returned to the Accounting Department.

HOME Amendments – Chair Kennedy signed a HOME Program Income Plan and an Amendment to the Interlocal Agreement for the 1996 Housing Rehabilitation HOME Program Grant, which allow the Human Resource Council to continue administering the 3-County rehab. Program. The documents were returned to Cindy Wulfekuhle in OPG for further signatures and handling.

Memorandums of Agreement – Chair Kennedy signed four Memorandums of Agreement between the Missoula County Park Board and:

1. Tower Street Park Stewardship Committee, for up to \$2,500.00 in matching funds for improvements. Funds must be spent by May 1, 2001.
2. Frenchtown School District #40, for up to \$1,125.00 in matching funds for improvements. Funds must be spent by May 1, 2001.
3. Westside Little League, Inc., for up to \$1,200.00 in matching funds for improvements. Funds must be spent by May 1, 2001.
4. Friends of Bonner and Bonner School, for up to \$1,000.00 in matching funds for improvements. Funds must be spent by May 1, 2001.

All Memorandums were returned to the Projects Office for further handling.

Letter of Support – The Commissioners signed a letter to Roger Payne, US Board on Geographic Names, supporting changing the name of Fish Lake to Big Sky Lake.

PUBLIC MEETING -- April 28, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt.

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 list in the amount of \$281,646.98. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Proclamation: Crime Victims' Rights Week

Whereas, April 25-May 1, 1999 is National Crime Victims' Rights Week; and

Whereas, in Missoula during 1998, more than 2,800 victims of violent personal crime received advocacy services from the City/County Crime Victims' Advocates, the YWCA Pathways Shelter Program, the University of Montana's Student Assault Recovery Services, and Friends to Youth; and

Whereas, the City and County of Missoula, through the Crime Victims' Advocate Programs, would like to raise awareness of the rights available to crime victims whose cases are being prosecuted, namely that:

- Crime victims who are injured as a result of the crime may be eligible for Crime Victims' Compensation, which can help pay medical and/or counseling expenses and reimburse for lost wages that are the result of a crime.
- Crime victims have the right to request restitution as reimbursement for expenses or losses incurred as a result of the crime.
- Crime victims have the right to be notified of court proceedings in their cases and to be present at any proceeding where the defendant has a right to be present.
- Crime victims have the right to review court documents in their cases; and

Whereas, in honor of the theme, "*Victims' Voices: Silent no More*," the Missoula City/County Crime Victims' Advocate Program will hold a speakout at the County Courthouse gazebo at noon on Thursday, April 29, 1999;

Therefore, we, the Board of Missoula County Commissioners and the Mayor of the City of Missoula, do hereby proclaim the week of April 25 to May 1, 1999 as Crime Victims' Rights Week in Missoula City and County and urge all citizens to attend the speakout on the 29th and support justice for and rights of crime victims throughout the year so that victims' voices are heard throughout our community and our justice system.

Kristina Swanson, Crime Victims' Advocate, Office of Planning and Grants, invited everyone to a ceremony on Thursday, April 29, 1999, at the Gazebo in front of the Courthouse at 12:00 noon, in honor of crime victims. The theme of National Crime Victims' Rights Week is "Victims Voices: Silent No More." The ceremony will include a speakout. Three speakers are scheduled, including Kirsten LaCroix, a prosecutor in the County Attorney's Office; someone from the Community Dispute Resolution Center to talk about restorative justice in Missoula; and a survivor of a violent crime. Other survivors of crime will also be invited to speak. She reminded everyone that crime victims who are injured as a result of a crime are eligible for crime victims' compensation. They have rights that are protected by Montana State law including the right to request restitution for reimbursement for expenses that are incurred as a result of a crime. They have the right to be notified of court proceedings in their cases, they have the right to review court documents in their cases and they also have the right to have their voice heard at sentencing of offenders.

Commissioner Evans mentioned that she and Commissioner Kennedy had a meeting at noon on Thursday and would be unable to attend.

Chair Kennedy stated it was important to realize there is a system of laws in this country. Sometime, victims of crimes get left out. This program exemplifies the system of justice and he encouraged everyone to come forward and witness the ceremony on Thursday.

Commissioner Evans moved that the Board of County Commissioners proclaim the week of April 25 to May 1, 1999 as Crime Victims' Rights Week in Missoula City and County. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0. The Commissioners then signed the Proclamation.

Hearing: Scott Edwards Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Book 334, Micro, Page 473.

Scott and Barbara Edwards 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 3.64 acres in size located off Highway 83. The applicant proposes to create two parcels, each approximately 1.82 acres in size, one of which will be transferred to Barbara Edward's son, Mark R. Huffman.

The applicants purchased the parcel in 1991. The applicants have not divided the parcel prior to this request and they have no history of the use of exemptions in Missoula County.

Chair Kennedy stated this was a different way of dividing land in the state and the Board is entitled by law to ask questions of a personal nature. He asked if Mark R. Huffman planned to live on the property.

Scott Edwards stated he did not plan to live there at the present time, he lives in Jackson Hole, Wyoming. He is looking to build in the future as he nears retirement.

Chair Kennedy stated the intent of this division was that he would eventually build there, it was not for sale.

Scott Edwards stated that was correct.

Chair Kennedy 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 Scott and Barbara Edwards 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: Vannoy Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 2 of COS 3758.

Walter and Clara Vannoy 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 176 acres in size located off Highway 200 and Sperry Grade Road. The Vannoys propose to create an approximately 3-acre parcel on the east portion of the property for transfer to their daughter, Ruth Vannoy Johnson.

A map entitled "Existing Configuration" depicts the various divisions of the land on the original ownership. According to the records kept by the Missoula County Surveyor, the applicant has used the exemptions to the Subdivision and Platting Act as set forth on the map, but has not used the family transfer exemption in the past.

Chair Kennedy stated this transfer was for the benefit of the Vannoys daughter and asked if she planned to live on the property.

Walter Vannoy stated she did plan to live on the property.

Chair Kennedy stated the property was an unusual shape and asked for an explanation.

Walter Vannoy stated the reason for the shape was that he maintained a pipeline easement across the property, which will be continued. This also allows access to the other properties without crossing anyone else's property.

Chair Kennedy asked if access was from Sperry Grade Road.

Walter Vannoy stated that was correct. His daughter and son-in-law were present and the main reason for moving to the property was that his son-in-law was a disabled Vietnam veteran and this allowed them to lower their expenses.

Chair Kennedy 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 Walter and Clara Vannoy 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.

Hearing: Application for Tax Incentives for New and Expanding Industry - Culligan Water Conditioning

Michael Sehestedt, Chief Civil Attorney, presented the general background.

This is a request to consider an application for Tax Reduction for the new Culligan facility on Ernest Avenue. The amount of tax reduction is shown in County Resolution 91-101. The Commissioners must agree that Culligan qualifies as an "industry" under the definition of the statute. The treatment of water could be broadly defined as processing of raw material.

The Legislature authorized the County Commissioners, under certain circumstances, to grant tax incentives, a reduction in taxes on qualifying new industrial improvements. There are some minimums, the improvements have to exceed \$125,000 in value and they have to be related to manufacturing, which is mechanical or chemical transformation of materials or substances into new products, extraction or harvesting of minerals, ore, or forestry products; or processing of Montana raw materials. There are other definitions that qualify that would not apply in this case.

If the tax incentive is granted, taxes are reduced on the new improvements by 50% for the first five years, then at 60%, 70% and so on until in the 10th year it comes up to 100% of its value. The law requires that notice is given and a public hearing conducted on each application. The question before the Commissioners is whether or not it is in the public interest to grant the particular project the incentive. Historically, the items generally looked at are job creation, adverse impacts, if any, and a decision is made on that basis.

Waunda Bravard, Culligan Water, stated that last year the company built a new building which also involves bottling their own water. She stated it is not exactly manufacturing but it is to them. It is a process they were not able to do before in the other building. They have invested quite a bit on money into this project. The bottling plant is in Missoula, the processing for bottled water is quite extensive and expensive. They hired one employee last fall and another employee yesterday and before the summer is over, they will probably hire one or two more employees.

Chair Kennedy stated this was a hearing but there would be no decision made today. One of the requirements is improvements have to exceed \$125,000, which he interpreted as meaning there was an additional \$125,000 worth of expense.

Waunda Bravard stated there was at least \$125,000 worth of additional expense beyond the building.

Chair Kennedy asked if they could disclose the amount.

Waunda Bravard stated the bottling plant was \$50,000, plus the processing plant, involving all the equipment going into the plant. She asked her partner to explain some of the details further.

Perry Thomas, Waunda Bravard business partner, stated there was approximately \$385,000 into the building and an additional \$225,000 into the bottling processing plant. They take Missoula City water and process it. It goes through reverse osmosis and other processes for purification. It is a process where they take Missoula City or well water, process and clean it, then bottle it.

Chair Kennedy stated the \$385,000 was for the building and land, the value received for the other property is \$210,000. They have approximately \$175,000 added dollars into this land and building.

Perry Thomas stated that was correct.

Chair Kennedy stated there was an additional \$225,000 into equipment.

Perry Thomas stated that was correct.

Chair Kennedy stated they were asserting the reverse osmosis process was a manufacturing process and they qualify for this incentive.

Perry Thomas stated that was correct.

Chair Kennedy asked about the personnel being hired. Were they permanent and what were they being paid?

Perry Thomas stated they were permanent employees and they started at \$7.50 per hour and worked up to \$10 to \$12 per hour. Raises are given every six months, it would be about a three to four year process to get to the \$12 to \$15 per hour rate.

Chair Kennedy asked about benefits?

Perry Thomas stated benefits were offered and there was a retirement package.

Chair Kennedy stated the two people added, one last fall and one yesterday, would both have a complete array of benefits and would be full-time employees.

Perry Thomas stated that was correct.

Chair Kennedy stated they were expecting to add, this summer sometime, at least an additional two people.

Perry Thomas stated that was correct.

Chair Kennedy went over the facts again. There is \$175,000 investment in land and building that is new, \$225,000 in process, two full time people, minimum wage is \$7.50 plus benefits, and two additional people would be added by this fall.

Perry Thomas stated that was correct.

Waunda Bravard stated that as the bottling grows, they will be adding more people. They have recently purchased another delivery truck. There is a need for clean water and the delivery of clean water is growing faster than any other part of their business at this time.

Chair Kennedy stated he had one question which comes from the oddity of the law which allows this incentive, and he stated he fundamentally disagreed with the process. He presumed there was financing obtained for this project and wanted to know if the financing package was in any way conditioned upon granting of this tax incentive.

Waunda Bravard stated it was not conditioned in any way. She had read an article in a Sunday paper about the tax incentives and felt her business could qualify and it would be worth applying.

Commissioner Carey stated his question was also if they knew about the tax incentive when going into the project.

Waunda Bravard stated they did not. She read about it in the paper and spoke with her accountant about it. They have put a lot of money into this project and she felt the business would grow. She stated they were the only locally owned bottling plant in Missoula.

Commissioner Evans asked if the tax incentives would help with adding more employees, would it give them enough financial help that they could benefit the community?

Perry Thomas stated the incentives would help. They are currently experiencing some growing pains. They were a small business, hiring new employees and offering a benefit package has put a damper on how fast they could grow. They could grow faster if they had the funds.

Commissioner Evans stated she supported tax incentive and wanted everyone to understand that when they are given to a company it aids them in providing more jobs and more tax base for the community. She also stated she personally uses Culligan's services and she was grateful they were available.

Chair Kennedy asked if the tax incentives were approved with a condition that required them to pay higher wages, would they be prepared to do that. He asked this because of the "living wage" issue, which has been established at approximately \$9.00 per hour plus benefits. If that came as a condition, could they accept it.

Perry Thomas stated it would depend on where it fell within the pay scale. They are already offering benefits and other packages for their employees. They would have to make it cost effective for the company. They would not have a problem with giving raises as long as it was still cost effective for them.

Commissioner Evans stated for the record that she did not support requiring the wage increase as a condition of granting the tax incentive.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Chair Kennedy stated this matter would be taken under advisement.

Commissioner Evans asked why they were not making a decision today.

Michael Sehestedt stated the Commissioners could act today or could take the matter under advisement if they wished.

Commissioner Evans stated it was not a requirement that they wait to make the decision. It is not a Resolution of Intent.

Michael Sehestedt stated the Resolution would have the standard 30 days before it is accepted after adoption, but there is nothing to keep them from continuing the matter or acting on it today.

Commissioner Evans stated she would like to make the decision today.

Chair Kennedy stated he had not reviewed the application and was not prepared to act on it today.

Commissioner Carey stated he was willing to allow time for Chair Kennedy to review the application.

Commissioner Evans suggested putting it on the agenda for next week.

Chair Kennedy stated next week is the Subdivision Regulations which may consume a substantial amount of time.

Michael Sehestedt stated two weeks would be appropriate or they could act on it at an Administrative Meeting.

Chair Kennedy stated they would let Ms. Bravard and Mr. Thomas know within a week when the decision would be made, so they could attend the meeting, be it a public meeting or an administrative meeting.

Hearing: Brewerton Summary Subdivision (3 lot Industrial Minor Subdivision) - Momont Industrial Park

Allison Handler, Office of Planning and Grants, presented the staff report.

Craig Brewerton, represented by Tim Wolfe of Territorial Engineering, is requesting approval to create a three lot industrial subdivision of a 1.5 acre lot in Momont Industrial Park, across West Broadway from the airport. This is a subdivision of Lot 6, Block 2 of Momont Industrial Park, Phase I. Mr. Brewerton has requested two variances, one for right of way and surface width of the roads that provide access to the subdivision, and one for provision of pedestrian walkways.

The proposal complies with zoning, which is C-II, light industrial, and with the 1998 Missoula Urban Comprehensive Plan designation, which is also light industrial. The subdivision lies within the Airport Influence Area and it is required to comply with the requirements of the Airport Influence Area Resolution. Mr. Brewerton will be required to obtain an avigation easement from the Airport Authority and file it with the plat.

The applicant has asked to vary from the required right of way and paved width of Momont and Industrial Roads that would provide access to this property. The regulations call for an 80 foot right of way and 44 paved width for roads that serve industrial subdivision. Momont and Industrials Roads are each 40 feet wide in a 60 foot right of way. Staff has recommended approval of this variance request and has recommended Condition 3, that the applicant waive the right to protest participation in an RSID or SID for future improvements to Momont or Industrial Road.

The applicant has also asked to vary from the requirement to provide sidewalk or pedestrian walkways. There is precedent in this area for requiring sidewalks. Provision of boulevard sidewalks was a condition of approval for Missoula Development Park which borders Momont Industrial Park on the northwest, north, northeast and southeast, and also of Alloy Court (also known as Alloy Lots #2) that was a 4-lot industrial division of Lot 3, Block 2 of Momont Industrial Park, Phase I, a neighboring property. Staff believes that it would be appropriate to continue the pattern developing from other subdivisions in this area.

Because of the proximity of this property to the City, staff asked both the County Surveyor and the City Engineer to review the subdivision. The County Surveyor said that it makes sense to continue the pattern developing from Alloy Court and Missoula Development Park, though he did not express a strong preference regarding sidewalks. The City Engineer felt it would be appropriate to install curb, gutter and sidewalk. Staff recommends denial of the variance request and has recommended Conditions 1 and 2, that the applicant install curb, gutter and sidewalks.

There was some question about Condition 2, specifically the feasibility of installing boulevard sidewalks given the space constraints where the paved surface of the road is within the easement, and also given the cost of sidewalk installation. Possible new language for Condition 2 has been presented which the developer has accepted.

Conditions 1, 3 and 4 as presented in the staff report remain the same and Condition 2 would be changed to read: "The applicant shall install sidewalk on Industrial Road and Momont Road. Plans for sidewalk installation shall be approved by the County Surveyor prior to plat filing. Improvements shall be constructed prior to filing of the plat or as part of an improvements guarantee, to be approved by the County Attorney and County Surveyor."

Tim Wolfe, Territorial Engineering and Surveying, developer's representative, stated he appreciated the staff work. He would like to argue his point on Conditions 1 and 2. His rationale for requesting a variance on the curb and gutter and sidewalks is the particular physical feature of Momont Road, an inverted crown that curves up instead of down. It is also in very poor shape and should be redone or repaved sometime within the next 10 years. With the inverted crown, if curb and gutter is placed and then the road is redone with a standard crown, the edge of the road would most likely drop to facilitate drainage. Therefore, the curb installed now will probably not be in the best location to match the redone road. The same is true for a sidewalk, if the road is reconstructed, it is unknown where the sidewalk would finally be located. To make the developer do it now is a guess at best and might be wasted whenever the road is redone.

Commissioner Evans asked if the adjoining properties have sidewalks and such?

Tim Wolfe stated there was nothing on adjacent properties.

Commissioner Evans stated this subdivision is not in the County's Development Park, it is in the Momont Development.

Tim Wolfe stated that was correct.

Commissioner Evans asked if the staff discussed a waiver of a right to protest when other sidewalks are installed? Whether or not, in the future, when sidewalks need to be put in the Momont section of this development, that a waiver would work and not waste improvements put in now that could get torn out later.

Allison Handler stated Condition 3 addresses the upgrading of the road, and the language reads, "including, but not limited to, street widening, drainage facilities and striped bicycle lanes," because those were not items that were in other conditions.

Commissioner Evans asked if there was any reason sidewalks could not be included as well, so it is not required to install something that may get torn up later.

Allison Handler stated they could include that. The main reason the staff decided to make sidewalks a separate condition was that sidewalks have been going in at other developments neighboring this property, not immediately adjacent, but in the vicinity. This also goes back to the discussion of the inverted crown road in this situation. She did not know what the road condition was at the Alloy South property.

Commissioner Evans stated it was her understanding that an inverted crown did not help a road. It is not a proper configuration for a road and at some point will likely have to be redone. It would make sense to her to install sidewalks at the time the road is redone.

Chair Kennedy stated that in discussion on Monday he made the point that the staff's recommendation could be kept and require curbs, gutters and sidewalks, and design them in such a way that they would not be torn out whenever that road is improved. He respectfully disagreed with Tim Wolfe on that point. The question is whether or not they want to do that. In this area, there are no curbs, gutters or sidewalks for any of those lot, although on Alloy South there is an improvement that is currently being installed. Virtually every new development out there is being improved with that infrastructure, there are several streets being paved, all with curbs and gutters. The big issue before the Board is what happens to this area, if the Board requires it, how long will those sidewalks, curbs and gutters be there before there is an additional improvement. He did not know the answer.

Horace Brown stated a road could be constructed with new curbs, gutters and sidewalks, but it also costs more to do it that way, it is harder to design and harder to build. He would rather see it done through an RSID in the future whenever the road is rebuilt. That will be a substantial amount of time with the money available to do projects. It does cost more when a road has to be designed to something that already exists and it is harder to build.

Chair Kennedy asked Allison Handler if she had mentioned Lot 3, Block 2 in her presentation.

Allison Handler stated that was correct, that is the one on Alloy South.

Chair Kennedy stated that did not have sidewalks.

Allison Handler stated it has boulevard sidewalks as a condition of approval. When she visited the site, they were installing curb and gutter.

Chair Kennedy stated he was out there yesterday and there are no sidewalks. There is curb and gutter.

Allison Handler said they are installing curb and gutter right now and it was a condition of approval to put in boulevard sidewalks.

Colleen Dowdall stated they would probably be coming later.

Allison Handler stated she was going on two things, what is physically out there right now, the installation of curb and gutter, and it appears there is a new crown on that road as well. The condition of approval for that subdivision was boulevard sidewalks.

Colleen Dowdall asked if Industrial Road was included for curb, gutter and sidewalks.

Allison Handler stated that property did not border on Industrial Road.

Chair Kennedy stated Eli & Associates development is on the corner of Alloy and Industrial and he asked if that condition applied to them.

Allison Handler stated she did not know that answer.

Chair Kennedy stated that from Lot 3, Block 2 north, on both sides of the street, there will be a boulevard sidewalk and curb and gutter.

Allison Handler stated that for Alloy Court that was her understanding.

Chair Kennedy stated that was except for Lot 4, which is on the corner of Industrial Way and Alloy.

Allison Handler stated that Alloy Court was just a division of Lot 3. Just that one lot was what that particular subdivision was addressing.

Colleen Dowdall stated she had no idea where that was, she was looking at the sewer main that shows a cul-de-sac called Alloy South. That is not where they are currently building curb and gutter.

Chair Kennedy stated yes it was.

Allison Handler stated they are coming off Alloy South. Alloy Court runs east/west.

Colleen Dowdall stated then that the only thing they were putting curb and gutter on was Alloy Court or Alloy South.

Chair Kennedy stated there was curb and gutter being constructed right now on Alloy South, for the entire cul-de-sac, they are reconstructing Alloy South road and it all has curb and gutter.

Colleen Dowdall asked if the Alloy subdivision is being required to do that.

Allison Handler stated that Alloy Lots, just Lot 3, has a requirement to have boulevard sidewalks, curb and gutter. They have a new cul-de-sac that comes into Lot 3 off of what is now labeled as Alloy South, it will have a new name.

Chair Kennedy stated that is all being constructed right now.

Commissioner Evans asked if the requirements was changed to not have a cul-de-sac, but to put the road through.

Paul Webber, Chief Administrative Officer, stated Alloy South ends in a cul-de-sac. That cul-de-sac is being extending through to Expressway and the new portion is the portion that will have curb and gutter. The County is not going to put curb and gutter all the way down Alloy South to Industrial Drive.

Commissioner Evans stated there would be curb and gutter on Block 1 and 2 and none on the rest.

Paul Webber stated there would be curb and gutter to the point where it connects to the current cul-de-sac.

Chair Kennedy stated there is a condition on Block 3, which is south of the cul-de-sac.

Paul Webber stated there would be curb and gutter along 1 and 2.

Chair Kennedy stated also 3, as that is an existing condition. The only one that will be excluded on that Block is Lot 4 and the one directly west of it.

Paul Webber stated he was not aware of that condition and could not speak to it. The road construction that is going on now does not go down to Lot 3. It may be a condition to Alloy Court, but the Development Park has nothing to do with it.

Commissioner Evans asked what point Chair Kennedy was getting at, that we should not have sidewalks now or we should.

Chair Kennedy stated he just wanted to have the discussion. By Roscoe Steel there is no curb, gutter or sidewalk. Development on Lots 8 and 9 do not. There are no waivers. It may end up with a waiver on Lot 6, now being subdivided into three lots, or there will be an improvement there. The question is which is most beneficial, to have the lot completely improved now or to have a waiver on it and there may never have any improvement because he did not know how to get an effective SID without permission of the people as there are no waivers out there.

Colleen Dowdall stated she pulled Alloy Court's file to see what was required. The file she has is one for Alloy Lots, was that Eldon's?

Allison Handler stated that Alloy Lots #2 name was later changed to Alloy Court.

Colleen Dowdall stated that Alloy Lots #2 (Alloy Court) received a variance regarding curb and gutter and the condition with regard to the sidewalks is, "The subdivision shall include a provision for boulevard sidewalks along Alloy South. The sidewalks shall allow public access and shall be constructed prior to filing of the plat or provision shall be made for the construction of sidewalks as a condition of issuance of the building permits for Lots 1 and 4."

Chair Kennedy stated Lot 4 is where Eli & Associates is now, on the corner of Industrial and Alloy, and asked if that extended to Industrial?

Colleen Dowdall stated this particular subdivision was a division of Lot 3, Block 2, it did not include where they are at.

Chair Kennedy was talking about the reference to Lot 4.

Colleen Dowdall stated it must be Lot 4 of Alloy Lots #2, which is within Lot 3 of Block 2.

Chair Kennedy stated then it had nothing to do with Lot 4 of Block 2 nor Industrial Road.

Commissioner Carey asked if there was a way to get the road improvement done in a timely manner. He felt sidewalks and curbs were necessary but he agreed with Horace Brown that to put sidewalks in makes it costlier and more difficult to tie a road to.

Horace Brown stated the only way the road would get done would be through an RSID, the County did not have money to construct it. If enough people waive their right to protest, then it could be done eventually.

Chair Kennedy stated he did not see it happening, Roscoe owns the whole east side of the street, the railroad is on the south side. He did not see either of them agreeing to an SID, they had no interest in doing one.

Commissioner Evans opened the public hearing.

Frank Cole stated he had recently retired from Cole Campers, during the construction phase of that area. They had drainage requirements, the grade was required to stay at a certain level and the flow direction was indicated, toward Momont then into a drainage ditch. Roscoe Steel had the same requirement, drainage to the ditch. There is no drainage system in the area and the soil is clay, the water has to go somewhere. The road was inverted as a drainage system also. The water from the road would drain out through the inverted center section. Momont is suggested to be 40 feet wide. There is not room for an 80 foot street and sidewalks without taking some of his property.

Chair Kennedy stated there were two different issue. The right of way is not being discussed, they are talking about whether or not an improvement should be constructed on existing Lot 6. The question for Mr. Cole is if there is an improvement to Momont Road which would include curbs, gutters, new roadway and sidewalks, would he agree to that for his property.

Frank Cole stated not the way it is now. They were given a drainage system to the ditch at the edge of the road. The drain ditch went under the railroad tracks and ended up puddled by the highway. There is barely room for the system they have and the ditch is 10 feet wide.

Chair Kennedy stated what would happen in front of his property was that the ditch would go away and there would be an underground pipe to handle the drainage. There would be sidewalks, curb and gutters. Would he be willing to pay into an RSID for these improvements.

Frank Cole stated he would not agree to pay into such an RSID. When construction was done out there Momont Road was not supposed to be used to haul gravel, they were to use Airway Blvd. Due to the bridge alignment position, they had to use Momont Road. JTL said they would refinish and redesign the street, they were going to improve it, but that has not been done. The road had sunk from heavy loads, the intersection of Industrial and Momont has sunk from heavy loads. That street was destroyed by JTL's use and they promised to fix it but it has not been done. There were also signs to be put up to relieve the problem of Momont being closed that has also not been done.

Chair Kennedy stated there is a sign out there with the company name on it.

Frank Cole stated the sign was on Industrial Way but not on Broadway, where they had signs before. Those signs have never been put up.

Commissioner Carey asked who that was promised to.

Frank Cole stated it was to them at the public meeting at DeSmet School.

Commissioner Evans asked if it was promised to the Highway Department or someone else in writing.

Frank Cole stated there were County officials there, including Commissioner Evans.

Commissioner Evans stated she was not present that night.

Frank Cole stated she was at a meeting with the County engineer and Fern Hart, when they were promised that their problem with traffic flow to their area, if Momont was closed, would be taken care of by signage.

Commissioner Evans stated she could not promise him, and couldn't at that time either, what would happen on a State highway. If the state says no, Fern, nor Horace nor herself or anybody else could tell the state what to do.

Frank Cole stated there were plenty of signs put up there prior to this construction.

Commissioner Evans stated that was done by the state, approved by the state.

Frank Cole disagreed with Commissioner Evans.

Chair Kennedy stated the question had to do with improvements and would like to conclude this discussion. He understood that Frank Cole was saying he would not agree to an SID.

Frank Cole wanted to explain why. Everybody always talks about this construction zone and how it will cause about a 40% loss of business. They did spreadsheets during the construction phase which showed they lost about 60% of their business. They wanted to improve the area, they did not want out of the Development area, yet they were taken out and now they are being told to spend more money to improve this area that is not part of the County Development area. They are surrounded but not part of it.

Chair Kennedy stated they were just asking him the question of participation in an RSID.

Frank Cole stated they cannot participate.

Chair Kennedy stated the issue was whether the Board wants to agree with the staff report and deny the variance or have instead an SID waiver that would include all improvements to Industrial and Momont, including sidewalks, drainage, curbs, gutters and streets.

Colleen Dowdall stated the issue is if the County requires curbs and gutters on a road they know will be rebuilt in a different configuration, whether those curbs and gutters are going to function in any way that is helpful to the drainage in the area, because that is why curbs and gutters are required. If it doesn't have any positive effect until the road is rebuilt, then curbs and gutters should be required at the time the road is rebuilt through an RSID. It makes no sense to impose a condition that will have no positive effect, because it won't meet the road in the appropriate way. That is her concern, how the Commissioner can support not granting this variance. How can the Board say the curbs and gutters are a necessary expense if they are not going to function as a curb and gutter until the road is rebuilt.

Chair Kennedy stated they would serve as a curb and gutter, to him that is not an issue. The question is whether or not they want this part of the area to have the same improvements as the Development Park has, and whether or not they want to impose them now. Along Industrial Way there is no problem with constructing sidewalks, curbs and gutters, there would be no conflict with any design no matter how the road was done. On Momont there is a bit more difficult design problem because Momont Road is higher in grade than the surrounding property. Curbs, gutters and sidewalks can be designed that would not have to be reconstructed and would provide their function. That is not the issue. He wanted to know what the Board wanted to do, whether to impose now or have an RSID waiver to take care of it sometime in the future.

Commissioner Evans stated she preferred to have an SID waiver so that when it gets done, the full length of the road is done. Having a sidewalk, curb and gutter on one lot in an area where there are no others, and does not serve its intended purpose, makes no sense.

Commissioner Carey stated he assumed Colleen Dowdall was speaking from a legal point of view, that if the Board required something that doesn't have its desired effect, they basically don't have the right to do that.

Colleen Dowdall stated it is very hard to support legally, that the findings can be made, that this is being required of this developer to mitigate some impact or to enhance some amenity, if it won't. The subdivision standards don't

require curb and gutter on all subdivisions. In this particular kind of subdivision they are required, which is why the variance is necessary. She is uncomfortable with it from a legal standpoint.

Commissioner Carey stated he felt the sidewalks were needed but the road was needed first. He did not know how to get to that point unless it is through an RSID.

Chair Kennedy stated they could not impose reconstruction of the road on this individual, that was not reasonable. His concern was what happens if they go with the RSID waiver, what kind of improvement would happen out to the road. There is not a condition that would require anything. He was concerned that will end up a no man's land that is an unmaintained patch that has no redeeming quality. It seems like something needs to be done, at least out to the pavement.

Colleen Dowdall asked if Industrial was a County road?

Chair Kennedy stated Industrial was a County road and so was Momont.

Colleen Dowdall stated that when they were improved, it would have to be to County road standards.

Chair Kennedy stated he was talking about now. The Board is leaning toward an RSID waiver, which could be a long time down the road, many, many years. In the meantime, if this lot gets divided into three lots and there are businesses, there will be activity there that will continue to deteriorate that road and cause problems. What can be done about that. That is a big concern of his and a compelling reason why they need to consider making these improvements in effect right now.

Frank Cole stated the first thing that is needed for the whole area is a storm drain system. Curb and gutter can't be put in which will cause puddling. Drainage comes down Expressway from in front of the Food Bank, down Momont and into Federal Express and over the Cole lot. He had pictures that show water running across his lot because of the grade at the FedEx building being too low. They put in a culvert and drain ditch but FedEx did not. The grade is important to the whole area, the ground is clay and the water does not disappear. A storm drain system is needed. Where will the water go.

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

Chair Kennedy stated the question remains, a 3 lot split where business may be soon. There will be increased activity and further deterioration of the road. Something has to be done to take care of at least that portion that is going to deteriorate. It is fine to have an SID waiver, he is not objecting to that. He is saying the problem that is going to be created by having the waiver instead of the improvement needs to be taken care of. What is that requirement.

Commissioner Evans stated the problem as she sees it isn't improving the road, the only thing it is doing is adding curb and gutter in a way that is not going to fit well with the current road and there are no current plans to fix the road. Requiring curbs, gutters and sidewalks to attach to a road that is known to be not good and needs fixing but won't be fixed, puts a lot of burden on one person and the improvements will be torn up in the future. She can't support doing that.

Chair Kennedy stated it won't get torn out in the future. He wanted to know what the alternative is if a waiver is allowed to substitute for the improvement. There will be deterioration as a result of the new activity that is being introduced as a result of this approval. There is going to be a problem out there. How does that problem get addressed without the improvement but with the waiver.

Colleen Dowdall stated that as the staff report exists now, it doesn't require any road improvement, it just requires curb and gutter and sidewalks. Was Chair Kennedy suggesting the road improvement be required now.

Chair Kennedy stated he was not suggesting that at all, he was asking for an alternative to the improvement. If the improvement is built, it will formalize the improvement on all of those lots so that whatever traffic activity goes on won't further deteriorate the existing roadway, it will protect it.

Colleen Dowdall asked if Chair Kennedy meant the curb and gutter?

Chair Kennedy stated of course, all those improvements will formalize it. What there is now is a situation where it will continue to ravel and deteriorate more because new activity is being introduced. He is asking how that problem can be mitigated which is anticipated if the improvement is not required.

Tim Wolfe stated the increased activity and road deterioration on these commercial lots could have a detrimental effect on their business causing them and surrounding businesses to be more apt to agree to an RSID. By doing it this way, as a waiver, there are three yes votes for an RSID. Mr. Cole was correct, there does need to be an overall drainage plan for the whole area. If the overall plan is contrary to what fits on the land right now then the situation is created where something is put in that will not work and will have to be designed around or removed.

Commissioner Carey asked who was responsible for the plan, was it the County.

Commissioner Evans stated the majority of the land was the County's Development Park. This area is an island of its own that was not included when the County bought the Development Park. At some point the road will be bad enough that the businesses will want them fixed or the Health Department will find some way to have it paved.

Colleen Dowdall stated Mr. Cole's complaint was also that the rest of the Development Park is in the tax increment district which will provide for those improvements. The Development Park did not require that all the improvements be made immediately, or prior to plat filing, those improvements will occur as the money is available. This area was not part of that district so it won't benefit from those funds.

Commissioner Carey stated they will be impacted by the drainage plan, it would have to be part of the plan. It seemed like that is where they needed to start.

Chair Kennedy stated Commissioner Carey's question, "Who pays for it?" was fairly asked, as the County does not have the resources to do it. Maybe there needs to be a condition in lieu of the improvement that there be some sort of an assessment to pay at least a part of the drainage plan development.

Commissioner Evans stated Chair Kennedy was asking the Commissioners to look in their crystal ball and find a way to fix something that at this point is not fixable. She appreciates the question but does not have an answer. She did not want to penalize this developer because they don't have the answer.

Colleen Dowdall stated when dealing with these conditions, the impact has to be looked at.

Chair Kennedy stated he understood that.

Colleen Dowdall stated she is trying to set a record. She is trying to establish the record for what it is, she is trying to formalize it so the Board can come up with what it is they want the developer to do. The Board has to look at what the developer's impact is on the roadway system and how they mitigate that impact. If the Board does not want to grant variances for the curb and gutter, they have to establish that Tim Wolfe's argument is false and the curb and gutter is necessary for whatever purpose curb and gutter is required.

Chair Kennedy stated he appreciated Colleen Dowdall's effort. He is suggesting that perhaps in between the two extremes of having a waiver which may not result in any improvement ever or requiring an improvement that may stand alone out there, there needs to be consideration of an effort that might mitigate a problem that can be anticipated.

Colleen Dowdall stated she understood that, but no alternative have been come up with, she felt Chair Kennedy might be thinking of something. Those two extremes, as he called them, are what were drafted in the regulations. There is not any middle ground in the regulations to get those improvements done.

Commissioner Evans suggested adding sidewalks to the RSID waiver in Condition 3, so it would read: "... including but not limited to sidewalks, street widening, drainage ..." and require the RSID waiver. At some point, when Roscoe decides to do some planned expansion, that may present the opportunity to ask for other improvements as well. This problem cannot be solved by this applicant alone. She preferred to wait, both from a legal perspective and a logical, common sense perspective, until it would be done as a whole. She would make that a motion.

Commissioner Carey stated he would second such a motion.

Tim Wolfe asked if Commissioner Evans intended to include curbs and gutters also.

Commissioner Evans stated that was correct, it would read, "... sidewalks, curbs and gutters..."

Chair Kennedy stated it would be, "... curbs, gutters, boulevard sidewalks and drainage ..."

Commissioner Evans stated she did not care if it was boulevard sidewalks or just sidewalks, as long as it matches whatever is out there and whatever the land will accommodate. Mr. Cole said it was not wide enough to accommodate boulevard sidewalks, in which case sidewalks by themselves without boulevard is fine.

Colleen Dowdall stated the Board could say the plans would be subject to the approval of the County Surveyor.

Commissioner Evans stated that was correct.

Chair Kennedy reread the motion to accept the variance subject to a waiver that includes sidewalks, curbs, gutters, drainage and roadway and is non specific as to whether or not boulevards would be required, to be approved by the County Surveyor.

Colleen Dowdall stated from a procedural standpoint, what the Board needed to do was grant the variance then add to the condition of approval of the subdivision.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations requiring a 44 foot paved width and 80 foot right of way for roads serving industrial subdivisions. 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 variance request from Article 3-5(5) of the Missoula County Subdivision Regulations requiring sidewalks, pedestrian walkways and bikeways. 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 Brewerton Subdivision with modifications to Condition 3 to read as follows: *"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 owners to any future RSID/SID, based on benefit, for upgrading of Momont Road or Industrial Road, including but not limited to street widening, sidewalk, curb, gutter, drainage facilities, and striped bicycle lanes, and may be used in lieu of their signatures on an RSID/SID petition. Improvements shall be subject to the approval of the County Surveyor"; and to delete Conditions 1 and 2, based on the findings of fact in the staff report.* Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Brewerton Subdivision Conditions of Approval:

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 the assent of the owners to any future RSID/SID, based on benefit, for upgrading of Momont Road or Industrial Road, including but not limited to street widening, sidewalk, curb, gutter, drainage facilities, and striped bicycle lanes, and may be used in lieu of their signatures on an RSID/SID petition. Improvements shall be subject to the approval of the County Surveyor."
Subdivision Regulations Article 3-2

2. The following statement shall appear on the face of the plat and in each instrument of conveyance:

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

The applicant shall file an avigation easement with the final plat. *Missoula County Airport Authority and staff recommendation*

Frank Cole added that the drainage system they had was adequate because Roscoe Steel had a culvert to Industrial Way, under the railroad tracks and into a large field. He felt Expressway has created part of the problem, before it was built the drainage was fine, but now the property floods. A drainage system was needed to help improve the area.

Commissioner Evans asked the Board to ask Horace Brown to go out and inspect the drainage situation in this area and report back to the Board in one month from today as to what the drainage is and what needs to be done. That does not mean anything will get done, it means he will look at it and explain the problems.

Horace Brown stated he would try to work it into his schedule.

There being no further business to come before the Board, the Commissioners were in recess at 2:45 p.m.

THURSDAY, APRIL 29, 1999

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:

Professional Services Contract – The Commissioners signed a Professional Services Contract with Zekra Brasher of Fighting Back Self-Defense for Women to conduct two 4-hour training seminars on self-defense for women in Seeley Lake. Performance schedule is May 3, 1999. Compensation shall not exceed \$300.00.

Amendment to Property Exchange Agreement – The Commissioners signed an Amendment to Property Exchange Agreement with Roscoe Steel and Culvert Company. Missoula County shall retain an easement for road and all other public purposes on that portion of the Missoula Development Park, Block 8, Lot 4, for the purpose of completing a cul-de-sac on Curlew Loop. Compensation to be paid by Roscoe shall be reduced by \$1,105.51. The Amendment was returned to Mike Sehestedt, Deputy County Attorney, for further signatures and handling.

Resolution – The Commissioners signed Resolution No. 99-027 (Joint Resolution No. 6241), a joint resolution with the City of Missoula to accept geographic information management strategic plan and decision-making process.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Watershed Education Network to provide wetlands information for the City-County Floodplain Program. Value of the Agreement is \$16,735.00. Duration of the Agreement is 24 months, commencing on April 29, 1999.

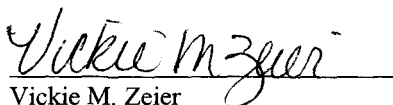
Other items included:

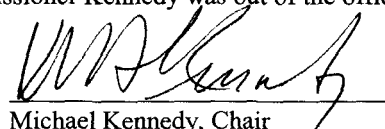
- 1) The Commissioners discussed the Missoula Development Park's policy on infrastructure improvements.
- 2) Horace Brown, County Surveyor, agreed to make improvements to S. Third St. W. near Hawthorne School. These improvements will be funded with CTEP money from the TEA 21 allocation, and will include improved crosswalks, a refuge island, improved drop-off area, sidewalk bulbs at Hiberta and at the east parking lot, and improved signage.

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

FRIDAY, APRIL 30, 1999

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, and Commissioner Kennedy was out of the office all afternoon.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MAY 3, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Carey was out of the office all day because of illness, and Commissioner Evans was out of the office all day. Commissioner Kennedy was out of the office all afternoon.

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending April 30, 1999.

On April 29, 1999, the Commissioners appointed Troy Kurth to the Missoula Rural Fire District Board of Trustees, effective until the School Election in April 2000.

TUESDAY, MAY 4, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of April, 1999; and the Report of the Clerk of District Court, Kathleen Breuer, for the month of April 1999.

ADMINISTRATIVE MEETING

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

Extension – The Commissioners approved an extension of the final plan submittal for Woody Mountain Subdivision with Units for Lease or Rent, making the new filing deadline April 29, 2000, with a letter to Charles S. Johnson of Druyvestein, Johnson and Anderson.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Human Resource Council for the JTPA Summer Youth Employment Program. Agreement is contingent on availability of Federal funds and continued Federal authorization for program activities. The Agreement was returned to Marie Pruitt in the Personnel Office for further signatures and handling.

Addendum – The Commissioners signed an Addendum to the buy-sell dated August 31, 1998 with HomeWORD for the property located at 300-306 West Broadway. The purchasers hereby remove tax credit contingency and will go forward toward closing by June 1, 1999. The Addendum was returned to John Coffee at Lambros Real Estate.

Agreement – The Commissioners signed an Agreement with the Montana Department of Transportation for Phase II of the Missoula Transportation Demand Management (TDM) program. The Transportation Policy Coordination Committee approved \$100,000.00 from the CMAQ funding source. Work is expected to begin by May 15, 1999 and continue for a 10-month period. One original was filed, and one original was returned to Mark Landkammer in OPG.

Memorandum of Agreement – Chair Kennedy signed a Memorandum of Agreement between the Missoula County Park Board and the Missoula Softball/Missoula Fastpitch Association. The Park Board will provide up to \$2,175.00 in matching funds for improvements. Funds must be spent by May 1, 2001.

Resolution – The Commissioners signed Resolution No. 99-026, approval of the application of Culligan Water Conditioning for tax incentives under Resolution No. 91-101.

Memorandum of Agreement – The Commissioners signed a Memorandum of Agreement with the Montana Natural History Center to obtain baseline information for the City-County Floodplain Program. Value of the Agreement is \$23,515.00.

Agreement – The Commissioners signed a Sewer Main Design Agreement with Wesmont, Inc. for the design of a sewer main to the southwest corner of the Reserve B property in the Missoula Development Park. Wesmont shall reimburse the County for cost of the design, not to exceed \$9,000.00, within 30 days of billing by the County. The Agreement was forwarded to Perry Ashby at Wesmont, Inc. for signature and return.

Other items included:

- 1) The Commissioners approved a request to relocate a water main on the lots purchased by American Eagle in the Missoula Development Park. Costs will be borne by the TIF undesignated fund balance.
- 2) The Commissioners agreed to negotiate with a party interested in purchasing the westerly two acres of the Mullan Road jail site.

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

WEDNESDAY, MAY 5, 1999

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

Audit List – The Commissioners signed the Audit List, dated May 4, 1999, pages 2-28, with a grand total of \$151,221.14. The Audit List was returned to the Accounting Department.

PUBLIC MEETING – May 5, 1999

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

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 list in the amount of \$151,221.14. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Decision: County Subdivision Regulation Amendments and Amendments to County Zoning Resolution 76-113 (Postponed from 4/14/99)

Chair Kennedy stated the decision on the County Subdivision Regulation Amendments and Amendments to County Zoning Resolution 76-113 has been postponed to a date yet uncertain. Correspondence had been received and he asked Barb Martens to read that into the record.

Barb Martens stated she received the following by fax from Ron Ewart of Eli & Associates: *"I wish to state that I am in general favor of the proposed County Zoning and Subdivision regulations as written. If they are passed, I would suggest that we first resolve to set a public hearing in about a year from now to revisit the regulations for possible amendments. During the year's time we could take notes regarding what works, what doesn't, and why. This way we can eventually have the best possible regulations. Thank you."*

Hearing: Ruth Edwards Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 4 of COS 2946, Sections 14 and 15, T16N, R15W.

Ruth Edwards 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 20.89 acres in size located off Highway 83 near Double Arrow. Ruth Edwards proposes to create a parcel on the west portion of the property for transfer to her son, John Edwards.

The history of the parcel is attached to the exemption affidavit. The most recent transfer of this parcel was from John Edwards to Ruth Edwards. The transfer was made in order to protect the assets of John Edwards and to provide security to his mother. John Edwards resides in the house on the parcel and wishes to sell it. However, he wants his mother to have a portion of the acreage. If the family transfer is approved, John Edwards will own the house and acreage around it and he will sell it, retaining the proceeds.

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

Dick Ainsworth, Professional Consultants, Inc., was present representing Ruth Edwards. He did not have anything further to add to the presentation and was available to answer any questions the Commissioners might have. Larry Walters, a realtor working with John Edwards, was also present and could answer any questions if necessary.

Chair Kennedy stated he thought that if the transfer was to be made by Ruth Edwards, she really needed to be present.

Colleen Dowdall stated that was not a requirement. The requirement was that either the applicant or a representative be present, even that is just policy. Family Transfers have been considered without the applicant present. Ruth Edwards lives in Massachusetts.

Chair Kennedy asked if John Edwards was present.

Dick Ainsworth stated John Edwards was not present. He lives in Seeley Lake.

Commissioner Evans stated the Edwards paid representative was present.

Chair Kennedy stated that Dick Ainsworth knew the rules for Family Transfers. The overall intent of this transfer was so that John Edwards could sell the property, making this a division for the purpose of sale.

Dick Ainsworth stated Mr. Edwards wishes to sell his home on a portion of the property that he originally owned in its entirety. Several years ago he put the property in his mother's name, he was involved in some litigation and was concerned about protecting his assets. Part of his mother's helping out with that was that she acquired an interest in the property as well. He is now interested in divesting himself of the property and have his mother own the remainder. Ultimately, the property will be sold. This transfer is to separate his interest in the one parcel from his mother's interest.

Colleen Dowdall stated typically the inquiry on a Family Transfer when a sale is proposed would be who will get the proceeds. If an owner transfers to a minor child, dividing the property with the parent retaining the proceeds, that would be evidence of an attempt to evade subdivision. For this reason she included in the report that John Edwards intends to retain the proceeds. His mother is giving him property, he is selling it and would retain the proceeds.

Commissioner Evans asked if the mother would retain part of the property in return for financial help she might have given him in the past.

Dick Ainsworth stated that was correct.

Commissioner Evans stated she had no problem with the transfer, it might not be as straightforward as others they see, but she did not see anything to be gained by refusing this action.

Chair Kennedy 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 Ruth Edwards to create a new parcel by dividing Tract 4 of COS 2946 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: Scharf – Revocation of Agricultural Covenant

Chair Kennedy asked if G. Robert Scharf III would come forward. He explained to Mr. Scharf that when this type of action is presented to the Commissioners, it is slightly different than normal and allows for questions to determine why the request is being made. Sometimes those questions can be of a personal nature. It appears that both of the parcels had agricultural easement on them and were recorded. Now there is a house on the property partially because the City-County Health Department granted a septic tank permit.

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to remove an agricultural covenant for that parcel described as Tract A-1 of COS 4098, Section 24, T12N, R17W.

G. Robert Scharf III has submitted a request to remove an agricultural covenant from his parcel, according to the terms of the Montana Subdivision and Platting Act. The current parcel was created by use of the agricultural covenant in 1992, is approximately 19.26 acres in size, and is located near Clinton off Wallace Creek Road. Mr. Scharf was not an owner of the parcel when the parcel was created but his wife and her sister and brother-in-law were owners.

Mr. Scharf has borrowed money for the construction of a house and prior title policies did not reveal the existence of the agricultural covenant. When he sought permanent financing, a different title company disclosed the covenant. Mr. Scharf was able to obtain a septic permit for the property in spite of the existence of the agricultural parcel. In order to complete his financing, he needs to have the covenant released.

According to the records kept by the Missoula County Surveyor, the applicant has not used the exemptions to the Subdivision and Platting Act but his wife did request the use of the agricultural covenant on this property.

Colleen Dowdall stated the affidavit requesting the agricultural covenant in 1992 was also included in the report for the Commissioners review, along with that staff report and approval letter.

Chair Kennedy asked Mr. Scharf if he was unaware there was an agricultural covenant on the land.

Robert Scharf stated he was not aware of the covenant. The history of the first division was to accommodate a neighbor who had unknowingly put a well and a part of a building on this property. Had they known or understood the agricultural covenant, it probably would not have been divided that way. The land was not divided for any benefit of theirs.

Chair Kennedy asked Mr. Scharf if he felt there was a mistake made.

Robert Scharf stated he did not understand there was an agricultural covenant. He just understood this was the last time the land would be divided, which was fine with him.

Chair Kennedy asked if Mr. Scharf would reside on the property himself?

Robert Scharf stated that was correct.

Chair Kennedy asked if he was taking the loan out in his name alone and would own the property?

Robert Scharf stated he and his wife were obtaining the loan and would own the property.

Colleen Dowdall stated she was aware that Mr. and Mrs. Scharf owned the property. At the time the agricultural covenant was applied for, Mr. Scharf did not own the property, but his wife did, with her sister and her sister's husband. Subsequently, Mr. and Mrs. Scharf bought out the sister and brother-in-law's ownership. Now Mr. and Mrs. Scharf own the property alone. On a item like this, one of the owners can apply to have the covenant removed. Both owners will have to sign the agreement, however it is not unusual for only one of the owners to apply and appear before the Commissioners.

Commissioner Evans stated she did not have a problem with this request.

Chair Kennedy stated he found it strange that Betsy Scharf had received a letter stating there was an agricultural covenant on the land. He asked if Betsy was saying she had never received such a letter.

Robert Scharf stated that same statement was on the survey, they just did not realize what was being explained. From the explanation they received, they thought it meant the land would not be divided. They did not fully understand what it meant.

Commissioner Carey asked Mr. Scharf if he understood correctly that this had been done for a neighbor who had part of a well on the property?

Robert Scharf stated that was correct, a well and part of an outbuilding. The neighbor paid for the survey that extended his property line.

Colleen Dowdall stated she seemed to understand. She asked Mr. Scharf if Parcel A-2 was the neighbor parcel?

Robert Scharf stated that was correct, that is why it was split in the first place.

Colleen Dowdall stated she thought Mr. Scharf owned both parcels, A-1 and A-2, but that was not the case. He only owned Parcel A-1. This process with the neighbor could have been done through a boundary relocation. She was not sure why it had been done through an agricultural covenant, but this did make the situation clear to her.

Commissioner Evans stated that granting this revocation made no change in the use of the land, but it did give Mr. Scharf the ability to complete financing with the bank.

Chair Kennedy stated he wouldn't have been able to construct the house with the agricultural exemption on it.

Commissioner Evans stated that was correct but a mistake had been made by the Health Department to grant the septic permit.

Colleen Dowdall stated she did not know for sure and did not want to speculate, but the neighbor may have had the agricultural covenant all along which would have then carried to both parcels after the split.

Robert Scharf stated he did not know either. This was the first time he had learned what an agricultural covenant means.

Chair Kennedy 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 G. Robert Scharf III to remove the agricultural covenant from Tract A-1 of COS 4098 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 it should be clear that the covenant was being lifted from only Tract A-1 of COS 4098.

There being no further business to come before the Board, the Commissioners were in recess at 1:48 p.m.

THURSDAY, MAY 6, 1999

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioners Carey and Evans attended the Community Prayer Breakfast held at the Christian Life Center. In the evening, the Commissioners attended the Upper Miller Creek Homeowners Association meeting held at the Linda Vista Golf Course Clubhouse.

ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheets – The Commissioners signed 12 Payroll Transmittal sheets:

1. Pay Period 24, with a total Missoula County payroll of \$665,118.72;
2. Pay Period 25, with a total Missoula County payroll of \$633,331.51;
3. Pay Period 26, with a total Missoula County payroll of \$627,743.51;
4. Pay Period 27, with a total Missoula County payroll of \$627,135.54;
5. Pay Period 1, with a total Missoula County payroll of \$670,178.52;
6. Pay Period 2, with a total Missoula County payroll of \$630,836.83;
7. Pay Period 3, with a total Missoula County payroll of \$638,255.55;
8. Pay Period 4, with a total Missoula County payroll of \$636,509.22;
9. Pay Period 5, with a total Missoula County payroll of \$623,350.89;
10. Pay Period 6, with a total Missoula County payroll of \$642,215.34;
11. Pay Period 7, with a total Missoula County payroll of \$663,438.25;
12. Pay Period 8, with a total Missoula County payroll of \$656,397.18.

Resolution – The Commissioners signed Resolution No. 99-028, revoking an agricultural use covenant for G. Robert Scharf III and Betsy Scharf, for Parcel A-1 of COS 4098.

Agreement – The Commissioners signed an Agreement with Brent and Jeanette Mickelson for payment for right-of-way acquired from the Mickelson's for the I-90 Interchange project. Settlement will be \$51,187.00, from the TIF bond proceeds. The Agreement was returned to Mike Sehestedt, Deputy County Attorney, for further signatures and handling.

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

FRIDAY, MAY 7, 1999

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


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MAY 10, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation May 10-11.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming National Retail Equipment Liquidation as principal for Warrant #101561, issued 4/30/99 on the Missoula County School District #34 General Fund in the amount of \$3,300.00, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Casey Miller as principal for Warrant #63042, issued 4/23/99 on the Missoula County MCPS Payroll Fund in the amount of \$256.68, not received in the mail.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending April 30, 1999.

TUESDAY, MAY 11, 1999

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:

Statement of Work -- The Commissioners signed a Statement of Work for FFY 2000 for OEM Coordinator Bill Silverman. The OEM Coordinator must meet the requirements of the SOW in order to receive FEMA funding. The Statement was returned to Bill Silverman in OEM for further handling.

Resolution -- The Commissioners signed Resolution No. 99-029 (superseding Resolution No. 98-089), a resolution adopting a water and sewer development fee for RSID #901, in the amount of \$1,381.00 per single family residential lot.

Agreement -- The Commissioners signed an Agreement for Provision of Professional Security Services between the University of Montana and the Missoula County Sheriff's Department, for the period of July 1, 1999 through June 30, 2000. Compensation shall be \$12.00 per hour for services for concerts and similar events, and \$10.00 per hour for other events, plus 12.90% of the total for work performed by reserve deputies and 33.48% of the total for work performed by regular deputies. The Agreement was returned to the Sheriff's Department for further signatures and handling.

Other items included:

- 1) Commissioners Kennedy and Carey agreed to commit \$300,000.00 in CTEP funds and \$50,000.00 in ARCO funds to the Kim Williams trail project.

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

WEDNESDAY, MAY 12, 1999

The Board of County Commissioners met in regular session; all three members were present; however, Commissioner Evans did not attend the Weekly Public Meeting in the afternoon.

Audit List -- Commissioners Kennedy and Carey signed the Audit List, dated May 11, 1999, pages 2-44, with a grand total of \$1,641,476.38. The Audit List was returned to the Accounting Department.

Plat -- The Commissioners signed the plat for Platinum Court, a subdivision located in the SW1/4 of Section 36, T14N R20W, PMM, Missoula County, a gross area of 2.92 acres, with the owners of record being Greg and Kathleen Booher.

Plat -- The Commissioners signed the plat for Linda Vista Eighth Supplement -- Phase 2, an urban residential subdivision located in the SW1/4, SE1/4 of Section 12, T12N R20W, PMM, Missoula County, a total area of 12.08 acres, with the owners/developers being Scott A. Twite and Joy E. Twite.

Proclamation -- The Commissioners signed a joint Proclamation with the City of Missoula declaring May 12 as UM Retirees' Day.

Technical Submission Forms – Chair Kennedy signed Technical Submission forms for \$500,000.00 in Economic Development Initiative Special grant funds for the SHARE House to construct a new facility. The forms were returned to Nancy Harte in OPG for further handling.

Renewal Grant Agreement – Chair Kennedy signed a 1998 Supportive Housing Program Renewal Grant Agreement between the US Dept. of Housing and Urban Development and Missoula County Share House. HUD's total fund obligation for this project is \$579,328.00. \$30,000.00 in leverage funds is required to keep the project operational into calendar year 1999 in order to be eligible for the application process. The Agreement was returned to Nancy Harte in OPG for further handling.

PUBLIC MEETING – May 12, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Bill Carey, County Surveyor Horace Brown, County Clerk & Recorder/Treasurer Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt.

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 list in the amount of \$1,641,476.38. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: John Moe Family Transfer

Colleen Dowdall, County Attorney's Office, presented the staff report.

This is a consideration of a request by John C. Moe and Gertrude H. Moe to create 6 family transfer parcels from that parcel described as Tract A-2 of COS 3145.

John C. and Gertrude H. Moe 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 8.83 acres in size located off Moe Road in Lolo. The applicants propose to create 6 parcels, each approximately one acre in size, for transfer to their six children: James C. Moe, Daniel R. Moe, Donald E. Moe, Thomas W. Moe, Mary Ann Georgia (nee Moe) and Nancy K. Moe Dye.

The history of the parcel is as follows: Deed to Moe June 4, 1964 filed in Book 235, Pages 91 & 92, of 10.5 acres. COS 3145 filed in 1984 creating occasional sale parcel of 1.84 acres sold to Brent Sells.

According to the records kept by the Missoula County Surveyor, the applicant used the occasional sale exemption to the Subdivision and Platting Act in 1984.

John Moe came forward to answer any questions the Commissioners may have.

Chair Kennedy explained that this process is a transfer under an exception to the Subdivision Act of the State of Montana. Because it is an exception and different from the usual way of doing things, the Commissioners are entitled to ask unusual questions about the proceeding, which may be of a personal nature. Colleen Dowdall had explained this request and he had no questions for the applicant. Commissioner Carey did not have any question as well.

Chair Kennedy 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 John C. and Gertrude H. Moe to create 6 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. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: Fred Black Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request by Fred J. and Nadine S. Black to create a family transfer parcel for that parcel described as Tract B of COS 3898.

Fred J. and Nadine S. Black have submitted a request to create 2 parcels and a remainder using the family transfer exemption. The current parcel is approximately 20 acres in size and is located near Potomac off Highway 200. The applicants propose to create an approximately 7.89 acre family transfer parcel for transfer to Berdine Strauss, the mother of Nadine Black, a 2.61 acre family transfer parcel for transfer to Della A. Black, the mother of Fred Black, and a 9 acre remainder parcel.

The history of the parcel is as follows: 20 acre tract created February 13, 1991 by exemption for parcels greater than 20 acres in size by William F. and Patricia A. Brandimere.

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

Fred Black came forward to answer any questions the Commissioners may have.

Chair Kennedy reiterated his explanation of the family transfer procedure. He asked Mr. Black if his mother and his wife's mother planned to live on the property.

Fred Black stated he hoped so, that was the intent of creating these parcels. Both the mothers are widowed and independent and the Blacks would like them close by to keep an eye on them.

Chair Kennedy 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 Fred J. and Nadine S. Black 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. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Hearing: East Missoula CDBG Application for Sewer Project

Cindy Wulfekuhle, Office of Planning and Grants, presented the staff report.

This is a request to conduct a public hearing on the East Missoula Sewer CDBG application; to approve submittal of the application on behalf of East Missoula residents to the State of Montana Department of Commerce CDBG Program; and to approve up to \$80,000 of County CDBG Program Income funds to be used to assist additional moderate-income property owners with sewer assessment and on-site connection costs.

For the past several years the East Missoula Sewer District Board has been actively investigating an alternative to individual septic use in its community. The District has been negotiating with the City of Missoula to receive City sewer service, after plans to build an independent facility in East Missoula could not be completed. To date, the District has also secured funding through DNRC, TSEP and the Water Quality District. The proposed CDBG grant, if awarded, will be used to pay the assessment and on-site connection costs for low-income, owner-occupied properties. The grant, combined with Water Quality District funds and requested County CDBG Program Income funds, will also pay the assessment and on-site connection costs for moderate-income, owner-occupied properties.

Cindy Wulfekuhle stated a survey was conducted in the East Missoula area to see what number of households would qualify for CDBG assistance. The survey showed there are 114 eligible property owners in the area. With the proposed funding package, all of the low-income and moderate-income folks would have their assessment and on-site costs paid for. All of the property owners in the area will benefit through this project, because of the DNRC and TSEP funding. An application is also being submitted to Rural Development that could possible result in a grant and low-interest loan, another benefit to all property owners. This CDBG application needs to be submitted to the Department of Commerce by May 28, 1999.

Scott Anderson, Neil Consulting, stated he has been working for the East Missoula Sewer District since January 1996. His firm was hired to prepare a facility plan to evaluate the situation in East Missoula regarding water quality, primarily looking at sewerage the area and providing sewage treatment in East Missoula. The study district was basically the fire district boundaries, but those boundaries may be adjusted slightly. There are lots of old, out of date, on-site systems, and approximately 76% are cesspools and seepage pits.

The Missoula Valley Water Quality District did a study assessing unsewered areas throughout the County. East Missoula was the number three priority in terms of need. The fourth priority is in the West Riverside, Bonner, Milltown area and a quick study of this area had been done.

The facility plan initially looked at providing a Community Wastewater Treatment System for East Missoula with a conventional gravity collection system. A site chosen for the plant, primarily Bandman Flats, did not succeed as there were problems acquiring the site. The next viable option for East Missoula was to connect to the City of Missoula. Negotiations were entered into with the City on conditions for sewer service. An interlocal agreement has developed as an outcome of negotiations. An acceptable agreement to both parties is close; it could be signed within the next couple of weeks. This agreement is key to the whole project moving ahead. A number of issues are included in the agreement, including annexation, cost of sewer service and connection costs.

The plan was completed in draft form in April 1996, and since then an affordable financing package for the project has been studied. A number of different grants have been applied for, including the DNRC Renewable Loan and Grant Program, the Treasure State Endowment Grant Program, and Water Quality District funding. These three programs are secure at this point. To further fund the financial package is today's hearing on the Community Block Development Grant Program (CDBG), targeted at low and moderate-income users. An application for the Rural Utilities Services Program is also being prepared.

The planning work is essentially complete; some preliminary fieldwork has been done. This was done prior to CI-75, which set the project back a few months, because of the bond election and the interlocal agreement. The issue of how to support the debt for this project has been discussed, possibly an RSID, Revenue Bond or some other type of bond. The tentative position is to go with a Revenue Bond, utilizing a law passed by the Legislature this session allowing a water and sewer district to issue a Revenue Bond and use an assessment to secure the bond rather than user charges. The design work is tentatively scheduled for summer, 1999. They would like to bid the project in late spring or early summer of 2000 and begin construction in 2000 as well.

The estimated project costs include \$343,000 for Administration/Financial; \$5,125,740 for Construction and \$205,200 for Low/Moderate- Income Service Lines, for a total estimated project cost of \$5,330,940. The anticipated sources of funding include: RRGL Grant, \$100,000; TSEP Grant, \$500,000; RUS Grant/Loan, \$4,172,940; EPA Grant, \$10,000; CDBG Grant, \$408,000; MVWQD Grant, \$100,000; Missoula County Grant, \$80,000 and Local Assessment, \$40,000. The estimated user cost, based on certain assumptions, is \$11.60 per month for Missoula Operations and Maintenance Charge and \$22.07 per month Capital Cost for a total monthly charge of \$33.67. This does not consider the benefits of the CDBG program, the Water Quality District grant and the \$80,000 the County is considering. That funding would be targeted toward the qualified low and moderate-income households. It would essentially eliminate the capital cost for all low and moderate income users as well as allow them to fund their connection costs, leaving them with just the \$11.60 Missoula O&M charge per month.

The projected timeline calls for Project Startup to be completed by the first quarter of 2000, Project Design completed by the second quarter of 2000, Bidding during the third quarter of 2000, and construction beginning in the third quarter of 2000 and completed by the first quarter of 2002. Depending on funds availability, the project may be broken into two phases.

The public involvement in this project has been tremendous. The District indicated that from the beginning they wanted a lot of public involvement to make sure the public knew everything about this project. Ultimately, the public voted the project in. There will be another election for the revenue bond. A number of public meetings have been held and three newsletters have

gone out to inform residents of the progress of the project. This has garnered good public support for the project; there has been nothing negative from residents. The biggest issue that has come forward is annexation. The city has agreed to defer annexation to the year 2019.

Chair Kennedy stated that the issue of pavement, while not an item of discussion today, needs a heads up, pertaining to the proposed schedule. He felt calling for bids in the third quarter basically precluded any work being done in that year, perhaps that bidding date should be moved forward. There is also a limited window of availability on paying funds, which is a major issue and should be addressed.

Scott Anderson stated that pavement repair is figured into the projected schedule, but alleys that are currently unpaved are not included. The schedule could conceivably be moved up, to a certain extent it is a function of the funding of the project and when the bond election might be passed.

Chair Kennedy stated that rather than wait until the last moment, perhaps everyone needs to get involved and exert as much pressure as need be to get this project on track as quickly as possible.

Horace Brown stated the CMAQ funds he has available to pave run out October 15, 2000. If the work is not done by that time, he will need the support of the Board and the people involved to turn the ISTEA funds into TEA-21 funds, so they can be carried forward. He will need to know the timing so something different can be done with the funds.

Chair Kennedy stated the money would then come out of the TEA-21 funds rather than the ISTEA funds.

Horace Brown stated that was correct and the ISTEA funds could be used for other projects.

Chair Kennedy stated he would like to see the design done earlier and have construction begin in 2000, which would save everyone problems and money and would be worthwhile. He also inquired about the abandonment of the old systems like the cesspools and septic. Was that a component of the overall costs?

Scott Anderson stated abandonment costs have been included. There are also costs included for stubbing out the service lines to the property boundary for all residents in the area. The hookup money available would apply to the low to moderate-income residents, making the connection from the stub out to the house connection itself.

Chair Kennedy opened the public hearing.

Jack Ballas, Chairman of the East Missoula Sewer District Board, stated he would like to thank the County Commissioners for the hearing on this application. This has been quite a project for himself and the residents of East Missoula. The project started in 1992 and has progressed to this point today. State or local authorities did not mandate this project; it was anticipated and pursued by the residents themselves. He voiced his thanks to the Commissioners and his support for the project.

Senator Dale Mahlum, Senate District 35 (which includes East Missoula), stated this is a great thing for the community and the aquifers. He was pleased the community took it upon themselves to initiate this project rather than being forced to do it. He hoped the Commissioners would give this project their endorsement and quickly move forward with it.

Steve King, Missoula City Engineer, stated he was in favor of this project and the CDBG funding for this project. East Missoula is within the 201 Facilities Plan Service Area for wastewater operations. The City has been working cooperatively with the District over the last few years to review their master plan, which is a reasonable approach to sewerage the area. The City has existing capacity in both the lines to East Missoula and the wastewater treatment plant. They have also been working cooperatively on the agreement for contracting sewer service in the area and delayed annexation. The City will be happy to continue working with the District to move this project along as quickly as possible.

Peter Nielson stated he is Supervisor of the Environmental Health Division, City-County Health Department and Missoula Valley Water Quality District. These groups very much support the CDBG application and applauded the folks who have put in so much time and effort to move this project along. The project will serve an area which is currently served by high densities of septic systems, most of which are seepage pit or cesspool systems. Connection of these systems to public sewer will assist with efforts to protect the Missoula Valley aquifer and with the County's commitment to terms of the Voluntary Nutrient Reduction Program (VNRP). He urged the Commissioners support and thanked the efforts of those responsible to making this happen.

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

Chair Kennedy stated he has been involved with the project since before he became a Commissioner. Its success to date is attributed to the leadership, initiative, persistence and determination of the Sewer District. He was proud of what they had done. They have done a remarkable job and hired a fine consultant; he appreciated Scott Anderson's work. The process has proceeded without much caution from the Commissioners due in large part to the integrity of those who head the project. He was very pleased and wished them much success. The benefits that will accrue from this project will also accrue downstream, in connection with the VNRP that has just recently been adopted. Their initiative to do this without being directed to do so deserves special thanks. The Commissioners want to see sewers out there as quickly as possible.

Commissioner Carey asked Cindy Wulfekuhle what the cost would be to those residents that are not considered low or moderate-income?

Cindy Wulfekuhle stated the anticipated on-site costs are approximately \$1,800 and the assessment would be approximately \$3,064.

Scott Anderson stated the assessment was calculated on a monthly basis at approximately \$33.67. Those residents not considered low or moderate income would pay \$11.60 to the city, \$22.07 for the capital cost and approximately \$1,800 for on-site connection work.

Cindy Wulfekuhle stated the \$22.07 per month charge is based on the \$3,000 assessment spread out over 20 years at 4.75 percent.

Chair Kennedy stated the capital cost could be paid up front if a resident chose to do so.

Cindy Wulfekuhle stated that was correct.

Chair Kennedy stated that would leave them with no monthly charge for capital costs, only the \$11.60 charge to the City.

Vickie Zeier stated she understood there was a bond election scheduled for August or September, which she has not included in her budget. She had a few concerns regarding the cost of such an election. She assumed it would be a mail ballot because of the timeframe involved. She needed to know if the County would be reimbursed and if the return postage would be included, which would facilitate a higher percentage of returns.

Scott Anderson stated there were approximately 750 electors in the area.

Chair Kennedy stated the election cost would be fairly modest.

Scott Anderson stated he would provide Vickie Zeier with an accounting of the costs involved. He felt sure the District would be able to cover the costs of the election.

Commissioner Carey moved that the Board of County Commissioners approve submittal of the CDBG application in the amount of \$400,000 to support low and moderate-income residents of the East Missoula Sewer District for the construction project. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey moved that the Board of County Commissioners approve up to \$80,000 of County CDBG Program Income funds to be used to assist additional moderate-income property owners with sewer assessment and on-site connection costs. Chair Kennedy 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.

THURSDAY, MAY 13, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation May 13-14. In the evening, Commissioner Evans attended the Missoula Law Enforcement Memorial held at the Memorial Rose Garden.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Linda Brunson as principal for Warrant #38340, issued 4/7/99 on the Missoula County General Fund in the amount of \$92.35, not received in the mail.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Charlene Dwyer as principal for Warrant #63531, issued 5/7/99 on the Missoula County MCPS Payroll Fund in the amount of \$156.54, not received in the mail.

ADMINISTRATIVE MEETING

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

Funding Letter -- Commissioners Kennedy and Carey signed a letter to Mayor Mike Kadas stating that the Commissioners will commit \$300,000.00 in County CTEP funds, and \$50,000.00 in ARCO funds to the extension of the Kim Williams Trail to Deer Creek Road. Commissioner Evans disagreed.

Professional Services Contract -- The Commissioners signed an Amended Professional Services Contract with James Ouellette for dental care for Partnership Health Center patients. The Contract amount is increased by \$600.00 (raised by sale of prints at PHC's dedication ceremony), to \$10,600.00, through June 30, 1999.

Resolution -- The Commissioners signed Resolution No. 99-030, a resolution relating to economic development revenue bonds for the Dinny Stranahan Advanced Cancer Research Institute, Inc., in an amount not to exceed \$7,000,000.

Extension -- The Commissioners approved a six-month extension of the final plat submittal for Williams Addition (formerly known as Edwards Addition), making the new filing deadline October 23, 1999, with a letter to Charles S. Johnson of Druyvestein, Johnson and Anderson.

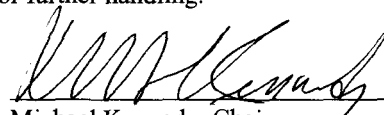
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, MAY 14, 1999

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

Deed Documents -- Chair Kennedy signed a Subordinate Deed of Trust and a Deed Restriction Agreement with Jaime E. Devlin for property located at 2302 Eaton, Missoula, for a loan amount of \$4,100.00 through the HOME Program. Both documents were returned to Cindy Wulfekuhle in OPG for further handling.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MAY 17, 1999

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a Highway 93 meeting held at the Lolo School.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Michael Dewing as principal for Warrant #63527, issued 5/7/99 on the Missoula County MCPS Payroll Fund in the amount of \$70.68, not received in the mail.

Agreement -- Chair Kennedy signed an Agreement with the Montana Department of Environmental Quality for the purpose of providing public information and outreach regarding radon. Services must be completed by June 30, 2000. Compensation shall be a maximum of \$7,000.00. The Agreement was forwarded to DEQ in Helena.

TUESDAY, MAY 18, 1999

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:

Extensions -- The Commissioners approved two extensions:

1. A six-month extension of the final plat submittal for Intoto Farms Summary Subdivision, making the new filing deadline November 19, 1999, with a letter to Ron Ewart of Eli & Associates.
2. A six-month extension of the final plat submittal for Deschamps Lane Subdivision #2, making the new filing deadline November 19, 1999, with a letter to Ron Ewart of Eli & Associates.

Professional Services Contract -- The Commissioners signed a Professional Services Contract with Druyvestein, Johnson and Anderson to provide engineering services for design and bid-ready documents for sewer main extension at Missoula Development Park to serve the proposed Perry Ashby property development at Reserve Area "B." Performance schedule is May 17, 1999 through June 30, 1999. Compensation shall not exceed \$8,616.00.

Resolution -- The Commissioners signed Resolution No. 99-031, a resolution to authorize a Community Development Block Grant application for the East Missoula County Sewer District.

Shoreline Permits -- Chair Kennedy signed two Shoreline Permits:

1. Edgewater Ranches, LLC, for a manufactured "roll-in" aluminum dock on Salmon Lake, Tract 1 of Bigwaters Ranch Subdivision;
2. Bob and Renee Morgan, to replace an existing dock on Lindbergh Lake, Lakeshore Tract 2, Lot 31.

Both permits were returned to Brian Maiorano in OPG for further handling.

Budget Transfer -- The Commissioners signed a Budget Transfer for the Health Department, in the amount of \$40,142.00 to reduce IMR-MCH and Infant Mortality Review to actual contract amounts for FY99, and to add a new revenue account for SMMR/FICMR program.

Resolution -- The Commissioners signed Resolution No. 99-032, a budget amendment for the Health Department, with expenditures in the amount of \$26,060.00, and revenue in the amount of \$50,000.00.

Warranty Deeds -- The Commissioners signed two Warranty Deeds:

1. Between the Missoula County Airport Industrial District and Roscoe Steel and Culvert Co., for Lot 4, Block 8, Missoula Development Park Phase 7
2. Between the Missoula County Airport Industrial District and Four S Corp., for Lot 2A1 in the Missoula Development Park Phase 2.

Both deeds were returned to Mike Sehestedt, Deputy County Attorney, for further handling.

Memorandum of Agreement -- The Commissioners signed a Memorandum of Agreement with Crisp Water Testing and Treatment to operate and maintain the Sunset West water system. Compensation shall be \$178.00 monthly for basic services. The Agreement was returned to Paul Webber, CAO, for further signatures and handling.

MRA Letter -- The Commissioners signed a letter to Geoffrey Badenoch, Director of the Missoula Redevelopment Agency, requesting \$600,000.00 to assist with the remodeling of the Missoula County Courthouse Annex.

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

WEDNESDAY, MAY 19, 1999

The Board of County Commissioners met in regular session; all three members were present. The Commissioners traveled to Polson, where they attended the MACo District 10 and 11 Counties Meeting. Commissioner Kennedy also attended a Regional Juvenile Detention Meeting held in Polson following the MACo meeting.

The Weekly Public Meeting scheduled for this date was canceled as the Commissioners were out of town.

THURSDAY, MAY 20, 1999

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

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Shauna Miller as principal for Warrant #1121, issued 5/10/99 on the Missoula County 187 Fund in the amount of \$182.50, not received in the mail.

Plats -- The Commissioners signed three plats:

1. Starburg Addition, a two-lot subdivision located in the NW1/4 of Section 8, T16N R14W, PMM, Missoula County, a total acreage of 10.28 acres, with the owners of record being Robert and Jewell Starburg.
2. River Watch -- Phase II, a 7 lot residential/recreational subdivision located in Sections 8 and 17, T15N R14W, PMM, Missoula County, a total area of 32.83 acres, with the owner of record being Sunlight, LLC. A Subdivision Improvements Agreement and Guarantee was signed for lots 9-15.
3. Pineridge Estates, a subdivision located in the NE1/4 and SE1/4 of Section 10, T16N R15W, PMM, Missoula County, a total area of 18.1 acres gross and net, with the owners of record being Emery J. and M. Lorraine Johnson. A Subdivision Improvements Agreement and Guarantee was also signed.

ADMINISTRATIVE MEETING

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

Resolution -- The Commissioners signed Resolution No. 99-033, a resolution setting County assignment cost for assignment of tax lien at \$75.00 for all assignees of County tax liens.

Affidavit Affirming Deed -- The Commissioners signed an Affidavit Affirming Deed regarding State-owned lots in the Missoula Development Park. The Affidavit was returned to Paul Webber, CAO, for further handling.

Agreement -- Chair Kennedy signed an Agreement between the Missoula Office of Planning and Grants and the Montana Department of Environmental Quality for the purpose of implementing a wetlands inventory and education program in Missoula, Montana. Performance schedule is May 1, 1999 through May 31, 2000. Compensation shall be up to \$42,087.00. The Agreement was forwarded to DEQ in Helena.

Other items included:

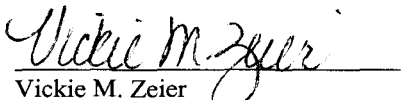
- 1) The Commissioners reappointed Sue Mathewson to a 3-year term on the Park Board, until May 2002. Tate Jones was appointed to a 3-year term as a regular member on the Park Board, until May 2000. Dan Morgan was reappointed to a 1-year term as first alternate member on the Park Board, until May 2000.

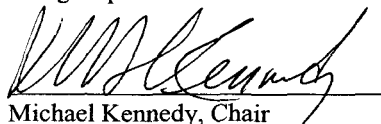
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, MAY 21, 1999

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Carey attended a Mental Health Board meeting held at Fort Missoula during the day, and Commissioner Kennedy was out of the office all afternoon.

Audit List -- Commissioners Kennedy and Carey signed the Audit List, dated May 21, 1999, pages 2-42, with a grand total of \$194,768.50. The Audit List was returned to the Accounting Department.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MAY 24, 1999

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

Intercap Form -- Chair Kennedy signed an Intercap Program Disbursement Request Form for Disbursement Request #2. The purpose of the disbursement was to purchase Sheriff and Motor Pool vehicles, repair the Courthouse roof, and build two new 911 microwave sites. The amount reserved was \$402,990.00. The form was returned to Jane Ellis, Chief Financial Officer, for further handling.

Amendment -- Chair Kennedy signed Amendment Number One to the Tobacco Subcontract with Community Care, Inc., amending the completion date to May 31, 1999. Reimbursement shall be up to \$3,300.00. The Amendment was returned to Holly Carnes in Health Promotion for further handling.

TUESDAY, MAY 25, 1999

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:

Resolutions -- The Commissioners signed three resolutions:

1. Resolution No. 99-034, a resolution of intention to create Rural Special Improvement District No. 8925, for maintenance of the water system serving the Sunset West area of Missoula County, Montana, and setting the hiring date for June 16, 1999 at 1:30 pm.

2. Resolution No. 99-035, a budget amendment for the Health Department, with expenditures of \$4,858.00 and revenue of \$45,000.00 for the SMMR/FICMR program.
3. Resolution No. 99-036, a budget amendment for the Health Department, with expenditures of \$37,638.00 and revenue of \$40,000.00 for the FAIM program.

Benefit Plan Amendment – The Commissioners signed an Amendment to the Missoula County Employee Benefits Plan Document, effective as of July 1, 1999, stating that the 20% copayment for prescription drugs will not accrue toward the benefit year out-of-pocket maximum for covered medical expenses.

Standard Agreement – Chair Kennedy signed a Standard Agreement with the Montana Department of Transportation, Traffic Safety Bureau, to use overtime patrols by the Sheriff's Department on holiday weekends to issue citations for non-use or absence of required seat belts by drivers and passengers stopped for these or other traffic violations. Project shall be completed by September 30, 1999. Compensation shall not exceed \$5,000.00. The Agreement was returned to Don Morman in the Sheriff's Department for further handling.

Other items included:

- 1) The Commissioners discussed the issues and problems related to design and finance of solutions to the County's space needs.
- 2) The Commissioners approved a request by the Lolo Community Council to amend its bylaws regarding election of officers to combine the offices of treasurer and secretary.

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

WEDNESDAY, MAY 26, 1999

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

Audit List -- Commissioners Kennedy and Carey signed the Audit List, dated May 26, 1999, pages 2-41, with a grand total of \$371,586.94. The Audit List was returned to the Accounting Department.

Resolutions – The Commissioners signed two resolutions:

1. Resolution No. 99-037, a budget amendment for the Sheriff's Department, in the amount of \$5,000.00.
2. Resolution No. 99-038, a budget amendment for the Office of Planning and Grants, in the amount of \$579,328.00.

PUBLIC MEETING – May 26, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder/Treasurer Vickie Zeier, and Chief Civil Attorney Michael Sehestedt.

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 list in the amount of \$371,586.94. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

At this point Commissioner Evans left the meeting temporarily.

Hearing: Godkin-Palermo Family Transfer

Michael Sehestedt, Chief Civil Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 1 on COS 4007, Section 10, T13N, R16W.

Victoria Godkin-Palermo, previously Victoria Wills, has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 62.96 acres in size located off Montana Highway 200 near Potomac. Ms. Godkin-Palermo proposes to create two additional parcels, each approximately 20 acres in size, for transfer to her son, Brandon M. Godkin and daughter, Bridgette L. Godkin.

The history of the parcel is as follows: COS 4007 was used to create a tract over 20 acres in size by Roy Wills in 1991.

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

Chair Kennedy asked Victoria Godkin-Palermo to come forward.

Victoria Godkin-Palermo, formerly Victoria Wills, came forward to answer any questions the Commissioner may have.

Chair Kennedy stated that since this is a division of land that is unusual and does not go through the subdivision process, it allows the Commissioners to ask different questions which may be personal in nature.

Commissioner Carey had no questions.

Chair Kennedy had no questions.

Michael Sehestedt asked if both of the children were adults.

Victoria Godkin-Palermo stated they were 18 and 24 years of age.

Chair Kennedy 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 Victoria Godkin-Palermo 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. Chair Kennedy seconded the motion. The motion carried on a vote of 2-0 (Commissioner Evans absent).

At this point, Commissioner Evans returned to the meeting.

Hearing: Bahnmaier Family Transfer

Michael Sehestedt, Chief Civil Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 21 on COS 3229, Section 22, T13N, R16W.

Debra and Dale Bahnmaier 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 twenty acres in size located off Mystic Moon Road, near Potomac. The Bahnmaiers propose to create an approximately 5 acre parcel on the north portion of the property for transfer to their parents, Mr. & Mrs. Ernest P. Boaze.

The history of the parcel is as follows: COS 3229 was used to create a parcel 20 acres or greater in size by Roy Wills in 1984.

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

Dale Bahnmaier came forward to answer any questions the Commissioners may have.

Chair Kennedy stated that since this is a division of land that is unusual and does not go through the subdivision process, it allows the Commissioners to ask different questions which may be personal in nature. He asked if Mr. Bahnmaier's parents intend to live on the property?

Dale Bahnmaier stated that was their intent, actually they were his mother-in-law and father-in-law.

Chair Kennedy stated that the purpose was to transfer the property to them so they can construct a home.

Dale Bahnmaier stated that was correct.

Commissioner Carey asked about the possibility of new covenants on the property after the transfer.

Dale Bahnmaier stated the covenants would probably be to state there would be no logging, gravel pits or junk yards allowed.

Commissioner Evans had no questions.

Chair Kennedy 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 Dale and Debra Bahnmaier 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.

Hearing: CDBG Application (Nutritional Laboratories International)

Cindy Wulfekuhle, Office of Planning and Grants, presented the staff report.

Nutritional Laboratories International (NLI), in the Lolo Shopping Center, has been in business since 1997. The company provides testing, processing and packaging of raw materials for national and international businesses that sell dietary food items and other health food supplements.

The company received a \$260,000 state CDBG loan in 1998, through Missoula County. The loan was used for working capital, equipment and additional inventory. As a condition of receiving the loan, NLI was required to hire approximately 21 low to moderate-income individuals within two years of receiving the loan. As of earlier this month, 13 low to moderate-income individuals have been hired. So far the company is meeting its hiring goals.

The new loan, in the amount of up to \$395,000, is part of a \$1.2 million expansion. The new loan will require that 20 additional full time employee positions be made available for low to moderate-income individuals. The company is proposing to hire 23 new full time employees, 20 of which will be available for low to moderate-income individuals. \$5,000 of the CDBG grant will be for administration, for a total grant of \$400,000.

Currently the company's operation includes encapsulation, bottling and packaging. This is in addition to quality control, testing, mixing and other aspects of the process. The company hopes to expand into tablet production, which is what the expansion is for. This will result in an increase in sales.

The company has a starting salary ranging from \$6.50 to \$9.00 per hour. Within 6 months the salary increases to \$7.50 to \$10.00 per hour. There are then 50 cents per hour increases over a two-year period, so that the ranges are from \$9.00 to \$12.00 per hour. These positions are for individuals that will not be required to have more than a high school education.

Employee benefits of the company include vacation, sick and holiday pay and health insurance. At a public meeting on March 22, 1999, Diana Mitchell of the Lolo Community Center, who wrote a strong letter of support for Nutritional Laboratories first loan, commended Nutritional Laboratories and said she supported the work they have done in Lolo.

Other sources of funds in the project include a Montana Department of Agriculture loan, a loan and line of credit through First Security Bank and funds from NLI. Barry Rouse, the regional development officer with the Department of Commerce, has not completed his review of Nutritional Laboratories financial information. Therefore, it is requested to approve the application submittal contingent on Mr. Rouse's review and approval of those documents.

Sheridan Wise, Chief Financial Officer of Nutritional Laboratories, stated that Cindy Wulfekuhle's presentation summed up what their new project included. It is an expansion program to increase capacity and increase sales. To increase sales, more employees are needed. They are seeking the CDBG loan in order to facilitate the expansion. It is felt the company can help Missoula County at the same time.

Chair Kennedy opened the public hearing.

John Fletcher, 655 Evans, stated he had presented a letter to the Commissioners (the text of the letter follows). He is not directing his comments at NLI; he has been by their facility and thought it looked good. In Cindy Wulfekuhle's staff report, he did hear the wage levels mentioned. He wanted to bring up three local, recent economic studies, one by the Missoula Housing Authority, one by Missoula Measures, and the Job Gap study. The indicator from those three studies are that the wage levels as Cindy Wulfekuhle reported are significantly lower than bare levels of sustenance in Missoula County. He would like to suggest that NLI consider increasing their starting salary. There are two levels in these studies, for a single adult with a high school education the lowest salary for self-sufficiency is \$7.15 per hour according to one study and \$9.02 per hour according to another study. He suggested the Commissioners might want, as a matter of policy for other such applications, to take into account the benchmarks that have been established in local studies.

The text of his letter reads:

Testimony at May 26, 1999 Public Hearing of Missoula County Board of Commissioners regarding awarding CDBG funding for loan to Nutritional Laboratories, Inc.

The stated purpose of the applicant's loan request is to expand its operation and create employment opportunities for low to moderate-income individuals.

Our community has seen three recent studies of its economic well being:

Data compiled by the Missoula Housing Authority shows that the mean market value of a home in Missoula in 1998 was \$115,000. Most first-time homebuyers rely on wage income for home purchase. Average wage income in Missoula County in 1998 was \$23,425. Wage income, corrected for inflation, has actually declined over the past ten years and is only now regaining the buying power it had in 1987. First-time homebuyers would need an income of approximately \$35,500 (or an hourly wage of \$17.08) to service the mortgage on the median-priced home assuming current lending practices and interest rates. Corrected for inflation, the income needed to buy a home in 1998 is 30% higher than it was in 1990, while wage income, corrected for inflation, is about the same as it was in 1990.

The May 1999 edition of the Missoula Measures Report on the Economy states a family (two parents, an infant, and a pre-school child) need an annual income of \$40,164 (or an hourly wage of \$19.31) to achieve bare-but-basic self-sufficiency in Missoula. A single adult would need an annual income of \$14,880 (an hourly wage of \$7.15).

The January 1999 Job Gap Study released by the Northwest Policy Center at the University of Washington found that a Montana family of four (two adults and two children) needed an annual income of \$34,941 (hourly wage of \$16.80) and that a single adult needed \$18,760 (hourly wage of \$9.02).

I respectfully request that the Missoula County Board of Commissioners require the applicant to commit to compensation which takes into account these data. Missoula County already has sufficient low-wage jobs, public funds should not subsidize the creation of more. When an employer pays less than a living wage, its employees may be placed in the position of seeking public assistance to supplement low incomes. Government oversight should ensure that public funding is not abused (twice?) in such ways.

--John Fletcher, P.O. Box 8381, Missoula, MT 59807, (406) 721-4269

Russ Hickman, 1828 Howell, stated he agreed with Mr. Fletcher's comments, primarily with regard to wages and giving a business a grant then having to subsidize employees later on. It makes sense that the government shouldn't have to help out twice. He would like to see companies give employees a wage that will allow them to not qualify for further assistance. This could be used as a benchmark for the state of Montana to insist that employees be treated fairly in regards to wage. NLI's wage and benefit package seems pretty decent but improvements could be made. This is a chance to start addressing some of the economic problems in Missoula County and the United States as a whole, the issue of the uneven distribution of wealth and quality of life. This would be one small step to address the living wage issue. He presented a copy of the Northwest Job Gap Study to each Commissioner and entered the following letter into the record.

The Missoula Coalition for Living Wages is a diverse group of organizations and includes advocacy groups, an economic development organization, a business organization, labor organizations, organizations representing Native Americans, and others. The Coalition advocates for economic development policies that promote the development of jobs that pay workers a living wage. Most notably we have advocated that the City of Missoula pass a living wage ordinance which would require that businesses being subsidized by the city in the name of job creation agree to pay their workers a living wage. The proposed ordinance would also require that recipients of the city's resources meet other conditions as well.

You have before you a request from Nutritional Laboratories, Inc. concerning a \$400,000 Community Development Block Grant economic development application, in part for the purpose of creating jobs for low- and moderate-income workers.

The Missoula Coalition for Living Wage Jobs calls on you to make this loan on the condition that Nutritional Laboratories, Inc. pays its workers a living wage. We believe that there are two simple, irrefutable reasons to place such a requirement on the company:

- 1. There are enough low-wage jobs in the Missoula and Montana economies. There is no reason to subsidize the creation of such jobs when they are being created at a rapid enough pace by businesses that don't require public subsidies.*
- 2. There is no rational reason to subsidize the creation of jobs that pay workers less than a living wage. When governments subsidizes low-paying jobs it provides multiple subsidies because of the fact that workers employed at these jobs often qualify for public assistance.*

We recognize that local government can only do so much to stimulate the local economy and the creation of jobs that pay enough to sustain families. But given the limits of your ability to have such an impact, we call on you to embrace one of the few policy options available to you – conditioning the granting of public resources on a recipient's willingness to pay living wages.

Sincerely – Melissa Case, Hotel and Restaurant Employees Union; Anita Anderson, Montana People's Action; and Russ Hickman

Melissa Case, 1617 Stoddard, stated she is the Political Director for the Hotel and Restaurant Employees Union. She agreed with the other two speakers and wanted to touch on a few other items that were not discussed. She said the NLI wage levels are not abhorrent, they are not paying \$5.15 per hour. Members of the Living Wage Coalition feel that if there are large sums of money given out, they want to make sure it is invested properly. People can at least be at a point where they can sustain themselves. She asked about health benefits that were offered through the company, and also any pension plan, retirement plan, on-site day care or 401(k) plan, which offset the wages offered. There are other things employers do that reflect more than wages. When a business is subsidized in some cases the free market economy is undermined. They do not want established, self-sufficient businesses at a competitive disadvantage with subsidized businesses. If the government is going to invest in the company they should make sure it is a good and solid investment for Missoula. If the Commissioners desire, she may be reached at her office at 549-5931.

Rebecca Holloway of Clinton stated her questions have to do with the percentage of low-income people who live in Lolo. It is her understanding there is no public transportation from Missoula to the Lolo. This lack of a way to get to work is a big barrier to low-income folks having successful employment. She did not know if there were any statistics available on low-income applicants in Lolo or if people would have to commute, but would like to see them if there were some. She would also like to see the employers give some kind of incentive for carpooling. Dependable transportation is definitely an issue.

Cindy Wulfekuhle wanted to make a clarification that was not stated in her presentation. This is not a grant to the company. The money is a grant to Missoula County who in turns loans it to the company. The loan is repaid over 5 years at 7% interest. The County then turns around and uses the money to fund other projects such as economic development, housing projects or anything in the public facility arena. This money comes back to the community and is reused. There are statistics available about the low and moderate-income individuals in Lolo but she did not have them with her today. She has spoken with Mountain Line and Ron Klaphake, Chairman of the Mountain Line Bus System, about the public transportation to Lolo. There is a vanpool system that brings people from the Bitterroot to Missoula. According to Ron Klaphake, they have not heard any interest expressed in going from Missoula to the Bitterroot. Mr. Klaphake suggested she contact Noel Larrivee of MR TMA to see if there is any interest. She will follow up with this investigation. The vanpool is a good value at 6 cents per mile.

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

Commissioner Evans complimented the company on the number of employees they currently have and the 23 more they plan to hire over the next two years. In regards to the comments about wages, a responsible company pays their employees as much as they possible can. Having been a business owner, she knows they pay employees as much as possible because they want to retain employees, but she also recognizes there are business realities. She would not tell this company they should pay a specific amount to their employees, especially since Missoula County does not do that same thing for their employees. Until the County pays all of their employees at that same rate, she would not feel comfortable imposing or asking NLI to do that for their employees. She does understand and appreciate the comments made regarding a living wage. She wished that could happen but business reality being what it is, it is lucky to have the 45 employees at NLI they currently have with 23 more coming. She did not want to do anything to prevent that from occurring.

Commissioner Carey asked Sheridan Wise to respond to Ms. Case's questions in terms of other employee benefits such as day care, pension funds, etc.

Sheridan Wise stated they did not have day care at the present time but it is something they have talked about. It is not a hot topic at the moment. There is a day care facility close to their location and perhaps some arrangements could be made with them. Their health insurance is through Blue Cross/Blue Shield and the company pays 80% of the premium for the

employees and their families, with only a 90 day waiting period. There is a paid vacation of 1 week after 1 year and 2 weeks after 2 years, which begins accruing from the first day of employment. There give four hours of sick/personal time per month that beings accruing from the first day of employment. They give eight paid holidays per year, which also accrues from day one.

Cindy Wulfekuhle asked if they had a pension plan or 401(k) plan?

Sheridan Wise stated they do not have one at the moment but they have talked about some kind of retirement plan. He feels strongly they need one and will work to have one shortly.

Cindy Wulfekuhle asked if health benefits are paid with pre-tax money.

Sheridan Wise stated the employee portion of premium payment was with pre-tax money, which is a new development for the company.

Commissioner Carey asked Mr. Wise if he had any idea of what percentage of their current employees live in Lolo?

Sheridan Wise stated it was probably less than 50% that live right in the Lolo area. There are at least two groups of employees in the Missoula area that carpool. He asked employees if they have any problems with the drive and there were no complaints, nor have there been any absenteeism or tardiness problems. They have at least 2 employees who drive in from Hamilton.

Commissioner Carey urged Mr. Wise to follow up with Cindy Wulfekuhle about MRTMA. They have recently hired an Employer Outreach Coordinator to bring more employers on board.

Chair Kennedy stated that when this first came to the Commissioners attention some time ago, similar questions were asked. At that time those questions were successfully answered and the previous CDBG application was granted. When asked about the wage scale at that time, it was the same as it is now. He felt the wage scale needed to increase over time. He was wondering what their thinking was about that issue. He heard Mr. Fletcher's and Ms. Case's comments and they reflect how he feels. The public is asked to support and subsidize an organization and there needs to be some give and take. It is hoped that the employee range of benefits and wages are satisfactory and sustainable. He wondered what the company thinking was on keeping the wage scale flat.

Sheridan Wise stated the beginning of the wage scale is flat, the same as it was before, but they have passed a cost of living increase on the higher end as people move up. The cost of living adjustment is based on the Consumer Price Index.

Chair Kennedy stated the wage range is \$6.50 to \$9.00 per hour. What was the discrimination? Further, he would like to know how many of the employees advance to the higher grade? Are people leaving before the six month period is over? What percentage continue on to be permanent employees?

Sheridan Wise stated there was a very low turnover rate, he would estimate 98% to 99% of employees are making it even further than the six month time period. The difference in the starting wage is primarily based on the type of position - general labor, quality control inspector or supervisor - which require only a high school education.

Chair Kennedy asked if they could break down the percentages? They have 45 employees, how many were at each different scale?

Sheridan Wise stated they actually have 47 employees now, 32 are production, 4 are quality assurance and 4 are supervisory.

Chair Kennedy stated that the 32 production employees are on the low end of the scale, was that correct?

Sheridan Wise stated as far as the starting wage that was correct.

Chair Kennedy asked if there was some sense of what those people make on average.

Sheridan Wise stated they make between \$7 and \$8 per hour. The starting wage is \$6.50 per hour, after 90 days the wage is increased to \$7.00 per hour and at six months it goes to \$7.50 per hour. At one year it goes to \$8.00 per hour. At a year and a half it goes to \$8.50 per hour and at two years it goes to \$9.00 per hour. Beyond that it goes up with the cost of living based on the consumer price index.

Chair Kennedy stated one of the questions asked earlier had to do with the location. Having a business in Lolo would eliminate some traffic into and out of Missoula. Mr. Wise stated that fewer than 50% of the employees live in Lolo which means the balance are somewhere else, many probably in Missoula. Transportation is a big issue when some of the employees are not making a sustainable wage. Adding the overall cost of transportation, it becomes even more acute. He felt there needed to be some way to deal with that issue. Since they are receiving a low interest loan that may not be obtainable in the private market, there needs to be some exchange for the privilege, perhaps better transportation, day care, etc.

Sheridan Wise stated they are interested in providing benefits to keep the people they do have.

Chair Kennedy wanted to reiterate the company answered very hard questions during the previous loan proposal. They are doing a good job but he wanted to emphasize that the wage scales are very important and they needed to do what they can to raise the basic salary from \$6.50 per hour. It should not remain flat, it needs to increase.

Commissioner Carey asked Ms. Case how the wage scale for this company compares to the prevailing introductory wages in the Missoula area.

Melissa Case wanted NLI to know she felt they had an excellent benefit package. The living wage as defined by the Missoula sustainability number is \$7.50 per hour. The Northwest Job Gap Study took housing, food, transportation and even some savings into account and came up with a per hour wage of \$9.02. The average annual wage for people in the restaurant industry is approximately \$10,000 per year, which is below poverty level. To be at poverty level, according to the U.S. Bureau of Labor Statistics, the wage per hour is \$7.52. That puts a single individual at a wage that would not qualify for subsistence such as food stamps. A wage level that is below \$7.50 per hour is unacceptable. It creates a gap where people are being subsidized twice. For NLI to bump the starting wage to \$7.50 per hour takes a huge burden off the community in terms of subsidizing health care, childcare, food or transportation. In terms of acceptability, \$9.02 per hour is really what people need, that is the level at which a single person can sustain themselves and move forward. She felt that anything less than poverty level is unacceptable. As a businessperson, she understood Commissioner Evans comments. She did not want to tell another businessperson what to pay. She realizes this is a loan and will be repaid which will benefit the community, but she did not want the funds to go right back into subsidizing workers.

Commissioner Carey asked what some introductory wage rates are in other industries?

Melissa Case stated she represented union folks who typically make between 35% and 40% more than non-union counterparts. She remembered the light manufacturing average starting salary from the Department of Labor is \$10.22 per hour but did not have the numbers in front of her. She would send the numbers to Commissioner Carey. She did not want this perceived as an attack on the company, she is glad they are in town and more light industrial businesses are needed. The debate is where do the positive economic results that they are seeking come from through having public dollars go out in terms of a loan or grant.

Chair Kennedy asked how the starting wage of \$6.50 could be raised, perhaps 50 cents per hour?

Sheridan Wise stated he did not know if the wage could be raised to \$7.00 or \$7.50 per hour without maybe adjusting some benefits. He felt that paying 80% of the health insurance premiums takes care of a lot of the health care needs that the employees have. He felt that with the benefits package and wages they offer they do provide a livable wage.

Commissioner Evans stated her concern was that if it is suggested to increase the starting wage and the company agrees it may mean that there are two less people they could hire. That would not gain anything. Or it may increase the price of their product. Someone is going to pay for the additional cost. There is a finite amount of money that is distributed as best they can for their company. She was grateful they have 45 employees and will add 23 more. It is not her business how much they pay, especially when the County does not pay that much themselves.

Chair Kennedy stated the reason the company is here is that they are seeking some sort of public assistance, an economic boost for their company. His feeling is that if they are judged deserving of an economic boost, then perhaps their employees are deserving of an economic boost as well, because they are the ones who make the product that keeps the company in business. That just seems fair to him. He wondered how they would respond to a proposal that would require an increase as a condition of County sponsorship of the loan.

Sheridan Wise stated he would certainly consider it. He would like to look at a complete package before he committed to doing that however.

Chair Kennedy stated what he would like to do, if the other Commissioners agree, is to not decide this issue today but talk further about the wage issue. If the company were willing to take the week to investigate, he would like to do that.

Commissioner Carey stated his understanding is the company would take a look at whether or not they might be able to raise the starting wage rate to \$7.00 per hour. They are not committing to do it, but will take a hard look at it.

Sheridan Wise stated he would commit to looking at the issue. That is not a decision he could make unilaterally.

Elizabeth Rissler-Pratt, Human Resource Director at NLI, stated the majority of their employees start at \$6.50 per hour and go up to \$7.00 per hour at 90 days and to \$7.50 per hour in six months. The \$7.50 wage is given after six months of continuous employment. The benefit plan is medical, dental and vision, with a \$25,000 life policy with accidental death and dismemberment. The premium the employee pays is 20% of the medical, dental, vision and life plans, on a pre-tax basis, Cafeteria 125 plan, for premiums only. For a single person that is about \$20 biweekly. The medical portion is Blue Cross, a \$500 major medical deductible plan. An office visit is paid at 80%. The plan does not require the \$500 to be paid out of pocket first when using participating physicians and it also includes a pharmacy plan. The company is also currently studying putting in a full Flexible Benefits Plan to assist with daycare and co-payment for medical and dental bills on a pre-tax basis. She is hoping this plan can be implemented by October. She has also requested information on 401(k) plans. She has not had any employees ask about paying for daycare but there have been a few requests for the Flex Plan. Approximately 70% of their employees will be past one year of employment by June which will put them at the \$8.00 per hour rate, along with 1 week of vacation, 6 days of sick/personal leave and 8 holidays. She just wanted to make sure the whole employee benefit package was understood.

Chair Kennedy thanked her for clarifying that, it answered some questions that had been raised. He asked if the Commissioners were interested in the proposal to wait a week?

Commissioner Carey stated he personally would like to see what Mr. Wise could come up with in a week.

Chair Kennedy stated he too would like to wait the week and asked Mr. Wise to work harder to come up with a plan.

Commissioner Evans stated she would not be at the hearing next week. From her perspective, NLI is a responsible company and was delighted they were here. She would vote to give them the loan today at next week's meeting, whether they are able to raise the starting wage or not. She would ask that when they look at this issue, include how many employees they would have to cut to raise the starting wage.

Commissioner Carey stated he would not be interested in having an overall reduction of employees in this package, that would not be sensible. He hoped there could be an increase in pay without a reduction in employees.

Chair Kennedy stated the public hearing on this issue is closed and the Commissioners will make a decision on the CDBG application submittal at the Public Meeting on June 2, 1999.

Hearing: Planning and Zoning Commission

Variance Regarding Accessory Building Floor Area Footprint – Zoning District #4 (Dick Ainsworth)

Chair Kennedy temporarily adjourned the meeting of the Board of County Commissioners and convened the meeting of the Planning and Zoning Commission, comprised of the three County Commissioners, the County Clerk and Recorder Vickie Zeier and the County Surveyor Horace Brown.

Lettie Hunnako, Office of Planning and Grants, presented the staff report.

Dick and Linda Ainsworth are requesting a variance from Section IV(4) of Zoning District #4 in the Pattee Canyon area in order to construct an addition to an existing detached garage with a shop and home office. The addition will be 12 feet by 24 feet at the front of the existing garage and will cover a portion of the existing driveway. It will be used for added vehicle storage space.

The existing single family home footprint is 1,080 square feet. The original garage building was 636 square feet, which already exceeded one-half the dwelling floor area. In 1994, a 320 square foot addition was made for a ground level shop and upper-level home office area. This increased the footprint square footage to 956 square feet. At the time of construction of the garage and addition, Zoning District #4 did not have a regulation concerning cumulative coverage of accessory structures.

The proposed addition to the front of the existing garage will be 12 feet by 24 feet, or 288 square feet. This will increase the square footage of the building footprint to 1,244 square feet, which is larger than the footprint of the home.

The Ainsworths feel that the addition will not negatively affect the site or the environment. If the garage shop/home office were attached to the main dwelling structure no variance would be required. The topography of the site, the creek and lot configuration constrains the site. When the shop/home office addition was made it was attached to the garage rather than the house to lessen the impact of the construction on the site.

The proposed addition will cover a portion of the existing driveway and will not add to the existing impervious surfaces on the site. The driveway is basically level requiring only minimal excavation for the footings. While the garage is quite close to the overflow channel of Pattee Creek, the proposed construction will not remove any riparian vegetation, it will not add development to the area of riparian resource, nor will it be in a designated floodplain. Excavation activities must be undertaken with care to see that material is not deposited in the creek channel or in the adjacent riparian area.

The Ainsworths have shown in their application letter how they will address the requirements of Section VI (Development Standards) of Zoning District #4. Staff agrees that these standards are met by the proposal.

Section VII (Development Guidelines) must be addressed by an applicant for any variance. The applicant letter outlines how these guidelines will or have been addressed. Staff agrees that these guidelines are met by the proposal.

Staff is recommending approval of the variance with two conditions: 1) The construction must comply with all building codes as determined by the City-County Building Division; and 2) Excavated material and construction materials must be kept out of Pattee Creek and out of the adjacent riparian area.

Dick Ainsworth stated Lettie Hunnako covered the request well. He did not have any problems with the conditions and will keep all materials out of the riparian area and Pattee Creek.

Chair Kennedy stated that during the staff meeting on this request the pictures presented of his yard show a well-manicured area all the way down to the creek. Because of the recent adoption of the Voluntary Nutrient Reduction Program (VNR), his concern was regarding fertilizer that might be used. How did Mr. Ainsworth deal with that option?

Dick Ainsworth stated he did not fertilize down by the creek.

Chair Kennedy opened the public hearing.

Kay Norris, President of the Pattee Canyon Landowners Association, stated they had been working with Mr. Ainsworth on this proposed construction. The board members had done a site inspection and are not concerned with the footprint of the proposed addition, which is what the variance deals with. Their major concern is riparian areas in regard to future projects, not Mr. Ainsworth's project specifically. He is building on the existing driveway so there will be no more damage to the area than already exists. Their concern is the whole riparian area that runs along the creek. There is a house close to Mr. Ainsworth's that is in prime riparian area and they are fearful that expansion of the house would damage the riparian area even further. The definition of riparian area is vague. Zoning District regulations state that no new improvements or new building will happen in the riparian area. What will the Commission and others see as riparian area for future projects? The regulations have just recently been redone to clarify the definition of what they want to protect. She wanted to know what more the Commissioners and the landowners could do to protect the riparian area.

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

Commissioner Evans stated she supported the fact that the Zoning District regulations have been re-done and what they are trying to accomplish. Just by being present at this hearing is an indication of what they can do in the future for new proposals. The Commissioners also care about the riparian area. The fact that the regulations have been re-done and the care they place on the canyon are strong indications that projects will be looked at carefully.

Commissioner Carey stated he agreed with Commissioner Evans.

Chair Kennedy stated their being attentive is the best thing they can do to protect the canyon and riparian areas.

Horace Brown asked Mr. Ainsworth if there were any riparian species that would be disturbed?

Dick Ainsworth stated there were not.

Kay Norris stated the whole construction process could possibly disturb riparian species. The whole fact that there is something there at all is disturbing it. That is the dilemma, when do they say no more building in this area, because it is already disturbed. A variance for the riparian area is not required. Her concern is when they get to the point of requiring a variance for riparian area disturbance.

Commissioner Evans stated the planning staff and planning office are aware of these concerns. Riparian area regulations have been passed Countywide. They will look at a project with regard to riparian area every time a new project is reviewed. Others will also look at it from a scientific standpoint so they should not be too worried about it.

Horace Brown moved that the Planning and Zoning Commission recommend approval of the request to vary from the Section IV(4) of Zoning District #4 which states "the cumulative building coverage of accessory building shall be less than that of the primary structure or dwelling, and the accessory building floor area footprint shall be not more than one-half the dwelling floor area footprint," as recommended by staff and subject to the recommended conditions. Vickie Zeier seconded the motion. The motion carried on a vote of 5-0.

Chair Kennedy adjourned 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 recommendation of the Planning and Zoning Commission and approve the variance request from Section IV(4) of Zoning District #4 regarding the accessory building floor area footprint for Dick and Linda Ainsworth, as recommended by staff and subject to the recommended conditions. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Ainsworth Zoning District #4 Variance Conditions of Approval

1. The construction must comply with all building codes as determined by the City-County Building Division.
2. Excavated material and construction materials must be kept out of Pattee Creek and out of the adjacent riparian area.

Hearing: Frenchtown Valley View Seniors Court (31 Spaces) – 1 mile southeast of Frenchtown on Mullan Road

Dave Loomis, Office of Planning and Grants, presented the staff report.

This is a proposal by Dick Lucier to develop a senior's mobile/manufactured home court of 31 rental spaces on 15.2 acres. The 15.2 acres is part of a much larger holding by the applicant. It is located on Mullan Road about 1-1/2 miles east and south of Frenchtown, between Mullan Road and the Montana Rail Link tracks. The existing land uses on this site and most of the area is agriculture. There is a small mobile home park to the northwest owned by Mr. Lucier and a couple of existing residential units adjacent to this site. There is no zoning.

The 1975 Comprehensive Plan designates this area as Open and Resource, with a density of generally one dwelling unit for every 40 acres. However, this area is within the Frenchtown Activity Circle, which recognizes existing development patterns, and promotes the Frenchtown and Huson Activity Centers as the location of any new development. The Plan continues by declaring "residential designation of up to two dwellings per acre ... will strengthen the communities." The intent of the Open and Resource land use designation in the 1975 Plan was to recognize the agricultural use of the land. Nothing has changed about the resource basis of the plan, but the economics of agriculture as a land use is cited by the applicant as the primary reason for conversion from agriculture to residential.

Section 3-10 of the Subdivision Regulations for the County contains additional standards about mobile home parks, in addition to the usual standards about roads and utilities. Staff looks specifically to Section 3-10 for standards to evaluate the project. In this particular project the applicant is proposing a 29-foot wide street section, 24 foot is the required width in the regulations. The reasons for the 29-foot width are that an additional 5-foot paved shoulder will be marked for walking. The question for the Commissioners is if there should be on-street or off-street pedestrian traffic. The determination can be made on a case by case basis. The applicant has suggested that off-street pedestrian traffic would be redundant in this particular instance and staff agrees. These roads are strictly internal to the project. There would not be any other through traffic.

The average size of each rental space being proposed is at least 10,000 square feet, with two paved, on-site parking spaces. Doublewide and even triple-wide mobile homes can fit on the site. Although it is not an "affordable housing" place, it is affordable to the seniors market that Mr. Lucier is aiming for. There is adequate space between units and for the on-site parking included.

The project proposes two on-site wells and a delivery system to each space, in effect a community system for all 31 spaces. The sewage is proposed to be treated by a community treatment system, basically large tanks, a collection system and a drainfield adjacent to the site. Each individual site does not have an on-site system; it is a community system, which is easier to maintain than individual systems.

Curbs and gutters are not proposed. Section 3-2 allows alternative designs and this is more a rural section design, with ditches for drainage on the side. The extra road width for vehicles and pedestrians were necessary in this case, which is within the purview of Section 3-4(B).

Improved parks are not required within a mobile home park; there is a requirement for park spaces. Three different types of common areas are offered in this proposal. One is for RV and equipment storage. There is another common area that is essentially a utility lot, where the wells, pumphouse and central trash collection will be located. There is another very large common area where the drainfield and its replacement will be located, noted as Common Area C. Staff is proposing conditions having to do with screening of adjacent residential properties and residential units from potentially incompatible uses, such as the storage area.

Since this is not a plat, but a plan, the suggested and recommended method to deal with conditions is to file a document of record with Missoula County. In this document, these are the key ingredients. One is to waive the right to protest an RSID for future improvements to Mullan Road. Another is to waive the right to protest an RSID for public sewer and water. The third is the owner shall submit a landscape plan. Parts of a landscape plan are already included in the proposal, and the applicants did recognize that part of this area is in the Primary Travel Corridor. There are additional standards they need to comply with. Additional landscape requirements for Common Areas A and B have also been included. Language for the provision of utilities on the plan is also included.

This mobile home park is consistent with the Comprehensive Plan. It does not require variances and staff is recommending minimal conditions to bring it into compliance. Staff is recommending approval of the plan.

Gordon Sorenson, engineer for Dick Lucier on this project, was present. He stated that David Loomis' staff report was comprehensive and they had no problem with the conditions as listed. He presented a map which showed the Common Areas in relation to the 31 spaces. The whole area is a little over 15 acres and the large common area is a little over 6 acres, on the side nearest the railroad. There will be additional landscaping to screen the existing private mobile homes in the area. Dick and Pat Lucier have operated their other mobile home park across the street for 40 years. They are used to the mobile home park rental business. They also run a cattle operation and Dick is an excavator. Both those businesses have slowed considerable in recent times, which is why they have taken a corner of their holdings to diversify and supplement their income.

Chair Kennedy opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans asked how far west of Stone Container this property was?

Gordon Sorenson stated it was more a northerly direction and about 2 miles.

Commissioner Evans stated that a landscaping plan would be presented. She asked if Dick Lucier would do all the landscaping or if the tenants would be asked to do their own landscaping?

Gordon Sorenson stated the tenants would be responsible for landscaping their own lot.

Commissioner Evans asked if there were covenants requiring specific requirements for tenant landscaping to insure the job would get done?

Dick Lucier stated that if the tenant does not put in the required landscaping, the developer would then do so, probably within 6 months or so, depending on the time of year.

Commissioner Evans stated she wanted to insure that the landscaping was done correctly and make this a showplace so there could be more mobile home parks contemplated. Mobile home parks are really the best affordable housing.

Dick Lucier stated he understood what Commissioner Evans was saying and the landscaping would be done right.

Commissioner Evans asked if there was a percentage of landscaping that is required by the regulations?

Gordon Sorenson stated the plan required at least one deciduous tree per lot.

Commissioner Evans asked if there was a percentage, such as 25% of the lot, that required landscaping?

David Loomis stated that in Section 3-10 of the Subdivision Standards, it does not give a percentage coverage requirement. It talks about the landscaping plan and where buffering is installed. Screening allowed includes fences and natural growth, but is not specified further.

Commissioner Evans stated Mr. Lucier said if the tenant doesn't do "it," he will. What is "it?"

Dick Lucier stated he would put in lawn and trees and some rock finish.

Gordon Sorenson stated the plan shows at least two trees required per lot, which are 10,000 + square feet.

David Loomis stated that in the Primary Travel Corridor along Mullan Road there are specific requirements for trees. Those plans will be reviewed prior to final plan submittal.

Commissioner Evans stated these were rental spaces, the tenant owns the mobile home and rents the space.

Dick Lucier stated that was correct.

Commissioner Carey stated the Common Areas do not include any recreation areas, beyond on-street walking. Having worked for several years with seniors, isolation is a severe problem. Was any thought given to providing a center where people could congregate?

Gordon Sorenson stated it was rather expensive and had not been included in any other parks in the area. People in other parks walk the area year round and the common areas are used in the summer months for gatherings. Other parks seem to function well without a community center.

Commissioner Evans suggested that a Homeowner's Association for the area might be a good idea, which could make some community improvements to provide opportunities for the residents to congregate.

Commissioner Carey stated that if there were that sense of community, people would tend to take better care of the park.

David Loomis stated that in Section 3-10 it allows for recreation areas that might include space for community recreation, building and facilities. The notion of that idea is stated but not required.

Commissioner Evans stated she did not want this as a requirement, only a suggestion to improve the park.

Chair Kennedy stated that the Frenchtown Fire District felt fire protection was adequate based on predictions. The applicant still has to comply with the requirements and if the wells don't work they could be a problem.

Commissioner Evans moved that the Board of County Commissioners approve the Frenchtown Valley View Senior's Court Preliminary Plan Subdivision, based on the findings of fact contained in the staff report and subject to the recommended conditions. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Frenchtown Valley View Senior's Court Preliminary Plan Subdivision Conditions of Approval:

1. The landowner shall file a document of record with Missoula County to:
 - a. Waive the right to protest improvements to Mullan Road, including installation of pedestrian walkways, based on benefit, which may be used in lieu of 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. Such document shall be filed prior to final plan filing.
 - b. Waive the right to protest a future RSID/SID for public sewer and water systems, based on benefit. The owner shall connect to public sewer within 180 days of when the public sewer main is available to the site. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.
 - c. The landowner shall submit a Landscape Plan:
 1. For the Primary Travel Corridor along Mullan Road, landscape and irrigation for trees and grass, consistent with the requirements of Article 3-14(3)(A).
 2. For Common Area A, a landscape and irrigation plan for trees, grass and shrubs that provide screening to the adjacent homes to the north (not a part of this project), consistent with the requirements of Article 3-10(8) and 3-10(9).
 3. For Common Area B, a landscape and irrigation plan that provides screening to Lots 2, 3, 4 and 5, and the private residential uses to the south, consistent with the requirements of Article 3-10(8) and 3-10(9).
 - d. The plan shall contain language for the provision of utilities:

"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 or equivalent for construction, maintenance, repair and removal of their lines in, over, under and across each area designated on the plan, to have and hold forever."
Missoula County Subdivision Regulations Articles 3-5, 3-6, 3-7(2), 3-10 and 3-14.

Hearing: Henry's Estates (5 lot Minor Residential Subdivision) – 3 miles west of Frenchtown on Mullan Road

Allison Handler, Office of Planning and Grants, presented the staff report.

This is a request by Joseph Boyer, represented by Gordon Sorenson, to subdivide 6.33 acres from the 157-acre parent parcel of land located on Mullan Road between Frenchtown and Huson. The proposal is to put 5 lots on those 6.33 acres, served by a cul-de-sac road called Boyer's Lane. This area is between the Frenchtown and Huson Activity Circles. The Activity Circles are the areas where staff likes to see development clustering. This location is unzoned. The Comprehensive Plan designation is 1 dwelling unit per 40 acres. The land is currently used for agricultural purposes and adjacent land uses are also agricultural, with some residential.

There are four issues which require attention. With regard to zoning and the Comprehensive Plan, staff was able to find compliance for this proposal using the 157-acre parent parcel. By clustering the homes onto that smaller 6.33 acre parcel, the rest of the property was preserved as agricultural and provides a gross density that is similar to that of the neighboring communities to the west called River Ranch I and River Ranch II.

With regard to agriculture, this is a 6.33 acre parcel of land that will be taken out of agricultural production. The soils are classified by Soil Conservation Survey as prime farmland. Water rights will pass proportionally to the lots. Given the size of the lots, approximately 1 acre, it is not likely that agricultural use will continue. Given that the rest of the parcel, 151 acres, is being reserved for agricultural use, staff is in support of this proposal.

With regard to access, Mullan Road provides access; Boyer's Lane comes off Mullan Road to the south as a cul-de-sac, and angles just to the east. Staff has recommended a condition to redesign Boyer's Lane so that it comes south and angles slightly to the west. This provides for a possible future connection to future divisions of land to the west. It cannot be known what will happen in the future with other later proposals. The applicant has suggested that there might be plans for additional divisions of land west of this subdivision. Should that happen, staff would like to see the possibility of a connecting road. Staff is not recommending that Boyer's Lane be extended at this time. They are recommending that an easement be created that will facilitate the possible extension in the future. This is an easement only, a forward-looking way of dealing with future access.

The applicant has requested a variance from the requirement to provide pedestrian facilities. Staff has recommended approval of the variance request and placed a condition on the subdivision that an RSID waiver be provided for the future installation of pedestrian walkways.

The final issue is with regard to the natural environment. This 6.33 acre portion of the property is north of the 100-year floodplain. Roman Creek forms, more or less, the northerly boundary of the Clark Fork River floodplain. Roman Creek, which crosses the property, empties into the Clark Fork River. Approximately 100 acres of this parcel is in floodplain and there was some suggestion to set aside some of that land for wildlife habitat and agricultural uses. That is not part of this proposal right now, the proposal is only for the 6.33 acre tract in the northeast corner.

Wally Congdon, developers representative, presented an aerial photo of the area to the Commissioners. He stated that Allison Handler is very persuasive. It has been a long time since he looked at a staff report and had an idea that something wasn't a good idea then spent 40 minutes on the phone with the planner and walked away thinking the idea had some very good merit to it. He would like to propose a minor change but in principle, the conditions are acceptable to Mr. Boyer. The staff report speaks very well to the proposal. Joseph Boyer is present today; he is a genuine, bonafide rancher at Frenchtown, Montana, one of the few left. The reason for this proposed division, and contemplating the division to the west at some later point in time, is primarily to pay off ranch debt and to keep going in the agricultural business. Mr. Boyer used to log but does not anymore because of the lack of trees and significant logging restrictions. This is a way for him to get out of debt and have operating money to continue agricultural use. The conditions as proposed by the staff were acceptable with one minor change. In looking at the aerial photo, Henry's Estates is in the upper right corner. They felt that rather than realigning Boyer's Lane, they prefer to widen the easement to include the second lot so there would be a straight road down into the cul-de-sac. That would leave the road aligned the way it is, but put an easement that would allow it to be straightened at a later point in time, so the roadway and lots don't have to be realigned. At the point in time that the road is extended between Lots 3 and 4, it would bend to the right to connect. The second concern with that is the fact they would like something specified which says that does not get built as long as Mr. Boyer or his successors stay in the agricultural business on the property. There are two reasons for that concern. The first is if the road is constructed it goes right through the barn. There are a significant number of buildings in the dooryard, a bull corral, a set of working pens, the hay barn, etc. As long as this stays as a viable agricultural entity, and Mr. Boyer and hopefully one or more of his children intent to continue agriculture, having that road constructed through there would be a significant problem. Should a successor at some later point in time divide the property that is south of the farm, it would be contemplated getting the road constructed at that point in time. In speaking with Mr. Boyer, Allison Handler and others at OPG, eventually the parcel that is north of the railroad right of way would be developed. The thought would be, according to Allison Handler, that at the time that were done, a similar easement would be reserved out of that parcel of property, so that subsequently, if they ever quit doing agriculture, both of those easement could be used to construct the road as a loop. The Boyer's don't contemplate doing anything in the dooryard and the concern is they don't want to find themselves in the circumstance of having to build a road through the dooryard now and disrupt the agricultural use. After speaking with Allison, the easement on this proposal and the easement on the possible proposal to the west made good sense. It is not often that a planner changes his mind significantly. The idea has merit, based on the fact that additional development is contemplated later. When the property to the west is possibly developed, the Boyer's will not have to build a loop road at that time through the dooryard. The loop road would not have to be constructed until after the Joseph Boyer and his successors no long use this land for agriculture. He wanted to make sure this understanding was included in the conditions so there would not be any questions when this may come up again sometime in the future when those present today may not be here. He added that Mr. Boyer did not have a "day job," he is one of a few ranchers that doesn't work separately, which is part of the reason for this proposal. He has been responsible on other proposal in the past. His preference would be to not do this, but he needs to pay off some debt to allow him to stay in business. The covenants are very straightforward; some things have been added regarding the obligation of owners to provide their own irrigation water for their lawns, etc.

Chair Kennedy stated that Wally Congdon emphasized several times that Mr. Boyer wanted to maintain the agricultural viability of the land. Every time a chunk is taken out, that diminished the ability to maintain viability. He wondered if a different lot configuration was considered to allow the same number of lots but smaller in size. The reason this is being suggested is that most people who would buy into an area like this have no idea of what an acre of land is. There are ways to deal with the sanitary restrictions of smaller than 1 acre parcels. It would be possible to build smaller lots and let the balance remain in agricultural use and still not reduce the potential of profit.

Gordon Sorenson stated the reason the lots are 1 acre are due to the sanitary restrictions as Chair Kennedy mentioned. When developing only five lots, it is not economical to put in a community water/sewer system. Even if the lots were reduced to 1/2 acre, it would only save 2-1/2 acres of farmland.

Chair Kennedy disagreed with the assertion that community water and sewer systems don't work for less than five lots. He felt it should be considered, as the land is cut up it becomes economically not viable. If the land area could be minimized, the profit is not reduced but the agricultural use is maximized. He felt this idea was worthy of consideration for this development and others he might have.

Wally Congdon stated that they had discussed that about 2 years ago, to decide if it was better to do half acre parcels and some kind of community system, or sell parcels that could be agricultural for tract gardening and 4-H purposes. They went the direction of providing small agricultural tracts that people could use. What deterred them from doing half acre parcels, which he actually prefers, were the state requirements for the water system. Basically, if you have a water system for five parcels of property, that water system has to do the same testing that Mountain Water does now for the City of

Missoula. That presented a huge cost problem. The other dilemma was that both these parcels of property were ones that Mr. Boyer picked out that were small enough in size that their farmability and viability as agricultural tracts was of minimal value. To the right of Henry's Estates is the end of Mr. Boyer's ownership. From the dooryard south is approximately 9 acres which was saved because that is where they feed cattle in the winter and calve in the spring. The reason that portion was cut off was because its viability as a tract itself was minimal as it is an isolated portion. If it were cutting a 6 acre parcel from a 60 acre tract, it would be a significant problem. Cutting out this 6 acres and saving the dooryard was the solution to the economics of the project. Similarly, the parcel on the west, about 14 acres of the entire 160 acres, was looked at as a potential development site because its viability as a parcel that small was not that great. The economics of irrigation and production were also taken into consideration to split the land. He agreed that quarter acre or half acre parcels were better if they could work economically. The economics of the water and sewer did not make it feasible in this instance.

Chair Kennedy stated Mr. Congdon may be correct on the water but the sewer was not an issue.

Wally Congdon stated he had not looked at the economics of the sewer, Mr. Sorenson and Mr. Boyer had done that investigation. They did discuss the water issue several years ago. A system that serves ten or more people is considered a public system and the state places severe restrictions on such systems. If there were a change to that state statute, it would open the door to more community systems, particularly where there is a good aquifer.

Gordon Sorenson stated they had discussed community sewer and Mr. Boyer felt it was not economical. Mr. Boyer is doing this project because he has ranch debt right now. To develop this small piece of land and put in a community sewer took more up front money. Mr. Boyer has been a logger and rancher. He is now out of the logging business because there isn't work available for him anymore. The agriculture business is marginal. Whether this stays agriculture or not, it still is not profitable for the landholder, in agriculture or not. This small parcel doesn't produce much. That is why he is here, to create enough cash flow immediately to maintain the agricultural work. He recognizes he may have to develop the other parcel to the west for the cash, but hopes that should be the end of development. He owns cattle land in Frenchtown and along Houle Creek. His cattle operation is not small but also not real profitable due to current economic conditions. That is why this project is presented the way it is today. He wants to use what he has to save the rest of his property. His other option is to bail out and sell to a developer. Mr. Boyer does not believe in splitting up land but he is doing what he can to save his ranching operation.

Chair Kennedy opened the public hearing.

Joe Boyer stated he really did not want to sell this little field, he and his relatives have worked that land since he was a child. However, he is to the point where he has to do this in order to continue with the ranching operation.

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

Allison Handler stated that in the regulations there is standard language for an RSID waiver for community water and sewer if such is not available at the time the subdivision is approved. She did not put that in as a condition, it was omitted inadvertently. She wanted to call attention to it; it is in the regulations. She did not feel it needed to be added as a condition, but that statement should appear on the face of the plat. She apologized to the developer, but it is standard language.

Gordon Sorenson stated that was not a problem.

Commissioner Evans commended Mr. Boyer. He is in a tough business and the fact that he has found a way to try and save his cattle operation and land is good.

Commissioner Evans moved that the Board of County Commissioners approve Henry's Estates Summary Subdivision based on the findings of fact contained in the staff report and subject to the conditions in the staff report, and approve the variance request from Article 3-2(5)(A) requiring sidewalks and pedestrian walkways, based on the findings of fact in the staff report.

Commissioner Evans asked Allison Handler if there was additional language to add to address the road issue.

Allison Handler stated the request by the developer was to address the intervening time between when the agriculture use is there versus when it might in the future cease. She did not personally feel the need for the language but the developer and lawyer have requested it.

Commissioner Evans asked Mr. Congdon to step forward and help her with the language.

Wally Congdon said: "I think what we'd ask is that the condition read: That the developer be required to create an easement along the east side of Lots 4 and 5 so that Boyer's Lane may be made straight at the time that the road between Lots 3 and 4 is constructed, and that that road needs to be constructed then, or will be constructed after and if the owners of the property cease doing agricultural uses or cease being an agricultural unit or the property ceases to be used for agriculture."

Commissioner Evans stated that was part of her motion.

Commissioner Carey seconded the motion.

Chair Kennedy stated he appreciated what Mr. Boyer was doing. In looking at all the different kinds of proposals the Commissioners see, this one is okay and accomplishes some of his goals. He believed it was at about 80% and felt there probably was a better plan for this. For the next proposal, there could be a way to save more of his land and accomplish his economic goals that are better than this one.

Joe Boyer stated he had thought about the smaller parcels and the road and all, however it brings more people, more dogs, more problems. He is going to build a real good fence to try to keep his livestock separated from these people. If there were smaller lots and more people, it would increase problems. He is hoping this project will bail him out enough that he doesn't have to do the other one.

The motion carried on a vote of 3-0.

Henry's Estates 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 shall constitute the assent of the lot owner to waive the right to protest a future RSID for improvements to Boyer's Lane and Mullan Road, including installation of sidewalks and extension of Boyer's Lane or construction of a second access route, 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 staff recommendation.*

2. The applicant shall contribute \$100.00 per new lot to the Frenchtown Rural Fire District prior to plan filing. *Subdivision Regulations Article 3-7(2) and Frenchtown Rural Fire District recommendation.*
3. The developer shall grant a 60-foot-wide public access easement for access to possible future development, from the end of the cul-de-sac of Boyer's Place to the western property line, along the common boundary between Lots 3 and 4. The developer shall create an easement along the east side of Lots 4 and 5 so that Boyer's Place may be made straight at the time that a road along the common boundary between Lots 3 and 4 is constructed. That road may be constructed after and if the owners of the property adjacent to the west of Henry's Estates cease doing agricultural uses or cease being an agricultural unit, or when that property ceases to be used for agriculture. These easements shall be placed on the plat and shall be subject to review and approval by the County Surveyor and the Office of Planning and Grants. *Subdivision Regulations Article 3-2(1) and staff recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 3.25 p.m.

THURSDAY, MAY 27, 1999

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:

Shoreline Permit – Chair Kennedy approved and signed a Shoreline Permit for Don Larson (representing Charles Romie), to replace an existing dock with a similar structure on Lots 8 & 10 of Seeley Lake Shore, Tract A'. The permit was returned to Brian Maiorano in OPG for further handling.

Resolutions – The Commissioners signed two resolutions:

1. Resolution No. 99-039, a resolution fixing salaries of certain elected officials:

Clerk of the District Court	\$42,273.23
County Auditor	\$42,273.23
County Surveyor	\$42,273.23
County Commissioner	\$44,273.23
Clerk & Recorder/Treasurer	\$50,727.87
County Superintendent of Schools	\$44,273.23
County Attorney	\$65,512.02
County Sheriff/Coroner	\$56,856.87
2. Resolution No. 99-040, a resolution fixing salaries of County Justices of the Peace at \$42,723.23.

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

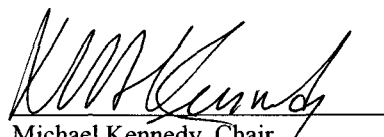
FRIDAY, MAY 28, 1999

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Tracy Pfeifer as principal for Warrant #62398 issued 4/16/99 on the Missoula County MCPS Payroll Fund in the amount of \$354.62 now unable to be found.

Agreement – Commissioners Carey and Evans approved (Commissioner Kennedy opposed) an Agreement with Barbara Howell and Colbert Howell of Magnolia Estates (developers), stating that the developers will comply with the conditions of approval for Magnolia Estates, and Missoula County will provide a statement to the USDA stating that the developers are in compliance with conditions of approval.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MAY 31, 1999

The Courthouse was closed for the Memorial Day holiday.

TUESDAY, JUNE 1, 1999

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

ADMINISTRATIVE MEETING

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

TDM Amendment – The Commissioners signed an Amendment to the 1998 Missoula TDM Planning Agreement between the Montana Department of Transportation and the Missoula Office of Planning and Grants. Performance schedule is from February 6, 1998 through June 30, 1999. \$1,090.00 is reallocated to Public Education and Information, and Phase I Evaluation. One original was returned to MDT in Helena, and one was recorded.

Standard Agreement – Chair Kennedy signed a Standard Agreement with the Montana Department of Transportation Traffic Safety Bureau for a \$10,000.00 Public Information and Education grant to target underage and binge drinking by 18-24 year olds. Grant was awarded to the Missoula Traffic Safety Task Force at the Missoula City-County Health Department. Project shall be completed by September 30, 1999. The Agreement was forwarded to Albert Goke at the MDT Traffic Safety Bureau in Helena.

Deed Documents – Chair Kennedy signed a Subordinate Deed of Trust and a Deed Restriction Agreement with Donald Real for a HOME Investment Partnership in the amount of \$3,369.38 for property at 625 Speedway Avenue, Missoula, MT 59802. The documents were returned to Cindy Wulfekuhle in OPG for further handling.

Budget Transfer – The Commissioners signed a Budget Transfer for the Health Department in the amount of \$13,600.00 from AIDS Prevention to HIV Community Planning.

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

WEDNESDAY, JUNE 2, 1999

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Commissioner Evans was out until noon and did not attend the Weekly Public Meeting because of another meeting. In the evening, the Commissioners hosted a workshop on the El Mar and Golden West Wastewater Facilities Studies at the Sunset Chapel Funeral Home Public Meeting Room.

Audit List – The Commissioners signed the Audit List, dated June 2, 1999, pages 2-48, with a grand total of \$209,357.29. The Audit List was returned to the Accounting Department.

Monthly Report – Chair Kennedy examined, approved and ordered filed the Report of the Clerk of District Court, Kathleen Breuer, for the month of May, 1999.

Registered Bond – Chair Kennedy signed Registered Bond #R-67, issued to CEDE and Co. for the County of Missoula Hospital Revenue Refunding and Improvement Bond, Series 1978 (Missoula Community Hospital Project). The Bond replaces Bond #R-66 for \$1,840,000.00, which has been canceled. The Bond was returned to First Interstate Bank – Financial Services Division.

The Commissioners approved a request for FTE increase in Computer Operations Specialist support for the Health Department, PHC, and Risk Management. Fiscal impact is \$33,159.00, which is included in departmental budgets. The Personnel Office was notified.

PUBLIC MEETING – June 2, 1999

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder/Treasurer Vickie Zeier, Deputy County Attorney Colleen Dowdall and Chief Civil Attorney Michael Sehestedt.

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 list in the amount of \$209,357.29. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Crushed Cover Aggregate (Road Department)

This item has been postponed to a later date yet to be determined.

Hearing: Mickelson Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 3 of COS 2488.

Brent Mickelson has submitted a request to create 3 new parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is twenty acres in size located near Frenchtown on Nighthawk Drive and off Roman Creek Road. Mr. Mickelson proposes to create three family transfer parcels and a remainder, each approximately five acres in size, for transfer to his son, Michael C. Mickelson and to his two daughters, Suann Allen and Jill Sawyer.

The history of the parcel is as follows: COS 2488 – one of nine 20 acre parcels created as a tract exempt because it is over 20 acres in size, by John Stiegler, in 1980.

According to the records kept by the Missoula County Surveyor, the applicant has used the Court Ordered exemption to the Subdivision and Platting Act in order to create a utility site on unrelated property.

Brent Mickelson came forward to answer any questions the Commissioner may have.

Chair Kennedy stated this request does not go through the subdivision process. Because it is an exemption to those rules, the Commissioners can ask different kinds of questions that allow them to determine whether or not the subdivision is really an attempt to evade the regulatory process. The law has changed over time because there was a problem with land being subdivided where there wasn't consideration to those who might come after the people who subdivided the land. The exemption of parcels greater than 20 acres recently was changed to parcels greater than 160 acres. This was done to protect future users and those adjacent properties. He did not have any questions for Mr. Mickelson.

Commissioner Carey had no questions.

Commissioner Evans had no questions.

Chair Kennedy 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 Brent Mickelson to create three 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.

Decision: CDBG Application (Nutritional Laboratories International)

Chair Kennedy: We deferred action on that until this week, pending further discussion with you, Mr. Wise. You are standing up there obviously so you want to present something to us.

Sheridan Wise: No, I was just getting prepared because you said people were leaving.

Chair Kennedy: You're just currying favor, but it worked. Okay, I was the one who really initiated the wait, and since then we've received a comment from Cindy's office about what you're prepared and not prepared to do. My sense is that this probably will pass muster today and that said, we could go straight to a motion. But I do want to make a couple of comments about it first.

Sheridan Wise: Certainly.

Chair Kennedy: In 1995, a study was done through the University of Montana. Paul Miller was the one who conducted the study that talked about what it takes in order for a person who is full time employed in Missoula to live in Missoula and surrounding area. That's the basically metropolitan area that would include Lolo. In 1985, the hourly wage that was needed was \$7.58 an hour. This is now 1999 and that number has been updated, according to Mr. Miller, to about \$9.32 an hour. For people with, for families, that even increases substantially. It goes to, for example, about \$14.00 an hour for a family of four, in order to be sustainable in 1995 and that number now is close to \$16.00 an hour. So you begin to see that even with the wage scale that you have, and even with the benefits that you provide, and even the support that we've offered to you because we think that your firm is doing a good job, more needs to be done. In my mind the pressure still needs to be there and I know you feel the pressure and this isn't any way a discouragement, it is an encouragement to continue to work on that and work it hard and harder to make sure that we get to that level. The advantage, ultimately, to you is, is that you have a better product to sell, that is in terms of the labor that you're buying from your employees and the product that they manufacture. You'll have fewer problems; you'll have more satisfaction. Obviously you as an employer will end up paying fewer taxes because they, the taxpayers that you employ, will be bearing some of that burden. There are all kinds of reasons on why it's advantageous to you, as an employer, and to the community, to increase those salary levels. I won't say anything more than that, other than to for you to notice that the pressure is still on and it will be continue to be on and as a past employer I understand that pressure really well. So with that I'll ask the Board for a discussion and any action that they wish to take.

Commissioner Evans: It pleases me greatly to make the motion that we grant the CDBG loan to Nutritional Laboratories International as recommended by Cindy Wulfekuhle.

Commissioner Carey: I second the motion.

Chair Kennedy: Okay, is there any further discussion or comment that the Board would like to make?

Commissioner Carey: I would. And I wonder if Cindy might be able to answer this. Kind of for the record, Cindy, does CDBG, does the grant allow the jurisdiction like the County to put any strings to the loan? In other words, if we were to say something, in this case, NLI will initiate a day care operation for its employees within 18 months, is that possible under the terms of the loan?

Cindy Wulfekuhle: I think it's something you would have to negotiate with the company. If you successfully negotiate that, you come to agreement, that would be fine.

Commissioner Carey: I see. So it's not ruled out?

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Cindy Wulfekuhle: No. And I did, just as an informational thing, talk to Ann Desch to see if she had done a study, Ann Desch is the Department of Commerce Economic Development person, she directs that program, if they had done a study to see what kind of wages are paid by the businesses that have been assisted. She said that about two years ago she took a look at that, just different types of companies that had been assisted, and she said at that time that what she saw was an average of \$6.00 per hour and that was with no benefits. She said if there are benefits, that's a rarity. And she said that NLI is actually used as an example of one of their best companies that have been assisted.

Commissioner Evans: One thing you could do is ask them to notify us when they add additional benefits for their folks, because they sound like the kind that will do that. And maybe they would let us know so that we could have a party.

Commissioner Carey: Well, I think you're on the right track. Of course, I wish that you could pay people more but I think, my sense is you're doing what you can and I hope you continue to look for ways to benefit employees. I just think it's good for business too.

Chair Kennedy: Yeah, I'll make one last comment. I just came from a luncheon where a major Fortune 500 firm is looking to come into Missoula as a consideration out of 50 towns, they are down to four and we're one of them. When asked the question about their wage scales and the number of employees that they had, you would stand proud among them because they were going to have 1,000 employees and 800 of those employees would make about \$7.00 an hour. And I said to them, why would we do this? What would be the advantage to Missoula to invite 800 underpaid people into this community? So looking at the overall percentage of people that they have being underpaid was not an attraction for me, in addition to that they wanted free land and they wanted tax incentives. This is a loan to you and you're not in that same category so I want you to know that those questions get asked, in a really hard way, to other people. And I'm very happy about the conduct that you people have had out there and I expect great things from you. And believe me the pressure is still going to be on. I like what you're doing and I want you to do more. So, with that, I'll call for the question. All those in favor signify by saying ... pardon me, there was a motion?

Commissioner Evans: There was.

Chair Kennedy: Did you second it?

Commissioner Carey: Yes, second.

Chair Kennedy: All those in favor signify by saying Aye.

Commissioner Evans: Aye.

Commissioner Carey: Aye.

Chair Kennedy: Aye. Thank you for coming and thank you for enduring us.

Commissioner Evans: I hope you didn't scare away that 1,000.

Chair Kennedy: Probably did, Barbara.

Commissioner Evans: Well, I may do you in, Michael.

There being no further business to come before the Board, the Commissioners were in recess at 1:45 p.m.

THURSDAY, JUNE 3, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice Court 1, John Odlin, for the month ending May 31, 1999; and the Monthly Reconciliation Report for Justice Court 2, Karen Orzech, for the month of May, 1999.

Plat and Subdivision Improvements Agreement – The Commissioners signed the plat and subdivision improvements agreement for Phillips Industrial Lots, a subdivision plat located in the NW1/4 of Section 28, T14N R20W, PMM, Missoula County, a total area of 5.18 acres, with the owners of record being James W. and Janice B. Phillips.

ADMINISTRATIVE MEETING

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

Contract – Chair Kennedy signed a Montana Cadastral Database Project Contract for Local Government Parcel Mapping Assistance with the State of Montana Department of Administration, Information Services Division. Contract takes effect on June 30, 1999 and terminates upon final project closeout by the Dept. of Administration. Contract will not exceed \$10,000.00. Purpose of the Contract is to work toward a standardized Montana Cadastral database. The Contract was forwarded to Doug Burreson in the Surveyor's Office for further signatures and handling.

Other items included:

- 1) The Commissioners sent a letter signed by Chair Kennedy to the Mineral County Commissioners regarding a 9-1-1 plan for Mineral County. The Commissioners recommend that Missoula County 9-1-1 should continue to dispatch calls for the Alberton area.

- 2) The Commissioners approved additional CDBG Program Income funds to be used to complete the Sunset West Water Improvement Project in the amount of \$18,000.00.
- 3) The Commissioners reviewed and approved the Auditor's review of the Treasurer's Office. It was forwarded to the Clerk and Recorder for filing.

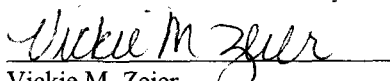
The minutes of the Administrative Meeting are on file in the Commissioners Office.

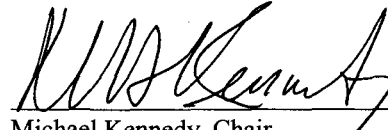
FRIDAY, JUNE 4, 1999

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

Plat and Subdivision Improvements Agreement – The Commissioners signed the plat and subdivision improvements agreement for Rufus Minor Subdivision, a minor residential subdivision located in the SW1/4 of Section 6, T12N R19W, PMM, Missoula County, a total area of 2.39 acres, with the owners of record being Lelan G. and Susan T. Rufus.

Resolution – The Commissioners signed Resolution No. 99-041, a Budget Amendment for the Health Department in the amount of \$2,000.00.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JUNE 7, 1999

The Board of County Commissioners did not meet in regular session. Commissioners Carey and Kennedy were in Helena attending a MACo Board of Directors meeting, and Commissioner Evans was out of the office all day.

TUESDAY, JUNE 8, 1999

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:

Printing Account Memorandum – The Commissioners approved a printing account through Missoula County Central Services for the Missoula Area Education Cooperative, and sent a memo to Central Services.

Counter Offers – The Commissioners (as representatives of the Missoula Development Authority) signed two Counter Offers for property in the Missoula Development Park:

1. with Jeff Smith, JS Properties, LLC for Lot 1-A, Block 4, with a sales price of \$225,000.00;
2. with USF Reddaway for Lots 2, 3, and 10, Block 4, with a sales price of \$595,000.00.

Both Counter Offers were returned to Don Sokoloski at Properties 2000 for further signatures and handling.

Supplemental License Agreement – The Commissioners signed a Supplemental License Agreement with the US General Services Administration, Public Buildings Service, for lease of a detention cell, adjoining office, and shower room in the Missoula Federal Building at 200 East Broadway (for juvenile detention). The license will run from April 15, 1998 through October 31, 1999. The Agreement was returned to Brenda Johnson in Judge Larson's office for further signatures and handling.

Other items included:

- 1) The Commissioners and Horace Brown discussed the issue of not using millings to pave Slide Rock Drive in Clinton. Horace indicated the County will not pave roads with an 11% or greater grade.
- 2) The Commissioners, Horace Brown, and Shannon Therriault discussed the dust problem in the Potomac area. The residents can either create an RSID, or take up a collection for dust control. The County will not provide dust control.

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

WEDNESDAY, JUNE 9, 1999

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

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated June 8, 1999, pages 3-33, with a grand total of \$274,556.02. The Audit List was returned to the Accounting Department.

Subordination Letter – Chair Kennedy signed a Subordination Letter from First Security Bank of Missoula for Nutritional Laboratories International's Small Business Administration loan in the maximum amount of \$790,000.00, and their Revolving Line of Credit loan in the maximum amount of \$1,250,000.00. The letter was returned to Cindy Wulfekuhle in OPG for further handling.

Letter – The Commissioners approved and signed a letter to Maria Bunstine, a partner in Woodmont Corporation, indicating their willingness to sell the Stockyard Road property on the terms outlined in Woodmont's most recent proposal, and with a contingency on approval of a stop light at the Stockyard Road/Reserve Street intersection.

PUBLIC MEETING – June 9, 1999

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

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 list in the amount of \$274,556.02. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: O'Toole Family Transfer

The O'Toole Family Transfer hearing was postponed to a later date.

Hearing: Marcure Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create an additional parcel of land by use of the family transfer exemption for that parcel described in Book 25 Micro, Page 1566.

Ed and Eileen Marcure 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 90 acres in size located off Mullan Road. The Marcures propose to create a one-acre parcel in the southern portion of the parcel for transfer to their son, Andre. The Marcures have one other child to whom they intend to transfer property.

The history of the parcel is as follows: The parcel was deeded to the Marcures by Alverd R. and Ellen L. Marcure in 1970.

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

Ed Marcure came forward to answer any questions the Commissioners may have. He stated that Colleen Dowdall indicated this was a 90-acre parcel.

Colleen Dowdall stated that was as close as she could tell from the information provided on the affidavit which asked for the acreage of the parcel.

Ed Marcure stated the parcel was 35 to 36 acres, in the northwest quarter of Section 12, Township 14, Range 21 West.

Colleen Dowdall stated she was able to identify several parcels in that area that are in his name and did not have the ability to calculate the acreage for each of them. It had been a hunt to track down all the acreage.

Ed Marcure stated it should not have been. He has the abstracts for the property. It is just east of Mullan Road on the northwest quarter. He wondered why it was such a hassle. Alverd R. Marcure (his brother) and Ellen L. Marcure own property in Section 11.

Chair Kennedy stated the location and acreage did not matter and he would like to explain the process. This is a different way of subdividing land and comes under an exemption of state law. This allows the Commissioners to ask questions which may be personal in nature to determine whether or not this is an attempt to evade subdivision regulations.

Commissioner Evans had no questions.

Commissioner Carey had no questions.

Chair Kennedy had no questions. He then 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 Ed and Eileen Marcure 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.

Consideration: Burch Tracts (2 lots) – Condon

Brian Maiorano, Office of Planning and Grants, presented the staff report.

The proposed Burch Tracts No. 1 is a 37-acre tract southeast of Condon. It is approximately one-quarter mile east of Highway 83 and northeast of the Swan Valley Elementary School. There is an existing dwelling in the northwest portion of the parcel. The applicant, Dolores Burch, proposes to divide it into two tracts, creating a 5-acre parcel in the southwest corner bordering Buck Creek Road and Lucky's Lane.

The Swan Valley Comprehensive Plan suggests that this area have a maximum density of 1 dwelling per 10 acres. For this 37-acre tract, that would allow up to three parcels. The Plan also states that parcels smaller than 10 acres are acceptable if they are clustered or created in a way to protect open space, timber needs or agricultural needs. This 5-acre tract is on the corner of the existing Lucky's Lane and Buck Creek Road and far away from the riparian habitat that cuts through the center of the parcel. Staff believes that it meets the intent of the Comprehensive Plan by being at that size and location.

The access for the existing dwelling comes from an off-site road, Rumble Creek Road, a County maintained road, then about one-quarter mile south on Lucky's Lane, which is a 14 foot wide private road maintained by the homeowners. Lucky's Lane runs all the way south to Buck Creek Road, but is not plowed in the winter past the existing dwelling to the north. Access to Tract 2 would likely be off Buck Creek Road, less than 1/10 of a mile from Highway 83. Buck Creek Road is also a 14-foot wide road that is privately owned and maintained within a 30-foot easement.

The applicant is requesting three variances for this subdivision: to vary from the 60 foot right-of-way to a 30 foot right-of-way; to vary from the 24 foot road width requirement to the existing condition; and to not provide pedestrian walkways. Staff recommends approval of all three variances.

There has been difficulty contacting the Swan Valley Fire Company to give comments on the subdivision. The primary concern with such narrow road width is whether or not the fire trucks would be able to get to the property and turn around, in the event of a fire. Two conditions regarding that are Condition 1 which talks about the fire company providing a written statement that they can provide year-round emergency services, and Condition 3 which talks about the fire company approving road clearances. The developers concern with this condition is because the fire company has not yet commented on the subdivision.

The other recommended conditions are fairly typical: waiving the right to protest an RSID for road improvements, some additions to the covenants dealing with fire protection and bear and mountain lion encounters, waiving the right to protest an RSID for public sewer, and a statement on the plat that says the roads are private and the County is not responsible for maintenance.

Commissioner Evans stated that Condition 4 reads that the covenants cannot be amended without prior approval of the governing body. That concerns her unless only specific sections are referred to. She did not want the Board to be in a position to approve every minor change to the covenants.

Chair Kennedy asked Colleen Dowdall which specific covenants were customarily included for Commissioner action.

Colleen Dowdall stated they were the ones listed in Condition 4 having to do with fire protection and wildlife interface. The condition would need to say that those covenants listed were the only ones requiring governing body action.

Brian Maiorano pointed out that the covenants proposed with the subdivision also include the riparian management plan, which is typically not allowed to change, as well as the ones Colleen Dowdall mentioned, wildlife, storage of garbage, etc. He did not list them in the condition as they are in the Subdivision Covenant proposals.

Commissioner Evans stated she did not want to hear every minor covenant change, yet did need to hear the ones that are crucial. She wanted it made clear in the conditions which ones the Commissioners would be a party to.

Colleen Dowdall stated she would identify the section before the motion was made.

Greg Martinsen, developer's representative, stated Dolores Burch and the buyer of the created parcel, Fred Timlick, were present and would like to speak today. Condition 1 asks for documentation from the fire department. They have had 60 days to respond and have not done so to date. He was willing to try again, but if no response is forthcoming, he did not want to be responsible for somebody else's lack of action.

Colleen Dowdall stated there was the same problem with Condition 3. A paragraph was added that says: "If approval by the local fire jurisdiction is not received prior to final plat filing, then the approval of the County Surveyor and governing body will meet the requirements of this condition. The Developer shall use diligence in attempting to obtain the response of the local fire jurisdiction." There were also some findings regarding the effort that has been made to get a response, acknowledging it is a volunteer fire department. If that paragraph was added to Condition 1, would that work?

Greg Martinsen stated he was not sure.

Chair Kennedy stated he had a concern about usurping the responsibility of the fire district, assuming their non-response is a nod of approval.

Colleen Dowdall stated she was not asking to assume a nod of approval. She was suggesting that no response may be received because it is a volunteer department. They may also not have the expertise. It is only a responsibility that the Commissioners have imposed upon the developer. The fire jurisdiction cannot be ordered to respond to the request for subdivision review. The Board can only ask the developer to ask the fire jurisdiction for their opinion. If there is no opinion forthcoming, she wanted to have a backup. The regulation says the road will be approved by the County Surveyor, the governing body and the local fire jurisdiction. She suggested that if the local fire jurisdiction approval cannot be obtained, then it would fall to the Commissioners and the County Surveyor.

Greg Martinsen stated he had sent a letter to Rollie Mathew. He would send a certified, return receipt letter to both Rollie Mathew and Bill Shoupe, who are both connected with the fire department. Dolores Burch would contact Mr. Shoupe as

well. The letter and evidence of sending such a letter could be provided to the Attorney's Office or OPG for approval. He would do his best to contact them. His concern is, and also on Condition 3, does this cover the access into the parcel being created, Lot 2. Was that correct?

Colleen Dowdall stated that was what was anticipated.

Greg Martinsen stated that Mr. Timlick did not plan to build on the property for quite some time. He is buying this property to keep it from being built on. He also owns property across the road. He may do something in the future but did not want to put in the access at this time.

Commissioner Evans stated the condition does not say he has to put it in now, it says that when he does put it in, it must meet the condition.

Greg Martinsen stated he wanted to make sure that was clear in the conditions.

Commissioner Carey asked if the volunteer fire service already provided emergency services year-round to existing households in the area?

Greg Martinsen stated they did.

Commissioner Carey stated this location would not be outside their normal range of operation.

Greg Martinsen stated that Condition 7 read: "Engineering plans and specification for the road and drainage improvements shall be provided for review and approval by the County Surveyor's Office prior to plat filing." The buyer will not be doing any road improvements or drainage. How could that be provided for?

Brian Maiorano stated that condition was included in case the fire department wanted improvements on the road.

Chair Kennedy asked if that was acceptable? It is not a condition requiring anything. If the fire department come up with something, then it may be applicable, but it appears they won't so this should not be a problem. Staff wanted to be sure that if the fire department determined that a turnaround or some other improvement was needed, there was a way to be sure it was accomplished.

Greg Martinsen understood what Chair Kennedy was saying. His concern was if there is no follow through from the fire department, that condition was included for some reason.

Commissioner Evans suggested adding "if required by the fire department" to the condition.

Greg Martinsen stated that would be acceptable.

Chair Kennedy asked for public comment.

Fred Timlick stated he was wanting to purchase this piece of property. His main reason to purchase it is so nothing will happen to it. He wanted it to stay just the way it is. He does have property across the road. This new piece is between him and his view of the mountains. He is hoping nothing happens to the new property. As far as fire access, he has had no problem with 5th wheel camper or motorhomes, which in some cases are larger than the fire equipment. These roads should be okay for emergency access.

Commissioner Evans stated conservation easements and other methods could be placed on the property that would keep it from being developed.

Dolores Burch stated she has been working with the Surveyor for a year. The reason she would like to sell this parcel is that she truly needs the money. Her son died of cancer some time ago and the medical bills are overwhelming.

Arlene Braun stated she and her husband own property near this proposal. Her concern is that there not be any large amount of building that would be contrary to the land use plan. That did not appear to be a problem in this case. She had a question about the restriction in the covenants that limits future division of Tract 1. She did not see that listed in Condition 4.

Brian Maiorano stated that was listed on Page 2 of the Covenants provided in the Application Packet. The covenants listed in Condition 4 were one specific to governing body action. It was stated in the covenants that Tract 1 could only be divided once more into two parcels, keeping the overall density of the property at 1 dwelling unit per 10 acres.

Arlene Braun stated she did not have a copy of the Application Packet. One was provided for her to read.

Brian Maiorano stated that a further split of Tract 1 would have to go through subdivision review and also come before the Commissioners for approval.

There being no further comments, the public comment section was closed.

Commissioner Evans stated she did not want the County a party to all the covenants. If there were a request to further split the land, it would be reviewed by the Planning Office and would come before the Board.

Brian Maiorano stated the Sections of the Covenants to be included for governing body approval be limited to Sections 12, 13, 15, 16 and 17.

Commissioner Carey asked about Section 8 which prohibits clear cutting.

Colleen Dowdall stated that was not one of the sections asked for and not in the regulations.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(5) of the Missoula County Subdivision Regulations to not provide sidewalks or pedestrian walkways in the subdivision; approve the variance request from Section 3-2(1)(I) for Buck Creek Road and Lucky's Lane to vary from a 60 foot right-of-way width to the existing 30 foot right-of-way width; and approve the variance request from Section 3-2(3) for Buck Creek Road and Lucky's Lane to vary from a 24 foot road width to the existing condition, based on the findings of fact set forth in the staff report and subject to conditions 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 Burch Tracts No. 1 Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, including adding to Condition 1 the same language at the end of Condition 3; that the covenants the County will be a party to in Condition 4 be limited to Sections 12, 13, 15, 16 and 17; and that "if required by the fire department" be added to Condition 7.

Commissioner Carey asked if it would be confusing to not add Section 2 which refers to lot size.

Colleen Dowdall stated it was up to the Commissioners but since a future split would need approval, it was probably not necessary.

Commissioner Carey seconded the motion.

Chair Kennedy stated fire protection in rural areas was largely met by volunteers. He wanted the developer to understand that fire protection in the area may be judged by the response from the fire department. That is not to say they are not good people. If they are not available when a fire happens, they simply are not available. Just because they are within a fire protection area doesn't mean they are safe and doesn't mean they are protected and doesn't mean that if a fire occurs it may be put out. He called the question.

The motion carried on a vote of 3-0.

Burch Tracts No. 1 Subdivision Conditions of Approval

1. The applicant shall provide written documentation from the Swan Valley Volunteer Fire Company that the District can provide year round emergency services to the subdivision prior to plat filing.

If approval by the local fire jurisdiction is not received prior to final plat filing, then the approval of the County Surveyor and governing body will meet the requirements of this condition. The Developer shall use diligence in attempting to obtain the response of the local fire jurisdiction. *Subdivision Regulations Article 3-1(1)(B), 3-1(1)(F), 3-2 (1)(E) and staff recommendation.*

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

"Acceptance of a deed for a lot within Burch Tracts No. 1 shall constitute the assent of the owners to any future RSID, based on benefit, for upgrading Lucky's Lane and Buck Creek Road, 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 petition." *Subdivision Regulations Article 3-2 and staff recommendation.*

3. The access to the additional parcel being created shall meet the requirements of Subdivision Regulation 3-2(3)(C) which requires that:

"The minimum unobstructed width shall not be less than 20 feet and there shall be an unobstructed vertical clearance for roadways and bridges, within areas of Wildlands/Residential Interface, of 13 feet 6 inches, and the roadway shall be reviewed by the appropriate fire jurisdiction for combustibility and emergency access, and approved by the County Surveyor, appropriate fire jurisdiction and governing body."

If approval by the local fire jurisdiction is not received prior to final plat filing, then the approval of the County Surveyor and governing body will meet the requirements of this condition. The Developer shall use diligence in attempting to obtain the response of the local fire jurisdiction.

4. Development covenants shall be amended and filed with the County Clerk and Recorder, subject to OPG and County Attorney approval, to include the following items related to minimizing potential wildlife conflicts, wildland residential interface standards and mitigation of fire department access:
 - a. Property owners and tenants shall obtain and read the brochures, "Living with Wildlife," "Living with Grizzlies," and "Living with Mountain Lions" from Montana Fish, Wildlife & Parks. Lot owners shall be informed that within a five-mile radius there have been numerous occurrences, sightings and some significant problem encounters between people, black bears, grizzly bears and mountain lions. *Subdivision Regulations Article 3-1(1)(C) and Montana Fish, Wildlife & Parks recommendation.*
 - b. 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 as 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)(H) and staff recommendation.*

- c. Only Class A or B fire-rated roofing materials shall be used for any new construction. *Subdivision Regulations 5-1(5)(H) and staff recommendation.*

The covenants shall also state that the above covenants and Sections 12, 13, 15, 16 and 17 of the covenants shall not be amended without prior approval of the governing body. The covenants shall be recorded with the County Clerk and Recorder and approved by OPG prior to final plat filing. *Subdivision Regulations Article 3-1(1)(C), 3-1(1)(F), 3-2(6)(E), 5-1(5)(H).*

- 5. 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 Article 3-7(2) and staff recommendation.*

- 6. The plat shall include the following statement:

"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 brought up to standards and accepted by the County of Missoula for maintenance." *Subdivision Regulations Article 5-2(5)(C) and staff recommendation.*

- 7. Engineering plans and specification for road and drainage improvements shall be provided for review and approval by the County Surveyor's Office prior to plat filing, if required by the fire department.

Hearing: Environmental Tobacco Smoke Ordinance

Chair Kennedy stated that a public hearing would be conducted prior to acting on the proposed ordinance that was enacted first by the Health Board and modified by the City Council. Through their extra-territorial powers it comes to the County Commissioners to act on before the City has authority to enforce it throughout the 5-mile radius from the City border. The Commissioner can either approve, disapprove or modify the ordinance. If there is a modification it creates the problem of having the modification agreed to by the City. It is likely the decision this Board will take today is to either approve or disapprove of the ordinance that has previously been passed by the City Council.

Commissioner Evans stated that Ellen Leahy, Director of the City-County Health Department, told her the Commissioners had no power to amend this in any way.

Ellen Leahy stated it was her understanding that the Commissioners do not have direct authority to modify the ordinance.

Michael Sehestedt stated the way the statute is set up is the Commissioners consent to the proposed exercise or say no to the proposed exercise. However, as a practical matter, if they say no, but would say yes if it were amended, then it returns to the City and is non-extra-territorial until it is modified, comes back to the Commissioners and they then approve it. The outcome is "yes" or "no" in the strict legal sense, but with the effective possibility of modification.

Ellen Leahy, Director, City-County Health Department, presented the staff report.

The City-County Health Board recommended that the City adopt an ordinance prohibiting smoking in indoor places and workplaces and that they extend that to their 5-mile extra-territorial powers for public health. The City Council adopted an amended version of the Board's recommended ordinance. The Board recommended an ordinance that did not have categories of exemptions. It did provide for variances in settings that were not yet defined. It was an "across the board" no exemptions, all workplaces, all public places ordinance.

Public places are not just public buildings, they are defined in the ordinance as places which the public frequents for business and commerce. The Council adopted a version which has exclusions and exemptions. There are exclusions by definition. Some public places and some workplaces are excluded because the definition of public places and workplaces does not include them. An important one to point out, because there has been some question from people not familiar with the format of ordinance, is individual hotel and motel rooms, which would be smoking or non-smoking. Those will continue to be decided by the manager of the hotel or motel. They are excluded from the regulation. Private residences are excluded except when they are used to serve the public, such as a day care facility. Others excluded by definition include residential accessory businesses as defined by City code, family-owned business or self-employed with only related employees and employees of other businesses providing services in a private residence.

The outright exemptions are primarily for places that have a liquor license and in the areas of those establishments where the service of liquor is the primary function and the service of food is secondary. There are also exemptions for stage performances where smoking is part of the production, retail tobacco shops, areas within truck stops where on-site food consumption or alcohol is served and in truckers waiting lounges. The last exemption for truck stops was added fairly late into the City Council's process. It is viewed as a wider exemption than some of the other exemptions related to bars and restaurants. However, the City Council did finally determine to leave this exemption as written.

There are requirements for new commercial stock. There is a provision for new construction and also for new use or change of use. Existing commercial stock in most cases is not built in a fashion that allows separate ventilation. Rather than try to retrofit this will prevent this type of commercial stock from being developed in the future. If a bar and restaurant goes into new construction or a facility that is existing but had a different type of use according to Uniform Building Code, they would then have to have separate ventilated rooms to continue to enjoy the exemptions that already exist. It does not provide for new exemptions. Old places that have exemptions, will continue to have them. As new commercial stock is developed, separate ventilation will be required because that is what brings about the public health protection.

There are some signing notifications and notifications of employees at the time of hire, if they are to be working in an area where an exemption is being exercised. The ordinance is enforced by written complaint to the Missoula City-County Health Department. The effective date for workplaces would be 90 days after approval and 180 days after approval for restaurants without a liquor license at the time of adoption. If this ordinance is approved by the Commissioners today, it will tentatively be on the Health Board agenda for next week.

There are surveys of restaurants and bars in the area and the Health Board is already separating out with relative ease how these exemptions will be handled. There is a plan in process for notification to all workplaces and a grant has been obtained to assist with that project.

The request before the Commissioners today is that they approve the use of extra-territorial powers of the Mayor pursuant to MCA 7-4-4306 and vested by Missoula Municipal Code Chapter 8.37 entitled "Smoking in Indoor Employment and Public Places" as adopted by the City Council on May 24, 1999.

Chair Kennedy stated that in a recent newspaper article there was an e-mail address published for comments on the proposal. He read the names of the people who responded who were in favor of the ordinance since the adoption by the City: Don Worden, Rebecca McVay, Richard Smith, Lucy Lewis, Pamela Kierulff, Cedric Hames, Carla Abrams, Bruce Hardy, Margie Gilder, Ed Brown, Cate Campbell and Jim Dayton. Those responding who were against the ordinance include: Bruce Allen and Shirley Wales.

Chair Kennedy opened the public hearing.

Janice Givler: I'm an obstetrician/gynecologist. I want to speak on behalf of the ordinance to ban smoking. I want to speak mostly about the effects of second hand smoke during pregnancy and on infants and small children. It has been known for years that women who smoke during pregnancy have an increased incidence of growth-retarded babies, small babies, pre-term delivery, pre-term separation of the placenta, fetal death and Sudden Infant Death Syndrome. Studies have also shown that women who are exposed to second hand smoke during pregnancy also run these same risks. It was for a long time thought that the placenta served as some sort of barrier to all of these toxins. It's just not true. Studies that have been done on amniotic fluid have shown that women who are exposed to second hand smoke have real high concentrations of certain tobacco metabolites in the amniotic fluid. So, not only are babies being directly exposed through the umbilical cord, but the babies actually end up almost bathing in the metabolites in the amniotic fluid throughout the pregnancy. It is also important to talk about the effects of children who are exposed to second hand smoke. The American Academy of Pediatrics has clearly shown that children who are exposed to second hand smoke have an increased incidence of upper respiratory tract illnesses -- colds, bronchitis, pneumonia. Children who are exposed to second hand smoke can actually develop asthma in children who may not have otherwise developed asthma. Children who already have asthma can have increased incidence of outbreaks, more severe outbreaks that require hospitalization. And also importantly is that both during pregnancy and in children, or infants I should say, pregnant women's fetuses who have been exposed to second hand smoke and infants who are exposed to second hand smoke have an increased incidence of Sudden Infant Death Syndrome. A lot of people say, "If you don't want to be around smoke, well then just avoid those places." But I'd like to say that that doesn't always pan out for everyone. Sometimes women have to work during their pregnancy. In doing so, they can expose their fetus to this unhealthy environment. Children often times have very little ability to control their environment. In considering this ordinance, I hope you will consider the health and safety of Missoula's young people and I hope that you'll all vote in favor of this. Thanks for your time.

Bruce Hardy: I grew up in Missoula and practiced general pediatrics for 16 years and then got a few more years of training to be a pediatric cardiologist. I'm certainly living in Missoula by choice. I won't go through the details. I think we all agree we know what the deleterious effects of first hand smoke and second hand smoke are, as Dr. Givler has enunciated again. This has been a long process and you've all read a lot of testimony so I won't bore you with more details now. It's really important that I support this proposal for Missoula and for the five-mile distance beyond Missoula because of my interest in protecting the health and welfare of children, young adults and other adults in Missoula. It is very important to protect them. We have so many laws to protect them from other deleterious effects such as asbestos, unsanitary food, fire safety, etc. As Ellen once mentioned to City Council, public health is by definition a bit of a compromise between ones personal freedoms and those of the public at large. And this certainly is the case too. I've heard a lot of testimony by those that are opposed and also in favor and thought about it carefully. In this case, second hand smoke is such a deleterious substance, there is no safe dose of second hand smoke. I do firmly believe that it's in the best interest of the public to pass this including for the distance around Missoula, and not just within Missoula. I appreciate all the time you've spent reading and listening to us today. Thanks a lot.

Dave Campbell: I represent Crossroads Truck Center, Crossroads Diamond Jim's and Crossroad 4B's Restaurant. I would urge you folks to go ahead and pass this ordinance as it's written. It's been a long, arduous process. There's been a lot of thought and time put into it. I think it's a good ordinance and we can live with it. I would urge you to go ahead and pass this ordinance. Thank you.

Linda Lee: Thanks for having us today. I work with the American Lung Association and a coalition of groups and individuals called Smoke Free Missoula. We've worked very hard on the passage of this important public health protection. For some the protections aren't good enough but we have been very closely involved throughout the process over the last year and a half and we have come to understand and accept the realities of compromise and we accept the exemptions as written into the ordinance right now. To date, 859 towns and cities across the United States have passed

ordinances to protect the public from second hand smoke exposure. These ordinances vary widely in their scope and their strength. The Missoula ordinance falls in the middle ground of these ordinances and I have a little fact sheet for you to show you what's been passed around the county. The major argument against these health protections is economic impact yet it seems almost monthly, or every couple of months, another study is released showing that, that economic impact is not a problem. Just recently in the Missoulian on May 26th, a study was reported on that was done about tourism and they study cities as diverse as Flagstaff, AZ and New York City. The results was that there has been no impact by the second hand smoke ordinances on tourism in these cities and towns. We urge you to pass the ordinance today. You'll be effectively protecting a large portion of the Missoula working community and the public from these carcinogens and toxins in second hand smoke. Thank you.

Pamela Kierulff: As the former executive director of the American Lung Association of Idaho, and as a member of this group of Missoula citizens concerned about the dangerous health effects of second hand smoke, I'm here to urge you to pass this ordinance as written. While it is not totally across the board, I think it has a very significant and positive impact for not only adults and youth in terms of exposure but also sends a very, very important message to our youth that smoking is not okay, that it is a health hazard and significantly affects the health of all of us. What's important today with all of the information that is being presented in the media about the tobacco industry and the tobacco industry settlements, is that this smoke screen that has been created by the tobacco industry to hide for decades the dangers of smoking and second hand smoke continues to do so. While billboards are coming down, there's still some advertising that is permitted. So when a community such as ours passes an ordinance that says smoking is not okay, it will send a message to our youth and hopefully will have the impact of helping youth not to start smoking because since 1991 we have seen a rise in teen smoking with the average youth smoker beginning at age 13 and becoming a daily smoker by the age of 14-1/2. Since 1991, smoking among 8th and 10th graders has increased by nearly 50%. Adolescents are three times more sensitive to tobacco advertising. Kids model what they see adults doing. Much has been done since these studies were published. This will make a difference so I urge you to vote to support it. Thanks.

Kevin Head: I own the Rhinoceros Tavern here in town and I'm also a spokesperson for the Missoula County Tavern Owners Association. I've been involved with this since the very beginning, with the first committee that had been brought together by the Health Board. We've worked hard with this to get to where we are right now, with the compromises that are in there. We can live with it as we see it right now, we would support it as it is, as it stands. I'd just like to say also that this isn't just an economic thing. Not everything that you read or that comes out of the media that speaks of studies that are done are accurate studies in any sense of the word. One of the things that came out of one of the City Council committee meetings was a comparison between Missoula and Corvallis, Oregon. Corvallis, Oregon, where they passed an across the board ordinance. And with this ordinance it was stated at the first time there that the officials in the city of Corvallis, Oregon said it had no economic effect at that time. So I called up and I talked to some of the owners of taverns and stuff over there. I talked to a bartender, who herself is a non-smoker, and she said that her tips had gone down more than 50% and that day business had gone down 50%. Another person, a bar owner I talked to, told me that he'd lost \$186,000 in the first six months. Another restaurant owner that I had talked to, that had been open for 50 years, the restaurant had been open for 50 years, was closing their doors. It isn't just a thing for an economic thing. It's also freedoms. Being able to make your own choices of what you can do and who you choose to spend time with. Where I would agree with the city here that 75% of Missoulians are non-smokers, it's safe to say that 25% are. And I would say that in my establishment, 60% to 70% of the regular customers there are smokers. I have people that come in there that smoke that don't even smoke in their own homes. But they like having the freedom of being able to come in there for that. As this stands right now, this is something that we could live with and hope that you'll pass it as is.

Jim Dayton: I live out toward Bonner in the donut area and I'd like to say I support an ordinance and I think this ordinance is one small step toward protecting our constitutional rights to a clean and healthful environment. I'd like to ask the County Commissioner to strengthen this in the area of the donut area. In the City Council hearing, for some reason truck stops, with no justification, were added to this. Specifically in Bonner, where I live, the Bonner Truck Stop, or Travel Plaza as it called and advertised, came in and said that they would be a community center, a place for the community to gather. They would be a benefit to the community. It's where the local school holds their car wash, it's where, when we have our garbage pickup along the streets, we gather at the truck stop and yet at the same time, the restaurant there is an Arby's and a Subway, and it's designated as the smoking area in the truck stop. The city has no truck stops as they're defined here. I think that there's a number of ways that you could strengthen this ordinance, only in the donut area, and that would be to say that truck stops would be defined as those places whose primary business is serving the commercial trucking industry. You would find that probably none of these truck stops as written in the ordinance would fall under that. If you follow the advertisements on TV you will see Muralt's advertising for vacationers to stop there and get their gas, their food, their beer. If you look at the advertisements out at Bonner, it's Subway, it's Arby's, it's a Travel Plaza, it's a food plaza. If you look at the customers, a survey's been done, by myself, 10% of the customers at these truck stops are commercial truckers. The number of truckers there sometime is considerable because they have to follow the state law, they have to get their 8 hours of rest before they hit the weight station out west of town. There's really no reason why these truck stops should be exempted. They all have their casinos, casinos are exempted, I'm not going to fight that. They can have their smoking in the casinos but in the Subway, the Arby's, the family restaurant at out the Wye at the truck stop, these places are already set up to have no smoking area. Every single truck stop has a truckers lounge. They're set up where only truckers are supposed to go, where they have color TVs, they have laundry facilities, they have telephone facilities, they have chairs, they have easy chairs such as what you're sitting on there, that are much more comfortable than sitting in the plastic benches at the Arby's. I think it's deception for these folks to come in here and say that they should be exempted because one percent, they portray truckers as being relatively stupid and saying that if they can't stop in Missoula and have a cigarette with their Arby's they're going to drive to Idaho where they can do it. And if you know where the truck stops are, you know they have to drive to Lewiston, Idaho, after they miss the one in Lolo. Lewiston, Idaho is the next truck stop. They're not going to drive that far so they can have a cigarette with their meal. Truckers are no dumber than any of the rest of us in here. They're going to have their meal, smoke their cigarettes in their truck or out at Bonner go sit by the picnic table by the lake there, by the reservoir and have their lunch. They don't need to have a cigarette in a place that came in and said we'll hire local, they hire local teenagers to work in these places, teenagers that aren't even allowed to buy tobacco are subjected to second hand tobacco delivery with this exemption. So I think it's a first step, this ordinance, and it should go on, but I would think it should be, with the County Commissioners, strengthened so that in the donut area that we also have some benefit of a place to eat or drink where we can have a smoke free environment. And as it's set up right now, there's no place in Bonner, East Missoula or out at the Wye where a person can go into a smoke free environment. And yet every single restaurant has a no smoking and a smoking area.

Unfortunately to get to the no smoking area you have to walk right dead through the smoking area to a no window dining room and that's where they put the smoking people, it's a perfect place ... er, that's where they put the no smoking people, it's the perfect place to put the smokers. All of these truck stops also have food service areas which are for truckers only to expedite them to get them back on the road. These areas are fine for smoking if that's what they want but if you're talking about a no smoking ordinance I would hope that you would strengthen it in the area that the County is really concerned about, and that would be the outlying areas within this so that we can have some of the benefits of the smoke free environment as well. I think there's other things that are wrong with it, I would hope that I think to do that it would be one of the things that you could do under the exemptions, number F, instead of areas in truck stops put truck stops areas used for liquor service. We have a restaurant out there, the River City Grill, who since this smoking ordinance has come to the front and started advertising their place as having room for 480 parking spots. Now they're considering themselves to be within the truck stop even though they certainly are a separate business, a complete separate entity but they are within the asphalt of the truck stop. That should be something we should have a smoke free environment there, they should not be exempted because they happen to lie within the asphalt out there. I think expanded, when bars expand into apartment buildings because they can have more customers, I think when these expansions come about it needs to be strengthened so that these expansions are smoke free. There's a number of things but I would like to see the truck stop be defined as a place that is primarily, whose primary business is serving the commercial trucking industry and I would like to make it that areas within these truck stops are not exempt except for the casinos and possibly the bars. Thank you.

Commissioner Evans asked if Ellen Leahy would respond to his comments in regards to the food areas in the truck stops and let her know whether or not they are exempt or not.

Chair Kennedy asked Ellen Leahy to wait a minute. He wanted to continue taking comments and then go back as other questions may come up.

Carla Abrams: 1121 Sherwood Street. I'd like to join with the illustrious owner of the Rhino Restaurant in passing this ordinance but I have two points I'd like to make. I'll make them as succinctly as I can. First, I don't believe a second hand smoking ordinance is a issue of personal freedoms or the personal freedom of anyone to smoke. I only smoke if I'm on fire myself. I don't feel that we're asking anyone not to smoke and it's not an issue of personal freedom but who around you is affected. Second of all, I'd like to say that there is a large population of people in Missoula who do not go out to bars or to a place where they have live music nowadays, because they don't want to be exposed to smoking. And so any kind of a poll where people go into a bar and ask the people in the bar well do you smoke, don't you smoke, what do you feel about an ordinance, are not representing any of the people, including many of my own friends, who don't go out to bars and don't go out to hear live music right now because there isn't a place we can go in Missoula where you don't come smelling of cigarette smoke, breathing it in, etc. So I just wanted to bring that perspective to the owners of the bars, even though, frankly, I can also live with this ordinance as it is right now.

Chair Kennedy stated that if anyone wanted to respond to what had been said, this was not the appropriate forum, it was not a debate, it was a public hearing. If someone wanted to add new information, that would be acceptable, but debate between testifiers would not be allowed. He asked if anyone would like to speak for a second time.

Kevin Head: Just to say that there was a non-smoking bar that I had here at one time in town. It was with music. It had the biggest dance floor in Missoula at that time. I talked with a lot of folks at that time, before we opened it, because we thought that we would be drawing in a lot of that crowd of folks that would want to come to in for that and the support just wasn't there.

Jim Dayton: I would just like to say that there's one important thing to remember. These places are licensed to serve the public. These are public licenses. And the public has the right to the clean and healthful environment. It's the people that have their drug addictions that have to make the choice of whether they want to come into a clean place. They shouldn't be allowed to bring their drug addictions into a public place and force that spew on the customers that are in these public places. You can go over to these places, you can go over here to Sean Kelley's, it says a Public House. If you look at their advertising they are advertising for family entertainment and yet you're playing Russian roulette every time you walk down the street with your mother, your father, your son, your daughter or yourself and decide to go in and have a beverage or a sandwich. I would respond to why the no-smoking bar failed, but

Chair Kennedy thanked Mr. Dayton for his comments and did not allow him to rebut other testimony. The public hearing was closed. He then asked Ellen Leahy to respond.

Ellen Leahy stated she was obligated to respond from a couple different perspectives. First are Mr. Dayton's observations, as described that are mostly correct. Staff does not consider River City Grill part of the truck stop. It is correct that in Bonner smoking would be allowed in Arby's. From a public health perspective that doesn't make a lot of sense. The Health Board recommended that kind of activity would not take place anywhere. In her introduction, she mentioned that the truck stop exemptions came along later in the process. It has taken 18 months to try to draw the line, but there are still difficulties to draw that line to cover existing activities throughout the valley. The City Council visited the truck stop issue and did received comments from Mr. Dayton and Mr. Campbell. When it came time to vote and send the ordinance to the floor, the issue did not carry the day. Speaking from another perspective, someone who honors the outcome and process of this, she did not feel the ordinance had been watered down to the extent that there is no effect. Thousands of workplaces will be brought into this protection. Having watched all the players work long and hard on this process she asked the Commissioners to trust that this is a good outcome and to honor all that work. She did not feel voting it down and hoping that particular provision would be changed was a risk worth taking. She did not recommend the Commissioners take that risk. She acknowledged that is an issue and looser than many people want.

Commissioner Evans stated that many of the folks in the audience who know her are wondering how she will vote. This is the most difficult decision she has had to make in 20 years. The wood smoke issue was difficult, but everybody has to go outside, which made it easier. This one is not easy. She has carefully listened to testimony at City Council from all the medical personnel, much more than what was heard today. Up until today she did not know the Board could send it back to the City and ask them to change anything. She is not inclined to do that. It is her understanding that the Board has the power to yes, this ordinance can be enforced outside the city limits, or no, it cannot. It makes no sense for folks inside the city have one set of rules and the folks outside the city have a separate set, because people's health outside the city is just

as important. She prepared a written statement with some of her reasons which was on the front table. Especially important to her are people's individual rights which is part of the reason why this has been so difficult. But people don't have the right to harm somebody else. When someone smokes in a room, they smoke everybody. She had lunch today at a restaurant whose smoking section is separated only by a half wall. There is no way the non-smoking section is non-smoking. It is a serious enough health issue that she intends to support this which will make some people happy and some will be upset.

Commissioner Carey stated he felt Commissioner Evans reached the right decision for the right reasons. He did not feel the ordinance was as strong as it should be, but it is as strong as it can be right now, which is why he will support it. He felt there was a long way to go, he was particularly concerned about the fact that more and more youth are beginning to smoke. That is a very dangerous development, not only for them but for society, because in the end it cost all of us a lot of money to take care of people who have smoked for a number of years. He thought it was the best that could be done right now and looked forward to strengthening it in the future.

Commissioner Evans asked Ellen Leahy to draft a letter for her signature to send to the Keneallys, who own the Travel Plaza in Bonner, pointing out these two places where food is the major occupation and through action of this regulations gives them an exemption, and explain the health hazards and ask them to willingly make those food areas non-smoking.

Chair Kennedy stated he would ask Ellen Leahy to do the same thing, and to draft the letter for signature of the entire Board. He felt his colleagues were going to make the right decision and he intends to support the ordinance. He added that protecting children and modeling for young people is paramount in his concern. More children are beginning to smoke at an earlier age who do not understand the future effects of what they are doing. Good modeling is perhaps the best reason for this ordinance, doing the best job for the children. He is happy to support this ordinance and felt, as Commissioner Carey did, there was lots of room for improvement. As other states and cities learn, improvements will be made, including the positive economic benefits. Testimony has been given today that money may be lost because people are staying away from certain establishments. If there was an across the board ban, that barrier would be erased and an economic improvement would be seen. The Commissioners want to be on record as supporting this and want it to work as hoped, protecting public safety and perhaps even lives. They want to be good models for children and youth.

Commissioner Carey moved that the Board of County Commissioners approve the use of extraterritorial powers of the Mayor pursuant to MCA 7-4-4306 and vested by Missoula Municipal Code Chapter 8.37, "Smoking in Indoor Employment and Public Places," as adopted by the City Council on May 24, 1999. 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 2:50 p.m.

THURSDAY, JUNE 10, 1999

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:

Service Contract – Chair Kennedy signed a Mineral/Missoula County Service Contract with the Mineral County Commissioners and the Missoula County Superintendent of Schools, to perform school superintendent duties from July 1, 1999 through June 30, 2000. Mineral County agrees to pay the Missoula County General Fund \$3,300.00 per year for these services. The Contract was returned to Rachel Vielleux, Superintendent of Schools, for further signatures and handling.

Logisys/IBM Maintenance Contract – The Commissioners signed a Logisys/IBM Maintenance Contract for seven RS6000 computers used in 911. Cost of the Contract is \$5,740.00 per year, included in the FY99 and FY2000 budgets. The Contract was returned to Susan Bomstad in 911 for further handling.


MACo Evaluation – The Commissioners completed and signed an annual evaluation of MACo and the Executive Director. The evaluation was forwarded to MACo's Evaluation Committee in Helena.


Extension – The Commissioners approved a six-month extension of the final plat submittal for Montana Vista Lot 9 (Phase II) Subdivision, making the new filing deadline December 11, 1999, with a letter to Ron Ewart of Eli and Associates.

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

FRIDAY, JUNE 11, 1999

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


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JUNE 14, 1999

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

Monthly Report – Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, for the month ending May 28, 1999.

Grant Awards – Chair Kennedy signed two grant award forms:

1. with the Montana Board of Crime Control for \$25,013.00 for the Family Referral Program and Community Youth Justice Councils.
2. with US West for \$4,000.00 for the Community Youth Justice Councils.

The paperwork was returned to Dori Brownlow in the County Attorney's Office.

TUESDAY, JUNE 15, 1999

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:

Extension – The Commissioners approved a one-month extension of the final plan submittal for Neilson and Son Subdivision for Lease or Rent, making the new filing deadline July 9, 1999, with a letter to Cheryl Neilson.

Main Extension Contract – The Commissioners signed a Main Extension Contract with Mountain Water Company for the Missoula Development Park, Phase I, American Eagle Instrument, Inc. Cost of the Contract will be \$10,800.00. Effective date shall be June, 1999. The Contract was returned to the Projects Office for further signatures and handling.

Other items included:

- 1) The Commissioners agreed that Missoula County will chip seal 8,320 LF of Wallace Creek Road, and Roy Handley will provide chips for 5,420 LF.

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

WEDNESDAY, JUNE 16, 1999

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Holt, Rinehart and Winston as principal for Warrant #028044 issued 1/14/99 on the Missoula County General Fund in the amount of \$1,777.44 now unable to be found.

Application for Issuance of Replacement Warrant -- Chair Kennedy approved an Application for Issuance of Replacement Warrant naming Jennifer Braun Bunn as principal for Warrant #64901, issued 6/4/99 on the Missoula County Payroll 78-42 Fund in the amount of \$273.78, not received in the mail.

Other items included:

- 1) The Commissioners approved a one-year extension of the deadline for constructing public improvements for Town Pump-West Riverside Subdivision conditioned upon extension of the Subdivision Improvements Agreement and providing continued security for that agreement. Colleen Dowdall, Deputy County Attorney, will send a letter.
- 2) Resolution – The Commissioners signed Resolution No. 99-042, a Budget Amendment for the Sheriff's Department, in the amount of \$66,668.00.
- 3) Weed Grant Agreements – Chair Kennedy signed four Noxious Weed Trust Fund Project Grant Agreements:
 - a. Grass Valley Weed Management Group, Number MDA 99-77, through September 30, 2000, to manage spotted knapweed, Canada thistle and leafy spurge. Compensation shall be a maximum of \$11,576.00;
 - b. Woodworth Weed Management Group, Number MDA 99-79, through September 30, 2000, to manage spotted knapweed, Canada thistle and leafy spurge. Compensation shall be a maximum of \$3,049.00;
 - c. Sapphire Weed Management Group, Number MDA 99-76, through September 30, 2000, to manage spotted knapweed and sulfur cinquefoil. Compensation shall be a maximum of \$35,054.00;
 - d. Goodan-Keil Weed Management Group, Number MDA 99-78, through September 30, 2000, to manage spotted knapweed, Canada thistle, sulfur cinquefoil, dalmatian toadflax and leafy spurge. Compensation shall be a maximum of \$4,184.00.

All four Agreements were returned to Alan Knudsen in the Weed Office for further handling.

PUBLIC MEETING – June 16, 1999

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

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 list in the amount of \$417,779.35. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Issuance of Revenue Bonds for the Dinny Stranahan Advanced Cancer Research Institute, Inc.

Michael Sehestedt, Chief Civil Attorney, presented a background.

At their Public Meeting on June 16, the Board of County Commissioners will conduct a public hearing on a proposal that the County issue its revenue bonds, under Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended, on behalf of the Dinny Stranahan Advanced Cancer Research Institute, Inc.

The Board has before it a request from the Dinny Stranahan Advanced Cancer Research Institute, Inc., for the issuance of Industrial Development Revenue (IDR) Bonds. These bonds are issued pursuant to State law and if they meet the requirements of State law and various Federal tax laws, the interest paid to the bondholders on the bonds is exempt from both State and Federal taxation. As a result, the money can be borrowed at a lower interest rate than generally available commercially.

The Bonds are a limited obligation of the County and as a matter of State law, the County assumes no pecuniary or financial obligation in connection with the bonds. The bondholders look solely to the project and to the project's revenues for their repayment. The bonds do not count against the County's bonded indebtedness limit and are not for any purpose other than exemption from Federal tax law considered to be obligations of the County.

Both State and Federal law require the issuing authority to conduct a public hearing to determine whether or not the issuance of the bonds is in the public interest, however, both are vague on what the meaning of public interest is. Missoula County has generally adopted the view that, at a minimum, the proposal has to be for an import industry, one that essentially sells its product outside the County, rather than the sorts of enterprises that divide up an existing retail or commercial pie within the County.

The other tests for construction of the project, are a matter of policy and now a matter of State law. Construction has to be paid for at Davis Bacon wage rates. The Commissioners have considered in the past the creation of jobs, the nature of the jobs and any favorable or unfavorable spin-offs the company might have on the community. They look at environmental impacts and at any requirements the project might impose for additional public infrastructure. Essentially, it is a policy decision for the Board of County Commissioners whether or not considering the project as a whole, it is in the public interest or not.

Milt Datsopoulos, Datsopoulos, MacDonald & Lind, P.C., stated he was present to represent the Stranahan Research Institute. He was proud and excited to be a part of this proposal. The Stranahan Research Institute is the culmination of the vision of Dr. Mary Stranahan. Dr. Stranahan has operated the Medicine Tree facility in St. Ignatius. She has practiced medicine for a number of years in the area. Her vision is combining Western medicine with integrated medicine. This includes immunotherapy, body-mind therapies, energy medicine such as acupuncture, homeopathy, massage, cranial-sacral therapy and nutrition, a blending of Eastern and Western medicine to enhance the well-being of the patient and provide a better curative and less violative curative process.

A number of friends and family of Dr. Stranahan have suffered from cancer and she has treated a number of cancer patients. She is using her intellectual and financial resources to create a cancer research center. The purpose and objective of the center is to be a world class center on the cutting edge of researching new treatment processes and modalities, to utilize an expansive and creative approach to the treatment of cancer to determine if cancer be treated more effectively and to produce new treatment therapies. Additionally, the research center will, with a world class staff in coordination with pharmaceutical houses and research labs, perform treatment protocols under the supervision of the FDA, publish medical reports and provide education to practitioners in this country and elsewhere in the world.

Dr. Stranahan has chosen Missoula primarily because it is a medical center already, but has been careful to understand that Missoula already has many fine facilities. This center does not intend to compete with any present facilities. Meetings have been held with St. Patrick's Hospital oncology group to advise them of what is intended. The center also intends to contract with local medical facilities to perform services. The center will tend to be compatible with the existing centers, not competitive. This should enhance the current medical community here.

The center will be run as a 501(c)(3) for non-profit, which will be the legal entity that will fund, construct and manage the facility. It will be supported in part by Dr. Stranahan and by certain other foundations that have committed their support. They are also finalizing an agreement with a pharmaceutical house to conduct a clinical trial under FDA protocol. Should these bonds be approved, the facility should be constructed and completed by spring and fully operational in one year. It will have a patient load of 25 patients every three weeks, most will come from out of state and will have completed a rigorous eligibility and admission review process. Cancer patients from the local area will also have access to this facility.

The center will be working with the current medical community, including the University of Montana. The U of M has an alliance with St. Patrick's in the heart surgery unit. It is believed the same thing can happen in the cancer research area. The University is excited about the participation with this center. It will be an enhancement of the University and the center to create new treatment processes and clinically evaluate them.

The center will have five members on the Board of Directors. The control will be local and tightly managed to be compatible with the vision described. It will be located on 4.7 acres in the Reserve Street area across from Fuddruckers. The property has already been acquired. Additional negotiations are ongoing for additional property. There will be a 20,000 square foot building which is currently under design with local architects and contractors. Virtually all the construction, professional and financial services will be utilized locally. First Interstate Bank has reviewed the project and funds have been arranged through them.

The acquisition of the land, construction of the building and funding of necessary equipment will cost approximately \$7 million and they are requesting authorization to sell revenue bonds for that amount. The center will be staffed with approximately 50 employees, many will come from the local area. The specialists that are not available here will be brought in, they will be world class specialists in the area of cancer research. Several have already been targeted. The payroll will be approximately \$2.4 to \$2.5 million. It's a facility that has always been envisioned for Missoula and will hopefully start a high tech medical movement to Missoula. It will have a favorable local economic and cultural impact on Missoula. It is requested the Commissioners will review and favorably approve the application for IDR bonds.

Dr. Mary Stranahan thanked the Commissioners for hearing their request. Her vision comes from a long involvement with both conventional and alternative medicine and seeing alternative medicine being more effective in chronic disease than conventional medicine. Her training is in conventional and her vision is to meld the best of all worlds. Dinny Stranahan was her sister who died from a brain tumor in 1993. Before she died she asked Dr. Stranahan to research everything, including alternative medicine. That was the beginning of her involvement with alternative medicine. It has been frustrating because there is very little statistical evidence and no good place to get answers. The staff that is anticipated can assist in pursuing those answers. The center will also address all three issues: mind, body, spirit.

Chair Kennedy opened the public hearing.

John Fletcher, 655 Evans, stated that his partner, Margaret Kingsland, has served on the Advisory Board of the Medicine Tree, he and Dr. Stranahan have been partners in the Dixon Partnership Farm, a community-supported agriculture enterprise, and he has been a health care worker in Missoula. He felt the Commissioners might wish to come up with a set of criteria to use when dealing with issues such as this, when government money is used to support private enterprises. He is a representative of the Missoula Living Wage Coalition and read a prepared statement as follows:

Missoula needs living wage jobs. The Northwest Policy Center found that "the living wage for a single adult in Montana is \$9.02 per hour" and that only 47% of new jobs in Montana meet that basic level. We would like our local government to only assist private development when the community has assurances that its support will generate jobs that pay living wages.

This is not the first time you've heard from our Coalition. Some weeks ago, representatives of our coalition gave testimony about another project before you seeking public assistance. In fact, all across the country taxpayers are demanding that private businesses that receive public assistance be accountable to their communities.

You may have read in today's Missoulian that our coalition began circulating petitions to establish a "living wage" ordinance for the City of Missoula. If that ordinance is passed, private businesses who are recipients of city grants, loans, subsidies, tax breaks or other assistance, pay their employees a wage of \$8.00 per hour plus provide health insurance. Additionally, such recipients would be required to accept an orderly process whereby employees can freely organize. During the year 2002, the "living wage" level would be increased to \$9.00 per hour and annually indexed to the Consumer Price Index.

"Living Wage" ordinances are now in place in twenty-nine other communities. Studies of the Baltimore and Los Angeles Living Wage ordinances found that there was no negative impact on either cities' budgets and no employment loss in the cities. The Los Angeles study also found a growth in consumer spending, home ownership and small business markets. The Economic Policy Institute found that increased wages actually benefits business by reducing turn over, training and supervision costs and increasing productivity.

Given the interest of private businesses to use our local government to assist their development projects, it's past time that Missoula County create its own standards to guide taxpayer funded support of private enterprises.

We would recommend that the County consider the following criteria to determine the appropriateness of taxpayer support for private development.:

1. *What is the level of compensation, both wages and benefits, to be provided to employees and is that a "living wage?"*
 2. *How many jobs will be created?*
 3. *What is a company's history respecting community standards regarding workers' rights to organize?*
- Only written guarantees from private enterprises that receive taxpayer support will assure that recipients of the community's support remain accountable.*

We ask that the County delay any final decision regarding the issuance of a development bond for the Dinny Stranahan Center for Advanced Cancer Research. The County must create guidelines for providing public assistance to private enterprise. Until such guidelines are in place, the County should delay any decision regarding this matter.

Hank Butzel: I live here in Missoula. I'm a member of Montana People's Action and support the Living Wage Coalition. The Missoula Living Wage Coalition is a diverse organization made up of over 20 labor, community and religious groups. The Coalition was created to help raise local wages and end the practice of private businesses receiving taxpayer assistance without any accountability to the community. The Dinny Stranahan Center for Advanced Cancer Research is asking your assistance to facilitate securing approximately \$7 million for the center's development. By securing its

financing via local government rather than a commercial lender, the project will enjoy reduced interest costs associated with borrowing. Financing via development bonds will likely result in an annual interest rate saving of approximately 2%. A 2% interest rate savings on \$7 million would save the center \$140,000 in the first year alone. Each year hundreds of Missoula taxpayers borrow money to construct new homes. Ordinarily, Missoulians do not ask local government to issue bonds for single family homes. In fact, such practice would violate state law. Why should the County provide financial assistance to private business? If the answer is that by issuing development bonds the County can assist job creation, then certainly the County should consider what kind of jobs to promote. The Stranahan project is not bound to any job creation goals and has not stated at what level employees will be compensated. Additionally, the project has not offered assurances that it will be free of labor unrest. This last point is important given questions about Dr. Stranahan's past labor practices. We, as Missoula taxpayers, support worker rights and would like our tax dollars and our local government to always do the same. Because of our unanswered questions and because the County lacks guidelines to direct its assistance to private projects, Missoula Living Wage Coalition requests that the County postpone any final decision to issue an Industrial Revenue Bond for the Dinny Stranahan Center for Advanced Cancer Research.

Secky Fascione: I'm from here in Missoula. I'm with the Hotel and Restaurant Employees Union, Local 427. We have a sister affiliate called United Health Care Workers Union, so part of my work is representing and advocating on behalf of health care workers. In the interest of your time, we didn't want to have too many coalition folks speak today. If I could ask your indulgence for just a second, I'll have folks just stand and be recognized. If the coalition could just stand for a moment so the Commissioner know that you're here. (Approximately 15 people stood up to be recognized). These are the folks supporting our request for a postponement and further investigation of today's bond request. I have a brief statement on behalf of our union:

We are a founding member of the Living Wage Coalition, because of course we support and are concerned about the issue of Montana's poverty wage problem. We also support the concept of good economic citizenship as a standard for use of public dollars by private corporations. We are also here today because we have a specific relationship with the company applying for today's bond at today's hearing, and with the owner/operator Dr. Mary Stranahan. Our relationship is based on her existing medical clinic, the Medicine Tree Clinic in St. Ignatius.

We think that the information we have and information about our experience has bearing on the decision you'll make about this application. We are here to specifically ask that you postpone any decision on this request until there is an opportunity for further investigation and until criteria is developed for employer conduct on receipt of public monies.

Very briefly I'll tell you our story. Eighteen months ago, employees at the Medicine Tree Clinic approached our union requesting assistance to help them organize for workplace fairness. The employees hoped that by organizing the union, they would gain a voice over workplace matters that affect their lives.

I spent months in that community, visiting with folks, tribal and non-tribal members, some who worked at the clinic and also with families and neighbors, many of whom were patients at the clinic. What I learned there prompts me to caution you against granting today's bond request without clear commitments back to this community.

What I learned was that employees at the Medicine Tree loved their work, their patients and the health care philosophy of the Clinic which you've heard described here today. But they felt this philosophy contrasted with their experience as employees. As employees of Dr. Stranahan, many of these workers did not feel respected or valued. They articulated frustrations about management practices and also about their repeated attempts to resolve problems in house to no avail.

They also talked with us about wages which had been frozen, in some cases for up to three years, at rates below a living wage. One employee I met had just quit her job at the clinic after being refused a promised raise from \$6.00 an hour to \$6.25. According to co-workers, she was a good employee and they felt she should have been retained for a quarter an hour.

A majority of Medicine Tree employees at that time supported unionization and they requested that Dr. Stranahan recognize the union and begin bargaining a contract. Dr. Stranahan refused.

Employees then exercised their next legal option, an election with the National Labor Relations Board. Dr. Stranahan then hired a local corporate law firm to represent the clinic and picked the first battle over which employees should be entitled to union representation. Her battle was possible because both professional health care workers, and so-called non-professional health care workers in the government's definition, were seeking union representation. She challenged the rights of both the group as defined, and of certain individuals, to unionize.

In the end, Dr. Stranahan's team did succeed in preventing some individuals, who were leaders in the union effort, from exercising these rights. Her decision to fight caused delays and created an atmosphere of antagonism that wasn't necessary in this small, community-based operation.

The NLRB did conduct two elections, one for professionals and one for non-professionals, in May of 1998. Both groups voted for union representation. We then attempted to negotiate a collective bargaining agreement with the Medicine Tree. The company's first proposal at the bargaining table was to subcontract or out source much of the bargaining unit work. This sent a clear signal to employees that unionization might cost them their jobs.

Midway through negotiations, Dr. Stranahan switched to a Portland-based law firm known for helping employers remain "union free." Despite claiming poverty status at the bargaining table, the clinic hired several consulting firms to develop a reorganization proposal. Rumors of the reorganization spread just before Thanksgiving and in fact on the day before Christmas Eve last year, employees were brought together and informed that the reorganization would include out sourcing, down sizing and layoffs, effective virtually immediately. By early 1999, just days later, almost none of the original bargaining unit remained employed at the clinic, and those few who did lived in fear of further retaliation. In that climate, the union has withdrawn from the relationship.

Before concluding my work on this project, I was approached by several individuals who would not normally be considered "union friendly." They included former supervisors from the clinic, physicians in the area who had specific

relationships with this operator, and others. I am uncomfortable providing people's names today without their permission, but I can offer the County full access to our records and files and assistance on these matters if that proves helpful.

We hope the information is useful as you consider developing criteria to guide public assistance in private development. Given that such criteria doesn't yet exist, except in general terms, please delay any decision to issue IRBs to support the Dinny Stranahan Center for Advanced Cancer Research today until further information is available.

Catherine McConnell: Good afternoon, I'm from St. Ignatius. I am a professional registered nurse who was an employee of the Medicine Tree. I'd like to talk about my experience there and the experiences of my co-workers, even though that is hearsay, it's me relating their stories to you. In July of 1997, I was called by one of the physicians on staff and told that the clinic would be expanding hours and going into urgent care. He asked me to please apply for the job because of my background and my credentials. I did indeed apply, was interviewed and was hired. I was delighted. I have never met a person more dynamic than Dr. Stranahan, her vision and her leadership were outstanding to me. I was thrilled to be working close to my home, in my community and behind a person that I thought was just God's gift to health care. I really did, I liked the idea of integrated medicine, it was all new to me. My experience is management and trauma and E.R. and I had never worked in that environment before. If you'd told me I was going to submit to acupuncture I'd have told you you were nuts. But later, I did indeed submit to acupuncture and loved it. I took the job, I quickly formed good relations with my co-workers and the physicians on staff there. I say I'm a professional registered nurse because I hold both a baccalaureate and masters degrees and because my credentials as far as the urgent care went where I am certified in advanced cardiac life support and also pediatric advanced life support. There was no one on staff at that time certified in either one, later one doctor did go and take the advanced cardiac life support. Six weeks after my hire I thought I was doing a great job. I was asked by then director Nancy Ball to take on the position of presentation of diseases at the monthly provider meeting. I hadn't had any trouble, no disciplinary action, nothing was wrong as far as I knew about my work. In September of that year, two months after my hire, or six-weeks after really, I approached Dr. Stranahan, after working there for six weeks I'd seen so many clients who desperately needed a support group, they needed somewhere to air things, throw them out for discussions and I proposed to her that I form a women's support group and that could be part of my community outreach associated with the clinic. I asked that the clinic provide us a place to meet for an hour and a half on Friday evenings. Dr. Stranahan agreed with the philosophy, she thought it was a good idea and we did indeed form the support group. That group has grown from four people to 22 to attend regularly. It's not a treatment group, it's not an AA group, an Alanon group, it's just a women's discussion group where we get together and give each other feedback about things going on in our lives. The first I ever heard of problems at the Medicine Tree was in January of 1998, and they were your basic employee rumblings, you know, "I'm not happy about the way they changed my job, or what I'm making," that sort of thing. And the employee that Secky referred to had gone to the director and said, "Look, I really need a quarter more an hour to stay here." I thought the employee did an outstanding job, I couldn't have done her job myself, there is no way. It turned out that the clinic wasn't ready to support her for a quarter an hour and therefore she had to leave to find employment elsewhere to maintain her lifestyle. This was not a nice thing because we had all just been told as staff members that the director had been given a \$1,000 bonus for Christmas, that we were still in a wage freeze, that nobody could get a raise for any reason. There were just too many conflicting things, retreats taken by the Board of Directors who were later the Advisory Board, things that were expensive that were going on and yet the employees ... she wanted a quarter, and that's just not a big deal to me. Shortly thereafter, United Parcel workers went on strike and one day over lunch in the Old Timers Café, Dr. Stranahan ran into the normal driver who delivered to the clinic and said how much she supported their strike and that she thought it was the right thing to do, that they should get their contract approved and do bargaining. Later, the conversation turned to the disgruntled employees at the Medicine Tree and she said, "Well, if that is how you feel, then you should form a union." I didn't think much of it at the time and then a month or so later I was told that the employees were indeed forming a union. I wasn't one of the initial group to be involved in this, I don't think I was well trusted yet, I'd only been there for six months, they didn't know me, they knew I thought Dr. Stranahan walked on water and therefore they didn't really want to involve me just yet. They also knew that I had been in management before coming there and that I was the management side of union, not the employee side. So I really wasn't well trusted with that issue. They did indeed petition Dr. Stranahan for recognition by the union and were turned down and from that went to the National Labor Board and voted in the union. Before the vote on the union I was hurt on the job in March, March 3rd as a matter of fact, moving a patient who was paralyzed from the waist down and I ruptured a disk in my back and I will have surgery the end of this month. While I was home on sick leave and worker's compensation, then the employees came to me and said, look you have free time, can you help us, will you help us, will you give us some input, we know you've been involved before from the other side, but what can you do. I said I'd be glad to help. They had voted in the union and I thought well somebody has to be there, so I decided yes I would help any way I could. On May 28th was our first bargaining meeting with the attorneys for Dr. Stranahan, union leadership, myself and another employee. The next day was Friday, physical therapy was closed. On Monday I reported to physical therapy at the Medicine Tree, as I did three days a week. I was called into the executive director's office, asked when I was returning to work and my reply was I really don't know, whenever the doctors decided what they're going to do with me and when I'm able to, I will be here. She wrote the letter that afternoon and put it in the mail to me, I received it Wednesday morning saying that my services were no longer needed, I had been terminated. I'd already been out of work for three months and suddenly they decided they had to terminate in order to hire another person because I had attended a union meeting. I thought that was very unfair, I was emotionally devastated, I was so upset that I could not even discuss it with Dr. Stranahan. She did, the next day, come to my house to talk to me about it and I don't hold her personally responsible for that, I think she has received some very ill advice from people she's hired to help her manage things. After being terminated from there I did continue my work with the union, I've gone to meetings, I've done what I can to help and like I said most of the things I hear about the atmosphere at the Medicine Tree are from employees who tell me in the bargaining session will you do this or that. Part of the devastation of losing my job there was that then I lost health care insurance. Granted, workmen's comp would continue to cover my back injury, but our group health care plan there covered both acupuncture and chiropractic and alternative treatments. My biggest fear that as a registered nurse, I have seen countless addicts and I did not want to be one of those people who were hooked on pain pills and could not function as a professional because they were addicts. Acupuncture, which was covered, took care of my pain for me, I did very well with acupuncture and now suddenly that was taken away. I didn't think that was ethically very nice. And I still don't, I still really object to that. I thought it was sort of mean-spirited, I guess. My co-workers tell me about their demotions, changes in their job descriptions, how hostile it is, how they live in constant fear of being just fired one day. And that went on until December and in December, as Secky related to you, they were all called together and told they were laid off, that the clinic was out of money. Now this is the same clinic that's here asking you today for you to sponsor a revenue bond so they can build

another clinic. Are these the same things that are going to happen there? Is the management going to be so poor that they're going to run out of money and they can't pay their workers? All this is documented, I have letters, I have everything. You just can't lay off 30 people the day before Christmas because you're out of money due to poor management. That's just not right. Is that going to happen in Missoula? I am one of the few people at the clinic at the time that was making the \$9.00 living wage, most of the employees made much less than that. \$6.00 an hour was the going wage for people there and that's not a living wage. Is that going to happen again here? She has brought in a new director. I don't know whose advising her today but I know that at the time the people she had chosen were very poor management people who gave her very bad advise, I feel. As a total retaliation I thought to my union activity the Friday night meeting that had gone on was then told we couldn't meet there anymore. So now all this group of ladies pays rent and we meet somewhere else. But I just thought that you tell me about your community involvement and then you take away something that these women desperately need. These women can't afford psychiatrists or counselors, they need people to talk to. I don't think that the public should be lending money to places that have failed this far financially that they have to lay off 30 employees. I think it should be studied and I would really urge you to delay your vote today, or vote to delay approving this. Thank you.

Chair Kennedy closed the public hearing. He stated the Board was not interested in rebuttal but there would be some questions. To be fair, he felt questions from the Board should be asked and then some investigation could be conducted. He delayed calling on Milt Datsopoulos.

Commissioner Evans asked Milt Datsopoulos to respond.

Milt Datsopoulos stated he did not represent Dr. Stranahan and the Medicine Tree in their labor discussions or negotiations. He was not the corporate lawyer who advised her previous to those discussions but he did know what occurred and knows her personally. He felt compelled to correct the record. He felt that what was presented was fundamentally inaccurate and unfair. Anyone who knows Dr. Stranahan knows that her life has not been motivated by money. Fortunately she hasn't had to worry about money and she has utilized her resources to assist others. She has always been a philanthropist, she still is. The Medicine Tree began operation in 1993. It was constructed by private funds from Dr. Stranahan. She virtually treated everybody the same whether they had money or not. That was a facility that was built to help folks who had no other sources of good medical attention. Every year Medicine Tree was in operation, because it was not operated for profit or to break even, it lost substantial amounts of money. Every year Dr. Stranahan reached in her pocket and provided hundreds of thousands of dollars to the facility so it could continue to help people without regard to their resources. In 1998, that subsidy was approximately \$500,000. The union came in to this situation and requested substantial increases. Those increases would have increased the losses more than the \$500,000 Dr. Stranahan was personally subsidizing. The management people brought in were asked what was prudent and how long could this situation continue. Dr. Stranahan reviewed the advice and very painfully made the decision that she could not continue to subsidize this facility. Many of the people who worked for her had also received loans from her in addition to being paid. She assisted their children in emergencies, etc. To hear these criticisms from folks that describe her as a wonderful person but come up and personally assassinate her is repugnant. He was not authorized to speak this way for her, but was speaking as a resident of Missoula and someone who knows her. He wanted to correct the record. The kind of human being Dr. Stranahan is speaks for itself, her record, her practice and the people she served. They will answer any questions the Board has.

Commissioner Evans stated the question was asked why the Board would believe this would not happen in Missoula and asked Milt Datsopoulos to respond to that question. She also asked what a delay would do to the project.

Milt Datsopoulos stated a delay would be very damaging. He has had discussions with a pharmaceutical house in San Antonio to do testing on a new cancer therapy drug. That pharmaceutical house would like this center to do their clinical trials. Other discussions for such trials have also been ongoing. There have been discussions with cancer research specialists who have to make a decision on coming here to work. If those people are lost, this center probably will not happen. He emphasized this was a 501(c)(3) non-profit organization. The public is not being asked to subsidize it. If they did not intend for the facility to survive, why would they go to this trouble. Dr. Stranahan has put her own credit on the line for millions of dollars. These bonds can't be sold without a personal credit enhancement by Dr. Stranahan. D.A. Davidson has agreed to be the underwriter and First Interstate has agreed to be the banking facility. Money has already been spent in anticipation. The \$140,000 interest savings mentioned is correct but it will not go in someone's pocket, it will be reinvested in the center. They are trying to advance cancer research. Dr. Stranahan will spend a great deal of personal money on this facility.

Dr. Mary Stranahan stated it felt as if a lot of dirty laundry had been aired for the livable wage campaign, which she believes in. She worked with a foundation that funded the Baltimore Livable Wage Project and the Los Angeles Livable Wage Project. It felt like a personal vendetta and inappropriate to bring up at this point.

Commissioner Carey stated he wholehearted supported the nature of Dr. Stranahan's work and the concept of the research institute. He believed it would be on the cutting edge of research and patient care. He asked how she could get to a point, as an employer, where she would be closer to the cutting edge of labor relations. It sounds as if there has been a problem, and he knows there are two sides to every story. He did not right now have assurances as to harmonious relations at the research institute. Had she given some thought to mistakes she may have made and how to correct those to become a model employer.

Dr. Mary Stranahan stated Secky Fascione's comments gave lots of food for thought.

Commissioner Carey asked if she had thought how to assure the Board and future employees that she had learned from past mistakes and was willing and able to be a model employer? He did not want to delay this project if it would kill it. He felt that a reasonable person, after hearing testimony today, may think this is not in the public interest to help finance, there is a history of poor labor relations. Is there some way to solve this problem?

Dr. Mary Stranahan stated she did not feel there would be any problem with wages as far as a livable wage given the type of staff they will have. She had no problem with that verbal assurance. As an aside on unfair labor practices, she was sued twice for that and both cases were thrown out of court. In general, the staff has not been formed yet but the type of people

to be hired has been outlined. She did not feel there would be any problem with meeting a livable wage level. That was about the best she could do as they are still over a year away from bringing this to completion.

Commissioner Evans stated her understanding was that the holistic type joined with the conventional type was not being done anywhere in the country. Was that correct?

Dr. Mary Stranahan stated there are places that are doing that but no one is doing any research and publishing the results, so there is a good source for informed decision-making. That is the frustration she faced with her sister and one of the really exciting things about the institute.

Commissioner Evans stated she was trying to get the folks in the room to know that there is more to this issue than what they are seeing. She would like them to see the medical benefits that could benefit them and everyone in the area, and maybe worldwide.

Dr. Mary Stranahan stated there is no one in the world, to her knowledge, that is trying to put together a program that combines this many modalities and with the goal of publishing the results. They want to bring together the top people in the specific fields.

Chair Kennedy stated that until yesterday he had heard no dissension on this proposal. He did hear from a union representative yesterday whose comments were prefaced with complimentary comments about Dr. Stranahan. The issue is, are there problems and how can they be solved. She has heard support for her work and he hoped the stage could be set to resolve any issues that would divert her from accomplishing her goal. He is concerned about labor and asked what the relationship between this center and the Learning Tree was?

Dr. Mary Stranahan stated there was some confusion regarding a newspaper article last week. There is a separate entity called the Spirit of Learning which is totally separate from the Medicine Tree.

Chair Kennedy stated he meant the Medicine Tree.

Dr. Mary Stranahan stated there was no relationship except for the chairmanship.

Chair Kennedy stated he heard Milt Datsopoulos estimate the payroll at \$2.4 to \$2.5 million, telling him that would be about \$50,000 per year including benefits. Clearly this reflects there would not be a problem with a livable wage. He did ask about non-professional and technical employee wages.

Dr. Mary Stranahan stated local people would be looked at for support, top of the line people. Those salaries would be above what the Montana People's Action is saying the livable wage is. She didn't see this is a problem.

Chair Kennedy stated it had been said by Michael Sehestedt and Milt Datsopoulos there is no subsidy if this is allowed but he felt there was. When someone doesn't pay taxes, someone else pays more so there is a round about way this is subsidized. The Board has to determine whether or not this is in the best interest of the public to allow this subsidy to happen. Once a decision is taken to allow the center to be tax exempt, there is no recourse to hold them to what they promised to do. The Board has to make a judgment that they will do what they say they will do.

Milt Datsopoulos stated he has been involved in discussions regarding budget and staffing. His background is pro labor union. He felt they could make a promise today that says they will pay as well if not better than what the prevailing wage is for each particular job. Dr. Stranahan was willing to back up that promise.

Chair Kennedy thanked Milt Datsopoulos for that statement and reminded him that the prevailing wage is substandard in Missoula. Mr. Fletcher and others testimony reflects what is true in Montana. A sustainable wage and a prevailing wage are remarkable different. If the statement was made regarding sustainable wage he would be more comfortable.

Dr. Mary Stranahan stated the reason they were trying to obtain IDR bonds was they could spread the money better to serve clientele and research.

Milt Datsopoulos stated an issue was could this matter wait or might it kill the project. He would hate to see the project die. A delay could cause another foundation in Arkansas that is interested in cancer research to make their commitment elsewhere. This foundation would be an important part of the revenue stream for this facility.

Commissioner Carey asked if there was some way that Milt Datsopoulos, Dr. Stranahan and some of the people who have testified today could step out in the hall for a few minutes and reach some sort of agreement on how to proceed. He does not want to vote to postpone this but some legitimate questions have been raised regarding labor practices. Would it be worth 15 to 20 minutes to get to some consensus.

Milt Datsopoulos stated he was amenable to talking with these folks. Dr. Stranahan does not want to be known as a bad employer, she find it very painful.

Commissioner Carey asked if that could be done.

Commissioner Evans stated she had no problem with that. She also pointed out to those who say the Commissioners have no policies that they are in error. There is a policy and those asking for support on the IDR bonds have met the criteria or they would not be here. If additional criteria are added, it would be the applicant's choice. The Board has certain rules and she did not believe in changing those rules in the middle of the game, for either side. If the rules are to be changed, they are done ahead of time, not in the middle of the process. The Board needs to determine if this is in the public interest. Cancer research is definitely in the public interest, that can't be argued. If these folks want to conduct a separate discussion, she had no problem with that, however her decision will be based on the current rules.

Milt Datsopoulos stated something that might be acceptable would be an Advisory Board to the institute with local folks to get input on the feelings of the community. They want to be good citizens. It is not in their best interest to create problems. This is a non-profit institute subsidized in part with personal funds from Dr. Stranahan. They want to make sure the institute runs on sound and prudent business practices. They can't make forward commitments if those commitments are not known, other than in the board sense that this will not be a facility that would be unfriendly to its employees. It is not driven by profit, it is driven by a mission to help mankind. The Medicine Tree was a different venture, there were huge losses that Dr. Stranahan was absorbing personally. Her advisors told her she could not continue to subsidize the clinic. This happened at the same time as the union negotiations. It was not retaliation. Dr. Stranahan personally supports the concept of unions and a livable wage. He felt this was an unfair personal attack on Dr. Stranahan.

Chair Kennedy stated the two issues need to be separated. He felt Commissioner Carey's suggestion was a good one and he would like to recess this part of the meeting to allow time for that discussion. He also commented on Commissioner Evans' comments about the decision-making process. Michael Sehestedt listed a couple of things, one was the import of capital or industry to this community, which this appears to meet. The environmental aspect is not viewed as a problem. Michael Sehestedt made the point that Davis Bacon wages have to be used on the labor in construction on these kinds of projects. That is interesting as Davis Bacon really speaks to a decent livable wage for people in the State of Montana. That criterion should be extended to the people who might work at the facility. He would like the parties involved to have a discussion before a decision is made by the Board.

Milt Datsopoulos stated they welcomed the opportunity.

At this time, Milt Datsopoulos, Dr. Mary Stranahan, John Fletcher, Hank Butzel, Secky Fascione, Catherine McConnell and other interested parties recessed to have a discussion.

Hearing: Intent to Create RSID No. 8925 – Maintenance of Sunset West Water System

Jesse Sattley, RSIDs, Surveyors Office, presented the staff report.

This is the public hearing for the official creation of the maintenance district to maintain and operate the RSID at Sunset West, which was the construction of the water system. This is a maintenance district so it falls in the category of the County operated system. The district will contract out for an operator to do the maintenance, operations and testing.

The Sunset West Water System was constructed through RSID 8458 to serve the residents of the area. The creation of a maintenance and operation RSID is necessary to control the water system.

There are 44 lots within the district of the water system. The operation and maintenance cost is estimated per lot at \$386.37 annually for the first year and \$397.73 annually for the subsequent years.

Two letters of protests were received.

Chair Kennedy opened the public hearing. There being no comments the public hearing was closed.

Commissioner Evans stated this RSID was initiated by the residents.

Commissioner Evans moved that the Board of County Commissioners approve the creation of RSID 8925 for maintenance of the water system created through RSID 8458, Sunset West Water System, as it meets the legal requirements and was initiated at the request of the residents. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Missoula Development Park Zoning Amendments

Jennie Dixon, Office of Planning and Grants, presented the staff report.

Missoula County is requesting that the proposed amendments to the Missoula Development Park Special Zoning District (Section 6.07) be approved. The Planning Board conducted a public hearing on these amendments on Tuesday, June 1, 1999, and voted 6 to 0 to recommend that the Missoula Development Park Special Zoning District (Section 6.07) be amended as shown in the staff report, with two modifications. These modifications are: 1) Section 6.07 D.2.a.(1) add the following language: "Any parking plan must have Missoula Development Authority approval prior to issuance of a zoning compliance permit for the main use." and 2) Section 6.07 D.2.d. delete the following language: "until July 1, 1999, and by the health Department after that date."

A summary of the proposed changes include:

- Amend the authorized uses in the Light Industrial and Community Commercial subdistricts to allow for automotive sales and supply and hardware and home building supply as conditional uses within a defined Airway Boulevard Corridor, which generally falls along the Airway Boulevard Interchange. They would be subject to conditional use standards that have been defined in the proposed changes.
- Allow outside storage as a conditional use on industrial lots except those abutting I-90, again with some design standards for that activity.
- Amend the on-site landscaping requirement from 1 tree per 1,000 square feet, including boulevard trees, to 1 tree per 2,000 square feet and not include boulevard trees.
- Increase the amount of parking authorized on industrial-zoned lots. There is a proposed amendment to that parking standard in Section 6.07 D.2.a. that Barb Martens could address in more detail.

Staff is recommending approval of the proposed changes.

Nick Kaufman: Thank you very much. I'm a land use planner here in Missoula with WGM Group and today representing the Missoula Development Authority and Missoula County. The reason we're here today is that the master plan, the land use plan, that was adopted out at the Missoula Development Park clearly indicates that there is a very narrow range of uses proposed in that development park. They deal with expanding industries and research and technology. There's a part of the land use plan that was originally discussed but was never implemented, and that part of the land use plan was an economic feasibility study. Instead of land use plan with proposed land use regulations, economic feasibility, which would give us an idea of demand for uses, an absorption rate in the park for uses, and an idea of return on investments, then adjustments for that reality check and then an implementation to the plan, we went right from land use plan to implementation with the zoning. Now, one of the goals of the comp plan is that the park be managed in a manner that creates a viable return on the public's investment in the infrastructure in the park and it's one of the more significant goals that's repeated throughout that land use plan. The second theme that appears repeatedly throughout the land use plan is the allowance for flexibility and assessment of the plan to achieve the plans goals and objectives. We think the County has a responsibility to the public to assess and adjust the regulations in the development park as required in conformance with that comprehensive plan to get a viable return on the public investment. I think today's hearing points that out in a pretty interesting way. In our application, if you go to Page 1, we talk about justifications for the proposed zoning changes for the Missoula Airport Development Park and Master Plan. On Page 3 of the Executive Summary of the Master Plan, it says, and I quote: "The likelihood of all these industries (and they're talking about the industries identified in the comp plan) locating within the Missoula Airport Development Park is extremely remote. The potential for one or a combination of these industries is greater, however, the potential for any of these industries or a similar industry within their industry group to locate within either the Development Park or the Missoula area is very possible." So what the author is telling us here is that you may or may not get some of the uses called for in the comprehensive plan, but if they do come, they can choose from a place in Missoula as well as the Development Park. So today, in the earlier hearing we see that a research facility is not locating at the Development Park, it's locating on Reserve Street, and we note that the University, in their recent decision for a business and technology center, has chosen Hellgate Canyon and not the Development Park. This is interesting because we have 200 acres of the Development Park for research facilities and 264 that would work for tech or business park facilities. So, in conformance with that Comprehensive Plan, we are asking for a zoning change to allow a slight bit of diversity in the product mix. Those resulting conditional uses with performance standards, and the performance standards assure the Development Park and the community that those changes, once they're implemented, will still meet the high performance standards for the park. So, there's the reason. I think Jennie went over very well the proposed regulations. If you have any questions about that I'd be happy to try to answer them for you.

Chair Kennedy opened the public hearing.

Ron Klaphake: I'm with the Missoula Area Economic Development Corporation. As I did at the Planning Board meeting, I raised questions about your setting a maximum number of parking spots and I would like you to consider taking another look at that because what you have basically done, at least in the commercial side, I know we talked about it at the Development Authority meeting on the industrial side, and I thought it was resolved, but for some reason the commercial section got ignored in the discussion. What you basically have in front of you is a minimum which is currently in the County's off-street parking ordinance becoming the maximum plus 10%. That is a very, very small window and by putting those maximums on you may be doing injustice to the exact same thing that my friend Mr. Kaufman was just talking about, creating some flexibility, flexibility on terms of some of your sales. If you look very, very carefully at the commercial area in the existing zoning ordinance relative to parking, the minimum parking for example on a building that would be an office building would be one parking space for 400 square feet or one for three or four employees. That is a minimum. By making it into a maximum by giving it a 10% leeway, you might be precluding some activity that could develop there. As a result, I would like you to consider creating a little more flexibility in that regard and I've got quit talking because I've got to catch a bus. Thank you.

John Crowley: I'm the President of Washington Development Company here in Missoula. This isn't the first time that I've come before you, but every time you stick your thumb in my eye I feel compelled to come before you again. With that in mind, Barbara, this isn't personal.

Commissioner Evans: Can I attack. Now Michael said I could attack, just be careful.

John Crowley: Could you wait 'til I finish. Really my opposition here today isn't to all of the proposed amendments to the zoning. It's really limited to those allowing automobile sales and service and home improvement and building supply buildings. Really, my opposition is two fold. One is from a community planning standpoint and the other that I've discussed numerous times with you is philosophical. First, and maybe just backing up a little bit and giving some perspective from my standpoint about what led us here. The Development Park was originally created to provide opportunities for economic development. I think Mr. Kennedy and myself debated this at one forum at the airport. I liken it to kind of a "field of dreams" concept where "if we build it, they will come." The industries that we were trying to attract at that time were the clean kinds of industries that Nick was just describing. The high tech industries that presumably wouldn't have chosen Missoula if not for the Development Park. Also those industries that we were trying to attract were presumably those that would bring a higher level of pay scale to Missoula, not the typical kinds of retail, service sector jobs that we have seen in the past. The County then preceded to demonstrate what I felt was poor planning and maybe some premature planning by adopting and promoting the park in a leap-frog fashion, that is that the development occurred some distance from the city limits and extended development that I thought was premature. It was likely the kind of development that planners and local government officials would usually criticize private developers for. The project was developed, as I said, about one mile from the city limits at a very substantial public expense. Although industrial land was available in the city, the County jumped out to what I consider to be a kind of a remote location and built the project with no demonstrated or defined market. We were also told at that time that the Development Park would focus on large lots, trying to attract industries that needed large amounts of land. I think that was somewhat in response to the questions that we raised at the time, because we were concerned about an industrial park we owned that we had owned for 20 years, been paying SIDs and taxes on it. That park did incorporate smaller lots. This was an attempt to somewhat differentiate what the County was doing from what we were trying to do. Now that the original concept is having its share of problems, I think what the County Commissioners are trying to do is to redefine some of the alternatives. Alternatives now seem to focus on retail instead of industrial uses and are directed more toward the relocation of existing businesses within Missoula as opposed to attracting outside businesses

that we were originally told was the purpose of the park. I think then we're also misleading ourselves in saying that we're also attracting new jobs that are higher paying jobs. What we're trying to do through the amendments that you're proposing here today is simply a relocation of existing jobs. From an overall planning standpoint I still believe the park was premature. We keep hearing more and more discussion about the need for some kind of urban growth boundaries. We are also hearing increasing concern about requiring private developers to pay various types of impact fees in an attempt to lessen the burden on the public from the impacts of that kind of development and yet what we see is the public officials, in my view, have done the very things that they criticize those in the private sector of doing. I think that now you're the ones who have extended a development some distance from the areas that should be going in, undertaking infill development in the city and have extended those further outside the city. I think that, and now you're proposing additional kinds of new land use controls on those of us in the private sector because you're trying to mitigate the very impacts that you're generating through your development. I just find that a little bit contradictory. From a land use standpoint, I see absolutely no justification for the proposed amendments. Clearly there was adequate land available for the proposed uses that is zoned and is available within the city limits or adjacent to it. The primary justification, then, as I see it, for this proposal, I think is based on the County's financial situation. That situation was caused, I think, by your own efforts to get into real estate development. The legislature has given all cities and counties in the state of Montana laws to live by. Those laws regulate the types of taxes that you can levy and the amounts of money that you can raise by those taxes. And what I'm being told now is that those tax sources may not be adequate and that we're looking at alternative means of raising money both in the short term and the long term and I believe that that is somewhat what is driving some of these considerations. I don't think the County's financial situation should supercede sound planning. From a philosophical position, I've said this before and I'll continue to say it and say it here again today, I don't believe the County should be in the real estate business. When the Development Park was created, we opposed it partly on the grounds that it would compete with the industrial park that we have undertaken and tried to nurture for some 20 years. We also opposed it partly because we opposed what we felt was an unfair use of public resources to compete with private enterprise. We were told that the focus of the park would be different than ours. That it was large lots, high tech, higher landscape standards, etc. Therefore, it would not compete with our industrial park. Now you are proposing further changes that will expand the competition beyond industrial uses and into the arena of commercial and retail development. Since 1994, our company has developed over 60 acres for both retail and commercial uses, including some 465,000 square feet of retail buildings. Everything that we've done has been located within the city limits and has met or exceeded all development requirements. Our development projects have added more than \$45 million to the tax base, not to mention the number of new jobs that they have created. The system of free enterprise when it comes to land use development and real estate development have worked and we don't have any problem whatsoever with competition provided that its not public and not using tax dollars that we generate to compete with us. Once again, I oppose the two modifications to the zoning today and feel that it's really the County's attempt to kind of compensate for its self-imposed financial situation and that what it's doing is really fostering additional poor planning and expanding the competition from industrial to commercial and retail activity with the County competing directly with those of us who are generating the taxes that you're using to compete with us.

Commissioner Evans: Thank you John.

Chair Kennedy: Thank you John. Next person. Is there anyone else who wants to testify on this issue? Anyone at all?

Nick Kaufman: I know John Crowley to be a very responsible person and a very excellent property manager and I think some of the history of the way John has managed the development park they have on Reserve Street needs to be looked at just for a second. John talked about the development of that park and I think it happened

Chair Kennedy: Nick, excuse me. If you're going to rebut some of the things that John said, then I'm going to have to give him some time also.

Nick Kaufman: That's great.

Commissioner Evans: That's okay.

Nick Kaufman: The property was zoned industrial. Recently with the shift in activity on Reserve Street and the different types of uses in that area, Washington Corporations came in and requested a zoning change for their property. That's good management practices. It required a shift in the zoning change to allow the attraction and competitiveness of different uses. Your Comprehensive Plan, your Missoula Development Park plan calls for you to manage that park as a business, just like John manages the park that Mr. Washington owns. And that's exactly what we're doing here. John talked about large lots. I think the Development Park has one lot that might be under two acres and the largest, the average size lots in our development park are over two acres and John's has the comparative advantage in the smaller lots. With regard to commercial zoning and competition and the free market system, certainly the Missoula Development Park, if you've looked at the staff report and were around when the Development Park zoning was adopted, it has commercial zoning in it right now. It has commercial zoning in it right now. With regard to the uses that John is talking about, the proposed changes and conditional uses affect a very small portion of the Development Park, specifically in the Airway Boulevard corridor area. And while I respect his opinion very much it seems that a lot of what John is talking about deals with competition. I remember when Southgate Mall, George Lambros, came forward with Southgate Mall, the downtown business people said, "oh, wait, oh, wait, this is not a competition issue, this is a land use issue. Should we put another shopping area in Missoula." And of course Southgate Mall came in and was very successful, it's been well maintained and of course the downtown right now is more healthy than it was at the time Southgate Mall came in. At the time Costco was proposed on the North Reserve Street area, George Lambros came in and said, "Wait, wait, this is a land use issue. Should Costco go on North Reserve Street?" Costco is on North Reserve Street and it's healthy, and Southgate Mall is healthy. And while they were all purported to be land use issues, they deal with competition and in the free market system, zoning is not the tool we use to control free market systems. So, thank you very much.

Chair Kennedy: John?

Commissioner Evans: At what point do we stop and say, "This is it"?

Chair Kennedy: This is it.

John Crowley: Okay, just don't allow him to stand up anymore.

Commissioner Evans: I might ask him more questions, though.

John Crowley: I respect everything Nick says too, and when I grow up I want to be just like him. I have absolutely no quarrel with competition, none whatsoever. Happy to compete all day long with George Lambros and whoever. What I don't like is those who don't have to pay taxes on their own property who take that property off the tax rolls and then use the taxes that I generate to turn around and compete with me. Very fundamentally different from what Nick is saying. I welcome competition all day long. What I don't like is competition under those circumstances.

Chair Kennedy: Thank you. Any further comment by anyone? Before we close the hearing, last chance. Okay, we'll close the public hearing then and ask for comments by our board. Barbara?

Commissioner Evans stated that when the Development Park was purchased it was not with an eye toward doing economic development or a development park, it was for providing better access to the airport. The remainder of the park was ancillary to that purpose. She understood Mr. Crowley's frustration and irritation and they have spoken on the subject before. She believed the original zoning was too narrowly defined at the beginning. These changes are simply making the zoning more ordinary and what should have been there in the first place. She supported making the changes and felt it was good use of the land. The development there is very good, and what Mr. Crowley has done on North Reserve is spectacular.

Commissioner Carey asked about the modification of the maximum parking allowance ratio from 2% to 10%, meant to prevent excessive paved parking areas and encourage alternative means of transportation. He felt that was contradictory.

Jennie Dixon stated the original proposal was to change the parking maximum for commercial uses from 2% to 10%. She thought there was an a request to amend that. This set a maximum impervious surface by way of a landscape minimum in the industrial area and take away any parking cap in the industrial area. In the commercial area there would be a parking maximum of 10% above what the minimum is. A maximum allowance for parking is an attempt at a transportation demand management tool.

Nick Kaufman added to clarify the parking maximum, to compare the cost of paving and landscaping are about the same. The cost to maintain landscaping is more than maintaining paving. The concern was, with this much land, there might be a propensity to put more paving than was really needed, instead of the maintenance cost of landscaping. The idea of the cap was to remove that propensity. The unfortunate part about the cap is if it can't be relaxed, the only remedy would be to go to the Board of Adjustment. The concern about going to the Board of Adjustment for a parking variance if it is not a hardship directly related to the land in terms of size, shape of topography, it is difficult to prove hardship. If the parking standard is too strict it could create a problem in the future.

Chair Kennedy stated he has thought about this action for a long time and even as of lunchtime today had not decided how he would vote. His tendency has been to scrutinize the process. His big concern was that when the zoning was originally adopted, they were not given sufficient time to work in order to find out if they would succeed. He still believes that to be true. Although he hadn't decided before the meeting today, after listening to Mr. Crowley he felt he was correct on his original feeling that this is the inappropriate time to make these changes. His reasons included the land use plan to prevent leap frog development, as Mr. Crowley presented eloquently. One reason why the County justified buying and developing that land so distant from the community center, was that it was going to be a different kind of park. It was going to attract new jobs, not move old jobs, and the new jobs would be high paying jobs of a different character for Missoula. This proposal allows for jobs to be relocated and doesn't necessarily increase the possibility that those jobs will increase in value or be sustainable. That is a major problem for him. In addition, the influence of the County's financial condition was really undo in this instance. He was not sure that if the County funding was adequate, this decision would be the same. The most important issue is the existing regulations have not been given a chance to succeed in attracting the kind of business hoped for. There are numerous offers and a comment by staff was made last week that there may not be an adequate inventory of land based on the offers received, with the old regulations. It is hard for him to understand why the changes are needed when there seems to be a rather heated market for the land currently. He would not support this unless there was some pretty substantial modification. There are some good proposals on how modification might be made, but the overall proposal is something he can't support.

Commissioner Evans stated that the Missoula Development Authority has made the recommendation that this be done. That is the organization that was formed to help the County administer the development park. A real estate firm was hired to assess the salability of the land and the best way to sell it. The realtors have stated the zoning needs to be broadened so the land is more saleable. She believed they should heed the advice of those hired to sell the land. She personally feels the zoning needs to be broadened and she will support the changes.

Chair Kennedy took issue with Commissioner Evans' statement. He was on the selection committee to hire a real estate firm and he asked if Properties 2000 felt a disadvantage because of the zoning requirements. The answer from Katie Ward was no. Later, it was clarified that their job could be made easier if there was a change, but Ms. Ward did not represent that it created a problem in the marketing of the park.

Commissioner Evans stated Ms. Ward represented only one-third of the team, and the other two-thirds clarified the following week that her statement was inaccurate and the zoning changes were needed.

Commissioner Carey stated that it looked like he was the swing vote on this matter and he moved to postpone this matter for a week so more discussion could be held.

Commissioner Evans stated she was willing to postpone for one week only.

Chair Kennedy stated he would be on vacation the following week.

Commissioner Carey felt this could wait until July 7th, it did not appear to be an urgent matter, and changed his motion to postpone this matter until July 7, 1999.

Jennie Dixon had no problem with waiting until July 7th.

Nick Kaufman had no problem with waiting until July 7th.

Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Issuance of Revenue Bonds for the Dinny Stranahan Advanced Cancer Research Institute, Inc.

The matter of the Revenue Bonds was reconvened.

Milt Datsopoulos stated they had a fairly significant discussion with the people representing the Living Wage Coalition. He felt they understand some of the constraints Dr. Stranahan has to making the commitments they would like. Dr. Stranahan understands some of their concerns and agrees with their position on some points raised today. He felt they have reached a consensus that he and Dr. Stranahan will recommend to the Board of the 501(c)(3) corporation that the position of the Living Wage Coalition will be taken into consideration regarding an appropriate wage for support staff. It will also be recommended to the corporation that a neutrality card be signed with regard to labor organization efforts. The concept of an advisory ad hoc committee from the community at large has also been endorsed with a Living Wage Coalition member included. Community involvement in this type of committee would be very beneficial. Dr. Stranahan and the Institute are confident both parties can work together and the issues are not as severe as they originally appeared. He thanked the Commissioners for separating Dr. Stranahan from these personal criticisms. He felt there was an agreement amongst the parties and they will continue to work together. The Coalition will appoint a representative to contact the Institute in the future.

Commissioner Carey stated he recommended both sides talk because he felt they were acting in good faith. He did not want to have some sort of "ransom" situation develop. He felt if both sides sat down and talked they could reach some satisfactory conclusion.

Milt Datsopoulos stated that did happen, the concerns were listened to and worked through with no kind of "ransom" being threatened.

Chair Kennedy stated he felt Commissioner Carey's idea was a good one and was glad they were able to sit down and talk. Both parties are working for the health of the community in different ways, one physical and one economic. He appreciated the work done.

Derrick Bernie stated he is the Director of Montana Peoples Action. He was speaking for the Coalition and reporting on the conversation. He thanked Mr. Datsopoulos for reporting correctly. They believed the discussion was very productive and were satisfied with the personal commitments from Dr. Stranahan and Mr. Datsopoulos to recommend to the Board of the organization both policies referred to. One, a practice of meeting with the Living Wage Coalition to determine the most appropriate wage rates for new employees and second, that the new organization adopt a policy of having a neutrality policy, right to organize agreement. He also commented on other parts of the discussion that were productive, an advisory board with representation by low income people from the community. Dr. Stranahan also personally committed to take care of unpaid severance pay for previous Medicine Tree employees and agreed to consider looking at those laid off for first hire at the new facility. The conversation was positive for the Living Wage Coalition and given these agreements they withdrew their request to delay the decision and support the proposal before the Board.

Commissioner Evans moved that the Board of County Commissioners approve the issuance of Revenue Bonds for the Dinny Stranahan Advanced Cancer Research Institute in that it does appear to be in the public interest, and authorize the Chair to sign the appropriate documents. 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 3:30 p.m.

Following the Public Meeting, Chair Kennedy signed Resolution No. 99-043, a resolution relating to a project on behalf of the Stranahan Research Institute, Inc. and the issuance of Economic Development Revenue Bonds to finance the costs thereof; approving the project and authorizing the issuance of bonds therefor.

THURSDAY, JUNE 17, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy traveled to Medical Lake, WA to attend a juvenile detention education issues meeting and tour the facilities there.

Audit List -- Commissioners Evans and Carey signed the Audit List, dated June 16, 1999, pages 3-38, with a grand total of \$418,620.37. The Audit List was returned to the Accounting Department.

ADMINISTRATIVE MEETING

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

Agreement for Security Services – The Commissioners signed an Agreement for Provision of Professional Security Services between the Missoula County Sheriff's Department and Joe Easton, representing Missoula Osprey Professional Baseball. The Sheriff's Dept. will provide two uniformed, regular deputies 15 minutes prior to game time until game has been completed. Term of the Agreement is approximately June 22 through August 31, 1999.

Agreement – The Commissioners signed an Agreement on Construction of Expressway Approaches with Scott Cooney of Rainflow Services, in accordance with terms of an Agreement signed between Montana Department of Transportation and Scott Cooney on August 27, 1996. Missoula County will pay JTL Group for total construction services of \$15,250.50 or 100% of services, whichever is greater, plus paying related engineering costs of Druyvestein, Johnson and Anderson and reimbursing Rainflow Services for related engineering costs of Professional Consultants, Inc. Scott Cooney will reimburse the County for its share of approach construction on private property in the amount of \$4,079.40, or 27% of total construction services, whichever is greater. The Agreement was returned to Orin Olsgaard in the Projects Office for further handling.

Letter – The Commissioners signed (as the Missoula Development Park Lot Owner's Association) a letter to Mountain Water Company agreeing to pay the annual maintenance fee for two hydrants to be installed on Butler Creek Road. The letter was returned to Orin Olsgaard in the Projects Office for further handling.

Amendment to Agreement – Acting Chairman Barbara Evans signed Amendment Number 2 to Services Agreement with MSE-HKM for the Sunset West Water System Improvement Project, RSID No. 8458. Total cost of the project is increased by \$8,981.00 to a new total of \$74,842.00. The Amendment was returned to Cindy Wulfekuhle in OPG for further handling.

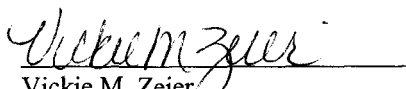
Other items included:

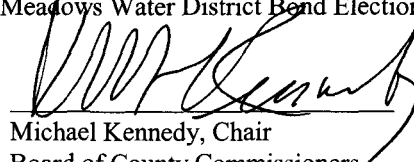
- 1) The Commissioners concurred with Risk Manager Hal Luttschwager's recommendation to reject an offer from Grant Creek Heights, Inc. to settle with Missoula County for \$250,000.00. Luttschwager and Mike Sehestedt will attend mediation in July.
- 2) The Commissioners approved replacing the water line from the main to the Courthouse, at a cost of \$5,000.00, which will be billed after July 1, 1999 and paid from the FY2000 budget.

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

FRIDAY, JUNE 18, 1999

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was on vacation. In the morning, Commissioner Evans, County Auditor Susan Reed, and County Superintendent of Schools Rachel Vielleux canvassed the Elk Meadows Water District Bond Election.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JUNE 21, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Kennedy was on vacation the week of June 21-25, and Commissioner Evans was out of the office all day.

TUESDAY, JUNE 22, 1999

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 afternoon.

ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheets – The Commissioners signed three Missoula County Payroll Transmittal Sheets:

1. for Pay Period 9, with a total Missoula County payroll of \$646,523.05;
2. for Pay Period 10, with a total Missoula County payroll of \$650,801.91;
3. for Pay Period 11, with a total Missoula County payroll of \$672,769.65.

The sheets were returned to the Auditor's Office.

Resolution – Chair Kennedy signed three resolutions:

1. Resolution No. 99-044, a resolution authorizing participation in the State of Montana InterCap loan program, and authorizing execution and delivery of related documents. Included are the Sheriff's and Motor Pool Vehicles and ADA Projects in the amount of \$239,000.00;
2. Resolution No. 99-045, a resolution authorizing participation in the State of Montana InterCap loan program, and authorizing execution and delivery of related documents. Included is the purchase of a Financial Accounting System in the amount of \$365,000.00;
3. Resolution No. 99-046, a resolution authorizing participation in the State of Montana InterCap loan program, and authorizing execution and delivery of related documents. Included is an Electronic Readerboard Sign for the Fairgrounds in the amount of \$49,854.00.

Two originals of the documents were returned to the Board of Investments in Helena, and one original was filed with the Clerk and Recorder.

Emergency Shelter Grant – The Commissioners approved Emergency Shelter Grant allocations made by the Human Resource Council for FY2000, with a letter to Jim Morton.

Grant Contracts – Acting Chairman Evans signed three Grant Contracts for the ongoing Crime Victims' Advocate Programs: VOCA, County Attorney Pilot Project VOCA, and STOP VAWA. All three were returned to Leslie McClintock in OPG for further handling.

Addendum – The Commissioners signed an Addendum to an Agreement with HomeWORD, Inc. to purchase the property at 300-306 West Broadway, extending the closing to no later than July 1, 1999, or as soon thereafter as the environmental review is completed by the County. The Addendum was returned to John Coffee at Lambros Real Estate.

Other items included:

- 1) The Commissioners approved a proposal from Kathleen Krager to provide consulting on traffic matters related to the proposed traffic light at Reserve Street and Stockyard Road. They authorized Mike Sehestedt, Deputy County Attorney, to execute a contract.

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

WEDNESDAY, JUNE 23, 1999

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

Audit List -- Commissioners Evans and Carey signed the Audit List, dated June 22, 1999, pages 3-40, with a grand total of \$1,153,115.89. The Audit List was returned to the Accounting Department.

Plat – The Commissioners signed the plat for Adler Acres, a subdivision located in the SE1/4 of Section 30, T14N R20W, PMM, Missoula County, a gross area of 16.17 acres, with the owner of record being Carl M. Saunders.

Contract Amendment – Acting Chairman Evans signed Amendment Number One to a Contract with the Montana Department of Public Health and Human Services for tuberculosis services. Maximum compensation shall be \$13,000.00. The Amendment was forwarded to DPHHS in Helena.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Eric N. Schreffler to create a TDM-effectiveness data collection model that can be implemented in Missoula. Performance schedule is May 10, 1999 through June 15, 1999. Compensation shall not exceed \$3,000.00.

Agreement – Acting Chairman Evans signed an Agreement between the Missoula Valley Water Quality District and the Montana Department of Environmental Quality to begin a drainfield study to eventually reduce contaminated groundwater discharging into the Clark Fork River. Performance schedule is May 15, 1999 through April 30, 2001. Compensation shall be a maximum of \$30,777.00. The Agreement was returned to the Health Department for further signature and handling.

Miller Creek Bridge Trust Fund Letter – The Commissioners approved a gift contribution from C. G. McCarthy in the amount of \$250,000.00 to Missoula County for construction of a roadway and bridge over the Bitterroot River to connect the Miller Creek area with Highway 93 South. They signed a letter to this effect.

PUBLIC MEETING – June 23, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder/Treasurer Vickie Zeier and Deputy County Attorney Colleen Dowdall. Commissioner Chair Michael Kennedy was on vacation.

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 list in the amount of \$1,153,115.89. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Bid Award: Chip Seal Cover Material (Road Department)

Horace Brown, County Surveyor, presented the staff report.

This material is for sealing of the 1998 Millings Projects in Lolo, Missoula and Ninemile areas; 1999 projects Wallace Creek and Marshall Canyon; and the County Shop Yard and Training Drive.

The bids were opened Monday, June 8, 1999 at 10:00 a.m. with the following results: Jensen Paving in the amount of \$103,000.00 with Alternate #2 at \$15,000.00; JTL Group in the amount of \$107,460.00 with Alternate #2 at \$15,950.00; and Big Crush Gravel with Alternate #2 at \$17,000.00.

It is recommended to award the contract as soon as possible to Jensen Paving in the amount of \$60,000, broken down as follows: Ninemile, 800 cubic yards at \$20.00 per cubic yard, \$16,000; Lolo, 1,000 cubic yards at \$15.00 per cubic yard, \$15,000; Clinton, 200 cubic yards at \$15.00 per cubic yard, \$3,000 and Road Department Yard 2,000 cubic yards at \$13.00 per cubic yard, \$26,000. The quantity and amount for each area were determined by the total budgeted cost of \$60,000. The reason for buying only 200 cubic yards in Clinton is the developer is going to chip seal the rest of Wallace Creek Road. The 200 cubic yards will finish what the developer does not provide.

Commissioner Evans asked if Horace Brown would have enough money in the budget to cover this cost?

Horace Brown stated he would have enough money.

Commissioner Evans moved that the Board of County Commissioners award the contract for Chip Seal Material to Jensen Paving in the amount of \$60,000, as the lowest and best bidder, broken down as recommended by the Road Department. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Otoupalik Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described in Parcel A-2 of COS 2400.

Ernie Otoupalik has submitted a request to create three new parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10.19 acres in size, located to the south of the Otoupalik family property which is located at the foot of Evaro Hill, off Highway 93. Mr. Otoupalik proposes to create two approximately two and one-half acre parcels on the north portion of the property, the remainder parcel and the third family transfer on the south portion of the property. The family transfer parcels are for transfer to daughter Carmen Otoupalik Molding (age 25), daughter Celina Otoupalik Bartelt (age 27) and son Jacob E. Otoupalik (age 19).

The history of the parcel is as follows: COS 2249 created Parcel A, 27.3 acres in 1979 by use of the exemption to allow parcels greater than 20 acres by Jon Cates. COS 2400 divided Parcel A in 1980 into Parcel A-1 an occasional sale parcel of 17.09 acres with a 10.19 acre remainder designated as Parcel A-2 by Jon Cates. Parcel A-2, 10.19 acres, is the proposed parcel to be divided.

According to the records kept by the Missoula County Surveyor, the applicant has used the agricultural exemption to the Subdivision and Platting Act on unrelated property.

Acting Chair Carey opened the public hearing.

Ernie Otoupalik stated he had not used any exemption in the past.

Colleen Dowdall stated it was probably someone else.

Commissioner Evans asked Mr. Otoupalik if he fully intended to convey this property to his children.

Ernie Otoupalik stated he did.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Ernie Otoupalik to create three new parcels by used of the family transfer exemption and a remainder based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Offenbacher Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 50 of COS 219, known as the Jordan Ranch.

Steve Offenbacher 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 16 acres in size located in the Potomac Area off Top 'o Deep Road which is accessed from Highway 200 by Hole in the Wall Road. Mr. Offenbacher proposes to create an approximately 8 acre parcel for transfer to his son-in-law and daughter Richard and Heather Shaw. The property is in the ownership of Dave Heikes but a sale is pending to Steve Offenbacher.

The history of the parcel is as follows: Part of the original Jordan Ranch filed by use of exemptions from the Subdivision and Platting Act.

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

Acting Chair Carey asked if it was necessary to know if the parcel has actually been sold.

Colleen Dowdall stated it did not matter. At the time the COS is filed, it would have to be in Mr. Offenbacher's name and a deed presented for transfer to his daughter and son-in-law.

Acting Chair Carey opened the public hearing.

Commissioner Evans stated this process was to determine if the applicant's intentions were to evade the subdivision act or not. She had some negative memories of the Jordan Ranch and how the road was created. She asked if Mr. Offenbacher really planned to give this land to his son-in-law and daughter.

Steve Offenbacher stated he did plan to give the land to his daughter and son-in-law. The two families plan to live up there.

Commissioner Evans asked Horace Brown if the road up there was County maintained.

Horace Brown stated Top 'o Deep Road was not County maintained.

Commissioner Evans related the history of the road. Mr. Jordan made a tract of the road and then didn't pay any taxes on it and let it go back to the County as a means of making it a County road. She wanted Mr. Offenbacher to know the County does not maintain that road.

Steve Offenbacher stated he understood that the County did not maintain the road.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Steve Offenbacher 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. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Other Business: Approve Counteroffer for Lots 2 and 3 and Portions of Lots 10 and 11, Block 4, Missoula Development Park

Don Sokoloski, seller's agent for the Development Park, stated that on May 20, 1999, an offer was received from USF Reddaway to purchase three lots. A counteroffer was made to the original offer and what is before the Board today is a counteroffer from USF Reddaway to the Development Park's original counteroffer. This counteroffer is an expansion of two lots so they have more square footage. They are not purchasing three lots. The purchase price is agreeable to the Development Park board. A counteroffer has been submitted to clarify some of the contingencies such as who is paying for what. The buyer will pay for the geotechnical investigation, the Phase II environmental, etc. This offer expired yesterday and a response is requested as soon as possible.

Commissioner Evans stated Paul Webber had briefed her on the situation. She questioned whether selling 50 feet of the two lower lots would make those lower lots less sellable. Paul Webber felt it would make them equally or better saleable.

Don Sokoloski felt strongly that it would enhance their salability. They have had requests for smaller parcel from other potential buyers. He felt it was a compatible use because USF Reddaway would be dealing with most of the people out in that area anyway.

Commissioner Evans asked if this was a 24-hour operation or an 8:00 a.m. to 5:00 p.m. operation.

Don Sokoloski stated he did not know the answer to that question. He anticipated it would be a 24-hour operation.

Commissioner Evans moved that the Board of County Commissioners approve the sale of Lots 2 and 3, and a portion of Lots 10 and 11, Block 4, Missoula Development Park, Phase I to USF Reddaway Trucking as recommended by the Missoula Development Authority, under terms listed in the counteroffer.

Paul Webber, Chief Administrative Officer, stated the County does have an obligation to extend Kestrel Drive from its current terminus another approximately 100 to 200 feet, for an estimated cost of \$22,000. This sale will still net the County approximately \$500,000. Kestrel Drive would have to be extended in any case.

Acting Chair Carey asked when the funds actually reach the County.

Paul Webber stated if everything goes as suggested in the offer, the County would receive the money on the 15th of October 1999.

Commissioner Evans stated knowing that, the money could be included in the budget as anticipated money.

Acting Chair Carey 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 1:47 p.m.


Following the Public Meeting, the Commissioners signed a Counter Offer with USF Reddaway for Lots 2 & 3 and a portion of Lots 10 & 11, Missoula Development Park Phase I, which was approved at the public meeting.

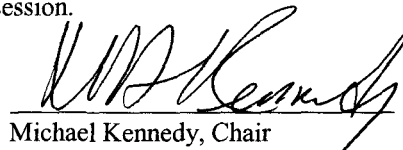
THURSDAY, JUNE 24, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Carey was out of the office June 24-25.

FRIDAY, JUNE 25, 1999

The Board of County Commissioners did not meet in regular session.


Vickie M. Zeier
Clerk & Recorder


Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JUNE 28, 1999

The Board of County Commissioners did not meet in regular session; Commissioner Kennedy was on vacation June 28-30, and Commissioner Carey was out of the office all day.

TUESDAY, JUNE 29, 1999

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 – The Commissioners signed Resolution No. 99-047, a resolution creating Rural Special Improvement District No. 8925, for maintenance and operation of a community water system constructed through RSID 8458 – Sunset West Water System – to serve the Sunset West area of Missoula County, Montana.

Professional Services Contract – The Commissioners signed a Professional Services Contract with Beth Thompson, MD, to serve as Health Services Division Medical Advisor, developing and/or approving public health policies and standards and acting as a liaison with health care providers in the community. Performance schedule is July 1, 1999 through July 31, 1999. Compensation shall be \$500.00. The Contract was returned to the Health Department for further signatures and handling.

Agreement – The Commissioners signed a 1998 Air Quality Equipment Agreement with the Montana Department of Transportation for acquisition of equipment for reducing PM-10 particulate matter in Missoula County. Missoula County's financial responsibility is \$3,952.26, which is budgeted in the FY2000 budget. The Agreement was returned to Horace Brown, County Surveyor, for further handling.

Lease Agreement – The Commissioners signed a Lease Agreement with the Missoula Valley Water Quality District to operate and maintain an experimental denitrifying septic system in Rosecrest Park. Consideration shall be \$1.00. Approval was granted on the condition that structures would not be installed which interfere with the use of the park. All monitoring devices and structures will be installed at or below ground surface and the land surface restored to its original condition.

Professional Services Contract – Acting Chairman Evans signed a Professional Services Contract between the Montana Department of Agriculture and the Missoula County Weed District for performance of duties as noxious weed seed free forage field inspectors. Contractor retains \$1.25 per acre of the \$1.50 inspection fees. Term of the contract is through December 31, 1999. The Contract was returned to the Weed Department for further signatures and handling.

Grant Documents – Acting Chairman Evans signed grant documents for continuation of the Flagship Project at Rattlesnake Middle School and Hellgate High School. Value of the grant is \$93,990.00. The documents were returned to Peggy Seel in OPG for further handling.

Agreement Modification – Acting Chairman Evans signed Modification No. 4 of Agreement 270054 with the Montana Department of Environmental Quality extending the time to finalize the El Mar Estates and Golden West facility plans to December 31, 1999. The Modification was forwarded to DEQ in Helena.

Other items included:

- 1) The Commissioners reappointed Dan Chilcote, Gary Ropp, and John Hulett to three-year terms on the Lolo Water and Sewer Board (RSID 901). All terms expire June 30, 2002.

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

WEDNESDAY, JUNE 30, 1999

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

Audit List -- Commissioners Evans and Carey signed the Audit List, dated June 29, 1999, pages 3-44, with a grand total of \$691,615.73. The Audit List was returned to the Accounting Department.

Application for Issuance of Replacement Warrant – Acting Chairman Evans approved an Application for Issuance of Replacement Warrant naming Martel Construction, Inc. as principal for Warrant #349393, issued 6/23/99 on the Missoula County Jail Construction Fund in the amount of \$827,732.07, not received in the mail.

Amendment to Task Order – Acting Chairman Evans signed an Amendment to a Task Order with Montana Department of Public Health and Human Services for the Missoula County Immunization Program changing the compensation amount to \$13,729.00. Source of funding is a grant from the US Dept. of Health and Human Services. The Amendment was returned to the Health Department for further handling.

Development Agreement – The Commissioners signed a Development Agreement between the Missoula City-County Health Department and the City of Missoula Redevelopment Agency for remodeling of the facility at 301 West Alder. MRA agrees to pledge up to \$39,015.00 in tax increment funds to assist in construction of ADA improvements, which the Health Department shall substantially complete by June 30, 2000. The Agreement was returned to the Health Department for further signatures and handling.

PUBLIC MEETING – June 30, 1999

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, County Surveyor Horace Brown, County Clerk & Recorder/Treasurer Vickie Zeier, Chief Civil Attorney Michael Sehestedt and Deputy County Attorney Colleen Dowdall. Commissioner Chair Michael Kennedy was on vacation.

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 list in the amount of \$691,615.73. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Bid Award: Aerators for RSID 901 – Lolo Water and Sewer

Michael Sehestedt, Chief Civil Attorney, presented the staff report.

The action requested is to award a bid for aerators to RSID 901 – Lolo Water and Sewer. The aerators are a replacement of under powered, 13-year-old, unreliable aeration system in the sludge lagoon at Lolo Water and Sewer. Bids received were as follows: Aeration Industries International, quantity two, in the amount of \$7,800; Aeromix Systems, Inc., quantity two, in the amount of \$10,294; and ABS Pumps, Inc., quantity two, in the amount of \$10,000.

The recommendation is to award the bid to Aeration Industries International in the amount of \$7,800, as the lowest and most responsive bidder. Their bid appears to meet or exceed bid specifications. The product has good references from other communities. The aerators have been fully budgeted and the money has been set aside for purchase.

Commissioner Evans moved that the Board of County Commissioners award the bid for two aerators for RSID 901 – Lolo Water and Sewer to Aeration Industries International in the amount of \$7,800 in that they appear to be the lowest and best bidder. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Hearing: Exe Family Transfer

Colleen Dowdall, Deputy County Attorney, presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 22 of Mill Creek Ranch Tracts as shown in Book 61 Micro, Page 128.

Lawrence and Vivian Exe, Trustees for the Lawrence T. and Vivian M. Exe Revocable Living Trust, 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 acres in size located near Frenchtown off Spring Hill Road. The Exes propose to create an approximately 3.4 acre parcel on the northeast portion of the property for transfer to their daughter, Jill M. Exe.

The history of the parcel is as follows: Created by deed exhibit and transferred to the Exes in 1974.

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

Acting Chair Carey opened the public hearing.

Lawrence Exe stated they wanted to create this parcel so their daughter would have a place to build a home.

Commissioner Evans stated that the Board was required by law to determine if this request was an attempt to evade the subdivision act.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by the Lawrence and Vivian Exe Revocable Living Trust to create a new parcel by used of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Michael Sehestedt stated for the record that what has happened today is the Commissioners have approved the division of land. The Exes will still have to deal with the septic and health issues. This action does not come with any representation that there is a building site, that services will be available or any of the other criteria of subdivision review.

Lawrence Exe stated they understood the process. Eli & Associates were assisting them on this project.

Hearing: Blankenfeld Family Transfer

Colleen Dowdall, Deputy County Attorney, requested the Blankenfeld Family Transfer be taken off the agenda. She will reschedule the hearing when requested materials are received.

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