

## FRIDAY, JULY 1, 1994

The Board of County Commissioners did not meet in regular session; Commissioners Dussault and Evans were out of the office all day.

*Vickie M. Zeier*

Vickie M. Zeier  
Clerk & Recorder

*Fern Hart*

Fern Hart, Chair  
Board of County Commissioners

## MONDAY, JULY 4, 1994

The Courthouse was closed for the Fourth of July holiday.

## TUESDAY, JULY 5, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present in the forenoon. Commissioner Evans was on vacation from July 5th through July 8th, and Commissioner Dussault was out of the office all afternoon.

DAILY ADMINISTRATIVE MEETING

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Matt Keener, an independent contractor, for the purpose of planning, acquiring supplies, instruction and cleanup for classes offered to the public by Missoula Museum of the Arts, as per the terms set forth, for the period commencing January 1, 1994, through December 30, 1994, with compensation at the rate of \$10.00/hour or \$7.50/hour when co-taught.

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Karen Perry, in the amount of \$16,074.00, for the property at 26 Russell Park West in Missoula, dated June 30, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

Notice of Hearing -- The Board of County Commissioners signed a Notice of Hearing on the proposal to call for an election on issuance of general obligation bonds for the purpose of acquiring open space, conservation easements, park land, wildlife corridors, sensitive wildlife habitat and development rights throughout Missoula County and to pay the cost associated with issuance of the bonds, setting the hearing for July 20, 1994, at 1:30 p.m.

Agreement -- The Board of County Commissioners signed an Agreement for Provision of Professional Security Services between the Missoula County Sheriff's Department and Ron Fesler of Fesler's Painting, Inc., whereby the Sheriff's Department will provide uniformed officers to perform general security duties while the requester is painting businesses after hours at dates and times requested, as per the terms and payment schedule set forth, for the period from June 30, 1994, until June 29, 1995. The Agreement was returned to the Sheriff's Department for further signatures and handling.

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Professional Services Contract between Missoula County (Partnership Health Center) and Mary Gallagher, Attorney at Law, extending the time to July 31, 1994, increasing the hours to 140 maximum, and increasing the maximum total payment to \$7,000.00. The Amendment was returned to the Health Department for further signatures and handling.

Other items included:

- 1) the Commissioners approved a draft department head performance policy submitted by John Pemberton, Director of Personnel;
- 2) as per the memo dated July 1, 1994, from Mike Sehestedt, Deputy County Attorney, the Commissioners authorized payment of a claim against Missoula County on behalf of Stephen Whitney III involving a site evaluation and sewer permit for a piece of property in Lolo, agreeing to offer \$2,500 as a settlement; and
- 3) the Commissioners appointed the following as trustees of the newly created Seeley Lake Cemetery District: Rod Kvamme for a three-year term; Allen Chaffin for a two-year term; Bucky Walters for a one-year term; and Mildred Chaffin and Gwen Schneiter were appointed as alternates.

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

**WEDNESDAY, JULY 6, 1994**

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

**PUBLIC MEETING**

The meeting was called to order at 1:30 by Chair Fern Hart. Also present was Commissioner Ann Mary Dussault.

There were no items on the agenda.

Commissioner Fern Hart announced that on July 13, the Chappel Addition Preliminary Plat and Lamb Addition will be heard.

**PUBLIC COMMENT**

Dan Poe Newman, a candidate for Justice of the Peace, asked the Commissioners to retain parity in the funding of the two Missoula County Justice Courts, regardless of who sits on the court. He asked that personalities be kept out of the funding decisions of the Justice Courts.

There being no further business, the Commissioners were in recess at 1:33 p.m.

**THURSDAY, JULY 7, 1994**

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

Monthly Report -- Chair Fern Hart examined, approved and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending June 30, 1994.

**DAILY ADMINISTRATIVE MEETING**

At the daily administrative meeting held in the forenoon, the following item was signed:

Agreement -- The Board of County Commissioners signed an Agreement for Professional Engineering Services, dated June 29, 1994, between Missoula County and Druyvestein, Johnson and Anderson, Inc. for the purpose of developing a Utility Master Plan for the Missoula Airport Development Park and adjacent properties, as per the items and terms set forth, for a fee of \$27,856.00. The Agreement was returned to Paula Nelson in the DES Office for further handling.

Other items included:

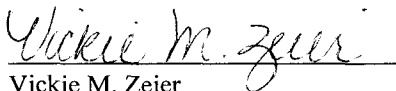
- 1) the Commissioners approved payment of the MACo dues for FY'95 in the amount of \$7,000.00.

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

**FRIDAY, JULY 8, 1994**

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

Monthly Report -- Chair Fern Hart examined, approved and ordered filed the Monthly Reconciliation Report for Justice of the Peace, David K. Clark, for month ending June 30, 1994.



Vickie M. Zeier  
Clerk & Recorder



Fern Hart, Chair  
Board of County Commissioners

**MONDAY, JULY 11, 1994**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners held a Community Budget Meeting at the Community Center in Lolo.

Monthly Report -- Chair examined, approved and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing items of fees and other collections made in Missoula County for month ending June 20, 1994.

Monthly Report -- Chair Fern Hart examined, approved and ordered filed the Monthly Report of Sheriff Doug Chase showing items of fees and other collections on account of Civil Business in Missoula County for month ending June 30, 1994.

**DAILY ADMINISTRATIVE MEETING**

At the daily administrative meeting held in the forenoon, the following item was signed:

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between Doyle Riley Construction and Missoula County for the purpose of providing services as the Water and Sewer Operator for the sewer and water system which serves the El Mar Estates and New Meadows Subdivisions, as per the terms and



conditions set forth, for the period from July 1, 1994 through June 30, 1995, with the total compensation for services under this agreement being \$71,736. The Agreement was returned to John DeVore, Administrative Officer, for further signatures and handling.

Other items included:

- 1) the Commissioners appointed Gladys Hardin as a member of the Missoula Aging Services Governing Board to fill out Anna Fendler's term through December 31, 1994; and
- 2) Chair Hart signed the Bond Registrar and Paying Agent Agency Agreement with TrustCorp for the Seeley Lake Rural Fire District General Obligation Bonds; and
- 3) the Commissioners signed the Signature Page of Addendum "A" to a Labor Agreement outlining the Detention Officers pay schedule from July 3, 1994, to June 30, 1994.

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

#### TUESDAY, JULY 12, 1994

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners held a Community Budget Meeting at the Bonner School Library.

#### DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was considered:

The Commissioners reapproved the PAMAP software purchase for the Rural Planning Office--this was approved previously in FY'94.

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

#### WEDNESDAY, JULY 13, 1994

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

Audit List -- Commissioners Hart and Dussault signed the Audit List, dated July 13, 1994, pages 2-10, with a grand total of \$42,031.70. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

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

Resolution No. 94-070 -- The Board of County Commissioners signed Resolution No. 94-070, a Resolution of Intention to create Rural Special Improvement District No. 8454, for the construction of a sanitary sewer main extension to serve Block 1 of Maclay Addition, Missoula County, Montana. The Resolution was returned to Jesse Sattley, RSID Coordinator, for further handling.

Agreement -- Chair Hart signed an Agreement between Missoula County and the Department of Health & Environmental Sciences for the purpose of providing the services of USDA's Special Supplemental Food Program for Women, Infants and Children (WIC) to the residents of Missoula and Mineral Counties, as per the terms and conditions set forth. The Agreement was forwarded to DHES in Helena.

Extension Letter -- The Board of County Commissioners signed a letter to Sam Martin of Southpointe Development Corporation approving a 90-day filing extension for Southpointe Phase I, making the new filing deadline October 18, 1994.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:35 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

#### CONSIDERATION OF: LAMB ADDITION - SUMMARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that Lamb Addition is a proposed 3-lot division of a 0.63-acre parcel located at the end of Trail Street, a short cul-de-sac street west of Curtis Street and to the north of Emma Dickinson School. The property is described as Lot 12 of Curtis & Majors Subdivision in the Southwest 1/4 of Section 20, Township 13 North, Range 19 West. The proposed three single-family lots are each 9151 square feet in area. The parcel is vacant; to the south are duplexes and the school, to the west and north are single family homes, and adjacent to the east is unzoned land under development construction.

The property is located within the CR-1 zoning district, which provides for single-family residential uses at densities of up to eight dwelling units per acre with a minimum lot area of 5400 square feet. According to the 1975 Missoula Urban Area Comprehensive Plan, this area is transitional between 16 units per acre and 6 units per acre. The predominant

density of the neighborhood is approximately four units per acre. This subdivision will connect with Mountain Water and City Sewer services.

The Office of Community Development staff recommended that the summary plat of Lamb Addition be approved, subject to compliance with the following conditions:

1. Plans for grading, drainage, and driveways shall be approved by the County Surveyor prior to filing of the final plat.  
*Section 3-2, 3-4.*
2. The following statement shall appear on the face of the plat and in all instruments of conveyance:  
"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements, including upgrading, paving, or sidewalk installation to Trail Street and Curtis Street, and may be used in lieu of their signatures on an RSID/SID petition."  
*Section 5-2(5)(D).*
3. A 20-foot utility easement shall be placed along the rear of the lots. In addition to showing the location of the utility easement, the following statement shall also be shown on the face of the plat:  
  
"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."  
*Section 3-5, 3-6.*
4. The developer shall provide cash-in-lieu of parkland dedication into the County Park Fund, the amount to be determined by the County Assessor and stated on the face of the plat.  
*Section 3-8(2)(D).*
5. The developer shall dedicate a minimum additional seven (7) feet of right-of-way along Trail Street, subject to approval of the County Surveyor.  
*Section 3-2(11).*
6. The developer shall circulate a petition to determine whether there is interest in an RSID for the installation of sidewalks along Trail Street. If interest warrants a sidewalk to be installed, the sidewalk plans shall be approved by the County Surveyor.  
*Comments of staff.*

#### VARIANCE REQUEST -- SIDEWALK REQUIREMENT:

The developer requested a variance to Section 3-2(5) of the Missoula County Subdivision Regulations which states that sidewalks and pedestrian walkways shall be provided in all subdivisions and bikeways should be considered. In comments, the City Engineer and the Missoula Bicycle/Pedestrian Coordinator recommend that sidewalks be installed at this time.

The variance request from the developer is as follows:

No sidewalks are proposed due to the lack of sidewalks in the area. The cul-de-sac, Trail Street, is existing and is very low volume. Sidewalks would detract from the rural appeal of the area.

This report recommends approval of this variance request if the RSID/SID statement regarding sidewalk installation is required as per the above Condition #2. Sidewalks on Trail Street would certainly benefit the neighborhood, however at this time there are no sidewalks at all on Trail Street. The installation of sidewalks on Trail Street might be better accomplished if done all at once. If this variance request is approved as recommended, then the above Condition #6 is also recommended.

#### STREET RIGHT-OF-WAY REQUIREMENT:

The developer requested a variance to Section 3-2(11) which states that right-of-way standards for off-site streets shall meet the standards of Section 3-2(8). The County standards for a cul-de-sac street accessing less than 50 dwelling units call for a 54-foot right-of-way. Trail Street is a 40-foot right-of-way and public utility easement.

The variance request from the developer is as follows:

The right-of-way for Trail Street is 40 feet in width. The right-of-way has been of record for many years and the street is constructed to County standards. Additional right-of-way from Lamb Addition would not serve any purpose as the street and right-of-way are existing.

The staff recommended denial of the variance request. As the total street width is 34 feet including curb and gutter, this leaves only about three feet of clear space between the back of curb and the property line. This is one of, if not the only, parcel on Trail Street remaining to be developed therefore the opportunity to gain the regulation 54-foot right-of-way along Trail Street (which would give more easement area between the street and property line) may be diminished. However, if sidewalks are to be constructed, there needs to be more than 3 feet of clearance. The developer would need to dedicate an additional 7 feet in order to comply with his share of the regulation 54-foot right-of-way.

Gilbert Larson, DJ&A, representing Lamar Lamb, the developer, concurred with the conditions as set forth. They requested one variance for the street right-of-way. The purpose of this request is Trail Street is an existing right-of-way. He wondered if it would be of much benefit to give the other 7 feet. However, they do not object to giving the extra 7 feet. He said the other lots already exists, but perhaps some day the other right-of-way can be obtained. He said the developer has also agreed to circulate a petition on Trail Street for the construction of sidewalks.

He said originally, they proposed duplexes on the three lots which was denied by Board of Adjustment. They met with neighborhood who indicated concurrence with the current proposal for single family homes. The minimum lot size for a single family home was 5,400 square feet; the lots in this subdivision are 9,000 square feet.

Don Stinger, 245 Davis, representing the neighborhood network, said there was no reason to oppose; the developer has complied with the rules. He thanked the Commissioners for the opportunity to comment.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the variance request to Section 3-2(5) regarding sidewalks and pedestrian walkways. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request for a variance to Section 3-2 (11) regarding right-of-way standards for offsite streets. The motion carried on a vote of 3-0.

Barbara Evans moved and Ann Mary Dussault seconded the motion to grant approval to Lamb Addition, Summary Plat, based on findings of fact and subject to the following conditions:

1. Plans for grading, drainage, and driveways shall be approved by the County Surveyor prior to filing of the final plat.
2. The following statement shall appear on the face of the plat and in all instruments of conveyance:  
  
"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements, including upgrading, paving, or sidewalk installation to Trail Street and Curtis Street, and may be used in lieu of their signatures on an RSID/SID petition."
3. A 20-foot utility easement shall be placed along the rear of the lots. In addition to showing the location of the utility easement, the following statement shall also be shown on the face of the plat:  
  
"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."
4. The developer shall provide cash-in-lieu of parkland dedication into the County Park Fund, the amount to be determined by the County Assessor and stated on the face of the plat.
5. The developer shall dedicate a minimum additional seven (7) feet of right-of-way along Trail Street, subject to approval of the County Surveyor.
6. The developer shall circulate a petition to determine whether there is interest in an RSID for the installation of sidewalks along Trail Street. If interest warrants a sidewalk to be installed, the sidewalk plans shall be approved by the County Surveyor.

The motion carried on a vote of 3-0.

#### HEARING: CHAPPELLE ADDITION - PRELIMINARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that Chappelle Addition is a proposed 12-lot single family residential subdivision on 6.1 acres, located on St. Thomas Drive west of Upper Miller Creek Road and east of Linda Vista. The property is legally described as Lot 15 of Massey McCullough in Section 12, Township 12 North, Range 20 West, Missoula County, and is located approximately one half mile west of the Missoula City limits. The project will connect to Mountain Water and City of Missoula sewer but will not be annexed into the City at this time.

The property and the surrounding area is zoned CRR-2, which allows a maximum residential density of up to two dwelling units per acre. The Missoula Urban Comprehensive Plan, 1990 Update, also recommends a density of up to two units per acre for this area. The proposed sizes of the lots are from 11,600 to 52,500 square feet. Ten of the lots are proposed to be served by Kristin Lane, a 22-foot cul-de-sac street.

On June 21, 1994, the Missoula Consolidated Planning Board voted 5-1 to recommend denial of the preliminary plat request for Chappelle Addition. The basic reasons for denial was due to the steepness of slope for housing and driveway construction, safety on Kristin Drive, potential drainage problems affecting residents to the west, and the possibility of a better design for this site. It should be noted that not only does the C-RR2 zoning district provide for a density of up to two dwelling units per acre, it also promotes a residential environment that is consistent with the physical limitations of the land.

Gilbert Larson, DJ&A, representing Jeff Langan, the developer, said this subdivision meets all the subdivision regulations. He said they have requested a variance to the street width. There are two main reasons for this: 1) the

hillside will require extensive cut and fill to put in a street, and the majority of the streets connecting to the cul-de-sac are asphalt without curb and gutter. Most of the streets do not have curbs and sidewalks which adds to the rural feel of the area. The density complies with the zoning and Comp Plan. There are large parks in the area within a 1/4 of a mile.

He said the Planning Board had concerns about providing a common area. The Board felt that there should be a pocket park for the development which would provide a green space and would reduce the density by one unit. There were also concerns relative to the covenants. The covenants have been revised relative to the architectural review committee as well as other minor items.

He said at the Planning Board meeting, a discussion concerning the need for common area instead of cash-in-lieu funds was held. A few years ago, there was a strong need for cash; now there seems to be a need for land in some areas. They proposed to use Lot 3 for a common area for a variety of reasons: the grade can be lessened on the road, and the lot is centrally located. They proposed an RSID for park maintenance that would collect the funds from the homeowners for the perpetual maintenance of the park.

He said this proposal would reduce the density from 12 to 11 units on six acres which complies both with the Comp Plan and the zoning. He said they received a letter from Horace Brown, County Surveyor, that supported the request for the variance for the curbs and sidewalks as well as an approval of the conceptual drainage plan. The three sumps proposed would be more than adequate for this size of street. Regarding the concerns about the safety of the street, they proposed a total of 8 homes on a short cul-de-sac which meets all of the requirements such as grade, driveways, etc. He said because the street is a cul-de-sac, he didn't think safety would be an issue. All the building sites are on less than 25% slopes; all the driveways are on less than 10% slope. This is a buildable subdivision within the regulations and meets all of the requirements. The development is included within the Linda Vista sewer RSID and Mountain Water lines are adjacent to the subdivision. They proposed to build a walkway along the full length of St. Thomas Drive in order to benefit the whole area. As the surrounding properties are developed, there will be a nice pedestrian walkway through the neighborhood. The proposed common area would also provide a way for pedestrians to go directly to the walkway without having to walk up the street.

Barbara Evans asked if the reduction of units changed the subdivision from an urban subdivision category to a rural subdivision category?

Gilbert Larson said it did not change the category because the definition as it is written, excludes common areas or parks. They decreased the density by creating a common area which will increase the open space in the area and will give it a more rural feeling. If they had submitted the proposal with 11 lots, it would have fallen under the category of a rural subdivision. However, even though they changed the density, technically, it will still fall under the urban category. A variance request will have to be approved for the street width requirement.

Barbara Evans explained that a rural subdivision can have a smaller width of a road without requiring a variance. A variance is required if a developer wants to make the road smaller in an urban subdivision.

Gilbert Larson said if the proposal was a rural subdivision, it would meet all the requirements; because this proposal is considered urban, it does not meet one standard for the road width. He said the variance was originally not requested because they did not understand that the subdivision was considered urban.

The hearing was opened to public comment.

Jeff Langan said OCD originally recommended approval of the subdivision. One of their concerns centered around the street situation. He said they did not attempt anything that would skirt the intentions of the regulations. He said they thought that cash-in-lieu of parks was the preferred method. There are no driveways along one side of Kristen Lane where the park will be located. It makes more sense to provide the walkway along St. Thomas to keep the children off the road. He said by taking out Lot 3, they have eliminated the steepest lot in the subdivision. Lots 1 and 2 are well within the grade limits and would access St. Thomas Drive. The only other lot with any kind of significant steepness is Lot 9. By eliminating Lot 3, they were able to drop the driveway grade on Lot 9.

He said several of the lots can be thought of as view lots. If the homes were clustered in the low areas, the lots would be significantly smaller and closer to each other. People would prefer to live farther away and have view lots. This will improve the quality of life for a few people. He said one particular property owner will have three lots adjacent to his property. Would the property owners in the area like it if the homes were clustered? The surrounding homes are spread out; they are not clustered together. Clustering would not meet any standard--not for the potential buyers or the adjacent homeowners.

He stated that all along he has been concerned whether they have been in compliance with all regulations in the subdivision. He said it was a surprise to learn that they did not comply with an urban subdivision. He said the variance will allow the subdivision to comply.

John Schindler, an adjacent landowner immediately to the west of the proposed subdivision, voiced concern about the density of the housing. Most of the lots in the area are half acre lots. He said his real concern was the drainage. He said probably 90% of this acreage drains across his property. He was concerned about the road and the lack of curbs and sidewalks. People will have to walk on the road. There should be a good drainage system in the cul-de-sac as well. He stated he was glad to see that the proposal now included common area. However, the hill is the neighborhood's sledding hill; he expressed concern that the children would sled into the street. This is a serious safety problem.

Ken Cowart agreed with the statements made by John Schindler. He was not against growth, but thought there should be serious considerations given to the subdivision and to the steepness of the road. He said water from this parcel runs onto his lot. He said the Planning Board made the right decision with regard to the subdivision. They took into consideration the steepness of the road and the drainage. There are three lots at 23%; the maximum slope allowed is 25%. When the

paved road and driveways are in, the water has to run somewhere. He said he has the same system in his driveway as is being proposed. His three-car garage is wider than the proposed road for the subdivision. While the subdivision meets the density of two units per acre, the surrounding homes sit on 1/2 acre lots. This proposed subdivision is not conducive with the surrounding neighborhood.

Lillian Carey, 2815 St. Thomas Drive, stated that she had many objections. This is a very steep area and the traffic is very bad at this particular spot. The neighborhood is primarily a country area; St. Thomas is barely a two-lane road. The area is not congested. Twelve lots will ruin the character of the neighborhood. The traffic on St. Thomas is bad; she expressed concern about the children on bicycles. Someone is going to be killed. She wondered if this was really the best place to put a 12 lot subdivision. She stated that as soon as homes start connecting to the City sewer, the City of Missoula will want to start annexing the area. Taxes will continue to go up.

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

Ann Mary Dussault asked Gilbert Larson to respond to the drainage issue and what the difference in the road will be due to the removal of Lot 3.

Gilbert Larson said when a road is paved, there will be more runoff. However, as a developer, they are required to demonstrate that the drainage facilities will restrict runoff to less than what it was previously to the Missoula City-County Health Department, the Surveyor's Office and to the State Health Department. The most common way drainage is handled is by means of sumps. The developer proposed three sumps on Kristen Lane, which is more than necessary to take all the runoff from the street and the runoff from the uphill side. The street will intercept the water from the hillside and will channel it to the sump where the water will be disposed. In addition, every home is required by the covenants to have a roof drain. The roof drains must be constructed to a size where no water would be able to flow over 15 feet from their roof. This is just a rock pocket drain that can take the runoff from the roof. The site has a lot of gravel and will work to their advantage. There are problems with runoff when there are clay soils. He said at this particular site, the sumps will perform particularly well; there have been tests done in Missoula County where sumps can take up to 500 gallons of water per minute in the right soils.

By using the chalkboard he showed the Commissioners how the slope of the roadway was affected by the elimination of Lot 3 as a building site. Eliminating Lot 3 will allow the developers to build the road more into the hillside with a steeper bank. This will allow them to put a lot less fill on the downhill side. Before Lot 3 was eliminated, the driveways sloped 3-4 feet; the grade will now be only 1-2 feet. The excess material can be used as fill in the bottom of the cul-de-sac to improve the roadway.

Ann Mary Dussault asked if the cut into the hillside will be greater?

Gilbert Larson said the cut will be deeper. The scar in the hillside will not be any larger, but depth would be. People will be able to walk on the gravel shoulder without driveways accessing this side of the street.

Barbara Evans expressed concern that curbs and gutters should be placed on the downhill side of the street to catch any runoff. She wondered if a berm could be placed at the back of the entire subdivision to catch runoff?

Gilbert Larson said when designing roads they design it so the road will have a "super elevation" when built. This slants the entire road around the inside of the curve so the water does not have the tendency for water to slide off the inside. This entire road will be "insloped". All the runoff will come into the hill; the three sumps will catch this water. Curbs on the outside of the road would never see water. The water will run to the inside into the cul-de-sac. Two sumps will be placed to catch the runoff before it gets to the cul-de-sac. The third sump would be placed at the bottom of the cul-de-sac to catch any water that got past the two sumps. This road will be a County maintained road. Horace Brown will review the plans for the sumps.

Michael Sehestedt, Deputy County Attorney, explained that the County Surveyor's Office will also inspect the sumps in the course of construction.

Barbara Evans stated that the drainage designs must meet the County road specifications.

Gilbert Larson said a berm could be built at the bottom of the site to stop the runoff temporarily. However, any time something is built to obstruct water, it will "pond" the water. This is not a level piece of property. If a berm was constructed the length of the property, the water must go somewhere; the water will follow the length of the berm. Instead of a small amount of water, there will be a substantial amount of water.

Barbara Evans stated that she felt for the residents. She had her basement flooded in February some years ago from runoff from the properties above. She stated it cost \$1,500 to reconfigure their yard so that the water did not go into their basement.

Gilbert Larson suggested that the way to prevent this type of drainage would not be by building a berm. By building the street, they will have eliminated the problem that exists today. The water is intercepted by the road and is dealt with by the sumps. Lawns will not have the same runoff problems that bare ground has.

Barbara Evans stated that during the winter everything is frozen and the lawns will not absorb the water.

Ann Mary Dussault said this is the same as it is today. The question is whether the developed area will cause more runoff than is currently occurring on the natural land.

Gilbert Larson said that even in the winter, a thicker lawn will slow the water even in the winter. The runoff will be controlled better by thicker vegetation than the knapweed there currently. He said the runoff after development will be substantially less than it is currently.

Barbara Evans said the subdivision will add to the problem because there will be less absorption in the developed areas.

Gilbert Larson said each of the homes will be required to have roof gutters which will run into rock sumps so that the water cannot move more than 15 feet from the home.

Barbara Evans asked who would be responsible if a residence gets flooded?

Gilbert Larson said the building permit process, the covenants and the other various requirements, will insure that the drains will be built properly to begin with. If the system fails after that, it will be the responsibility of the owner of the home; they would be violating the covenants. The only recourse would be to go back to the home that was causing the problem. If there was a problem with the road, the engineer is responsible for the road.

He said he could not give a 100% answer. It is the developer's position that they cannot say there will be no runoff during any type of storm; this isn't realistic. The property as it exists has runoff. The water leaving will be less when developed. The drainage report is a matter of public record.

Fern Hart referred to concerns about the sumps filling with sand and small rocks; won't the sump fill up?

Horace Brown said it will eventually fill up. However, the County has to clean them. They have equipment that sucks the sand out. It is standard maintenance to clean the sumps out every so often.

Gilbert Larson said Horace Brown, in the last few years has moved forward to initiate regular maintenance on the sumps which has avoided a lot of problems.

Ann Mary Dussault asked about the variance. She clarified that the County Attorney's Office has determined that this development constitutes an urban subdivision. An urban subdivision has certain requirements relative to streets and sidewalks. The County requires sidewalks in all subdivisions within the County. The request for the variance to the sidewalk requirements is being requested regardless of whether this is an urban subdivision.

Horace Brown stated he concurred with the variance request for the sidewalks. The wide street and the deep cut into the hillside is not necessary.

Colleen Dowdall, Deputy County Attorney, said the street width for urban subdivisions is 32 feet and rural subdivisions, 24 feet. The developers requested a variance to the urban street width. The variance requests a street width of 24 feet. This is a request to meet rural subdivision standards.

Horace Brown said if a wide street is built, there will be a deeper cut into the hillside for the road. This is not necessary. Also, the road is a cul-de-sac and most people who will use the road will live in the subdivision. The sides of the road will be wide enough to walk on.

Ron Ewart said OCD received the variance request after the staff report had gone out.

Fern Hart asked if the driveways would be paved?

Jeff Langan stated that all the driveways adjoining the asphalt were required to be paved.

A member of the audience said years ago sumps were installed in this area. One of the rains caused the sump to fill with sand and gravel. Water ran down a street with curbs to Eldora, which had no curbs, where the water cut deep gullies into the side of the road. He said one of the gullies was so deep, he couldn't see the road from the bottom of it and it was approximately 6-10 feet wide. He wondered about the efficiency of the sumps.

Horace Brown stated that after this incident, the County installed two french drains on Eldora Lane. There have been no problem since.

Fern Hart said Kristin Lane is not a through street that empties onto another street.

Barbara Evans voiced her concerns regarding the proposed park land; children use this as a sledding area. When they come off the hill, they will cross the road. She wondered when the road is plowed, would this provide some sort of barrier?

Gilbert Larson said the road is required to have a one foot deep ditch.

Barbara Evans said when the ditch is full of snow, it will not provide a barrier. She wondered what the developers could do to protect the sledding children from the street.

Gilbert Larson commented that this issue gets into what the parents will allow their children to do. The question is, will the parents recognize that it may not be a safe condition? The developers will not encourage sledding. He said the developers really have no way to take away all the risk. A berm would create a jump. This hill is not unique in Missoula. He wondered if it would help to put a sign up?

Barbara Evans said in the past, park land was given to the County that was not suitable for park land. She wondered if this was the best piece of land for park?

Gilbert Larson said this lot is the best piece because of its location and its view; it is very visible from all of the homes. Once it is planted and improved, it will be a very nice park. They have included a mechanism for perpetual maintenance as well. There isn't a site in this subdivision that could be developed into an "active" park with a basketball court, etc. He said there are several other areas in this neighborhood that are appropriate for active recreation and sledding. He said his kids sled at Marilyn Park in Linda Vista. There are other places they can sled. He said he would encourage the homeowners' association to plant an attractive hedge at the bottom of the hill. This would discourage anyone from sledding down the hill.

Barbara Evans asked if three sumps were sufficient? Would it be feasible to put in an additional sump?

Gilbert Larson said it is feasible, but they already have. The City requires one sump for every 10,000 square feet of asphalt used. By the City's standards, they would need one sump; they proposed three. They have already exceeded what is necessary.

A discussion ensued relative to the variance and conditions of approval.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request for the variance to the sidewalk regulations and the street width. The motion carried on a vote of 2-1 with Fern Hart voting against the motion.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve Chappelle Addition subject to the findings of fact contained in the staff report, and based upon the discussion at the Planning Board on June 21, 1994 and at this meeting, relative to the criteria on the effects on local services, particularly the discussion relative to roads and parks, and subject to the conditions contained in the staff report of the Planning Board as recorded in the meeting minutes of June 21, 1994, page 6, as amended as follows:

1. Plans for grading, drainage, streets, driveways, and sidewalks shall be approved by the County Surveyor.
2. Slopes in excess of 25 per cent shall be deemed unsuitable for building sites and shall be shown as such on the plat. This includes lots on slopes in excess of 25 per cent that result from roadway and shoulder construction.
3. A site grading plan shall be approved by the County Surveyor, showing that the maximum grade of streets will not exceed 8 per cent (short distances up to 10 per cent may be approved by the County Surveyor) and that driveway grades will not exceed 10 per cent.
4. The following statement shall appear on the face of the plat and in all instruments of conveyance:  
  
"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to St. Thomas Drive or Upper Miller Creek Road, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."
5. If common area is to be dedicated to a Property Owner's Association, the developer shall file Property Owner's Association Articles of Incorporation and bylaws, with proof of filing with the Secretary of State. The Articles of Incorporation, By-Laws, and Covenants shall be approved by the Board of County Commissioners. They shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana, that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict.
6. Fire hydrant locations, a maintenance agreement for fire hydrants, and plans for the cul-de-sac shall be approved by the Rural Fire Marshal.
7. Kristin Lane shall be paved to 24 feet, and a 5-foot walkway shall be constructed along the property frontage on St. Thomas Drive. The plans for both shall be approved by the County Surveyor prior to filing of the final plat.
8. One-ninth of the total lot area of the subdivision shall be dedicated to the public as park land or to the property-owner's association as common area. The developer shall cause an RSID to be created for perpetual park maintenance.
9. Utility easements shall be a minimum of 20 feet wide and their location shall be approved by the appropriate utility and the governing body. In addition to the easement location, the following statement shall be shown on the summary plat:  
  
"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 the plat as "Utility Easement" to have and to hold forever."
10. The following hillside standards shall be recorded in the covenants and shall be incorporated into the building permit plans and approved by the Zoning Officer at the time of building permit issuance:
  - 1) A complete grading plan shall accompany the building permit that shows the building site is not located on an existing grade of 25 per cent or more, and that the driveway will not exceed a grade of 10 per cent.

- 2) Grading shall produce slopes that are continuous in grade with the existing landform. Manufactured slopes shall substantially conform to the natural grade of each lot.
- 3) Building walls, not including gabled ends, shall not exceed 18 feet above the adjacent finished grade on all sides.
- 4) The building shall be oriented parallel to the contours along the hillside presenting not more than a two-level profile when viewed from above or below.

The motion carried on a vote of 3-0.

Barbara Evans said the Commissioners didn't approve the subdivision because of a lack of concern to the people in the area. She said the developers meet all the rules and laws that are in place. If the Commissioners were to deny this subdivision, the developers could take the County to court--thus the taxpayers would have to pay for the litigation. Regarding annexation, she said it is only a matter of time; whether or not this subdivision is approved bears no weight. The City will hold off annexing for a time because the County was able to get the City to agree to wait until the RSID is paid off. The Commissioners do not have the latitude to tell people they cannot develop their land.

Mrs. Carey said the zoning in the area is not right. There has to be some way the rules can be modified on a case-by-case basis.

Barbara Evans suggested that Mrs. Carey initiate a process for zoning. The staff at OCD can help. It may be difficult to get the surrounding neighbors involved.

Ann Mary Dussault said this was incredibly confusing to everyone. She said when the staff and Commissioners were trying to meld the new regulations with the old, one of things noted was that the definition for rural and urban subdivisions meant nothing in terms of the context of urban and rural. There can be urban subdivisions in Arlee and rural subdivisions in Linda Vista. The County recognized that they have work left to do to make sense out of these regulations. This particular subdivision got caught in the vortex.

Fern Hart thanked the audience for their patience and participation.

#### HEARING - CERTIFICATE OF SURVEY REVIEW - FAMILY TRANSFER - STEELE - TRACT 4 OF COS 1806

Kathy Smith, Paralegal in the County Attorneys Office, explained that Darrell and Virginia Steele submitted a request for two family transfer exemptions for Tract 4 of COS 1806. This is a 32.213 acre parcel and Mr. And Mrs. Steele propose to transfer a portion to each of their children, Cindy Sellers and Tim Steele. Mr. and Mrs. Steele intend to retain approximately 1.5 acres for the home they currently reside in. Mr. Steele indicated he did not know how large each of the proposed parcel would be until he was able to talk to a surveyor about the best place to put the parcels.

The history of the parcel is as follows: The parcel was once a part of the Denton Ranch. Sherman and Cleo Denton created eight parcels greater than 20 acres through Certificate of Survey in 1979. These have no other changes to the property. Mr. and Mrs. Steele purchased Tract 4 in 1989.

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

The hearing was opened to public comment.

Virginia Steele explained that her daughter, Cindy Sellers, already has a home on the property, and her son, Tim Steele, is just starting his.

Ann Mary Dussault explained that the Commissioners have to determine whether or not there is an intent to evade the Montana Subdivision and Platting Act. She said there was nothing in the application to indicate that the applicants were trying to evade the law. She wondered how a second home could have been constructed on one parcel of land.

Virginia Steele stated that they were able to obtain three septic permits. She said two of the permits were approved before they moved onto the property.

Colleen Dowdall, Deputy County Attorney, said while the permits could be approved, she thought that they should still be going through OCD to determine whether there is Comprehensive Plan compliance and zoning compliance. The Health Department should still send every septic permit through OCD to check for floodplain, etc.

Ann Mary Dussault said this is not the applicant's problem. She said they apparently have something in the system that allows various permits on a large parcel. She asked how large the proposed parcels would be?

Cindy Sellers said about 10 acres a piece or two 15 acre parcels with the remaining acreage for their parents. A surveyor will have to survey the land.

Colleen Dowdall said there will not be a record of how the land is split until the Certificate of Survey is filed in the Clerk and Recorders office.

Ann Mary Dussault said if approved, the Commissioners will be giving the applicants permission to split the property any way they want.

Fern Hart said in a sense, this is a small subdivision over which the Commissioners have no authority. She wondered about the access to the proposed parcels.



Cindy Sellers said there is a private road that runs through the whole parcel.

A discussion ensued relative to how the parcel may be split.

Ann Mary Dussault said the deeds must be transferred to the family members. The children cannot further divide the land by use of the family transfer exemption.

Barbara Evans moved and Ann Mary Dussault seconded the motion to grant the request by Darrell and Virginia Steele for two family transfer exemptions for Tract 4 of COS 1806, based on the finding that the request does not attempt to evade the Montana Subdivision and Platting Act and contingent upon the transfer of the deeds to the family members. The motion carried on a vote of 3-0.

PUBLIC COMMENT:

Don Stinger said due to conflicts with other meetings, he would not be able to attend the community budget meeting for the Target Range area.

There being no further business to come before the Board, the Commissioners were in recess at 3:50 p.m.

**THURSDAY, JULY 14, 1994**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended the Annual Fair Superintendent's Bar-B-Que held at the Fairgrounds.

DAILY ADMINISTRATIVE MEETING

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

Resolution No. 94-071 -- The Board of County Commissioners signed Resolution No. 94-071, a resolution ordering the canceling of personal property taxes and contractual obligations five years delinquent, as per the list received from the Missoula County Treasurer and attached to the Resolution.

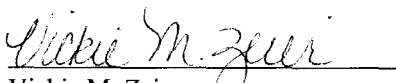
Other items included:

- 1) the Commissioners reviewed and approved the audit of the Jail Commissary for the period from July 1, 1993, to February 28, 1994, as submitted by Susan Reed, Missoula County Auditor. The Audit was forwarded to the Clerk & Recorder's Office for filing; and
- 2) the Commissioners signed concurrence on letters from County Surveyor, Horace Brown, to Mayor Dan Kemmis and Doug Harrison of the City Council supporting the hiring of a Project Coordinator for the Non-Motorized Transportation Program.

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

**FRIDAY, JULY 15, 1994**

The Board of County Commissioners did not meet in regular session; all three Commissioners were out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, JULY 18, 1994**

The Board of County Commissioners did not meet in regular session. Commissioner Evans was in Denver, Colorado attending an EDA Conference through Tuesday, July 19th; and Commissioner Dussault was out of the office all day. At noon, Commissioner Hart attended the U/M/City/County Luncheon Meeting hosted by U/M and held at the College of Technology.

**TUESDAY, JULY 19, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. At noon, Commissioners Dussault and Hart attended a luncheon meeting sponsored by the Missoula Downtown Association.

DAILY ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #11, pay date of 5/27/94, with a total Missoula County Payroll of \$479,336.08. The Transmittal Sheet was returned to the Auditor's Office.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #13, pay date of 6/24/94, with a total Missoula County Payroll of \$498,439.27. The Transmittal Sheet was returned to the Auditor's Office.

Other items included:

Extension Letter -- The Board of County Commissioners signed a letter to Dick Ainsworth of PCI approving a 180-day filing extension for King Ranch Phase I, making the new filing deadline January 12, 1995.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Kory Lamb, an independent contractor, for the purpose of clean up work at the Motor Vehicle Graveyard, as per the items and terms set forth, commencing July 15, 1994, and concluding by July 31, 1994, for a total payment not to exceed \$525.00.

Modification to Contract -- Chair Hart signed a Modification to the Contract between Missoula County and Montana Power Company (Contract #D1435), the Montana Power Efficiency Plus Business Partners Program, modifying the payment schedule and increasing the contribution from Montana Power by \$825.00 bringing the contract total to \$29,825.00 to help offset the additional cost by the County for the replacement of existing fire alarms. One original was forwarded to Montana Power Company in Butte.

The minutes of the daily administrative meeting are on file in the Commissioner's Office.

### WEDNESDAY, JULY 20, 1994

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners held a Community Budget Meeting at the High School Commons in Frenchtown.

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated July 19, 1994, pages 4-40, with a grand total of \$253,997.69. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was signed:

DES Work Program -- The Board of County Commissioners signed the DES Work Program for FFY 1995 as submitted by Orin Olsgaard, DES Coordinator, and is a requirement of the State DES Office as a condition of receiving FEMA funds. The Work Program was returned to Paula Nelson in the DES Office for further handling.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:35 p.m. by Chair Fern Hart. Also present was Commissioner Barbara Evans.

#### HEARING: PROPOSAL TO CALL FOR ELECTION ON ISSUANCE OF GENERAL OBLIGATION BONDS TO ACQUIRE OPEN SPACE

Fern Hart explained that this was a hearing on a proposal to call for the election on the issuance of general obligation bonds to acquire open space, conservation easements, park land, wildlife corridors, sensitive wildlife habitat and development rights and to pay the cost associated with the issuance of the bonds.

The hearing was opened to public comment. There being none, the hearing was closed to public testimony.

Fern Hart said there have been calls and letters relative to this issue, both for and against, which will be included in the public record.

Barbara Evans moved and Fern Hart seconded the motion to postpone action on the proposal to call for the election on the issuance of general obligation bonds to acquire open space until the Public Meeting on August 3, 1994. The motion carried on a vote of 2-0.

Fern Hart explained that written testimony will be taken until August 2, 1994 at 5:00 p.m. The Commissioners will make their decision at the Public Meeting on August 3, 1994.

#### HEARING - CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER - ORIET - LOT 9 OF COS 3611

Kathy Smith, Paralegal in the County's Attorney's Office, explained that Geoffrey and Melodie Oriet submitted a request for a family transfer exemption for Lot 9 of COS 3611. This is a 20.01 acre parcel located on the Clark Fork River near Huson. Mr. And Mrs. Oriet proposed to transfer approximately 10 acres of the parcel to their son, Michael G. Oriet.

The history of the parcel is as follows: COS 1452 was filed in 1978 creating 4 parcels greater than 20 acres in size. COS 3611 was filed in 1986, superseding COS 1452 and creating 10 parcels greater than 20 acres in size. The Oriets purchased the property in June, 1994.

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

The hearing was opened to public comment.

Geoffrey Oriet said he and his wife would like to carry on a family tradition by giving his 18-year old son a piece of property. His grandfather gave his father property and his father gave him some property. He said an access road exists on the property. He said he and his wife would like to build a retirement home in the future on the piece closest to the river. However, they wanted to split the property and give the piece closest to the entrance to his son. Their son will give his parents an easement for access to their property. His son intends to some day build on the property. This will give their son the opportunity to get a good start in life.

Fern Hart stated that the deeds must be transferred to the Oriet's son.

Barbara Evans said the Commissioners must determine whether the applicant is trying to evade the Subdivision and Platting Act.

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

Barbara Evans moved and Fern Hart seconded the motion to approve the request by Geoffrey and Melodie Oriet for a family transfer exemption for Lot 9 of COS 3611 to their son Michael G. Oriet, contingent upon the transfer of the deeds and based upon the finding that the request does not appear to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 2-0.

Barbara Evans explained that the property could not be split further unless the applicants went through the subdivision review process.

HEARING -- CERTIFICATE OF SURVEY REVIEW: AGRICULTURAL EXEMPTION -- CHAMPION INTERNATIONAL -- PARCEL LOCATED IN THE N1/2 NE1/4 & THE SW1/4NE1/4 OF SECTION 20, T13N R18W

Kathy Smith, Paralegal in the County's Attorney's Office, explained that Champion submitted a request for an agricultural exemption for a parcel located in the N1/2 NE1/4 and the SW1/4NE1/4 of Section 20, T13N R18W. This is a 19.87 acre parcel near Milltown and Champion proposed to create an approximately 7 acre agricultural exemption on the old Milltown landfill. The remainder parcel would then be sold to Plum Creek which intends to use it for a single family home.

The history of the parcel is as follows: Champion purchased the parcel along with several other parcels in 1972 from The Anaconda Company. When Champion left Montana in 1993, they retained ownership of the parcel because of concerns about the environmental issues concerning the land fill. In November, 1993, Champion made an agreement with Plum Creek to purchase some of Champion's property but excluded this particular parcel. The agreement stated that Plum Creek could purchase any of the excluded property at a later date. Plum Creek has expressed an interest in that portion of the property aside from the land fill and have requested the agricultural exemption in order to create a parcel around the land fill of which Champion would retain ownership. Plum Creek would then purchase the remainder parcel.

According to the records kept by the Missoula County Surveyor's Office, the applicant has used various exemptions to the Subdivision and Platting Act.

The hearing was opened to public comment.

Jerry Sorenson, Land Use Manager for Plum Creek Timber Company, said this request is basically a matter of trying to clean up some loose ends from the land deal between Plum Creek and Champion International. This parcel was intended to go to Plum Creek as part of the transaction, but because of the environmental concerns with the land fill and the associated liabilities, Plum Creek wanted to exclude this piece. He said they are now back with this request trying to accomplish the land division so that Plum Creek will acquire the 11 acres that is not encumbered by the landfill. Champion will retain the landfill and will continue to do the land reclamation and going through the appropriate closure procedures. He said it seemed to be the best way to accomplish this was to use the agricultural exemption on the landfill; this piece will not be used for a homesite. This would allow the remaining piece to be declared a remainder. Plum Creek will do the soil testing which will be submitted to the State Department of Health to obtain the approval for the accommodation of a single family residence. However, at this time, it is Plum Creek's intention to manage timber on the property. He said they do not have any interest in selling at this time. They would like to keep this option open for the future. The request for an agricultural exemption does not change anything, but it expedites the situation with Champion. It is difficult to finish up some of the loose ends because Champion is now located in Connecticut.

Jim Bentley, Forester for Plum Creek, explained that at this time, Champion has topsoil and grass seed on the site. The site is a steep side slope that was used as a borrow pit when the State built the Interstate. This was later filled in with residue from the mill in Bonner. This is a piece of property that no one but Champion would be interested in.

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

Barbara Evans moved and Fern Hart seconded the motion to approve the request by Champion for an agricultural exemption for a parcel located in the N1/2 NE1/4 and the SW1/4NE1/4 of Section 20, T13N R18W which is a 19.87 acre parcel near Milltown, based upon the finding that the request does not attempt to evade the Montana Subdivision

and Platting Act and that the agricultural exemption may only be lifted by a favorable vote from the Board of County Commissioners. The motion carried on a vote of 2-0.

#### OTHER

Fern Hart said the Commissioners will continue to hold their community budget meetings. The next meeting was scheduled for tonight at the Frenchtown School from 7-9 p.m.; Thursday at Target Range School from 7-9 p.m.; Wednesday, July 27th from 7-9 p.m. in the Seeley Lake Community Center. There will be two other budget hearings: August 3, 1994 after the Public Meeting at 1:30 p.m. in the Courthouse Annex, and continued that evening from 7-9 p.m. in the Public Library.

Barbara Evans explained that she received a letter from BFI detailing their cleanup efforts in this community. One of the areas of cleanup was located by the gravel pit near Harper's Bridge. There was much garbage and mess left in this area. The County did not have the funds or resources to clean this up. BFI cleaned the mess by using three people, a pickup and a packer truck. The refuse amounted to forty 90-gallon carts, 11 plastic bags and one pickup full of miscellaneous items. The total cost was about \$300.

In addition, BFI donated for another area that needed cleaning up that had been the subject of one of the decay ordinance complaints to the tune of \$625. They also recently cleaned up in connection with a community sentence of another company to the tune of \$1,632. This was all donated with no expense to Missoula County or the citizens of the County.

She asked that a letter be sent thanking them for their community service. She said BFI is a good neighbor.

There being no further business to come before the Board, the Commissioners were in recess at 1:50 p.m.

#### **THURSDAY, JULY 21, 1994**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners held a Community Budget Meeting at Target Range School.

Audit List -- Commissioners Hart and Dussault signed the Audit List, dated July 20, 1994, pages 4-29, with a grand total of \$84,238.30. The Audit List was returned to the Accounting Department.

Deed Restriction Agreements and Subordinate Deeds of Trust -- Chair Hart signed Deed Restriction Agreements and Subordinate Deeds of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

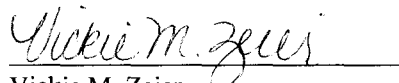
- 1) Rosalee J. Murphy in the amount of \$20,000.00, for the property located at 1735 Sherwood, Missoula, dated July 15, 1994; and
- 2) Robert L. and Kari L. Cullip in the amount of \$15,960.00, for the property located at 123 Hearth Court, Missoula, dated July 14, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

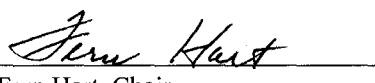
#### **FRIDAY, JULY 22, 1994**

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

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Becky Cox as principal for warrant #21790, dated June 1, 1994, issued on the School District #1 Chapter 2 fund in the amount of \$99.90 now unable to be found.



Vickie M. Zeier  
Clerk & Recorder



Fern Hart, Chair  
Board of County Commissioners

#### **MONDAY, JULY 25, 1994**

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

#### DAILY ADMINISTRATIVE MEETING

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

Modification of Agreement -- Chair Hart signed Modification No. 2 of an Agreement between Missoula County and the Montana Department of Health and Environmental Sciences modifying the terms concerning provision of services under the Maternal and Child Health Services Block Grant (DHES No. 340156) in order to add funds for performance during SFY 1995 and to update contract language and attachments, as per the items set forth. The Modification was forwarded to DHES in Helena.

Acceptance of Grant Award -- Chair Hart signed Acceptance of Grant Number 94 16573, awarded by the Board of Crime Control for the Victim Assistance Program, as per the terms and conditions set forth, for the period from 7/01/94 through 6/30/95. The document was returned to Leslie McClintock, Grants Administrator, for further handling.

Resolution No. 94-072 -- The Board of County Commissioners signed Resolution No. 94-072, a resolution creating Rural Special Improvement District No. 8916, for the maintenance of a community sewer and water system to serve the developments known as El Mar Estates and New Meadows subdivisions, as per the items set forth.

Memorandum of Agreement -- Chair Hart signed a Memorandum of Agreement between the Missoula County Park Board and the Spring Meadows Homeowners' Association for the purpose of providing up to \$2,500.00 in matching funds for capital improvements, which must be expended before June 30, 1996, as per the terms set forth. The Agreement was returned to Leslie Bailey, Secretary for the Park Board, for further signatures and handling.

Other items included:

The Commissioners sent a letter to Sheriff Doug Chase authorizing him to levy and collect a \$10 processing fee for each abandoned vehicle handled by the Sheriff's Department.

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

#### JOINT CITY/COUNTY PUBLIC HEARING -- JULY 25, 1994

The meeting of the Missoula City Council was called to order by Mayor Kemmis at 7:00 P.M. in the Council Chambers, 435 Ryman Street. Present were Alderwomen Cregg, Gingerelli, Rosenleaf, Shea and Tracy and Aldermen Bennett, Harrison, Horton, Reidy, and Sweet. Aldermen Hermes and Sampson were absent. Also present were Chief Administrative Officer Walsh, Attorney Nugent and Finance Officer/City Clerk Stearns. Also present were County Commissioners Fern Hart, Ann Mary Dussault, and Barbara Evans.

Mayor Kemmis said, we have no items for final consideration this evening and under Public Hearings we have two joint hearings with the Missoula Board of County Commissioners and I'd like to welcome the Board of County Commissioners to our proceedings this evening. Commissioner Evans..., thank you, she'll be right back. The Chair of the Board of County Commissioners Fern Hart and Commissioner Dussault. Welcome. I've spoken with Chairman Hart and I'll go ahead and conduct the hearings but we will remind everyone that they are joint hearings before both the Council and the Board of County Commissioners. The two hearings are, first of all, a hearing regarding resolutions for adoption of air quality regulations and then regarding a proposed aquifer protection ordinance.

#### JOINT PUBLIC HEARING: TWO RESOLUTIONS FOR ADOPTION OF AIR QUALITY REGULATIONS

Mayor Kemmis opened the public hearing.

Phil Schwebber, Chairman of Air Pollution Control Board. As you are aware, the Air Pollution Control Board has spent the last year taking a number of new air pollution control initiatives through public process. These included regulations on paving, sweeping and woodstoves. The woodstove regulations in particular went through a great deal of public process. Public hearings were held December 14 and March 29th and the comment period remained open throughout the three and a half months between both hearings. In my tenure on the Board, I cannot recall any other public process that has produced the number of constructive comments and criticisms on the proposed regulations. It was particularly gratifying that most of the comments dealt with substantive issues related to improving the air shed as opposed to questioning the need or duty of government to do more. On April 11th the Board voted unanimously to approve the regulations that appear before you tonight. The extent of the public process and the unanimous vote of the Board are evidence of the necessity of the proposed rules. I strongly urge the City Council and Board of County Commissioners to approve these regulations. The first resolution deals with the process to be followed in obtaining your approval on forwarding the regulations to the State Health Department for final review and approval. The second resolution asks that you approve all prior regulations previously approved by the Air Pollution Control Board and forward these regulations to the State Department of Health. In order to have these regulations in place for this air quality season, I respectfully request that a vote be taken tonight. Ken Anderson from the Health Department will now provide more detailed information on the two resolutions.

Ken Anderson, City-County Health Department. As Chairman Schwebber explained, the first resolution deals with change in state law which involves the process of adoption of rule changes before the Control Board, which ultimately are approved by the State Board of Health and are found then in the local air pollution control program regulations. As you can read, the previous process just involved the Control Board with a public hearing, then the Board of County Commissioners' approval was sought, then everything went to the State Board of Health. A revision of that state law then revises the process that brings the City Council into the process. Both the City Council and Board of County Commissioners will then vote on the adoption of any rule changes or amendments. Again, that is a separate resolution before you tonight. To summarize some other rule changes briefly, we have the Rule 1401 in your packet, refers to paving ordinances. These, in essence, are being strengthened in the local air pollution control program regulations and also in effect shift them from zoning to air pollution control. They do apply to all public, private, commercial and industrial roads, driveways and parking lots within the air stagnation zone. I'll display a map of that. Incidentally, for the new Council members the air stagnation zone is the affected area where a majority of the air pollution rules take effect. This is the Wye, at the top of the page is north, it does extend down to south of Lolo and out to Bonner. So within that zone, then all the parking lots and roads constructed will need to be paved in the future. There are RSID's and SID's that will be formed to subject property owners to paving requirement. Basically there will be language as a covenant filed with the plat or survey that is a waiver of the right to protest. These rules do not apply to long term storage of vehicles, roads or construction sites, or roads for horticultural or agricultural purposes. We believe most of these are temporary roads not meant to be permanent. The next set of rules are basically some housekeeping rules. These are updates of

current federal rules that were cited in our rules as well as the state's rules. So as these federal laws change, so do our references to those federal laws. It does add the definition of "administrator." Again, we're committed to making these changes by the State Air Quality Bureau in order to satisfy relationship or implementation plan requirement. So again this is not too extensive a change, a minor update. The last section of rule changes are quite extensive and they are referring to solid fuel burning devices. Just a brief synopsis of the problem and I believe it would be safe to say we are now just addressing part of our pollution problem. We have a particulate problem here, as well as a carbon monoxide pollution problem, and part of the problem is due to wood burning devices. Again, this would affect the air stagnation zone and essentially requires that new installations or those going into remodeled homes would have to be an ultra-low emitting-type stoves. Those limited to one gram per hour emission level or less. That effectively limits the choice of devices to pellet fire devices only because of their emission level. During the formulation of these rules there was talk about potentially some catalytic stick stoves being able to meet the standards. I think the intent was to do away with the catalytic converter and there are some associated problems with functioning of the converter, as well as useful life. It was felt that to avoid new owners from operating a previously low emitting catalytic-type device, to limit it to pellet stoves only, would do away with that problem or that concern. This does not affect existing fireplaces. It does not affect existing woodstoves except at the point of sale. It would not affect fireplaces at the point of sale but it would affect high emitting older-type devices that were previously installed before the woodstove rules were originally passed. As I've mentioned earlier, some earlier rules that were passed beginning in 1985 updated in 1988 and 1990, all these rules lowered the effective limits of emissions for woodstoves so they could be installed in the Missoula Valley. Again then, the existing rules that were originally passed in '85, updated in 1988 and 1990, lowered the emission levels for acceptable devices so that now the proposal is to limit those to 1 gram per hour. Again that would effectively limit them to pellet-fired devices and the wording of the rule does say pellet-fired devices. At the point of sale, only the existing woodstoves without permits would be affected. That is an effort to change out older, high emitting woodstoves, those that were in place before the rules were adopted. Other rule changes would increase the fine for burning during stage 1 air pollution alerts. Previously the first offense amounted to a \$20 charge. The Control Board felt that stiffening these fines and penalties would further provide a disincentive for operating an illegal woodstove. That first offense would be charged \$50, the second offense \$100, the third offense \$250. It also establishes another penalty for operating a woodstove that was installed without a permit prior to the date that permits were required. So if we receive a complaint about a resident that's burning a woodstove repeatedly, we can determine whether they had a permit when that stove was originally installed. If not, it is a more substantial penalty and that's \$500. One last rule changes effectively lowers the level at which stage 1 air pollution alerts are declared. Currently that level is 100 micrograms in an eight hour period. That would be lowered to 80. Again, the Control Board felt that by declaring more alerts we would reduce the level at which we find our general particulate levels during a winter. That is supported by some evidence being presented by the American Lung Association as well as other groups to the United States Environmental Protection Agency that perhaps levels previously considered safe or not to cause harm might be ranked too high. The EPA is currently revising or looking at revising that standard. I just want to say this has been about seven months work of two groups, the Air Pollution Control Board as well as the Air Quality Advisory Council. It's a citizens group that meets at least once or twice a month and all of these topics have been extensively covered by that group, as well as the Control Board. And I would just like to add that these last matters are also a separate resolution and we would like you to both approve both resolutions before the evening's out. I believe that's all.

Alderman Bennett said, if I could make a question. There was one point that was brought up and I haven't been able to find it referred to anywhere. There was concern this was going to affect stoves outside of this urban area. Is there anything in the regulations that would affect anything outside of what you refer to as the air stagnation zone?

Ken Anderson said, these rules simply apply to the air stagnation zone. There might be some misconception. There is a high impact zone which is a smaller area, more densely populated area, the urban area, and that's where we do the woodstove enforcement during air pollution alerts. However, the installation of woodstoves would be restricted in this larger area, the larger area I had a map of earlier.

Alderman Harrison said, if you would, would you talk a little bit more about the difference between pellet stoves and woodstoves. It seems to me technology could improve to the point to where you could use, where the woodstove itself could meet the standard that the pellet stoves are currently meeting. If that happens it seems to me that maybe kind of ruled them out here. Could you address that.

Ken Anderson said, the Control Board very seriously looked at a ban of all wood burning devices. That excluded a type of energy source that we thought might be preserved in this part of the country. Catalytic or stick stoves, let me say, technology can probably reach that limit at some time. But it would have to be with some secondary assisted device. There are problems with homes changing hands that may have one of these assistive devices in it that will be operated as the original purchaser intended. For the conscientious burner purchasing one of these ultra-low emitting devices have to regularly maintain that device to operate it efficiently. In fact, there are bypass mechanisms to a catalytic converter. Catalytic converter stoves that aren't operated in that mode can pollute than an older, nonefficient-type stove. It was the feeling of the Control Board to avoid the whole issue of malfunctioning parts or bypass parts that they limit the types of stoves to pellet-fired devices.

Alderman Reidy said, I didn't see it in here or didn't listen to you, existing woodstoves in houses now don't have to be replaced unless the property sold. Is that what you're saying?

Ken Anderson said. That's correct. We plan to do a lot of advertising and we will have brochures distributed to all the realtors in town, as well as in the air stagnation zone. We hope there will be no misconception about this that only those woodstoves that are in a residence to be sold or title transferred would this affect. The change out rule would either require them to plug up the chimney, remove the device and plug up the chimney, render the device inoperable somehow, and leave it in place, or buy one of the ultra-low emitting devices that would meet the current standards. So only at the time of proposed sale or title transfer would this rule come into effect.

Alderman Reidy said, so if a person has an existing woodstove right now, and the only compliance they have to comply with unless they sell it is to comply with the alerts. Am I right?

Ken Anderson said, I should add this does not again apply to fireplaces. Due to the masonry construction, rather detailed, involved construction that may be required to remove the device. It would not again apply to fireplaces. And I don't believe a lot of people use their fireplace to heat anyway. It would actually be a negative heat loss in a residence.

Alderman Bennett said, another question with regard to some of the legal issues involved. If you require that a wood burning stove that doesn't meet this pellet requirement is removed or taken out of commission at time of sale, and somebody's invested a fair bit of money in that stove, essentially when they sell their house you're saying, well you've got to throw that away now. Is that going to run into any problems for the takings clause, or recent rulings there. It seems that people are losing possibly some significant investment in a situation like that.

Ken Anderson said, as far as the legality, I think you'd have to ask the attorney's staff about that. The Control Board and Air Quality Advisory Council determined at the point of sale, where there was some mutual give and take between a buyer and seller on what to do with the particular appliance or what to do in a particular situation, that was the best time to hit the pocketbook frankly. Where the cost could be shared by two parties. I should too, and should have during the presentation, that the Citizens Council as well as the Control Board have also delegated us to investigate loans to individuals that have these devices that are middle and high income. We currently are appealing to two different funding sources for defraying cost to change out low income residences. So we have several proposals, in fact both purchases of stoves from at least one dealer so far to defray the cost of change out. We hope we will have more woodstove dealers to help in that regard, but we have at least one that has already agreed to make sales to us for this program. All these units will be rendered inoperable that are changed out for this program, so we don't believe there will be a secondary market springing up for these devices. Again, getting back to the original question. There will be some financial efforts made to defray the cost for the typical homeowner in order to meet this requirement. In fact, it would be a good of citizenry to I guess foresee that this change will be coming about and maybe apply for their loans early on and change out their homes-or change out the device even before they are required to do so at the point of sale.

Doranda Scheffler, from Lolo. I have two questions actually. You're saying that the air stagnation zone extends south of Lolo. That's a little ambiguous for people who live in that area. South of Lolo could mean a lot of things. And secondly, you're saying that only pellet stoves can be put in new housing starts. Have you researched every store on the market and can you one hundred percent, without any condition, say that there are no other stoves on the market at this time that meet these standards other than a pellet stove.

Ken Anderson said, there are not any stick stoves that can currently meet this emission standard.

Doranda Scheffler said, do you have, do you have paper proof of this?

Ken Anderson said, we have a list of approved devices. There are three different approvals necessary. One is by EPA. A second is by the State of Montana for tax credit purposes, the third is our local rules, which have been more stringent than both those previous agencies. So we have a certified list of those devices that can be installed. In order to demonstrate emission limits, a stove manufacturer must submit to us data from their tests that show the emission limits grams per hour, the model of that device. If they meet our current gram per hour limit which is right now 4.1 grams per hour, then we place that on the list. Someone coming in to install a device in the air stagnation zone go through this list to determine if the model they've looked at would meet that limitation.

Doranda Scheffler said, so you're saying that there are stoves that meet national EPA standards but there are no other stoves other than a pellet stove that meets Missoula City Council Control Board standards.

Ken Anderson said, if reduced to one gram or less, true. Right now there are about 200 stoves that meet the current emission limit. That would be a Class 1 device that allows people to burn during alerts and there's Class 2 devices that are installed that aren't burned during alerts. But if this rule is passed, it would limit those devices to pellet fired devices only.

Mayor Kemmis said, would you explain the boundaries of the air stagnation zone.

Ken Anderson said, it is by section line, so I'm sorry for not giving an exact distance. It appears to be on Highway 93, 3/4 of a mile south of Lolo, and then a section and a half west of there.

Mayor Kemmis said, if anyone is in doubt, it is drawn according to section lines and so the legal description of the property would define whether you're inside or outside the air stagnation zone.

Doranda Scheffler said, one other question. All of this information, could I say that it would be fair to give this information or allow that every citizen within this air stagnation zone have a copy of this information? And I feel my own opinion that I believe that all the people who live within this area should at least have a vote or a say or something to do with this. Because I think there are a lot of people, even though you have had some hearings and some discussion on that, I've talked to many, many people in my area and there are very, very few people that understand or even know that this particular action is going on. And especially the fact that that is extending down into Lolo and other parts. A lot of people are aware it was happening within the city limits of Missoula but not the area that you are suggesting now. And I really feel like it would be fair to the people who put all of you in office to allow them the opportunity to see this information.

Jim King with the Northwest Hearth Products Association. I would like to take just a second to pass material out to you.

Mayor Kemmis said, why don't you just leave it at the end of the desks and we can pass it down. Thank you.

Jim King said, as I indicated I'm with the Northwest Hearth Products Association which represents woodstove, pellet stove, gas stove manufacturers and dealers within the States of Washington, Oregon, Idaho and Western Montana. We're



very concerned about the proposed regulations here tonight. I would also, I think as a first step, first comment to urge not to take action tonight. You have an August 8th deadline for notification to the State Health Board to make the September meeting, so there's no need for action this evening, and quite frankly, it would leave a lot of people feeling that the Council and Commission had made up their minds before the hearing if you don't take time to digest what you hear tonight before you take votes. There is no doubt that Missoula has an air quality problem. The problem actually is, however, is in doubt in too many minds. There are different problems, particulate, carbon monoxide, other air pollutants at varying levels of seriousness. And there are varied and different sources, road dust, industry, woodstoves, pellet stoves, fireplaces, outdoor barbecues, cars, trucks, and you can continue on with the list of pollutants. The greatest problem Missoula has right now, however, is an extreme lack of knowledge. Good, hard, accurate and recent data about its air quality problem. It is not possible to substitute ignorance in the form of public opinion for knowledge and hysteria for rational thought, and still develop an effective and efficient public policy. The issue here tonight is particulates. However, no particulate source survey has been done in Missoula since the winter of 1986-87. That was before the current woodstove regulation, before the City of Missoula began using liquid de-icer. In reality, the old data is not relevant. No one can give honest answers to questions because source surveys, in spite of being required by the Federal Clean Air Act every three years, have not been done. Instead public money was wasted on useless public opinion surveys. That is why when asked staff will on one occasion say, for instance, that the mill produces 5% of particulate. On another occasion will say 8%. The survey says 10%. And the reality is no one knows it isn't 20% or 3%. And anyone who claims to know is not being honest about the lack of knowledge. Nor does anyone know how many woodstoves or fireplaces or pellet stoves or whatever are being used. And how much they are being used. The local, daily newspaper keeps on using the discredited 10,000 figure for woodstoves, which would have over half your population using wood heat, which I think is clearly erroneous. But what numbers there are indicate a substantially lower figure of woodstoves actually in use in Missoula County. What is true is that Missoula's air quality has consistently been improving and that there is not now at this time a wood smoke problem in Missoula. Since the winter of 1988-89, over five years ago, there has been only a single violation of the Federal PM10 particulate, including wood smoke, standard. And that was when the Louisiana Pacific mill burned in October, 1991. In spite of growth, air quality has gotten better. Yes, more people are moving to Missoula, and eight out of ten are using gas. At the same time, on average one old polluting stove a day is being traded out for a newer, cleaner burning certified woodstove or pellet stove or gas stove. Result, as can be seen on the charts I've included in the testimony, is cleaner air. The bottom line is this, the woodstove industry and the woodstove users have done their job. They have produced cleaner air. Missoula is now in attainment for particulate except that government has not done its job. The Missoula City-County Health Department has failed to follow through on what it could accomplish by the citizenry and it failed to do the paperwork to get the official EPA declaration of attainment. All you needed was three years without a violation of the 150 standard and EPA will waive the Louisiana Pacific fire. Everyone else recognizes that there is not a particulate problem in Missoula. That was one of the reasons Stone Container was successful ten days ago before the State Health Board. But, of course, a declaration of attainment isn't desirable because it would pull the rug out from under certain feet. The Missoula City-County Air Pollution Control Board has proposed new woodstove regulations. These regulations, if adopted by the City Council and County Commission and approved by the State Board of Health, will result in the worsening of air quality in the Missoula air base. The current framework has provided an incentive for owners of older, polluting stoves to trade in their stoves for certified woodstoves and pellet stoves. For a modest investment, even less than \$800, anyone can help improve air quality and continue heating with a renewable resource. The investment is actually recovered quickly due to the energy efficiency of the new stove reducing heating costs. It makes sense and it is working. The new regulations will bring that to a stop. A person will be looking at a \$2,000 or more cost of a pellet stove, plus increased fuel cost. They lose the option to burn good, clean, unadulterated wood and the independence that comes with that option. And they lose the financial incentive to change out. They will have no reason not to continue using their old, dirty appliance with the exception of the few days you have an alert. In addition, the immediate change out on sale requirement puts an enormous and instant burden on homeowners. Possibly upwards of \$5,000 on extreme short notice. That unfairly places the regulatory burden on a small part of the private sector, all because the local governments are unwilling to do their job. The immediate change out on sale provision is just a camel's nose under the tent of a coercive measure that will be advocated as voluntary efforts are destroyed. A lot of erroneous assumptions are being built into the new scheme. It is assumed someone else, not local government will pay the bill for change out and for enforcement. It is assumed that no one will challenge either the erroneous science or the degrading effect on air quality. It is assumed that the local government's constituencies will not demand forthrightness about what coercive efforts will have to be put in place after the destruction of the voluntary effort. It is assumed that the public will not link the waste of resources on this issue to the need for resources to tackle other vital issues in Missoula, issues such as Reserve Street, open space and water quality. Those are not safe assumptions to make. Who is going to pay for expensive change out and expensive fuel? A common assumption of this community seems to have been the bank, but there is no commitment by the bank and bankers are not easily swayed by hysteria. So hit the local family with these costs when what they really need to do is upgrade their car inside. So we worsen the carbon monoxide problem and create votes against other projects they just cannot afford, thanks to their new pellet stove. And then improper use and maintenance of that pellet stove turns it into a carbon monoxide emitter. Is anyone really looking objectively at the linkages and interrelationships. Missoula really cannot afford to play games and react to hysteria at a time when the community resources are going to be pushed to the limits to deal with real problems. Then on July 7th, the Air Quality Advisory Council presented its draft proposal for a county-wide woodstove ban to be in place in six years in most areas, and completely within five years after that even in the most remote areas. You'll notice when the question was asked whether these regulations would impact only the air stagnation zone, the answer was at this time. Ask the Health Department what the plans are for the year 2000 and the year 2005. After destroying the current successful voluntary change out efforts, the City Council and County Commission will be under tremendous pressure to adopt a highly coercive and expensive to the citizenry program that will be demanded by the same hysterics now pushing for the destruction of the voluntary efforts. As night follows day the county-wide ban will follow the new regulations. What is most frightening is that all this is happening as the Department of Energy moves to require electric ignition for gas stoves. A great threat to the public health and safety is being created as people who do not know what they are doing seek to run everyone else's lives. The reply at the Air Board meeting to the question about a woodstove ban in areas without gas was a flip, let them use propane. How about letting them eat cake. In the Missoula area, the weather's cold and electrical outages are real. The conjunction is deadly. Lack of consideration for real people is a real problem. It is imperative that Missoula continue to improve its air quality. If common sense didn't demand that, federal regulations do. What must be kept in mind, however, are certain realities. First, voluntary actions succeed better than coercive plans. Two, scientific data, not public opinion must guide decision making processes. Three, costs and



trade offs have to be considered. There is not a bottomless well of money in anybody's pocket. Four, costs have to be apportioned fairly. Five, community resources have to be expended wisely. And in some ways, most importantly woodstove industry and user involvement and developing and implementing plans have been crucial to the success of every community effort in the nation that has improved air quality as regards particulates from wood smoke. One of the handouts I have given you deals with a lot of the great change out programs throughout the west where the air quality authorities and the industry have stepped in and succeeded in improving substantial air quality.

Mayor Kemmis said, sir, could I just interrupt you briefly. Is your testimony almost completed?

Jim King said, I'm just about done. I'll wrap it up very quickly. Missoula faces significant air and water pollution problems. Problems that require significant commitment to financial resources to solve. Missoula will also have to decide whether or not to commit resources to mitigating the impacts of growth, whether or not to invest in open space, schools, and crime prevention as examples. In this context, it does not make sense to waste resources on hysteria driven actions to solve problems which do not exist. What Missoula needs is a program to effectively and efficiently expand upon the voluntary efforts already provided and so successful. I've listed several points on the handout and I'll drop the testimony at this point going over them. You can see the industry has many proposals that the local Health Department has refused to consider or has not gone near as far as other communities that have worked elsewhere. We would urge you not try to reinvent the wheel and especially not invent a square wheel when other communities have found ways to do this successfully. Thank you.

Alderwoman Gingerelli said, sir, I'm sorry, I didn't get your name.

Jim King said, Jim King.

Alderwoman Gingerelli said, Mr. King, at the past public hearings before the Health Department, those of us who were involved in this heard from John Crouch who is from out of state. Hearth Products is based out of state, is that correct?

John King said, Hearth Products base depends on whose president of the association in a given year. We represent people in Montana as well as elsewhere.

Alderwoman Gingerelli said, where do you live, sir?

John King said, I live in Tacoma.

Alderwoman Gingerelli said, in Tacoma, Washington.

John King said, yes.

Alderwoman Gingerelli said, and where is Hearth Products based?

John King said, the new president is in Spokane this year.

Alderwoman Gingerelli said, thank you very much.

John King said, and we have membership here in Missoula.

Alderwoman Gingerelli said, with all due respect your testimony is riddled with inaccuracies and I'll address that later.

John King said, with all due respect your positions have been so, Councilwoman.

Mayor Kemmis said, let me call people's attention to the agenda that the City Council has this evening. We have two public hearings here, joint public hearings with the County Commissioners, and then we have two other public hearings that the City Council has to conduct, as well as all of the rest of their regular agenda. Obviously, we want to be fully informed before either of the bodies here takes action, but since we didn't set any ground rules at the beginning, why don't I just ask for everybody's information, how many more people expect to testify on the air quality resolution? If you'll all look around and get a sense of how many other people expect to testify, then I'd ask that you limit your testimony accordingly. How many people will want to testify on the water quality issues? That's quite a number as well. And how many people are here to testify on the City of Missoula budget? These last people I would especially ask that those of you who are here to testify on the air and water quality would keep in mind because those people will be sitting here waiting for their chance to testify on the budget. So it's simply a matter of a city government that has a lot of work to do, and we can do it better if people will be kind enough to limit their remarks. So we've got probably about 30 people here in the room that want to talk tonight and I ask that you limit your remarks accordingly. With that then we'll go on with testimony on the proposed resolutions regarding air quality.

Ross Best, Box 8303. Just a brief comment and a brief question. I support the proposed regulation. I think, however, we've got to start talking about what we're going to do about cars. And there is an inherent unfairness in going after the woodstoves when there's essentially no regulation on cars out there. My question is, what is change out. I've never heard the term change out before I went to a hearing on this subject several months ago. In Mr. King's statement, he referred to trade out, trade in, change out. I think the word is replacement. If the change out is in wide circulation in other parts of the country or the world, I would be interested to hear about that.

Harlene Fortune said, I'll just tell this gentleman here that change out is a lot of the dealers are actually doing change out programs, where they take in the old stoves, they take them to the dump, and they put in clean burning ones. We've never had that problem here because we have had a major change out going without having to do this.

Mayor Kemmis said, I need to remind everyone who testifies--our rules require you to give your name and address.

Harlene Fortune, and I am in with Missoula Fireplace and Spa. I'm also a member of the Northwest Hearth Products Association. And even though Jim is from out of state that doesn't mean that he doesn't have a concern for what's going on here in Missoula as it can effect the whole organization. First of all, also I'm very concerned that these regulations will just do the opposite of what you intend to accomplish which he said also. But many of our customers have indicated to us that if these regulations are passed and if they have not had sufficient time or money to replace their old stoves, that they aren't going to do it because they do rely on their wood for alternative heat. We're concerned for the safety of it. Because for these past years, we have been able to rely on the building inspector to go out there and check these installations with these new stoves. If these people are going to be replacing these stoves with maybe other dirtier burning stoves or some stove you don't even know what it is, nobody's going to get in there and check the safety and, believe me, there's safety problems. There really is. I also don't believe their as big a problem as indicated. It's true what Jim said that the dealers got together and we figured out that ourselves we have replaced one unit per day for like the last two years with either gas, pellet or clean burning woodstoves. So you're really dwindling down on the older stoves that you do have out there. And I'm puzzled that a ban would even be considered when these stoves burn so clean. We invited all of you who were on these boards here about February or March to a demonstration at our store and you all got a chance to look at and see these stoves burning and you seem very impressed with their performances. The catalytic stoves that have been referred to can be found to have major problems that he indicated. He is very concerned that their customers are not going to replace these catalytic converters when they go bad. But if they don't they're going to be using much more wood and they're going to burn way more inefficiently, they're going to have dirty chimneys, and we just haven't found that to be a problem. Also, we delivered to the County Commissioners a video tape about Vermont Castings who has the majority of their stove is catalytic. They are working hand in hand with the American Lung Association for replacement of stoves. So if they're that bad I can't imagine the American Lung Association would be working with them. The noncatalytic and catalytic stoves can and do burn as clean as pellet stoves. And we sell both and we think both are great, and we're not prejudiced like some of you are on trying to ban woodstoves. O.K. The emission numbers they want 1 per pellet stoves. We have a wood burning stove that's 1.9. I mean this is nine-tenths of a gram. I can't see a problem with that at all. And people will be able to go out and get their own wood and be able to burn their stove just as cleanly. You don't see any emission number, emissions out of either the pellet stove or the woodstove. And voluntary effort has paid off and we have seen this. And the people had the incentive not to burn during alert which has worked very well in other areas. They haven't seen replacement like we have and I think it was a great thing that we've done, and also we've had Montana State give tax credits to the wood burning stove and to the pellet stove and that's also helped. So, I hope you don't rule on this to hastily. Thank you.

Sandy Finch, 109 Brighton, Lolo. I'm just a citizen. I've been following this discussion for a long time. I've also considered myself a naturalist and environmentalist and also worked here in the city. I've seen air pollution, I've been amongst it because I work every day here. But at the same time I also believe in wood burning stoves and the freedom to use that. We have a--inaudible--and when we first moved back, my husband's a native here, we did what we thought was the environmentally right thing to do too. We are not higher income people. We live as much as we can within our income and within our line, and one of those is by burning wood. And it's not cause that's the reason. We like our wood burning stove. It has the front on it and we can view it. We also go out and get our own wood. That's a family adventure. And very much I'm a safe person so to me safety is a real issue. So wood burning is also a family oriented thing that we do. But it's also a cost factor for us. It helps our bills. It helps to raise our kids and live our life here like we like to. Along with growing our garden and doing the things that we do to help out ourselves and just raising our family up and owning a home here. That's what we do. And we try to do it as cleanly and well as we can by getting the wood dead and seasoned. We rotate our wood. We try to be very conscious on what we do. We don't burn during the air pollution alerts. We've tried very hard to cooperate that can with the rules and regulations as they are now. We have also seen it very cold, 70 below that at one time, the gas meter couldn't even keep up. Our wood was going, our kids were sleeping in sleeping bags in front of the woodstove. We didn't freeze. Businesses were shut down. We were shut in. At one point our gas meter was even blown over and it cut off our gas. Which was a good thing we weren't home, we caught that or it could have killed us, or froze up everything eventually. So what I'm saying is to us woodstoves are an alternative and it's a helpful alternative and we do try really hard. I know when, I know so many people who are living this way and they also try really hard. And they're burning wood to help their families and they burn cleanly and follow the regulations, so we're not a bunch of just the ragged, terrible people out there. And we're not trying to be terrible people out there. We're just being citizens. That are trying to make a living here, and it's very hard sometimes. I just want to say that it seems awful strict to me that following all this issue when I've talked to my brother who also lives in Spokane, they have an issue, and he just says that doesn't seem right. We don't seem to have issue, we have a pretty tough policy but it's not that tough. He was even wondering if it was lawful to have such a tough policy on citizens here. Lot of people who just moved in don't think it seems to be such an issue. What is the issue. We should have, I guess just living here and knowing Montana, we know there is an issue of severity of winters and severity of conditions, and sometimes you don't make as much money as if you lived in another place, or we don't. So to us these are issues. And I when I see things in the paper like Sunday, the new development could bring in 10,000 more cars on Reserve Street, I just go 10,000 more cars on Reserve Street. Talk about the pollution problem and the road problem, and all kinds of problems I can see from that. But yet we're going to punish wood burning stoves who are trying to help their families, who we upgrade. We really work hard now. Granted there are some people out there who don't but there again some people don't follow every rule that you bring out anyway. So sometimes hurting some people for helping their families. You may catch the ones who are burning improperly but you're also hurting a lot of other people. And that's about all I have to say.

Carl Prinzing, Realtor in Missoula County, and tonight representing the Missoula Association of Realtors. There's three items on the new agenda on page 7 and on page 8, a, d and f. And those are the three items that we're concerned with and they all have to deal with compliance at the point of sale. We prepared a little letter and I'll just quickly read this one. The Missoula Association of Realtors supports the efforts of those involved with improving air quality within the air stagnation zone, and recognizes the importance of continuing those efforts. We are proud of our community and all its accomplished in cleaning up the air but recognize there is more work to be done. The Association was contacted early in the process of drafting the solid fuel burning device rules and a representative, which was myself at most of the meetings. During these discussions we expressed concern to various proposals. Some were addressed. However, the rules as proposed in their final form do contain some provisions which prohibit the Association from being able to support the

adoption of these rules. Our primary objection is to tying the sale of the property to the requirement to remove, replace or render inoperable permanently woodstoves. This selectively singles out a small group of homeowners who are selling their home at any given time to comply with the rules while allowing other homeowners whose stoves are not in compliance to continue to pollute. In our opinion, this represents an infringement on private property rights and creates major problems for those required to comply. The time of sale is the worst time to require to remove woodstoves. Sellers already have to deal with appraisal requirements, there may be punch lists there of painting, electrical, and other work to be done. There is also a new law in radon mitigation which may or may not have to happen during the sale of the proper. Water tests on rural property, title concerns, building inspections, and so forth. In short, adding to this list the additional burden of removing the woodstove, hiring someone to haul it away, replacing the carpet, repairing the ceiling, patching the roof, etc., there exists potential of spending hundreds, perhaps thousands of dollars to remove that stove, or someone before them spent hundreds or thousands of dollars to install that same device. In addition, the buyer and seller and listing agent are required to sign a notice of exemption on any sale. This potentially subjects the seller and the listing agents to legal liability if a buyer should install a stove after the same. Banks and title companies may refuse to close transactions which involve this liability. One of the special concerns is that the certificate of compliance is only good while that present owner is there, even if he has put in a pellet stove, and it would have to be renewed after a period. It doesn't matter what time it says here. Anytime that he sells the property he must get another certificate. There are also those households within the air stagnation zone who rely on woodstoves as their only source of heat. In addition, some transactions involve buyers and sellers who do not have financial resource to meet the requirements of this ordinance. Tying mitigation at the time of sale may impose severe restrictions on the ability of these homeowners to utilize the investments they have made in their home. In the matter of time, I'm going to cut some of the things short. We do have copies of this presentation for your benefit. Thank you.

Loreen Folsom, Box 9225. I would like to applaud the efforts of the Air Quality Board, the Missoula Environmental and Health Department, and City Council for putting in place these regulations and putting them eventually up for consideration. I personally was very disappointed that mandatory change out was not included in the regulations. Maybe this is kind of a personal concern. I live directly down wind from a wood burner, who lives right next door to me, who has an old, noncompliance woodstove and I can only hope that some kind of regulation will exist so that he will have to eventually comply. I spend my entire winter usually from early September through March sometimes to April with all of the windows in my house closed. I cannot go away and open the windows of my house up because who knows if he's going to start a fire or not. There is no minimum temperature at which a person cannot burn. He can burn his stove at 70 degrees if he wants to. And we have found him burning his stove at 65 degrees with his doors all open. So it puts a real burden on the person who happens to be unfortunate enough to live next door to somebody who kind of burns at will. So I would like to have seen a mandatory change out and I would like to encourage the City Council to have some sort of a public media campaign to inform people of change out possibilities, of any public assistance that is available, and also a tax credit option so people are aware. This gentlemen just before spoke about the hardship at time of sale. Well certainly it's not necessary to wait until time of sale. A person could do this replacement at any time that they would choose to do so. I'm also very disappointed that the particulate count for calling the alert was not set lower. The American Lung Association is recommending a minimum of 75 micrograms. They're recommending that as the high level, and they are finding documented lung damage at levels as low as 35 micrograms. So, we're certainly not overstating a case here when we set it at 80 and I would like to see it lower. The gentleman from Tacoma spoke about us being in compliance. Well, the American Lung Association now has a suit against the EPA. The EPA's standards says 150 micrograms. And the American Lung Association is currently suing them because that certainly is a level where there is a lot of damage to the lungs. So I thank you for your efforts and I'm hoping that we can have very stringent standards. Thanks.

Garon Smith, 2015 26th Avenue. I'm a member of the Air Pollution Control Board, their liaison for the Air Advisory Council and I wanted to come tonight. I ask your support of the work that these two bodies have done over the last eight or nine months. I can't count probably on fingers and toes the numbers of nights that I've come down to listen to people who were concerned, both from the standpoint of people in the private sector and people in the public who are subjected to health impacts because of wood burning, so I'd like to just address a few comments. Some in answer to points that have been brought up tonight and some that are my own. First of all, I'd like to just say that we're victims of valley setting and that we really have to take exceptional measures if we are going to keep our air clean. I don't think any of us if asked the question if you were going to improve the environment of Missoula would not say that the air needs to be cleaned up. So I think we need to take every effort. I think that the wood burning stoves have been shown in the past to be a contributor so since I can take my hat off here, it's actually my bike helmet because I'm trying to keep the vehicle pollution down, I'd like to take my hat off to Chris Gingerelli and Curtis Horton for adding some public notice about taking affirmative and strong action on this. Because really although the Health Department and the Board and the Council were working on it, it's really their impetus that got this rolling more and more. And I wanted to publically acknowledge my thanks to them for getting this on the public forum. As a member of these boards, and I'm there as a scientific member because I'm a Professor of Environmental Chemistry at the University, my specialty happens to be with a class of chemicals known as polycyclic aromatic hydrocarbons which are known toxins and carcinogens. They're the active ingredients in cigarette smoke which cause lung cancer. They're also components of wood smoke. I think they represent one of the most noxious sweets of chemicals that our lungs are subjected to compared to the road dust that's stirred up by pulverized sand or unwashed sand. Those are minerals which are fairly chemically inert. The polycyclic aromatic hydrocarbons condensed on wood smoke particles are very damaging to lung tissue. As the last person who testified indicated, the EPA limit of 150 micrograms per cubic meter has been drawn into controversy by recent studies which show that there is no level at which noticeable lung damage can't be seen. The Air Advisory Council has suggested that the Air Control Board set as a goal 50 micrograms per cubic meter. Right now, given the history of what the particulate counts are in Missoula, we don't think it's possible to administratively to go for 50 micrograms so we set it at 80, which is what whose studies it looks like, staff and the air shed can shoot for right now. It's probably going to stretch the environmental health division in order to call those alerts and change the manpower to meet those. That 80 is just at this point our current goal. It's not really what we intend to stop at or at least what I intend to stop at because I'd like to get the air quality better. A lot of talk is addressed at PM10. Most of the evidence in the scientific literature suggests that it's maybe PM2.5, the smaller particulates which are more the health problem, and again these are the particulates that tend to be associated with wood smoke, cigarette smoke and diesel exhaust. The Air Control Board has asked for a task force to be set up in conjunction with the Air Advisory Council. As liaison I helped put that together. We are looking at studies to make sure we can apportion where the different particulates in the air basin are coming from,

coming up with new techniques to predict air alert situations so we can ask for voluntary compliance. I'd have to say that voluntary compliance on the part of the community has usually been extremely effective so I'm feeling very good about having a lower limit for calling alerts because I think the general populace wants to help out and the voluntary compliance will make large inroads towards that. Some of the other issues I wanted to speak to briefly are elimination of woodstoves, the stick stoves, from possibilities. As far as the formation of these PAH's. That's controlled by completeness of combustion. And in the combustion process the factor that seems to control how complete the combustion is, is the moisture content of the fuel. The best seasoned, dry firewood has a moisture content typically around 17%. So that controls the effectiveness of combustion, although some technological advances could presumably help that out. The actual process of manufacturing pellets is the heat process where the lignin content of the wood is plasticized so it becomes pliable and forced through a mold into the pellet shape. That actual process of heating the lignin up, dries off more moisture. A typical content of pellets is more like 6%. So the moisture content is more carefully controlled because the pellets are all a uniform size, and they're small chunks. You have a better fuel to air contact with the forced air aspect of the fuel, and the pellet stoves you also get better combustion efficiency too. We just think that with the current technology that the pellets offer a fuel that will burn efficiently no matter what the operator does because it's controlled at the fuel stage. Stick stoves can and have stick put in of different sizes with different amounts of resins, different wood quality. I think our control is much less controllable in that sense. So that's why we think the pellet stoves offer a distinctly different type of combustion. I think that as a community we need to own up to the fact that we have to limit what we're dumping into our air shed, and like it or not, I think as citizens of Missoula we just have to be very careful what we're injecting into the air because in the winter time it doesn't go anywhere else. I also volunteer to answer any questions the Council or Commissioners have.

Commissioner Evans said, these rules were passed and the types of stove being suggested were the only type of stoves that could be burned with the exception of those noncompliant stoves that would still be burning, is that attainable to 50 micrograms or would we again have to make another change to get there.

Garon Smith said, the current regulations that you would be voting on would be reducing the input from the wood particulate component. The representative from the Hearth Association was correct. The most recent apportionment studies to show where the particulates are coming from showed that during early winter months 45% were from wood burning stoves. In that instance, what you could assume is if the wood burning stove population were changed out you can look at a possible gain of 40% reduction. I think that there are particulates from automobiles and diesels which are going to continue to plague us and I think they're even more troublesome than woodstoves to address the problems from. But as a member of the Board I'm willing to look at that one too. I think it's real important that we get accurate indications of where those particulates are coming from. These pellet stoves are so low compared to everything else that, although it's foreseeable that something that might have to be done, I think it's quite a distance in the future.

Commissioner Evans said, I just would be concerned that whatever we came up with now if that isn't what we ultimately wanted to accomplish and we have to go back and say to the folks, oops, I'm sorry, those stoves that we just made you get five years ago, we're going to make you get something else. I don't want to do that.

Garon Smith said, I can appreciate that. It's true that the pellet stoves do put out particulates but we're looking at levels that are low enough that I don't think that the numbers in the marketplace suggest that that's going to be a significant impact. One of the things that we did in drawing up these conclusions was look at what the current sales are in stoves, and if it turned out that the vast majority of the stoves that are being purchased now days are gas stoves. I don't have my notes with me from back in April so trying to reconstruct that from my head I think that that market, the market figures provided to me by the stove retailers indicated about 80% gas stoves, 12% pellet stoves, and 8% woodstoves. So I think that the public isn't really supporting the pellet stove as strongly as the gas stove. So given their very low limits and the number that are being sold, I don't really see it as a significant problem.

Mayor Kemmis said, let me remind people that at the rate we're going with these hearings that we're headed for a 12:00 o'clock adjournment here, and people who are here to testify on other matters are going to be here well beyond 10:00 probably 11:00 o'clock. And the Council I know has a hard time concentrating like they'd like to. I'm going to ask everybody to be just as brief and concise as you can. We've heard the major arguments on both sides now, and I'd like to move on to the next hearing as soon as possible.

Will Snodgrass, Missoulians for Clean Environment, P.O. Box 2885. The late Thomas Garyzubay was arguably one of not the most knowledgeable aerosol scientist on this planet. He trained members of the Missoula County Health Department while working at the EPA's Research Triangle Park. Tom was my cousin. He pioneered air toxics research around the planet. And he described a terrible problem in Missoula caused by wood smoke. He also referred me to a colleague of his, Dr. David Mong, who was kind enough to spend a considerable amount of time with me on the phone discussing some of the chemical problems that we've heard about tonight, in particular, pyrobenzine which is, of course, one of the problem chemicals produced in wood smoke. It is a known carcinogen. In short, wood burning can and does seriously impair human health, and so do a lot of things in today's world. One of the major problems I feel across the board is denial of a ubiquitous problem involving not only wood smoke but the family of chemicals to which we're all exposed, so in picking on just one we're kind of cutting our options short. The air quality problem in Missoula is severe enough to cause widespread chemical injury, that is damage to living tissue, skin, eyes, respiratory tract, brain and internal organs. Regarding Rule 1401 approved deicer, we have cut ourselves some slack or created a problem in dealing, cutting deals with the devil, Stone Container, in the issue of the deicer. Although this chemical was known to have an arsenic problem early on and our officials were told that the 50 part per billion arsenic level in our water, which is the federal level, was soon to be reduced 5 parts per billion or .5, the models that were created to rationalize the disbursement of this arsenic into our living environment were nonetheless based upon 50 parts per billion. Now there's a problem that has not been discussed with respect to the arsenic and that has to do with the mist that is coming off of all the car tires during the winter at 25 or 30 or 35 miles per hour because the arsenic is in that mist. And we all know, all of us who have been in this room, that we breathe a lot more air than we eat food or drink water. Arsenic is one of the leading causes of lung cancer and I'm now told, and correct me if I'm wrong, we're considering a switch to a new products which has an even higher concentration of arsenic in it. So we have a problem of arsenic contamination of the aquifer which has been improperly described in my opinion and a problem with arsenic being blown into the air in an

aqueous aerosol and also as a dry powder mist, because this is a powder that's mixed with water. When the solvent disappears we have the dust that gets blown up into the air. We also have no vehicle inspections and we know that 80% of the pollution is caused by 10% of the vehicles, and people moving into Missoula are saying that they cannot believe the extent of the air quality problem and they're amazed that we do not have a vehicle inspection program. There has been, in my opinion, no meaningful provision in these rules for much needed public education. That is the key. If people know the effects of chemical injury, then people would be much more willing to cooperate. Regarding the 80 microgram per cub meter level. I feel the setting of this level at 80 is a slap in the face to Missoula residents when all the scientific studies that have been discussed in this room have shown that 75 is a level at which these standards should be set maximally. So here we have discussions of 75 and yet our officials come in with a rating of 80. It's like a slap in the face. The remark was made, good, clean wood. I have a question about that. What about the uptake of radioactive isotopes into the trees during the 1940's, the 50's, and 60's from above ground nuclear testing. Now these are the trees that we're cutting and burning. And if you think that this is Jules Verne, it's not. These products are being released when the wood is being burned. It is my understanding that a number of Missoulians, including one member of the Citizens Air Quality Advisory Council are in possession of paperwork relating to the levels of radioactivity emitted from woodstoves and that this is a concern. In the winter, I often leave the thermostat turned down to 50 degrees. I just turn it down as far as it goes. And I get up out of bed and I put on long underwear top and bottom, and a hat if I have to, and one or two pair of sweatpants and a warm shirt and sweater, and I don't have a lot of meat on my bones, so I have learned that if I get up and dress appropriately that I can stay warm and it's pretty easy to do. Now some people would probably argue that this would be hard on children and the elderly and that's true. But there are cultures who have learned the wisdom of keeping warm this way who are far healthier than we are who pollute less. So there will have to be sacrifice. The sacrifice is really not that uncomfortable, in my opinion. I enjoy the vigor of 55 degree weather and a hot drink if necessary. And public education once again is missing from this program. This community should be engaging in a widespread, large scale public education campaign regarding ubiquitous air toxins, of course including woodstoves, to ensure the cooperation and understanding of those people who will be impacted. Thank you.

John Fletcher, 655 Evans Street. I would like to just briefly share with you the critical history of a related issue as it come before the Planning Board. Over the past year and a half the Planning Board has considered motions to add conditions to which recommendations to both governing bodies prohibiting the installation of solid fuel burning devices in new subdivisions. I would like to stress this issue as it comes before the Planning Board is only for new subdivisions, therefore, we're talking about new construction, plus we're also talking about several lots, six, a dozen, more. I believe in a year and a half we've considered this motion 12 times. It has been passed on, I'd say recommended condition to our governing bodies nine times. So there is some division on the Planning Board. Only once in those 12 times has there been an objection from either a developer or a property owner. That was Mr. Rangitsch in his development by McCauley Butte. I'd like to draw two points from this. The first is that perhaps at the level of new construction this is the time to act. The second is that I believe the main source of division on the Planning Board is not over the substance of the issue but rather is it appropriate for the Planning Board to be making this recommendation. There has been great relief on the Planning Board that the Air Pollution Control Board has begun addressing it. And as you know, the issue in these rules is less stringent in that it does allow pellet stoves in new construction, so these rules are less stringent than what the Planning Board's recommendations have been on new subdivisions. But, at least I personally, would like to express my support of the rules as they are now before you. Thank you.

Elena Ingraham, Mallard Estates. I've spoken to you before, and there was a time a little while ago when I was involved in another controversy here in Missoula. At that time I thought I had asthma. And the only time I had a problem breathing in this city and headaches and nausea, and so did a lot of other people, is when the bureaucracy decided that there would be a gasoline additive that would be a lot better for me called NTBE and that was supported by the EPA. Thank you.

Collin Bangs, 4607 North Avenue West. In interest of brevity, I will just say that if you want to have a successful change out program, you should do three things. One is to treat everyone equally. Selling a house is neither immoral or illegal and people shouldn't be penalized for doing so. Secondly, you should have an approveable change out available. If everyone is going for gas maybe that is going to be good enough to take care of that. Thirdly, if you're working on financial assistance for change out, I would suggest you got that in order before you make it required. Thank you.

Judy Pratt, 2306 Hillview Court #1. I'm actually here to talk about item #6 about the irrigation ditches, but I wanted to catch Garon Smith and Jim Carlson. I didn't hear any figures on how many cases of cancer, emphysema, or deaths from those conditions are estimated for Missoula. Does anybody here have any idea or have those figures ever been come up with in any shape or form?

Mayor Kemmis said, we can let people consider that question and somebody may be able to come up with some information.

Judy Pratt said, so nobody really has a figure. Also I think it would be interesting, first of all I want to say I'm not against the air pollution restrictions. I think definitely we need to do something about it. But as I said I'm here to talk on item #6, and I think it would be interesting to find out from another community the size of Missoula that's not polluted what they're cancer rates, emphysema rates are compared to Missoula. And any of you who might be leaving right after this discussion, might want to stay around and hear some of the facts about the irrigation ditches because we have a known number of deaths attributed to those and we have some ideas.

Alderwoman Gingerelli said, Judy, I think I might be able to answer a little bit of your question. Just so you don't leave here without having an answer at all. There was a study done, a longitudinal human health study and I'm sure someone from the Health Department will probably speak to this at length later, but it took, I think it was six cities, there may be more, that were across the United States. And this was reported last year in the New England Journal of Medicine. And you may have seen some of the Missoulian reports on this last spring that the amounts of particulates in those other cities were comparable and actually in many cases, much, much less than what we see in Missoula during our worst wintertime episodes, and there were significant human health problems associated with very, very low levels of particulates. In some cases, I think the level was as low as 11 grams. So we're talking about mortality, deaths were being associated,



particularly in populations of people with emphysema, heart disease, people with some other associated health problems. And the Missoula pulmonologists who testified at the public hearing in March reported that these findings were comparable definitely to Missoula. So whereas we haven't done any longitudinal studies here certainly, we can extrapolate from that information and the particulate levels here are very damaging.

Darrell Geist, 1001 South 4th West, and I just had a couple of questions for clarification. Do any of these proposed rules affect Stone Container's operation at their mill. Section, page 6 on the last page, I believe it's a strike ten. It says if any airway is designated non-attainment, I believe this would apply to Stone Container even though they may exist. This is a limiting rule proposed. Even though Stone Container is outside the attainment area they contribute to the non-attainment of the standards for air pollution in Missoula. It seems to me that the Board, this Council, joint council, should consider amending this section to incorporate them. I realize the state supposedly reserves the right to regulate their facility, I believe it's up to the local government to get involved and use what legal authority that may be available to help us clean up our act. Would anyone like to offer any contrary views to that?

Alderman Horton said, a point of clarification. The state specifically prohibits us from regulating Stone.

Darrell Geist said, under the Clean Water Act, I was told today that the state reserves the right to itself to regulate Stone Container.

Alderman Horton said, and they specifically prohibit us from getting into that. I wish they didn't, but they do.

Darrell Geist said, I submit to you that if Missoula is going to clean up its air, it will have to take the means of getting that legal authority to clean up Stone Container's facility. Right now the Board is considering new opacity standards which would increase their emissions by 25%. And now the Board the City-County is proposing regulations on air quality and yet they are not even touched upon. I think there is legal basis for us to pursue Stone Container and I think it's up to the Council to do so. Who says, where is it said that we are prevented from trying to attain this legal authority over their facility. Where is it said.

Alderwoman Rosenleaf said, much to our dismay the State does, in fact, reserve this authority to itself. The other thing that has been brought up here, just to clarify for folks, is the whole issue about emission testing of vehicles which is also something the state could do. So I would really urge people who are concerned about these issues to contact their legislators because it is at the state level that these things are regulated. The City only has the powers that the states give us and they don't give us that one.

Darrell Geist said, power's not given away, it's requested and it's worked for. It's not something that you wait for to receive.

Alderwoman Gingerelli said, sir, I just wanted to clarify a point about your comments. And a couple of other people have brought up vehicle emissions. These regulations, and this is something really important that we wish we had taken some time in the beginning before the hearing to sort of set the framework for why these are being proposed now. The Health Department deals with four major sources of pollution. Vehicle emissions, industrial pollutions, road dust and wood burning. Each of these sources has a certain set of regulations. The Health Board and the Air Pollution Control Board have to hear independently each one at a time, each year, maybe every couple of years, each source. So we never take them all together. And I think that's something that is always confusing to people because we always hear comments about, well, why aren't we looking at vehicle emissions or industrial emissions. And you're absolutely right, we need to work much harder on getting local control for Stone. But that really is a separate topic than this is right now. It is definitely related, but just so that you understand these regulations only deal with wood burning simply because they're being proposed right now, and we will continue to work on the other sources.

Tony Tweedale, 224 East Pine Street. I'm really glad to see some of the people who have worked on this issue for twenty years or more come out of the woodwork and support these changes and people who are upset with these proposed regulations and look at their somewhat narrow viewpoints and what they're complaining about, the narrow basis of their complaints, and weigh that against the demonstrated health effects that a particulate, especially sub 2.5 microns in diameter size particulate has. I brought the wrong file with me but I'll just review real briefly out of my memory what some effects are starting to be shown in some studies. There is a statistically significant increase in hospital admittance for pulmonary upsets as well as 15 micrograms per cubic meter and that's 1-5 they can ascribe to deleterious health effects at that low a level. And that's at least a statement that there's no known threshold level for these particulates. The fact that six or seven of these studies that have been done in the last few years on particulate matter all come up with incredibly similar correlations between the amount of particulate that causes health effects no matter what city the study is done in, makes the studies very robust and shows that the health effects are real. Of course, we've also got the map study, Montana air pollution study, which showed, I guess that's about 20 years old and we certainly need to do another one. The Anderson test although not very comprehensive was cheap and would have been a good first step to take on that road. Anyway, the map study as everybody knows, showed increased, decreased lung capacity and showed that samples of Missoula's particulate were quite radiogenic. I guess I'll just leave it at that and, well one more thing, what a lot of people are talking about and what Chris Gingerelli just addressed a minute ago. One of the reasons it is nice to see so many people turn out and support this issue that everybody seems to know and no one is really willing to talk about it at full length is that there are a lot of other sources of particulate emission in our valley compounded by the meteorology of our valley which just doesn't let the particulate escape. My personal favorite that I think everybody should start thinking about because it's going to require a change in the state implementation plan is to stop spending these hundreds of thousands of dollars on sweeping the roads and getting these basically minerals, stopping them from being entrained in the air, and spend those huge sums of money on what a clearly more hazardous substances, that is to say, Stone Container, but more importantly vehicles and maybe some more action on woodstoves. What Garon Smith said about the PAH's just in case you don't know, almost the synonym for that phrase is creosote. Not all creosotes are PAH's but there's at least a couple hundred creosote compounds and they're all PAH's and I think you all know how hazardous creosotes are whether they're in cigarette smoke or in Missoula's air. Thank you.

Mayor Kemmis said, one more reminder, we've got a lot of public hearings left to go tonight.

Mike Meese, P.O. Box 7941. I'd just like to say that clean air and clean water are pretty much all we need in life to live. We've already seen what big business and corporations do to our clean water, i.e. the Clark Fork. It's a big problem and from what I've heard from Darrell Geist, just in the past few minutes, and this gentleman telling about the particulate, I think if the City Council does represent the community and the wants and the needs and the health of this community, it's up to you guys to have this law changed. It's up to you to write up some kind of procedure, some kind of cry out to the state that policy is wrong and we've got to be able to control our own community. And if you don't do something about this, towards this direction, you're not truly representative of this community. And I think that's why all of you were elected.

Mayor Kemmis said, I think we do have questions from the Commissioners and Council to the staff and then we'll close the public hearing.

Commissioner Hart said, I have a question, maybe two questions for the staff. Does the staff have statistics on the amount of distribution of particulate pollution later than 1987.

Jim Carlson said, no, there's been no chemical mass balance studies conducted since that time. That's when we collect samples from a variety of sources in the valley and compare them to the chemistry in the ambient air. There's quite a bit of analysis, computer work and time involved. Last time we did it it cost about \$30,000. We're hoping to do an abbreviated study of that this winter so that we can get another benchmark of where we are. We're pretty confident that wood smoke is still a significant contributor to the particulate burden in the valley and I think you don't need to be a scientist to figure that out. But the percentages will have obviously changed and we need to benchmark that again. There is no requirement, however, from the Federal Government that we do that every three years. That's simply not true.

Commissioner Hart said, would that require another \$30,000, Jim.

Jim Carlson said, no, we won't do as extensive a job of collecting fingerprint samples. We'll use a lot of the same fingerprints from the sources that we used in 1986. We'll essentially be collecting ambient samples and having those analyzed.

Commissioner Hart said, and what's the best time of year?

Jim Carlson said we'll be targeting the worst day of the year.

Commissioner Hart said, can you tell me, with Harlene's comments, I was interested in what is the disincentive for changing to a pellet stove if you're a wood burner, due to building inspection? Is it that you don't have building inspection until you have a sale of the home? Is that correct?

Jim Carlson said, I think that question would perhaps be best asked of Harlene. I can think of a couple of possible scenarios.

Mayor Kemmis said, Mrs. Fortune, could you elaborate on that a little bit. We need you to do it at the mike.

Harlene Fortune said, what I was referring to is if the people cannot replace their old stoves with a clean burning stove, they'll just, they may go out and get another old burning stove or another clean burning stove that might not be as clean as Missoula would want. At that point without anybody knowing about it. And then they will have no requirement that a building inspector comes out to check it for safety. And previous to these regulations that they passed there was no building inspector, no safety inspector, until this came about. And we felt much more comfortable with this process going on. But you know that if somebody cannot heat their house and they don't have the money, they're going to be doing this and make outlaws out of them and I don't like to see that happen.

Commissioner Hart said, I understand, and would you stay there just a minute. That a certain percentage of the stoves are now permitted stoves so they have been inspected. Is that not right?

Harlene Fortune said, yes.

Commissioner Hart said, and you're saying that this system will reduce the number of permitted stoves, that we will have more violations?

Harlene Fortune said, no, the concern is the old stoves out there. The old stoves that have never had an inspection. And when they go to replace them...

Commissioner Hart said, won't those be caught with some kind of opacity standards?

Harlene Fortune said, maybe, but those old stoves can still burn clean. All they've got to do is burn wide open with them.

Commissioner Hart said, if they burn clean, they're out there but I don't know it, they're burning clean.

Harlene Fortune said, but enforcement on it. Can you provide the enforcement to be able to do that? That's the thing. You need the incentive. We've seen it over the years with the incentive people will replace. I mean, they will. And there's not that many out there that are going to go with the wood.

Commissioner Hart said, what is the difference between the cost of a clean wood burning stove and a pellet stove.

Harlene Fortune said, that's the other problem I didn't touch on. We have a clean burning woodstove that is \$645, that's a low end cost, and the pellet stove, our low end cost is \$1,495.

Commissioner Evans said, while we're talking about the woodstoves and the pellet stoves and comparing costs, would you compare the cost for me of the pellets to run a pellet stove versus say gas or something else. I recognize that wood has a variety of prices depending on how you get it.

Harlene Fortune said, you want me to compare pellet to gas. O.K. Right now I feel, some people would not say this, but I feel pellets and gas are just about the same cost right now.

Commission Evans said, compare for me the cost of wood.

Harlene Fortune said, if people can go out and get their own wood, there's no comparison because it's just the cost to go out and get it. If they have to buy it, I would say that pellets, I would say probably maybe right in there. It would be probably less depending on the efficiency of the stove they buy. If they've got an efficient stove you're probably looking at about the same.

Commissioner Evans said, what has been said to me, Harlene, is that people who are not wealthy will be unable to afford the pellets and what I'm trying to get at, is that true?

Harlene Fortune said, that's true. Because most of them go out and get their own wood.

Alderwoman Shea said, thanks, Harlene. I don't have a question for you. You can sit down. I do have a question for one of the realtors, I guess Mr. Bangs left. I'm sorry I don't remember your name, but could you come up to the podium? Thank you. Are you familiar with restrictions at the time of sale that now are relevant to sewer. Whether a person is hooked to sewer or not hooked to sewer and whether that person has the ability to sell a home, for example, to a potential buyer with an FHA loan, those restrictions? Could you tell us about those, please?

Mayor Kemmis said, let me remind everyone here we transcribe these hearings and for the transcriber who isn't here, if people will identify themselves it's very helpful.

Carl Prinzing said, realtor in Missoula, presently with Gillespie Realty. Normally if there is what we call like an SID for a sewer hook up or something at the time of sale, then the seller, if it's an FHA loan, is required to pay that off because the FHA will not finance that. So it's an added expense for the seller. With a conventional loan that isn't always true.

Alderwoman Shea said, I have a follow up to that. I understood that you and your associate were speaking about the restrictions at the time of sale and that this was somehow a precedent. And I was reminded of a time when I almost sold my home and that was before I was hooked up to the sewer and I remembered that the realtor told me, and it probably was one of the associates at Gillespie that said, I would not be able to sell that unless we hooked up first because it was available in the street, or that the person who buys the home would have to then..., would not be able to have access to that particular loan program. So there were restrictions and it was health-related restrictions. So it seems to me this is a very similar kind of situation that we're talking about. It is a time to effect change, in other words, for the benefit of the community.

Carl Prinzing said, right. Some of the things we're pointing out is, if we're going to have something like this, we'd like to see a compliance over a period of time, so that everybody is required to replace these within the stagnation period, I mean the zone, instead of just requiring at the time of sale. Have these things done earlier. Because there are a lot of things at the time of sale that come into bearing as you were just saying. And the sewer problems in some of our areas are like up to ten to fifteen thousand that we have to worry about.

Alderman Sweet said, I have a question for Mrs. Fortune. I'm sorry I didn't ask this when you were up there earlier. You mentioned that there is a woodstove that has an emission level of 1.9.

Harlene Fortune said, that's correct.

Alderman Sweet said, how is that affected if the wood isn't dry or if it isn't seasoned?

Harlene Fortune said, the way that they're tested, it doesn't make that much difference. This is an average of three tests. And they could, if they had really wet wood it just wouldn't burn, so there has to be a certain moisture content, not a really wet piece of wood. But most of these, now the catalytic stoves actually you can burn really wet wood and you can still burn clean. That's the way they're designed.

Alderman Sweet said, when you say clean, are you saying it would approach that 1.9 or would it be...?

Harlene Fortune said, the catalytic stoves are quite low in emissions. But the noncatalytic stoves have the advantage of not having a catalytic combustor in them, but it doesn't--we've seen with our own experience that the new technology on these stoves is very forgiving for the moisture content in the wood.

Alderwoman Gingerelli said, I wonder if Mr. Carlson or perhaps Dr. Smith would like to respond to what Mrs. Fortune just said about wet wood not being a problem. Is that, is there anything you could add to that?

Jim Carlson said, well certainly I think what she said about catalytic technology is that to a point the catalytic stoves are more forgiving to the condition of the wood. That is not true of noncatalytic technology for stick wood burners. For every amount of water that's in the wood takes away that many BTU's of heat that's generated. It lowers the combustion temperatures and you get the creation of larger amounts of smoke and creosote if the temperature is inadequate to break those molecules down into their component parts.



Mayor Kemmis said, I'm going to encourage us to bring this hearing to a close here. Is there anything further that anybody wants to ask?

Commissioner Hart said, I'm waiting for pipe smokers. Can you do something about pipe smokers?

Mayor Kemmis said, if there isn't anything further then we'll close the public hearing.

Mayor Kemmis closed the public hearing.

Commissioner Evans said, are we planning to vote on these tonight?

Mayor Kemmis said, I was going...

Commissioner Evans said, because I have a few things I'd like to say before we vote.

Mayor Kemmis said, yes, and they will be separate votes if we're going to vote, and I think we need to decide now whether we do want to vote while folks are still present who have testified, understanding that there won't be any further testimony. At least with regard to the Council, we have to suspend the rules in order to vote on anything at all and then we have two separate resolutions and I'd be glad to just let the Commissioners do your business if you want to and then we can bring it before the Council.

Alderman Horton said, I would move we suspend the rules for the purpose of voting on this issue.

MOTION - Suspension of the Rules

Alderman Horton moved to suspend the rules.

Mayor Kemmis said, you've heard the motion to suspend the rules. This is just for the Council. All those in favor of the motion, say aye. Opposed. We'll have a roll call vote. The motion to suspend the rules requires a two-thirds vote of those present and voting. If 10 of you vote it will require 7 affirmative votes to suspend the rules. The motion to suspend the rules under the Council's rules is non-debatable.

Upon a roll call vote, the vote to suspend the rules was as follows:

AYES: Cregg, Gingerelli, Horton, Rosenleaf, Shea, Sweet and Tracy

NAYES: Bennett, Harrison, Reidy

PASSES: None

ABSENT: Hermes, Sampson

Motion carried: 7 Ayes, 3 Naves, 0 Passes, and 2 Absent.

Mayor Kemmis said, the Council's rules have been suspended. In deference to the Board of County Commissioners, however, I would suggest that we allow the Commissioners to take up this matter and then we can return. So if it's all right, we'll turn the matter over to the Board of County Commissioners.

Barbara Evans said, there were a couple of comments I would like to make. And that is to state the County Commissioners have been working with seven loan and financial institutions in the community to put together a program that will provide low interest loans to folks who wish to sewer in the Linda Vista area, which is what started it, but they'll also expand that to anyone in the community who wishes to attach to the sewer. Now the reason I'm bringing that up is that group of banks and lending institutions will very likely be willing to allow that to be used also for allowing people to change out their noncompliance stoves for cleaner burning stoves. To me that's the kind of carrot that we need to provide for folks to get them to change out their noncompliant stoves for something that will help to clean up the air. We will be working on that in the near future here to get it going. It took us many, many months to put together the Linda Vista sewer one, but we've broken the ground so I think this one could go significantly faster. I would much prefer that we use carrots than we use sticks with folks, and I neglected to ask Mr. Carlson a question which was are the fines that we're presently levying against folks not working. I guess I can't ask that question at this point so I'm going to assume that heavy fines, such as these are, probably will be so onerous to folks who have a problem that I'm not willing to adopt the fines as they presently are. I would like to see the fines kept as they are. I realize we need to improve the air quality here and the Transportation Advisory Committee in concert with the Health Department has for a year or more been working towards getting an auto emission testing program. So it is something we know is needed and necessary. I would also like to see that we do not totally ban the cleanest burning woodstoves in the interest of just saying pellets. I would prefer that we find the microgramage, that we put it in so that it will allow the cleanest burning woodstoves to continue to be burned. I think that we need to be aware of the needs of our citizens and not everyone in this town is wealthy and I would hate to see us make it impossible for the folks who are not wealthy to live here.

Commissioner Hart said, thank you, Barbara. I think we are trying to make steps toward cleaner air and cleaner water as easy for the whole valley as we can. Ann Mary, do you have any comments?

Commissioner Dussault said, as I understand the process that we're following, neither the Board nor the Commissioners nor the City Council can amend these proposed rules. This is a yes or a no vote. If either vote should fail, then the rule changes then go back to the Air Control Board for further work. So to move things along, I'm going to move that the Board of County Commissioners approve both resolutions, number 1 approving revisions to the Missoula City-County

Air Pollution Control Program Rules 401, 1401, 1423, 1424 and 1428, and the resolution amending the Missoula City-County Air Pollution Program Chapter 16 and Rule 1401, sub 7.

Commissioner Dussault moved to adopt both resolutions, number 1 approving revisions to the Missoula City-County Air Pollution Control Program Rules 401, 1401, 1423, 1424 and 1428, and the resolution amending the Missoula City-County Air Pollution Program Chapter 16 and Rule 1401, sub 7. Commissioner Hart seconded the motion.

#### MISSOULA COUNTY RESOLUTIONS

A Resolution amending the Missoula City-County air pollution control program Chapter XVI and rule 1401(7).

A Resolution approving revisions to the Missoula City-County air pollution control program rules 401, 1401, 1423, 1424, and 1428.

Commissioner Dussault moved the adoption of both Resolutions. Commissioner Hart seconded the motion.

Commissioner Hart said, is there a need to divide the motion, Barbara? I think one is a procedure motion.

Mayor Kemmis said, Fern, before you go on, do you have any need for us to be recording this in any special way?

Commissioner Hart said, I hope it is recorded.

Finance Officer/City Clerk Stearns said, we'll record this on the tape then it'll be transcribed in the minutes. I wasn't sure whether the Commissioners wanted me to actually read the roll call or not. I'm not sure of their procedures.

Commissioner Hart said, I think it'll be pretty clear when we vote.

Commissioner Evans said, I'd like to speak in regards to the paving regulations. Not what the requirements will be, but I'm not real happy in that the previous paving regulations were contained in the zoning regulations, and if there were special circumstance the folks could ask for a variance from the Board of Adjustment. Due to the fact that the Federal EPA requirements require that this be in the SIP and require that it be changed so that now this control is lodged with the Air Pollution Control Board, I feel that that's a significant change, and I think it's wrong because even though the regulations that caused this so happen to require that it be approved by the governing body, the right of local government to deal with it on a day-to-day basis will be gone. And I think that limits the power of the elected officials and that's the power of the citizens and I don't support that particular part of this. I suspect if we separated the paving regulations from the wood burning regulations, I might vote for the paving one but I won't vote for the solid fuel burning devices unless it provides some means of providing heat for the folks that presently have clean burning stoves. I would like to see some carrots for the folks to change out their noncompliant stoves. I just prefer the carrots to the sticks.

Commissioner Hart said, any other discussion? Just so that I can understand this and for the record, we will vote in one vote for the amendments and revisions which changes the regulation to conform to the state regulation. Not only the County Commissioners but the City Council vote before it goes before the Board of Health. And with the vote then we vote on these particular regulations which are as you listed, 1423, 1424, 1401, and 1448. Did I get them all? And you have moved to approve those in that order. I will second that motion and say that those items have been moved, the amendments and revisions and the numbers that I listed 1423, 1424, 1401 and 1428.

#### MOTION

Upon a vote, the vote on both Missoula County Resolutions was as follows:

Ayes: Dussault, Hart

Nayes: Evans

Passes: None

Absent: None

Both Missoula County Resolutions passed, 2 Ayes, 1 Naye, 0 Passes, and 0 Absent.

Mayor Kemmis said, we'll return now to the Council proceedings. The rules have been suspended.

Alderman Horton said, is it appropriate to make a motion to deal with both these issues together?

Mayor Kemmis said, let's deal with them separately. That's usually Council's procedure. We'll have each resolution moved separately and I would suggest that we take the procedural one first.

Alderman Horton said, our resolution being tentative don't have resolution numbers. But I would make a motion to deal with the woodstove issue first, and I would speak to the motion.

Mayor Kemmis said, my understanding was that we would do the procedural motion first.

Alderman Horton said, so moved.

RESOLUTION 5616

A Resolution amending the Missoula City-County air pollution control program Chapter XVI and rule 1401(7).

Alderman Horton moved the adoption of Resolution 5616.

MOTION

Alderman Bennett said, I think this initial motion is simply to approve the amendment to the rules which brings the City Council into the loop.

Mayor Kemmis said, that's correct.

Alderman Reidy said, I'm not completely clear on this. Are we voting this time on the approval or what are we voting on?

Mayor Kemmis said, we're just voting on a change in the rule which would in effect make the City, require that the City Council approve any substantive changes in the rules. So this is a procedural move that brings the City Council into that position.

Alderwoman Gingerelli said, prior to this ruling coming down from the state, what used to happen is that the Board of Health/Air Pollution Control Board voted on regulation changes then they only had to go to the County Commissioners for a vote and then to the State Board of Health. Now the state has requested that both governing bodies be involved in approving what the Air Pollution Control Board and the Board of Health has just approved. So all this does is bring the City Council into the decision making process. This is the first part, and then the exact changes will come in the next motion.

Alderman Reidy said, ordinarily this would go back to the Committee if we didn't do this.

Mayor Kemmis said, that's correct.

Alderman Reidy said, I'm not saying I'm not for clean air or anything else. But I'm also not..., there are a certain amount of people out there that I don't think we've completely heard from. And, we sit around here on zoning things and if this happened some of the people on this Council would fly through the roof. So I don't think we've had the proper input. I'd like to see it go back to the Committee. It might not be politically correct, but I have certain constituents that I have to speak for too, and I don't think all of them have been spoken too and I can't support this.

Upon a roll call vote, the vote on Resolution 5616 was as follows:

Ayes: Bennett, Cregg, Gingerelli, Harrison, Horton, Rosenleaf, Shea, Sweet, and Tracy.

Nays: Reidy

Passes: None

Absent: Hermes, Sampson

Resolution 5616 passed, 9 Ayes, 1 Naye, 0 Passes, and 2 Absent.

Alderman Horton said, I would move the resolution approving revisions to the Missoula City-County air pollution control program Rules 401, 1401, 1423, 1424, and 1428, and I would speak to the motion.

RESOLUTION 5617

A Resolution approving revisions to the Missoula City-County air pollution control program rules 401, 1401, 1423, 1424, and 1428.

MOTION

Alderman Horton moved the adoption of Resolution 5617.

Alderman Horton said, the City Council has tentatively approved \$40,000 potentially yearly for low income change outs on woodstoves. We're committed to getting this done. When we began this process more than a year ago, I got rid of my woodstove because I knew that it wasn't fair for me to have to ask other people to do something with theirs if I were to continue burning mine. I think the best thing that elected officials can do is to begin processes, good processes that continue to benefit the citizens after the elected officials are gone. This is one of those things. I'm not happy with the complete package. I would very much like to see some of these items altered. Generally in a stringent direction. I'm also concerned that there's any chance that we may go through another wood burning season without having protection for our citizens in place. We allowed the citizens to be subjective to this last year so that the Health Board would have the opportunity to participate in the process. Rightfully so, pretty late, but rightfully so. And to re-establish their credibility in the community. I think they've done a pretty good job. Again, I'm not willing to see our citizens go through another burning season, and at the first hint I have that this process is being stalled, we'll see it in ordinance form and I don't believe that will be subject to the delays.

Alderman Harrison said, the reason I voted to not suspend the rules was that there's a gentleman who spoke that offered, said he had some written testimony, and then another gentleman gave us three pieces of written testimony. I don't think

there's a reason to hold the numerous public hearings that we have if we don't consider the input that we get. And that would be impossible in this amount of time, right here tonight. There's no doubt that steps should be taken to address the problems that we face and air quality. I appreciate the time and effort made by the Board and I think they did some good work. One lady spoke tonight and she talked about how there are people that go out and get their own wood. And absolutely I know lots and lots of people that do. There's a whole culture, a whole segment of our law abiding society that's going to be impacted in a negative way by this vote. Many people who live in this valley would not be represented by this vote tonight and I just think that we should take this in a little smaller step. We need to accomplish this but I think it could be done in smaller steps. I do agree with Barbara that I think the low emission woodstove should also be allowed. If they were allowed I could support this, but it's very difficult. I think one of the reasons, how would you call it, the purpose of a democratic society is that you have the heart of the people, the heart of the people represented, and that if you bypass whole segments of the society, then you'll just get a fight on this and it'll be impossible to enforce. And I just hate to see another one of those type of things out there.

Alderwoman Shea said, I think public health is a critical issue. I don't think you can inch up to it. Maybe it would be better if we could. But you really can't, because the whole community is subject, particularly children and elderly, who are vulnerable to health issues. What individuals do or don't do does impact our neighbors. I appreciate that industry has worked with the appropriate Boards. I think that's been very helpful, and perhaps it is reflected. In some ways, perhaps wood smoke has been the whipping boy because it is not the sole source of pollution in this valley. There are many others and auto emission is right up there. I do support these. I think public health again is the critical issue for people in our community. There's nothing more important, in my opinion. I will also support financial incentives for families needing change outs. That would be built in and piggy back to this program.

Alderman Sweet said, I'm a little bit uncomfortable with the way things have transpired this evening because I would feel more comfortable if we had a greater opportunity amongst ourselves to debate and discuss this. This is for many of us the first time we've heard from citizens, from people from the industry as well as our own health professionals. We've had opportunity to attend public hearings or to see the minutes of other public hearings, but not all of us were able to get to those meetings. Sometimes they're held during the middle of the day and it's very difficult. I do have a lot of concern about the impact this will have upon low to moderate income people who do rely on wood for at least part or all of their heating. Curtis, did you mention there was \$40,000 that has been appropriated, or there will be \$40,000 appropriated.

Alderman Horton said, tentatively appropriated.

Alderman Sweet said, I'm very uncomfortable moving forward without that money definitely being appropriated. I feel that it's very, very important if we're going to ask someone to give up something like that, that we're prepared in some way to help those people out. Before I moved out here I lived in what was called a Medallion home, all electric house in New Hampshire. And if you've never paid electric power bills until you've lived in New England. It's incredible. It makes Montana Power look very, very inexpensive. And we heated our entire home with wood heat. Went out and collected our wood and heated it. So I've been on that end of that particular activity and it is quite an adventure as the woman mentioned, gathering your wood. I also understand that not everyone takes good care in gathering the wood, gathering good dry wood, gathering it in advance to allow it to dry, and they often burn wood that is somewhat green with a lot of moisture in it, and it won't be near as efficient as it should, and I understand the concerns of our Health Department. I want to let people, they can rest assured that I don't think we automatically come into these rooms with our minds made up. We're often accused of already having our minds made up on a lot of these issues when we walk in here. But I don't think that's necessarily the case. I wish we had more time to discuss this. I wish we had the financial end of this set up so that we could say yes, this is how we're going to take care of these change outs, and this is the process that we will use. I wish that were in place before voting for this. I will probably reluctantly support these because I do feel we have to take these measures as an issue of public health. And I hope the next thing we go after are the automobiles and some of the large corporate polluters which we should be after.

Alderman Bennett said, first, I have some real problems with this approach. I think that having the hearing and having the vote on the same night does tend to make a sham out of the public hearing. I think a lot of the people that spent their time to come here to attend and tell us what they think, either in comments or in written form, are going to feel shortchanged. I know I haven't had a chance to look through any of the written comments. I haven't, frankly I got this package last week. It's in the middle of budget season. I really haven't had a chance to go through it with any kind of detail whatsoever. And I don't think it serves the public well on an issue of this importance that we do a slipshod and fast paced job of approving this. I don't know what's in here completely. I would like to be able to look through it in more detail. I do know there are some things in here that I have problems with, and some of them weren't even touched upon. The paving requirements I think go beyond what is required to address air pollution. They get into implementing infrastructure decisions and they get into tying people into open ended commitments to fund future public projects. I think although I was one of seven members that signed a petition to the Air Board asking that they restrict future installations of woodstoves in new construction, that it may be a case of shooting ourselves in the foot to outlaw conversions from old jalopies to Chevrolets and insisting people must buy Cadillacs if they're going to change. So I would prefer to send this back with some comments rather than rush through it and accept this as being the only way to get the job done. I think we can do a better job.

Alderman Reidy said, my concern isn't with the product. My concern is really the product getting there. I'm not fully convinced we've heard from all the public. I'm not fully convinced this shouldn't be back in Committee and some Committee work done on this. So for that reason I won't support it. Normally it went to Committee and there's more input and I could study like Mr. Bennett said I would support it. But I can't support anything knowing some constituents haven't been heard from and I haven't had a chance to study it good enough.

Alderwoman Gingerelli said, ten months ago when some of these items initially were started at the Health Department level, there were three topics that were really kind of a crux of why a lot of these went forward. One was the new health information that I mentioned earlier. And I think that's been widely reported and I hope that everyone is understanding of that. That this is a serious, there are serious health effects related to these small amounts of particulate. And actually it is the first time that the doctors in Missoula, and believe me they've been asked over the years to get more involved, and I

think, and I know they were reluctant because of the lack of longitudinal health studies, even though they knew instinctively that there was certainly something not be gained by breathing particulates. The lack of health studies prevented them from really going on the record. That all changed this year in Missoula and we had both pulmonologists in town, and I know that there's a third pulmonologist who I just don't think had the opportunity to speak, but two of the pulmonologists went on record as saying, and I think this was mentioned earlier, there is no safe level of particulate breathing. The second item was the topography. That we have an air shed that makes Missoula different. We live in somewhat of a bowl so anything we put into the air is stuck. And the third thing was the growth rate. We know that from 1990 to '93 we've had almost a doubling of our growth rate. We have lots of new housing starts. Those three things combined really made action very important this year. So I'd like to take my hat off to the Board, Garon Smith for all of his work on this, to the Health Department for their help. I'm very encouraged that a whole package of things have come forward. I would like to just remind the Council that along the way there were several packets of information that were provided to the Council about the public hearings that were held. And I know it's hard for all of us to read everything. But I can tell you having participated in both of those public hearings that they were very well attended and there was overwhelming public support for enacting these changes. Essentially the opponents were pretty much what you heard tonight. The Hearth Products Association from out of state was represented and pretty much one or two local dealers. I strongly urge that we pass these now. I don't think we need to send them back to Committee because I think the many months of work that has taken place on these has taken place in front of the Air Pollution Control Board and they are the duly appointed Board of experts that deal with these kind of health issues. When we talk about cost, Craig, I want to address your concern about the low income component. I absolutely agree and that was always part of the package right from the beginning. That we absolutely needed to take a look at helping low income households retrofit, so I hope we can for sure move forward in that direction. We also need to think about the costs to human health. And that's really the bottom line here, protecting human health. That's what the Air Pollution Control Board is charged to do and I think we as elected officials should take their heed, and I'd like to thank the Commissioners, and I sure hope we can pass this.

Alderwoman Cregg said, if I'm counting right, I think this is going to pass tonight and it thrills me to death to be a member of the Air Pollution Control Board and have this regulation pass. I would like to take this minute to especially thank Garon Smith for his hard work. The Air Pollution Advisory Board gave the Air Pollution Board a list of suggestions on what these regulations should be and Garon Smith was sort of the liaison between the two Boards. So, thank you, Garon, and thanks everyone whose been involved in this.

Alderman Horton said, the information we were given tonight by the representative of the wood stove industry, the Hearth Products industry, I presume is about half the information that they handed out to us early on in the process. I feel the need to address two things. The \$40,000 allocation for the retrofitting for low income. When I said that was tentatively approved it was approved in Committee as a whole, which is as close as you can get to having money in hand before the Council makes the final budget vote on August 1st. But still it's tentative until that final vote. Second, as far as information on specific parts of this issue, to the best of my knowledge, nothing has changed since this was adopted by the Board. It's just been put in legalese and brought forward for our adoption and that was sometime back.

Alderwoman Rosenleaf said, I support this change in the regulation as well. Personally, I would have supported any ban on any new construction, because I don't care how much particulate these things emit, they do emit particulate and in this air shed I would prefer that we didn't do it at all and that we put a time line for all change outs to nonsolid fuel burning. Because I'm so concerned about our air quality. So this doesn't go as far as I might like it to go, but I think it represents a significant improvement in the possibility to improve our air quality. I am currently involved in watching a friend of mine die of cancer, which is partially a lung cancer. It is a hideous death. And we should do everything that we can to stop any contribution to lung cancer. And I'm not very motivated by industry people talking to us about their desires around various things and presenting some inaccurate information, because I reviewed this stuff when we got it, when the Health Board was holding their hearings. It sort of reminds of the smoking industry saying smoking isn't really very bad for you. So I would support these changes and if you need to go further in the future, I would support those changes as well.

Alderwoman Tracy said, I would just like to remind my fellow Council members and for those people in the audience this evening and those watching at home, that this is not the first time we have seen this information or material. This is not the first time that we've discussed it. It has come before us in Committee and we were also well informed about the timetable and the need to move forward in a timely manner. We were also informed about the public hearings and we have received packets of information in the past. I feel very uncomfortable about pitting the needs of our lower income families who rely on wood burning to heat their home versus those people in our community who have pulmonary health problems. I have friends who have had problems, specifically in the winter, who try for instance to use bicycle transportation but are not able to during certain months of the year simply because they get some form of an asthma problem during the course of the winter months that they and their doctors have tied to the quality of our air during those months. The concerns that were brought up by Ms. Finch from Lolo, and thank you for sharing your concerns with us, are certainly well founded, and I think that some of the products that Ms. Evans talked about this evening to help find ways to provide low interest loans for replacement, the pilot program that we've just begun to talk about but did pass in our Committee as a whole for city residents today would certainly help. But I did want to remind you and others who currently do use wood to heat your home, that this change in regulation, the proposed change in regulation does not affect your existing woodstove unless and until you sell your home, so that you can continue to burn responsibly as Ms. Finch has. And you can continue to live within your own family's budget and your need to identify a time when you are able to potentially change your method of heating your home. So, just to remind people that this does not affect your existing woodstove and there are programs that will help you retrofit when you're ready for that. And certainly if you are selling your homes then these would come into effect.

Alderman Harrison said, I hate to go on, but I think that that's a very important point that Linda just made. It does not affect existing woodstoves because that'll be what everyone thinks. And that needs to be really clear. I think that the question that we should have debated in Committee would be by going at this real hard approach..., will that accomplish..., will that get us closer to the goal since the pellet stoves are much higher cost than the low emission woodstoves, to try to weigh that out better. I think that should have been the focus of a debate. We won't have that opportunity.

Upon a roll call vote, the vote on Resolution 5617 was as follows:

Ayes: Cregg, Gingerelli, Horton, Rosenleaf, Shea, Sweet, and Tracy.

Nays: Bennett, Harrison, Reidy.

Passes: None

Absent: Hermes, Sampson.

Resolution 5617 passed, 7 Ayes, 3 Nays, 0 Passes, and 2 Absent.

Mayor Kemmis said, with the concurrence, I hope, of the County Commissioners, we will stand at ease for just a couple of minutes here and we'll be right back at work.

JOINT PUBLIC HEARING: PROPOSED AQUIFER PROTECTION ORDINANCE

Mayor Kemmis opened the public hearing.

Phil Schwebber, Chairman of the Missoula Valley Water Quality District Board, and I'm pleased to introduce the Missoula Valley Aquifer Protection Ordinance. The Water Quality District staff has worked very hard and diligently to develop this ordinance. The Water Quality Advisory Council has provided significant input into this ordinance. The Water Quality District Board held two full public hearings and a substantial subcommittee of the Board held several meetings, which included significant public participation over an eight month time period. Both City Attorney Jim Nugent and County Attorney Marnie McClain provided input into drafting the ordinance and reviewed several of the drafts. This ordinance is a critical step in protecting our sole source aquifer. In addition to providing local authorities to protect our only source of drinking water, this ordinance focuses attention on the pollution sources with the greatest potential harm to our water quality and stresses techniques and education to help facility operators prevent pollution accidents from occurring. The Water Quality District Board unanimously approved this ordinance and I respectfully request that the City Council and the Board of County Commissioners approve this ordinance. Peter Neilson from the Water Quality District staff will now describe two components of the ordinance.

Peter Neilson, Environmental Health Supervisor and Supervisor of the Missoula Valley Quality District. In that capacity, I'm here tonight to describe to you the contents of the proposed Missoula Valley Aquifer Protection Ordinance. I would like to stress before I get into that that the ordinance represents the collective efforts of many people in this community over the past four years. Since the Maurice Avenue well incident woke us up to the need to take more serious efforts to protect our aquifer and our water quality and our drinking water in this community. The process began with which was at the time called a well head protection program. It was developed by the Mountain Water Company initially with extensive involvement of the Health Department and the Missoula Water Quality Advisory Council, which is appointed by the Health Board. It's a group of about 20 or 21 mostly scientific, technically oriented individuals who serve at the pleasure of the Board to advise the Department and the Board on matters pertaining to environmental quality in the community. The Mountain Water Company well head protection program included a proposed well head protection ordinance. And it was designed principally to protect the quality of the water obtained by the Mountain Water Company at its 35 wells throughout the urban area, including in East Missoula. The Mountain Water Company proposed ordinance was published first in April of 1992. Shortly following that time it was put on hold to prioritize the formation and initiation of the Water Quality District. The reasons for that were several, one of which was the desire to have in place a broader program of water quality protection which included all of the elements that we have in the Water Quality District program, including research and monitoring, public education, inspection of facilities, infrastructures, planning and regulation. And the other reason was to have in place a funding source to help us have the staff to develop an appropriate ordinance and to enforce it once it's time to do so. Following the creation of the Water Quality District in July of last year, we began work again in earnest on the proposed ordinance. At that time we decided to change the focus of our efforts in a number of important ways. First of all, we changed the focus away from what was called well head protection to aquifer protection. The difference in that is that we're not only designing an ordinance now to protect a small area surrounding 35 wells in the community that supplies about half of the urban area's population with water but we're trying now to design an ordinance that affects the entire aquifer, which is used by many more people, including approximately 156 other community water supplies in the valley and thousands of private wells, many of which are scattered around the western end of the valley in the most vulnerable location possible, down gradient of urban Missoula and its septic systems and other pollution sources. We also decided to try to target the highest priority toxic pollutants that we have, that are an identified threat to our aquifer, have already caused us problems and needed to be addressed. And we decided early on to address the sewage and septic issues through the Health Board and Health Board existing regulations and through existing city regulations as well, and to focus in this ordinance on toxic and hazardous pollutants. We also decided at that point to reorient the approach and stress pollution prevention rather than remediation or a zoning approach to keep certain types of activities away from locations where we are taking water out of the aquifer. Since that time, Chris Sircone, who is here tonight and myself and Allen English, looks like Allen has gone home, and John Harbel of the Water Quality District staff have worked on this ordinance and with extensive involvement of the Water Quality Advisory Committee and a number of other parties. Most notably John Horowitz from the University of Montana Law School, who has given us extensive aid in drafting the ordinance. We referred the draft to the Water Quality District Board in January of this year. The Board held a hearing in February. At that time sufficient concerns were raised that the Board decided to hold onto the ordinance before referring it to the Council, and established a Board subcommittee. The Board subcommittee met many times. I can't remember how many times. But many evening meetings and workshops. Which really it turned into education workshops and exchanges between ourselves and those who were going to be regulated by the ordinance. The Chamber of Commerce also held a number of meetings and workshops which we participated in in the time period February through April. The Water Quality District Board held its second public hearing in May of this year, and at that public hearing virtually every party that spoke expressed widespread support for the ordinance. At that point the Board was satisfied that the ordinance was in a form which it was comfortable having the Water Quality District administer and



decided to refer it to the City Council and the Board of County Commissioners to initiate this process of ordinance adoption. I just want to tell you I think it's been a real productive process along the way. It's been educational for all of us that have been involved. It has improved the proposed ordinance. It has not resolved all the issues. There still may be some opposition. I don't think everyone is entirely happy, but it has narrowed the range of remaining issues and the most important thing is that it has improved it and it has established some commitment among all of us to work together, and commitment on those who are going to be regulated to comply with the ordinance. I'm going to switch up to the overhead and run real briefly, I know this is a late meeting but this is a 20 page ordinance and I have to at least try to explain this to you. I'm going to run through briefly what's in the ordinance and then we'll go on to public comment. As I mentioned a key concept behind this ordinance is pollution prevention. And pollution prevention is any practice that reduces the amount of any hazardous substance, pollutant or contaminant entering a waystream or released into the environment prior to recycling treatment or disposal. It reduces generation of pollutants. It minimizes the use of toxic materials in manufacturing, substitutes less harmful materials for toxic ones, and an attempt to ensure that reducing emissions in one environmental medium such as water doesn't increase emissions to another, such as air, and it maximizes the efficient use of resources. The Aquifer Protection Ordinance that you have before you tonight establishes pollution prevention requirements. It requires pollution prevention and facility closure permits of facilities that handle significant quantities of toxic substances. It requires reporting to Missoula 911 Center and our Department of suspected and actual spills of toxic and hazardous materials. It generally prohibits activities which may contaminate the Missoula Valley aquifer. It provides protection of new public and private water supply wells. And I'll go into a little more detail on that in a moment. It authorizes our Department to conduct inspection of facilities that may cause pollution to the aquifer. It establishes enforcement procedures. Provides for criminal penalties and injunctive relief. I hope you all can read these. Probably not. I'll go through them quickly. These are the pollution prevention requirements of the ordinance. The first one is that it would ban the sale six months from adoption of the ordinance of all products containing perchloroethylene in any quantity. For new facilities established, there are two different requirements for fueling facilities, one new fueling facilities and one for existing facilities. New facilities would be required to install canopies, fuel spill collection, and grassy swells to treat dorm water. Existing facilities would be required to install breakaway hoses and nozzles, to provide emergency response to the equipment, to train staff and have trained staff on site at all times, and to prepare a pollution prevention plan describing how spills are contained and to evaluate spill containment devices in that plan. All facilities which have regulated substances above the threshold quantity must submit an inventory to the local emergency planning committee, and provide secondary containment, by the first of 1996. The inventory is already going on on a voluntary basis in the community and this would simply make it mandatory for those chemicals which pose a threat to the aquifer. Facilities which would have regulated substances in quantities four times the threshold quantity would be required to obtain a pollution prevention permit. New and replacement underground storage tank systems would be equipped with double wall piping and complete secondary containment of all ancillary equipment from the tank to the dispenser, as well as tank and line release detection systems. These are requirements above and beyond what is already required by state law. Use of an underground injection well to dispose of industrial or commercial waste would be prohibited unless the discharge meets state and federal drinking water standards. All wells that are abandoned, whether they be monitoring wells or drinking water wells, must be abandoned by permanently closing them to eliminate contamination routes to the aquifer. All petroleum facilities, a number of requirements and these we developed in extensive consultation with Exxon and Conoco, new and replacement piping would be installed above ground, a monitoring system to detect leaks, annual integrity and leak testing, cathodic protection of underground piping, a five year contingency plan, tank shell integrity testing every 10 years, fuel containment in vehicle fueling areas, secondary containment of pipe manifolds and tank bottom testing every 10 years. And then the ordinance establishes a future well head reservation area, which is shown on this map right behind Chris. It's basically the University area. This is an urban area of Missoula. And this area in the pink would be designated as a future well head reservation area. Basically what we would be saying there is that our goal is to keep that area clean. That's presently our cleanest water in the valley and if all else fails and we trash the rest of the aquifer, we'll at least keep this clean. And this is where we can always put our wells. We would like to adopt some other areas to do this, to establish as well head reservation areas, but this is one that clearly makes sense and in that area no new or replacement facilities with substances at or above the threshold quantity, regulated substances. And existing facilities would be designated as nonconforming uses, which may not be expanded, replaced or resume operations if they cease for 12 months. Very stringent requirements in that area. The ordinance also would establish a number of requirements for protection of water supplies. New and replacement public and private wells would be required to be installed to meet state standards. Already existing state standards. Community and non-transient public supply wells would be prohibited within certain distances of an identified contamination sources. It's a thousand feet from a landfill, thousand feet from a hazardous waste treatment facility and so forth, and these are detailed in the ordinance. Quite a long list. Those same identified contamination sources to be reciprocal would also be prohibited from locating within the same distances of wells that already exist in the community. Community and non-transient public supply wells. New public supply wells would be prohibited if they would be proposed to be located within a thousand feet of an existing public system regulated by the Public Service Commission or operated by the city or county. The purpose behind this is to begin to limit the number of holes that we're punching in the ground in this aquifer. Everyone of those holes is a potential contamination source, whether its for contamination from the ground surface down to the aquifer or a contamination plume that's traveling underground. If we had all private wells over on the north side now, your White Pine and Sash, we would be dealing with a much higher priority of an issue. It certainly is a high priority but we would be dealing with a much more difficult problem to resolve and the contamination certainly would have spread further. New private wells would also be prohibited if proposed to be located within 200 feet of an existing system regulated by the PSC or operated by the city or county. A public water supply system would be required for all land divisions of ten or more parcels where the overall density of the land division is less than one parcel per five acres. And the last thing we would designate with this ordinance U.S. Highway 93 and Interstate 90 as the principal north-south and east-west hazardous materials transportation routes in the community. This was simply designated as the transportation route and would direct the city to provide signage to direct people as to using that transportation route. Of course, we would have to negotiate with the Montana Department of Transportation to obtain their approval for those signs. In your packets and in the material I submitted to the County Commissioners if you don't have packets, I included a number of recommendations for you to consider for revisions to the June 24th draft which is the draft on which we are having a hearing tonight. And I'm also distributing an additional set of minor changes, which is different than the one I sent you before. I want to run through those just briefly. In the first set of recommendations we gave you, number one was to add the definition of a soluble solid. And I won't read through that, but it's simply to clarify what sort of substances are actually regulated by the ordinance and it was response actually to a concern that Mike Bennett had about

over-regulating for certain substances which really don't pose a threat to the aquifer, and the intent here is to clarify what substances are regulated. Number two is to simply add the clause regardless of the location number of containers or method of storage, to the section where deal with the quantities of regulated substances handled at any one time at facilities which are regulated. Number three is to add simply the words or commercial to the definition of industrial process well so it would not be industrial or commercial process well. Number four is change an "a" to a "n". Number five is changes in the commercial section and referring to an underground injection control permit from the Environmental Protection Agency or the Department. Number six is to clarify with regard to bulk petroleum facilities. The existing language in the 6/24 draft says install all new or replacement piping above ground. Conoco and Exxon were concerned that that meant they had to immediately install their piping above ground, and what we meant was when they put in new or replacement piping then it has to be put in above ground. So we put in new language to clarify that. Number seven is to add the phrase "any above ground product fuel storage tanks" to clarify that it is fuel storage tanks and not just any above ground tank that's regulated there. Number eight is to specify fuel product piping rather than simply referring to underground piping. Nine is in 1326.040 and it says the change is "the plan shall also address alternative technologies which may prevent release fuel from contaminating the Missoula Valley aquifer, such as." And that's a minor change in language. Ten was to add--rather than saying appropriate standard to put the standard in there to say "American Petroleum Institute API 653" to clarify that. Number eleven is to strike the words "or sump" because that was confusing. Number twelve again to specify the appropriate standard as the American Petroleum Institute API 653." Thirteen was to strike out the word immediately to help clarify the language. Number fourteen was proposed to add, this is where you're talking about when you have to have a public water system and to clarify that was to apply to parcels of land in less than five acres in size rather than any size of parcel. And number fifteen was related to enforcement procedures and this was in response to a comment from Jim Nugent, City Attorney. We wanted to specify that the prohibition on the city contracting with any person that's convicted of a violation of this ordinance would continue for a period of one year following the date of conviction and more than one year if said person did not correct the condition giving rise to the conditions. The previous language was not exactly clear as to that intent. The changes that I put before you tonight are lettered "a" through "d", there are four of them. "A" was to change the definition of regulated substance on page four to place at the end of the definition a statement that the Board may also, following public review and comment, remove a substance from a list of regulated substances not just add to the list, and that may be appropriate in certain instances. "B" is in the definition of threshold quantity to clarify that, threshold quantity strike the word "other threshold quantities or substances may be established or revised. Add the words "or revised by the Board following public review and comment." "C" is to change--further that language on public water supply that I proposed changes to in the last proposed changes, to clarify that the overall density of the land in question is what we're talking about here, and not just that the individual lots are five acres in size. "D" on page 13, 13.26.090 we wanted to add, we're saying that you have to hook up to an existing system that is regulated by the PSC as an existing public water system. We wanted to add "or owned or operated by a county or consolidated city and water sewer district as defined in Title VII, Chapter 13, Parts 22 and 23." This is in response to a comment by the State Water Quality Bureau who pointed out that the Lolo RSID and other SID's in this community are not regulated by the PSC and it was our intent to include those not just the Mountain Water Company as the regulated monopoly in the community. Those are our only changes that we propose at this time and I would be happy to entertain questions or comments.

Commissioner Hart said, what is a transient public supply well and a non-transient?

Peter Neilson said, it's a terribly confusing way of defining public supply wells that the state has come up with, but it's what we've got. It's basically to define systems as either community systems or non-community systems. Community systems are systems that serve subdivisions or the Mountain Water system they serve the general public. A non-community system would be something like a church or a school or a minimart. And in non-community systems they've broken those into two as either transient or non-transient. Non-transients are those where the same people are there day after day after day, year after year, like a school or church or something like that. Whereas a transient system would like a minimart someplace where you have the general public coming through, using the ice dispenser, using the bathroom, and getting water there but they're not the same people day after day that are served by the system. We've tried to make that distinction in here clear and I bet that hasn't been done.

Alderman Bennett said, first of all I want to thank Peter for their efforts into this and I've been able to review this. I feel much more comfortable knowing what's going on than possibly the previous issue. I did have one more concern that came to me and that's with regard to both the pollution prevent permits and the facility closure permits. And I don't if it's been addressed or not, and that's one of the scenarios that I can envision is somebody bringing in a quantity of a certain substance that's on the list that's above your threshold limit quantity, putting it in a warehouse and then selling it and moving it out of the warehouse somewhere else. Being in bags, or boxes or whatever. If I read this correctly, in order to do that they would have to get the pollution prevention permit to first bring the material into the warehouse and then file a closure permit after the material is shipped out of the warehouse and this could be repeated for any number of different kinds of things.

Peter Neilson said, I think a facility closure permit is intended to deal with a use that is terminated, a use of that substance which is terminated for an indefinite period of time, or a facility which simply closes and pulls up stakes and leaves town. That's one example. Another facility that used, let's say it used 111 Tryquil, that thing is a solvent used in their process for many years and they decided to simply stop using that, and then a closure permit would be required for the use of that substance so we could determine how any problems might be cleaned up that may have been left by that. But mainly it's oriented towards facilities which close and leave town, and we want to be able to require them with a local ordinance to require them to clean up any problems that are left behind.

Alderman Bennett said, I agree with that intent and understand it. I'm just looking at the wording. It looks like if somebody brought something in, had it there, shipped it out, didn't have anything there for several months, that they might fall into the definition.

Peter Neilson said, if that's so we probably should fix that.



Mayor Kemmis said, is there any other staff report? If not, we'll go on to general public comment regarding the proposed ordinance. Let me remind everyone again that we would like you to give your name and address.

Bill Nooney from Hi-Noon Petroleum. As Peter indicated, from mid-winter to now has been a real learning process for everybody, the Department, the dealers, the industry and everybody. The subcommittee of dealers and the Department has spent many hours coming up with this draft of this ordinance. I'm a little at a loss because my comments are based on the 6/15 draft and I just got the 6/24 draft this evening. And all of the changes that Peter just indicated to you in terminology and definition, of course, I don't have at all. The ordinance, and I talked to Peter and Garon Smith, and we will attempt, before going to your Committee, have another subcommittee meeting and probably clear up some of the definition and interpretation or intent problems in verbiage that we still see here and I don't think that's a big problem. The result would be, of course, if that didn't work the variance section would come into play. But one of the things that we have attempted to address and really didn't get it done. Right in the beginning this ordinance is more stringent than the requirements of both local or state and federal government. And one of the problems I see with it and we tried to address it and never really came up with answer, is I think all of you are aware there's an Underground Tank Compensation Board that has money going into it of every gallon of gasoline and diesel fuel that's sold in the state, to clean up contamination problems. The problem I see here, this is more stringent. Say that I have a contamination problem that costs \$200,000, I have to pay \$17,500, the state fund pays the balance. However, what if the City-County Health Department says that isn't enough you have to spend another \$50,000. I can see the only way probably that this will be cleared up is probably in court because using that scenario it could be a problem. And again, I had some verbiage and definition situations. I talked to Peter about them prior to stepping up here, so I don't think I'll address them at this time. But we'll probably have another subcommittee meeting. Another thing that's happening at the state level right now. They have spent considerable time the last two or three months changing the above ground tank regulations. And you talk about a closure permit, you talk pollution prevention permits, and you talk about above ground tank regulations, and this ordinance addresses them. Hopefully, as time goes on we won't be in a situation where we're trying to answer to two or three different masters, and that has happened in the past, where the state says you do this, the city-county says you do that, and the federal government says you do something else, and you can only comply with one of them, you can't comply with all three because they're conflicting. But I don't see that to be a problem. The cooperation of the Department, the Aquifer Board, and I don't want to be nice, but particularly Garon. He did a real good job. He said at our first hearing, he said I'm a University Professor. All of a sudden I lost a lot of interest in that. But then he went on to say that I want to let you know I don't know a thing about business and I'm open and we're all going to learn. And really seriously he really did a heck of a job, as did the subcommittee. I think the ordinance right now is a better plan, providing better protection for the aquifer than which it started with the total containment of double wall piping, containment under the dispenser, secondary containment where you fill the tank. That constitutes about 80 or 90 percent of the leaks. And the contamination problems in the state. And I think we've addressed those very well. It's going to be costly. It'll be costly to the dealer and I hope that as we've talked about in committee that the Department will set up some workshops so that the smaller dealer will be able to address these problems and the cost of them, because when you're talking about the oil-water separator that was up there, each site has to be treated individually. They're all different, the grades are different, the cement's poured different, they all drain different ways, but I think the Department understands and the dealers understand that we have to work together and I just think it will work. But we'll try to have a subcommittee prior to your Committee meeting.

Clark Ridgeway, owner Ole's Convenience Store at Mount and Russell. There's kind of two things that create emotion. One is the heart and one's the pocketbook. And I want to talk to you about the pocketbook. Page 7 item b in the ordinance, and I'm going to read just a little bit of it. This existing fueling facility. In addition to the above procedural and physical requirements, the person who owns, operates or controls an existing fueling facility shall by December 31, 1996, incorporate a release prevention section within the pollution prevention plan. The release prevention sections of the plan shall describe the steps or methods that will be taken to prevent fuel release at the tank and/or vehicle fueling area from reaching a storm water injection well. It must include an evaluation of installing an oil-water separator or other spill containment device where a storm water injection well is located in such a location that personnel are unlikely to prevent a release from draining to a storm water injection well. The release prevention plan must be approved by the Department. I have an injection well 30 feet from where the cars fuel. If I had a spill, and I want to emphasize if, I don't think I can convince the Department that my help can beat the spill to the injection well. So I guess I'm looking at an oil-water separator. Because of our property we're elevated probably four to eight feet above street level. Where our tanks are filled, if, and I want to emphasize if again, we had a spill, we're probably going to have the spill draining west towards Russell and north towards Mount. That's the way everything flows. There's a fuel injection well or an injection well on the corner of Mount and Russell. I don't know what it's going to take to correct this flow because of our property situation. We've been open five and a half years, we meet all federal existing and state laws. We have overflow protection on our tanks. In other words, when a tanker pulls up and starts filling, it cannot overflow. I mean it can't happen. We have sure-valves on our pumps. If somebody knocks a pump over there's a valve on the bottom on the pump that will stop any spill. If somebody drives off with a nozzle in their car, which they do quite frequently, we have sure-valves which prevent a spill. In the five and a half years, we have not a spill over two gallons by customers filling their vehicles. I'm very concerned about a plan which might be acceptable by the Department which literally could cost hundreds of thousands of dollars, and I'm not exaggerating to meet the requirements in this ordinance. I believe that more thought has to be put into the requirements for existing facilities and the financial burden which may be placed upon them. Thank you.

Alderman Horton said would you yield to a question, please. Your reference to hundreds of thousands of dollars, and I presume you meant collectively since...

Clark Ridgeway said, no I'm not.

Alderman Horton said, ...the oil-water separators are what, under a thousand dollars.

Clark Ridgeway said, to fully meet this plan, as I see it, if we're going to protect from a spill from a tanker filling our tanks, that spill's going to go three different ways. How am I going to meet those requirements? How am I going to contain that gasoline that could be spilled. If I have drainage into Mount, that's the way the parking lot is curved, okay,

and also..., I'm going to drain into Russell, because that's the way the slope goes, I cannot perceive containing that gasoline unless there's major, major reconstruction and grading of the parking lot. I mean tearing up concrete, I mean regrading and laying of concrete. There's nothing in the ordinance that gives me any relief. If the Department approves a plan and they have to approve the plan, if they approve a plan that requires me to do all this, yes, it could cost hundreds of thousands of dollars, or tens or thousands of dollars.

Cassandra Noble, Program Officer for State at the Department of Health and Environmental Sciences. I'm here this evening with Mr. Jeff Koone, who's head of the Collective Action Program at the Underground Storage Tank Program and we are just here to listen and to gain information. We've had some input into the draft ordinance. And I guess I just want to address a couple of issues. One is that, in my experience with the Underground Storage Tank Program it's extremely important not to confuse the public with any perception that it might have of dual regulation or dual reporting requirements. I hear, on the phone, a lot of complaining and there's seems to be a perception in the public, which I'm sure you're all well aware of, of over regulation. There's a gentleman who testified just a moment earlier who mentioned the petroleum composition fund and I think I can partially answer his question. The petroleum composition fund compensates for expenditures in furtherance of a state approved corrective action plan and, therefore, if it were the case that this ordinance required extra over and above corrective action work, it could possibly turn out to be that there would be some uncompensated expenditures that would be made. And that brings me around to the major point that I wish to make to you tonight, on behalf of the State DHES, and that is with regard to leases. It's very, very critical that some kind of good and workable system be in place for coordination and mutual communication between your community and the State DHES, Underground Storage Program. This is very possible. There are a number of ways of doing it and I certainly would be committed, myself, and I know Mr. Koone would be and the administrators back at the department in working that out. I think there's never, never too much communication between bodies that have mutual goals in common. I'd also urge that there'd be continued exchange of information between the City, County and the State and coordination with regard to enforcement efforts and priorities. Generally, I wish to applaud you as City and County public officials and also your staff for being concerned enough about your environment and about your aquifer to work so hard on this effort. And I hope that Jeff's presence and mine tonight will serve as a signal to you of the State's willingness to coordinate and cooperate with you in serving our mutual goal of protecting the environment of the State of Montana. Thank you.

Michael Jaworsky, 825 E. Front. Representing the Missoula Chamber of Commerce. Peter Nielsen came to see us last December and said we're putting together an ordinance and I'd like to talk it over with you, and, believe it or not, we're here to try to help. So I said, well, why don't you come on over and between December and today we've gotten a few meetings that we were happy and proud, as a Chamber, to sponsor with representatives of Water Quality District and, as importantly, the gasoline retailers and oil distributors in the City. I want to echo Bill Nooney's comment that the draft of the ordinance that you have before you looks pretty dramatically different than the first draft and that's a testament to the willingness of Peter and his staff and especially Garon Smith, all of whom had an open mind about listening to people's concerns. I will say that my reason for speaking, in addition to complimenting all those concerned and have worked on this ordinance, is to ask that before the County and City enact this ordinance that you give us at least a couple more opportunities to meet with staff. Many of us did not get the June 24th revision of the ordinance and there was a little breakdown, and things get feverish towards the end and it seems like there was a revision about every other week. And then tonight..., tonight you got some..., also some proposed amendments that we've not had an opportunity to review. We don't consider any of these things major stumbling blocks. We pretty much support the list of items that make up the ordinance. We just want to work a little bit more with the Water Quality District to iron out some of the last, I think, language issues. There seems to be some minor communication and things. But, all in all, it's a pretty good ordinance. I would have liked to come up here tonight and say, pass it because we all worked on it and it's a great ordinance, considering its impact, and I'd say we're about 90% there, or 95% there. We think we're going to get pretty good one before very long. Just give us an opportunity to have at least two more meetings with the Water Quality District people to iron these last little issues.

Jeffrey Smith, 3401 River Bend Road, Bonner. Clark Fork/Pend D'Oreille Coalition. I want to thank you for the opportunity to testify. I'm here to testify in favor of the ordinance. I think it's a critical first step in protecting Missoula's sole source aquifer from many different sources of pollution and I applaud the efforts of the Water Quality District and the City-County Health Department in drafting it. There are a couple of points in the ordinance that I feel should be addressed before any action is taken on it. The first point I want to raise is just a general comment on public participation and the process. In the section regarding variances from the ordinance itself, there's a requirement in there for, I believe, it's a 30 or 45-day public notice and public hearing process and I think that's a good start, but I feel there are two areas, other areas, in the ordinance that should have that public participation in it as well. The first is the petition for ground water discharge permit for injection wells. I think it's Section 40(H), states that someone can apply for a petition to have a discharge permit..., excuse me, approved by the department or by the EPA, and I feel that the public should be involved in the review of that permit. The other one is..., Peter was talking earlier about well head protection areas and there is a petition process also in that for increasing noncomplying activities within a future well head protection area if it's demonstrated that it wouldn't cause significant increase of threats to the aquifer. And I also feel that that section of the ordinance should be open for public participation and comment. I think there's plenty of knowledgeable people here in Missoula that are concerned about water quality and would be able to provide a substantive and meaningful comment on those issues. On a bit of a more specific note, first I want to again applaud the section on the perk chloroethylene ban. I think it's very, very important to address chlorinated organic solvents here in the valley but I feel we have to be aware of the fact that if we're going to ban one substance, we might be moving to another class of chlorinated organic solvents, maybe carbon pet or trichloroethylene. It might, in fact, cause more of a threat to the aquifer. So if we're going to ban one product, we certainly have to keep our eyes open for people switching over to another product that may actually be more of a threat to the aquifer. Also, regarding the perk ban, I feel that dry cleaning facilities were left out in that and I feel there should be some sort of incremental approach to having dry cleaning facilities phase out perk as well because there are other alternatives out there for dry cleaning facilities and they do pose a threat to the aquifer so I feel that they should also be included in the perk ban. Maybe not immediately but certainly in a phased-in approach. The other specific area I wanted to commented on was the bulk petroleum storage facilities. I guess Peter addressed the first point which was the issue of providing above ground piping and I noticed that there was no date on that and there were very specific dates for all the other components of that. And I want to applaud them for at least spelling out when compliance

would have to occur on that. But more importantly, I think that item 2 in that section stated that either a bulk petroleum storage facilities would either have to have a trained personnel on site or they would have to have an approved monitoring program. And I feel that that or should be changed to an and. I think that..., both of those requirements should be in there because of the potential for very large and damaging spills into the aquifer at these facilities that are handling large, large amounts of potential contaminants for the aquifer. A final comment I have was on the fine scale that was spelled out in that and I believe the maximum fine was \$500 per day per violation. I don't really feel that this provides significant disincentive for some activities. It may be in someone's best interest to do what they're going to do and discharge to the aquifer and then take the \$500 fine. In the variance petition section they said that the fee for the variance petition would be commensurate with how much it costs to hold the public hearing to hear that variance, and I think that the fine system should also be set up to be commensurate with the amount of damage that's done to the aquifer and negligence or premeditated action in discharging hazardous substances to the aquifer. That's all I really have to say and I hope the City and County are able to act on this quickly, cause I think we really need it. Thank you.

Arvid Hiller, Vice-President & General Manager of Mountain Water Company, 1345 West Broadway. I know that some of you here recall, about four years ago, I know Mayor Kemmis does and some of the other Council members, but..., and, Barbara, remember that when we embarked on the Well Head Protection Program, one of the things that we did is come to the City Council and to the County Commissioners and ask them if they would be willing to pass a resolution to help this community move forward in at least looking at and making those difficult choices that we're going to have to make in the future to protect, what I consider, to be the most valuable resource in this community. At that request, both bodies did pass resolutions which said they would support those hard choices that this community had to make. I think that this ordinance is come a long ways in four years. Remember, it's taken four years. I heard you talk about the air quality standards for wood stoves that you set tonight and it was eight months process of getting these..., getting it to the point it is. This is really been pretty much a four-year process with a strong commitment of resolution from both bodies. I think this ordinance really is just one component that we all have to pursue in this community, but it is an important component in that it addresses what has been identified as being the largest risks to the contamination of this aquifer. I knew when we started out on this Well Head Protection Program it was very clearly set out to me that, as a private water purveyor, we were only going to be able to go so far in the process of trying to protect the resource for our consumers. We represent 50,000 residents in Missoula but because of the limitations that we have, unfortunately, they won't let us create our own company ordinances so we have to look to the local government to do that. And I see in this ordinance, and this hearing tonight, the commitment that was made when you passed those resolutions being met, and I think that all of the work that's gone into this ordinance has produced something and, if I will say, a camaraderie at least between the Chamber, between the Missoula City-County Health Department, the oil distributors that is uncommon. I also know that it has produced somewhat of a common bond between the County and the City when it comes to recognizing it being such an important effort. I think ultimately what I recognize as being most important to this whole process, though, in an ordinance here is some local control. We deal every day with mandates, unfunded mandates on water quality, OSHA regulations, all the requirements to run a business in a community. Mayor Kemmis entertained us in a letter to Senator Baucus when it came to the recent bill before..., or a..., that passed the Senate in asking him to please consider unfunded mandates and what they do to a community. What this ordinance does is it gives us an element of local control. I suggest that nobody knows better in this community, better what this community has to do to protect its resources than we do. Now it doesn't give us all of the control. There's still some review that has to come from the State and there's some limitations to what we can do but I suggest that this ordinance is a large step. I enjoy being here, being part of the process and I do ask this combined Commission and Council to act on this ordinance as soon as possible. We've been too long. We don't know when the next contamination episode can come up. Let's at least have something in hand here that helps us protect it first and then do something about it if something happens. Thank you.

Garon Smith, Member of Water Quality District Board and Professor at the University. This is going to sound like a Oscar acceptance speech. When I moved to Missoula, I had visions of why this would be such a great place to live. And having worked on this particular piece of work for a water quality here, I know that that assessment was correct. Dealing with environmental chemistry, a lot of times what I'm dealing with is how to clean up experiments that were started by other people when they used indiscretion. And it's so refreshing to be working on the other end to keep them from happening. That's where our efforts should be. I can't say how many different versions of this ordinance we've gone through simply because there's been so much input from the community. And I think the ordinance is going to be extraordinarily strong because there's a whole community ownership to it. Everybody has had a part that feels like they're going to be bound by in shaping the exact language and you can hear that in the comments from the petroleum industry people. Peter and Chris and Allan, to their credit, have taken every single comment, be it from the private sector, from the State regulators, from the environmental watch dogs, they've taken every suggestion as a friendly amendment and incorporated it into the language and they're still willing to do that. And as chair of the subcommittee, I'm still willing to learn some more about that too, because really the people who run those facilities know where their problems have come up and they can teach us where to look for them. I'm not worried about Ole's at Reserve and Mount because I think, as a community, we can come up with a solution. If there's an injection well that goes down to the aquifer, that's endangered by Ole's at Reserve..., at Russell and Mount, we can take that injection well or make sure that it gets rerouted somewhere else. It doesn't have to penalize one person to protect the good of the community. So I think we can work on those things and that's the spirit of cooperation I've gotten out of this. I know a lot more people in the community, having worked in these groups, and it makes me feel good to walk by the terminal facility, knowing that Shawn and Gail are interested in making sure that they stay in business because they know that if they don't take care, fingers are going to be pointed at them. Those are big gallons that they're playing with. And every time I drive by the filling stations, I look at those and I say, oh, yeah, that one belongs to Bill..., oh, yeah, that's at Eastgate..., Conoco, boy, they were at every one of those meetings, so I really feel good driving around saying the people that are working with those things we need to keep out of the water are really interested in making sure that nothing happens. So, I'm really encouraging you to join the ring of people that's expanding in bringing this to a reality. I'd also have to support the idea of the future well head reservation area. Of course, my chemistry lab is smack in the middle of that. It sits..., if you've looked at the paths of where the water gets to the different Mountain Water wells, we need to look at that. And as a member of the university, I'm going to make sure that I can uphold the responsibility as well as the service station owners and petroleum distributors have. Thank you.

Tony Tweedale, 224 East Pine Street. I want to make a response to one of the concerns of the..., of one of the business people. I walked in, after you began talking, and I'm not sure, and I have a terrible memory, although I recognize him as being one of the persons who sat in on a lot of the subcommittee meetings. To address the concern, just to say that the variance section of the ordinance, which was added later, is meant to protect against exactly these concerns that the gentleman had about the hammer requirements of the ordinances, of the ordinance. It's a very well developed variance section with very spelled out procedures for what a party who feels they're not getting the satisfaction can do, and ultimately it's in the hands of the Health Board, not of the department. I guess we're all sounding like broken records but, again, I'd reiterate even more so than the wood stove process this aquifer ordinance process was with incredibly rancor and with very positive atmosphere, very constructive atmosphere. There was hardly any haggling at all. All the discussion, which even when it got heated, was very productive discussion. I do have one more section of language that I'd like to see added to the ordinance. I'm glad, by the way, that the suggestions I made on strengthening the pollution prevention plan requirements, as pertaining to the emergency response, were adopted. There is a federal statute, the amendments to Super Fund emergency and right-to-know procedures which are fairly flexible for communities and yet if a community wants to, a community can make out of those federal requirements a very strong protective set of regulations and this ordinance, this aquifer protection ordinance, for the purpose of protecting an aquifer does involve the LEPC (the Local Emergency Planning Committee) and, more specifically, it tells the LEPC what chemicals above..., if they've at a property above a certain amount, where they're stored and what they are, which is really invaluable, in terms of planning for emergencies. The language that I was glad to see added, pertaining to the pollution prevention plans, is..., I stole basically from some Clean Air Act requirements that are coming down the pike that will apply to several..., or a handful of facilities at Missoula, and they involve things like personnel training, engineering controls, preventative maintenance, process safety, and these may seem like real hammer provisions in the ordinance but the way it's written, it's..., the department really just wants to see that the facility is making a good, safe effort at recognizing the hazards that the chemicals it stores at its property pose. I guess I got off track so to conclude, like I said, with the language that I would like to see added, I guess I'll maybe approach a Council member or two in the coming days and maybe work with the subcommittee again to try to get this language added. This would be a 13.26.04, a new part M perhaps which would read, "The Board in conjunction with the Air Quality Board, shall release an annual pollution prevention progress report as part of its annual State of Missoula's Health Report, which shall be prepared by the department and shall be released to the local media. The report shall include minimally, 1) Missoula County's latest toxic lease inventory; 2) the Chamber of Commerce Environmental Stewardship Award facilities that have been nominated by the department to the Chamber for achieving outstanding pollution prevention; 3) a description of waste reduction and pollution prevention efforts; 4) a description of major releases, intentional and unintentional." And the purpose of that, that should be obvious just from hearing it is so that we can have a little bit stronger of an educational effort to get some of these things that are being done to protect the aquifer and for emergency planning and so forth that are in this ordinance, to get them to be more familiar to the public and I think if this was done as part of the current State of Missoula's Annual Report, it would entail a..., well, it'd be a fairly easy project. The toxic lease inventory only applies to a handful of facilities in Missoula but I think the other elements, that I mentioned, that could be part of the Annual Pollution Prevention Program Report would effect all facilities. Thank you very much.

Will Snodgrass, P.O. Box 2885. Missoulians for Clean Environment. Early on in my environmental work in Missoula, I had the good fortune to speak at length a number of times with Doctor Marian Moses, well known, highly respected, tough and highly accredited. During one of our early talks, she said, Will, what do you want to accomplish? She was very angry. She went on to tell me that legislation does not work so well. She said, Will, education is the key. I have found that she was and is correct. Education is the key. The barrier is denial of our chemical nightmare. In Minneapolis, during an interview on environmental racism, I spoke with a young African-American woman and she was very concerned about what was happening to her people and her environment. I said time will bring a change, Ebony. She said, we're running out of time. Four years is an awful long time to fix a problem of this magnitude. Regarding the perk ban, we have banned one chemical and we banned phosphates in this valley but there are literally hundreds and thousands of chemicals which pose similar serious threats to our aquifer and, therefore, to human health. Why was only one listed as being banned? If we ban it, people are worried that people will turn to other chemicals. There are options which are safe. Regarding keeping our eyes open, how can we miss what are found on the shelves of our stores. Regarding MTBE and oxyfuel, there have been numerous bulletins and discussion, some presented in this room, regarding the well known fact that fuels oxygenated with MTBE and ethanol significantly increase gasoline solubility in water. So here we've been trying to protect our aquifer, on the one hand, but we've introduced a chemistry in the living environment which is a far greater threat, in many cases, in what it replaced. While we were promoting Water District Quality, a ridiculous contaminant was being introduced. With respect to the semimetallic arsenic salt reaching into our aquifer from deicer, I see no mention of that in the ordinance. We would not have had to use this chemical and probably the oxygenating agent if we had been acting with foresight. Our retail store shelves are full of every kind of chemical imaginable--bottles, boxes and cans, which we cannot keep out of the living environment. Once they're put into use, they wind up in our water and in our air and in our bodies eventually. Given what we now know about the tragic effects of toxics in our environment and given the resources available to Missoula agencies, resources including citizens groups, with a wealth of sound cutting-edge information garnered by way of literature facts, electromagnetic media, TV, grants and conferences and a public access television station, I would suggest here that we should be..., we could have been educating our community a long ago, using these resources very effectively and perhaps more cost-effectively than we've been spending our funds. How much money has Missoula spent on effective, straightforward, honest, public education regarding the virtual sea of chemical toxins in Missoula and the inevitable negative effects of chemical injury? Are we going to really discuss Missoula's chemical injury problem or will this problem continue to be Montana's dirty little secret? How are we supposed to trust ourselves and one another, given the past history of the Missoula valley and the contamination that has occurred here, time and time again, with no disclosure? Clearly this is a problem and it involves citizens who must feel that their officials are acting ultimately on their behalf with no questions asked. Regarding the regulation of pesticides. The very chemical compounds, which we're trying to prevent from getting into our drinking water, are found every day, driving around on our streets in very large tank trucks. These pesticide trucks contain chemicals known as inerts, which are volatile organic compounds, BLCs, by the thousands of gallons. So, imagine, if you would, a community which is trying desperately to reject its aquifer while, at the same time, trucks are going around literally spraying the very chemicals that we're trying to keep out of our aquifer, onto our lawns and our golf courses and our ground. Many of these pesticides have ground water advisory bulletins put out by the EPA. They're saying don't use them. They contaminate the ground water, yet they're found on the stores..., all of our retail..., the shelves of all the retail stores..., in all the trucks..., proposed

use in the schools this year. I guess I would have to say that, with all due respect, from my perspective as an environmental activist, that I favor the passage of this ordinance, but it's woefully lacking. It is a bandaid that is being placed upon a festering wound and, like all bandaids, it's a step in the right direction, and I advocate passage of it. But I think that what's happened in Missoula is tragic and it could have been prevented and it's going to take a tremendous amount of work given the influx of people and the chemicals that they bring with them into their lives. The chemical agenda is, as I said, at the State level, like an elephant in the living room, it's there; it's making a mess. And too few people are willing to say the emperor has no clothes or there it is. So, if we can ban phosphates, then we can ban oregano chlorine. And if we can ban perk, then we can start spending some of our money to educate people to tell them the chemicals are killing you and they're killing the children and this aquifer has not only threatened, it is already damaged very seriously. So, kudos to those people who have worked so hard to pass this thing but we have to do more. Thank you.

Loreen Folsom, Box 9225. And I'll just be brief. I want to echo the part of Will's testimony here about public education. I think it's a critical aspect of any protection of our aquifer. We have talked here about doing some regulations and have, in front of us, regulations for businesses but we have not talked about much that's going to impact the public in general. And I think that all of the information that we can get out to the public about the chemicals that each one of us can keep from putting into our aquifer, things that we don't need to use, things that we use on a regular basis because we have no idea of what they're doing, and all of this stuff that goes on our ground, goes on the land, goes in our gardens eventually, ends up into the aquifer. It seems to me somewhere in here there could be something on public education and perhaps some way to fund it, possibly the fines that come under the criminal..., penalty section could not go into the general fund but perhaps into a special fund for education of the public. Thanks.

Mayor Kemmis closed the public hearing.

The meeting was adjourned at 12:35 A.M. (Note: Decision was made on August 10, 1995)

#### TUESDAY, JULY 26, 1994

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

Audit List -- The Board of County Commissioners signed the Audit List, dated July 26, 1994, pages 4-27, with a grand total of \$460,357.74. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming the Missoulain as principal for warrant #262295, dated May 25, 1994, issued on the Personnel Fund in the amount of \$75.11 now unable to be found.

#### DAILY ADMINISTRATIVE MEETING

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

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Thomas E. Wynia in the amount of \$10,363.00, for the property at 710 Howell, Missoula, dated July 20, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

Memorandum of Understanding -- Chair Hart signed a Memorandum of Understanding between Missoula County and the USDA, Animal Damage Control, whereby Missoula County agrees to allocate funds for the protection of sheep from destructive animals, as per the items and conditions set forth, for the period from July 1, 1994, through June 30, 1995. The document was returned to David Nelson, District Supervisor, for further signatures and handling.

Other items included:

The Commissioners appointed Jay Ottman as an "alternate member" of the Missoula Aging Services Governing Board through December 31, 1996.

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

#### WEDNESDAY, JULY 27, 1994

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

#### DAILY ADMINISTRATIVE MEETING

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

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Frank O. and W. Ann Pfau in the amount of \$16,587.00, for the property located at 1323 Phillips, Missoula, dated July 20, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

Resolution No. 94-073 -- The Board of County Commissioners signed Resolution No. 94-073, a resolution granting an agricultural exemption to Champion International Corporation for a portion of the N1/2NE1/4 and the SW1/4NE1/4 of Section 20, T13N, R18W (the old Milltown landfill, approximately 7 acres), as Champion International proposes that the landfill remain in its present state until environmental and other concerns are addressed by Champion.

Resolution No. 94-074 -- The Board of County Commissioners signed Resolution No. 94-074, a resolution proclaiming an emergency pursuant to Title 10, Chapter 3, MCA, due to the wildland fire in the Grant Creek area which has a potential for rapid movement and directly threatens residential and other structures within the Grant Creek area, and that all provisions and authorization to use extraordinary measures of the County Emergency Operations Plan be in effect.

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

#### PUBLIC MEETING

The Public Meeting was called to order by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

#### BID AWARD: CRS-2 EMULSIFIED ASPHALT OIL - SURVEYOR

Bids were opened for 180 tons of CRS-2 Emulsified Asphalt Oil for the Surveyor's Office on Tuesday, July 26, 1994 at 10:00 a.m. The results of the bids were as follows:

City Service, Inc.	\$160.00/Ton	\$28,800.00
Northwest Petroleum Co.	\$137.56/Ton	\$24,760.80
Montana Refining	\$130.60/Ton	\$23,508.00

The staff recommended that the bid for the CRS-2 Emulsified Asphalt Oil be awarded to Montana Refining Co. as the lowest and most responsive bid.

Horace Brown stated that the asphalt oil is used for chip sealing.

Barbara Evans moved and Ann Mary Dussault seconded the motion to award the bid for 180 tons of CRS-2 Emulsified asphalt oil to Montana Refining Co. in the amount of \$23,508.00 as the lowest and most responsive bid. The motion carried on a vote of 3-0.

#### HEARING: INTENT TO CREATE RSID NO. 8454 -- CONSTRUCTION OF SANITARY SEWER MAIN EXTENSION -- BLOCK 1 OF MACLAY ADDITION

Fern Hart explained from information received from Jesse Sattley, RSID Coordinator, that in July of 1993, RSID 8454 was created with an estimated construction cost of \$27,000. However, when the construction bids were received, the lowest bid was \$38,890. which far exceeded the original engineering estimate and petition amount. The bids for construction were therefore rejected and the project was postponed for further evaluation and discussion with the residents concerning the higher cost.

A new petition was received with 64% approval of a project cost of \$52,000.

John DeVore, Administrative Officer, explained that the district was created last year, but when it went to bid, the actual cost of construction was greater than the amount petitioned. Therefore, the staff had to go back to the people in the district to find out if they would agree to the higher costs. If this was the case, the district had to be re-created and re-noticed along with a new protest period. The district would be created for \$52,000. If the new bids come in higher, the process would have to start all over again. The cost is greater due to higher construction costs. The bids came in higher than the engineers estimated costs and higher than what the RSID was created for.

The hearing was opened to public comment.

Bob Harlow, an engineer, said the original estimate was made on the basis of the contractor's quote. There was only one bid, which, for some unknown reason, was elevated. Due to the higher cost involved, the district had to be recreated. The neighborhood approached the City with the intent of obtaining funds because the City required the depth to be extremely deep at 16 1/2 feet. The City denied the request for the funds. They petitioned the residents again to re-create the district at a higher price. He said he is currently pumping his drain pit approximately once a month at \$100 a time. He urged the Commissioners to create the district.

Barbara Evans said there was a meeting with the City, the County, and the residents on this issue. At one end of the project, the sewer pipe will have to be extremely deep. The costs are due to the extreme depth that they have to go.

Howard Cotten, resident, wondered why the cost would increase so much due to the depth at the one end of the project. He said the residents who are participating at this time will pay much more than people who hook onto the system at a later date. He wondered if these people could pay their fair share? It is not fair for the eight residents to pave the way for other people who will not pay their fair share.



John DeVore said as long as the RSID is active for the term of the debt, if anyone wants to hook up and extend the service further, they would have to reimburse the RSID for that portion of the existing project that they derived benefit from. This would reduce the assessments of the properties within the district. He said what is not addressed is if a person would sell their property two or three years into the RSID, the benefit would be to whoever the person was who owned the property at that time. The term of the RSID is 15 years.

Fern Hart said the residents would still a benefit on their tax bill later if other people hook onto the system.

Bob Harlow said the City controls the sewer. According Bruce Bender, City Engineer, this would be too much of an accounting problem for them and they would deny it. The City has the jurisdiction over the sewer. This area will soon be annexed.

Fern Hart said the RSID is controlled by the County.

John DeVore said it is true that the City won't do utility agreements because they do not want to have to track them. However, as long as the bonds are outstanding, the County has control of the RSID. If anyone attaches to the system after the creation of the RSID, they must deal with the County. Even though the infrastructure as well as the maintenance and operation is turned over to the ownership of the City, and as long as there are existing bonds that are outstanding, then the County retains control of the RSID. Once the debt is retired, the County has no jurisdiction. The RSID is for a period of 15 years. He said he would clarify this with Bruce Bender.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to create RSID 8454 for the construction of sanitary sewer main extension in Block 1 of Maclay Addition in the amount of \$52,000, with the clear stated intent that if anyone else attaches to the system that rebates will go to the folks presently involved in the RSID as long as the bonds are outstanding. The motion carried on a vote of 3-0.

#### HEARING: REQUEST TO ABANDON CAYUSE COURT -- CANYON VILLAGE NO. 2

Fern Hart explained that the Clerk & Recorder's Office received a petition to vacate "CAYUSE COURT, located in the Southwest one-quarter of Section 21, T12N, R19W, in Canyon Village No. 2. From the beginning of Cayuse Court at the Easterly right-of-way of Singletree Lane to the end of Cayuse Court at the cul-de-sac at Lots 20 and 21 of Canyon Village No. 2, and further described in the road Book of the Missoula County Surveyor as map reference No. 94."

The reasons for this request are as follows: "Cayuse Court has never been used or constructed and its platted location is not desirable since it provides poor access to Lots 20 and 21. An access easement has been granted across Lot 18 for access to Lot 20 and to the easterly portion of Lot 19 as shown in Book 93 micro Page 852 and is located in the position of the existing driveway. An access easement has been located and granted across the southerly portion of Lot 22 for access to the building site on Lot 21, and the use of this access easement eliminates the need for another crossing of Miller Creek in a very poor location and access from the end of Cayuse Court would require a very poor driveway. Since the existing driveway across Lot 18 serves Lot 20, the only parcel that would be served by Cayuse Court would be Lot 21, and as stated earlier, the access easement across Lot 22 to Lot 21 is much better and causes less impact. This is also being done in preparation for a relocation of common boundary which will move the boundary lines of Lot 18, 20, 21 and 22 to the centerline of Miller Creek which will make Miller Creek the "back line" of all these parcels and elimination of Cayuse Court will certainly lower the possibility of adverse impacts on Miller Creek and greatly increase the desirability of these lots for future homeowners."

The following adjacent landowners were notified of the hearing: Stanley and Mary Ann Bertlin and Missoula Rural Fire District.

The hearing was opened to public comment.

Greg Martinsen, Martinsen Surveys, explained why the applicants wanted to abandon Cayuse Court. He said if the access easement were moved, which follows the base of the hill, they would not have to disturb Miller Creek or the hillside. The proposed road does not exist at this time. They will build the road when they begin construction on the homes. He said the road has never been built or used. The paving on Miller Creek Road ends before the subdivision. The roads in the surrounding area are gravel. He said they want the driveways to remain private; they will not be maintained by the County.

A discussion ensued relative to recently considered paving regulations. These regulations must be approved by the Board of Housing at their next meeting in September. It will be a while before these regulations go into affect.

Horace Brown said the right-of-way on Singletree Lane is County, but the County does not maintain the road. The developers will need an approach permit to access Singletree Lane.

Michael Sehestedt, Deputy County Attorney, said the decision on this matter should be continued for one week to allow a member of the Board and the Surveyor to inspect the site and report back to the Board with their recommendations as to the validity of granting the vacation.

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

Fern Hart said a member of the Board of County Commissioners and the County Surveyor will review the site and give their recommendations to the Board at the Public Meeting on August 3, 1994.



HEARING - CERTIFICATE OF SURVEY REVIEW: BOUNDARY RELOCATION -- CANYON VILLAGE NO. 2 -- TRACTS 18, 20, 21 AND 22 -- BERTLIN

Kathy Smith, Paralegal in the Attorney's Office, explained that Stanley and Mary Ann Bertlin submitted a request to relocate boundaries between Tracts 18, 20, 21 and 22 in the Canyon Village No. 2 subdivision. This request is submitted in conjunction with the request to vacate Cayuse Court which has apparently never been improved or used. Cayuse Court is currently used as a boundary between all four parcels. Mr. and Mrs. Bertlin wish to relocate the boundaries to better fit the land. This would include using Miller Creek as the middle boundary between all four lots.

The history of the parcel is as follows: Canyon Village No. 2 was filed in February, 1965. Tracts 18 and 20 were purchased by the Bertlins in 1977 and Tracts 21 and 22 were purchased in 1983.

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

The hearing was opened to public comment.

Greg Martinsen, Martinsen Surveys, explained that this request was in conjunction with the request to vacate "Cayuse Court, located in the Southwest one-quarter of Section 21, T12N, R19W, in Canyon Village No. 2. The Bertlins wish to relocate common boundaries so that the four lots will front onto the creek which is a natural boundary line.

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

Ann Mary Dussault moved and Barbara Evans seconded the motion to postpone action on the request by Stanley and Mary Ann Bertlin to relocate boundaries between Tracts 18, 20, 21 and 22 in the Canyon Village No. 2 subdivision until the Public Meeting on August 3, 1994, to allow sufficient time for the request to abandon Cayuse Court to be inspected by a member of the Board of County Commissioners and the County Surveyor. The motion carried on a vote of 3-0.

HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- KLEPPER -- TRANSFERS FOR THE PROPERTY LOCATED IN E1/2NW1/4 OF SECTION 26, T15N, R20W

Kathy Smith, Paralegal in the Attorney's Office, explained that Donald F. and Vivian L. Klepper submitted a request to revoke an agricultural exemption and two family transfers for the property located in E1/2NW1/4 of Section 26, T15N, R20W. The parcel is a 95.87 acre parcel and Mr. and Mrs. Klepper propose to give 22.5 acres to their son, Donald K. Klepper, which is south of Grooms Road, and approximately 40 acres to their daughter, Diane Brady, which is north of Grooms Road. Donald K. and Janet A. Klepper plan to build on the south parcel. On January 12, 1994, the Commissioners approved an agricultural exemption for the 22.5 acre proposed parcel. The Kleppers now wish to revoke the agricultural exemption and change it to a family transfer so that Donald K. Klepper can build at a future date. Donald K. Klepper currently keeps horses on this portion of the property and intends to continue to do so. The remaining 33.5 acres south of Highway 93 is currently being purchased by Donald K. and Janet A. Klepper through contract for deed.

The history of the parcel is as follows: Donald F. and Vivian L. Klepper bought the parcel in its original condition in 1946. They used the occasional sale exemption in 1985 and transferred 1.13 acres of the parcel to their son and daughter-in-law, Donald K. and Janet A. Klepper. They did request and receive approval for the agricultural exemption as mentioned above. However, a Certificate of Survey was never filed.

According to the records kept by the Missoula County Surveyor's Office, the applicant has previously used the occasional sale exemption to the Subdivision and Platting Act as described.

The hearing was opened to public comment.

Zane Sullivan, representing the Klepper family, stated that they originally approached the Commissioners with a request for an agricultural exemption which was approved. However, the family has rearranged its property interests to handle all of the Klepper ranch property. The southern portion has been transferred by contract of deed to Donald K. Klepper. The north portion is the only remaining Klepper ownership which is split by Grooms Road. The southern portion of this property is being applied for as a family transfer to their son, Donald K. Klepper; the northern portion is being applied for as a family transfer to their daughter, Diane Brady.

Fern Hart asked about the 1.13 acre parcel.

Zane Sullivan explained that this parcel is located in the southeast portion of the northern parcel which fronts Highway 93.

Fern Hart asked if there were any livable dwellings located on the property?

Zane Sullivan said there were no livable structures on this parcel.

Donald K. Klepper said at one time, there was a business located on the property. The building is now being used for storage.

Barbara Evans asked if there were any other children that would want to be included?

Zane Sullivan said the Kleppers have run out of property. He said when they first came before the Commissioners, he was not aware that there were any other proposed transfers contemplated at this time. Shortly after the approval of

the family transfer to Donald K. Klepper, the potential of a family transfer to Diane Brady arose and substantially changed the situation. There are other family members, but he was not aware of any other proposed family transfer exemptions.

Donald F. Klepper indicated that there were none anticipated.

Kathy Smith said the money from the contract for deed for the southern property is going into a trust for the other children.

Zane Sullivan said it was the Kleppers' intention that the proceeds from the deed of contract would be paid to the parents. At some point in time, however, the children will benefit from further probate or proceedings. This asset will likely to be transferred to other family members.

Barbara Evans asked if Mr. Sullivan explained to his clients that the Commissioners must determine whether this request is an attempt to evade the Montana Subdivision and Platting Act?

Zane Sullivan said his clients were informed of this.

Ann Mary Dussault said the Kleppers should be aware that any further division of this property must go through the subdivision review process.

Fern Hart asked if there would be residences on all three parcels?

Zane Sullivan said Donald K. Klepper intends to construct a residence on the property south of Grooms Road. The property south of Highway 93 is presently bare ground.

Donald K. Klepper said he intends to continue to raise hay on the field.

Mr. Brady said there is a structure on the property north of Grooms Road. This structure is actually the old Klepper home which was converted into a garage. This old house may be converted back into a livable structure.

Fern Hart asked which parcel had the agricultural exemption placed upon it?

Donald K. Klepper said this is the parcel where he wishes to place his home. His horses are on the property currently. He said the southern parcel adjacent to Highway 93 will not have a structure placed on it; it will remain as a hay field. The family members wish to maintain their land as natural as they can.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Donald F. and Vivian L. Klepper to revoke an agricultural exemption and for two family transfers for the property located in E1/2NW1/4 of Section 26, T15N, R20W, to their son (22.5 acres), Donald K. Klepper, which is south of Grooms Road, and approximately 40 acres to their daughter, Diane Brady, which is north of Grooms Road. This finding is based on the fact that there appeared to be no attempt to evade the Subdivision and Platting Act and that the deeds be transferred to the family members. 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 2:25 p.m.

HEARING: SEELEY LAKE REFUSE DISTRICT -- PROPOSED CHANGE IN FEES -- SEELEY LAKE COMMUNITY CENTER - 7:00 P.M.

Fern Hart called the meeting to order at 7:10 p.m. Also present were Commissioners Ann Mary Dussault and Barbara Evans. She explained that the hearing concerned the proposed change in fees for the Seeley Lake Refuse District. Immediately following this hearing, the Commissioners would hold a Community Budget Meeting for the Seeley Lake area. Horace Brown, County Surveyor; Vickie Zeier, Clerk & Recorder/Treasurer; David Pauli, Library Director; Jane Ellis, Chief Financial Officer; John DeVore, Administrative Officer; and Robert Brown, Director of the Historical Museum, were in attendance for the Community Budget Meeting.

She explained that the formal budget hearings would begin after the Public Meeting on Wednesday, August 3, 1994 at 1:30 p.m. in Room 201 of the Courthouse Annex and would continue at 7:00 p.m. in the Library Meeting Room; Thursday, August 4 at 10:00 a.m. in Room 201 of the Courthouse Annex; and Friday, August 5 at 10:00 a.m. in the Courthouse Annex. The budget hearing will continue on Monday, August 8 at 10:00 a.m. in Room 201 of the Courthouse Annex. The budget will be adopted on Monday, August 8th at 10:00 a.m.

Byrl Thompson, Chairman of the Seeley Lake Refuse Board, gave a detailed history of the district. In 1984, the district was started with a yearly cost to each residence of \$28.00. The costs have continually gone up due to new EPA rules. The original dump site had to be shut down because it did not meet the new standards. The yearly cost went to \$41 to mitigate the expected closure costs and other bills incurred trying to meet Federal standards. In 1992, the yearly cost increased to \$126 per unit based on an individual household. This rate increase paid for the construction of a dump site that would meet the standards and that would transfer the garbage to Missoula. If the district did not close the dump site by October 9, 1993, they would have faced the liability for 30 years. At this time, the Board felt that the site chosen for the temporary transfer site was the best option. The \$126 a year per household enabled the district to construct a site, most of the bills were satisfied, the closure is almost complete, and the district is in compliance with the EPA standards.

The Board proposed dropping the residential cost per unit from \$126 a year to \$90. There was only one major

change. A committee was formed to discuss how the business unit could be charged. The business people took the district to court and were concerned about the estimated costs. The committee came up with several recommendations as follows:

1. Establish two rate categories - one for residential consumers and one for commercial consumers.
2. That residential rates be continued as a flat rate per household unit with no differentiation between summer and year-round residents. That the residential flat rate be changed from the current rate of \$126 per year for each household unit to \$90 per year.
3. That commercial rates be from a one half unit base minimum to one established on a per yard basis, using \$12 per yard as the rate base for FY'95 for every commercial business in the District.

A figure for the actual production of waste for businesses is now available. The big volume producers can be tracked. Small businesses will go down, while the large users will probably go up.

He said the rates may continue to go down; however, they still have debts that must be met. The rates will not go down all at once.

Fern Hart opened the public hearing.

Erv Gysler, past chairman of the District, wondered about the fairness of the rate structure for commercial operators. He wondered if the rate structure was legal and asked that they seek the legal opinion of the Attorney General. He asked how much BFI charges to per yard to haul from Seeley Lake to Missoula?

Byrl Thompson said it costs \$300/round trip for two 40-46 yard boxes. The rental cost is \$200 for each box per month. For the first year, the district will only be charged for three boxes. This will allow time to estimate the amount of garbage per year. The cost per yard is typically \$3.25 per yard. He said the reason they are not going to have recycle bins is due to the cost of recycling. It will cost more to recycle the cardboard and paper than what the paper is actually worth. They are however, taking on steel and aluminum. The \$90 per unit accounts for approximately seven yards per year.

Erv Gysler said charging by the truckload is a lousy way of charging their customers.

Byrl Thompson said it is a bookkeeping headache otherwise.

Bruce Wold, resident, said the proposed rates are more in line with the rates in the surrounding area. He said it is impossible to figure out the cost per residential unit. However, it is possible to know the volume for the businesses.

Sue Cushman, resident of Swan Valley, asked what the rate would be to dump a truckload?

Byrl Thompson said they would charge the best guess they could make on the load.

There being no other testimony, the hearing was closed to public comment.

Fern Hart said the Commissioners received written comment and phone calls which would be part of the official record.

Ann Mary Dussault explained that the protest period for the proposed rates will be open until Friday, July 29, 1994. Written protest will be taken until that time.

The Commissioners continued with their Community Budget Meeting. The Commissioners will make their decision on the proposed rate changes for the Seeley Lake Refuse District by the middle of August.

#### THURSDAY, JULY 28, 1994

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

#### DAILY ADMINISTRATIVE MEETING

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

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Lawrence J. Silverman in the amount of \$20,000.00, for the property located at 420 Lakeside Drive in Lolo, dated July 27, 1995.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

Resolution No. 94-075 -- The Board of County Commissioners signed Resolution No. 94-075, a Joint City-County Resolution amending the Missoula City-County Air Pollution Control Program Chapter XVI and Rule 1401(7), as per the attachment to the Resolution, to be effective upon approval by the State Board of Health and Environmental Sciences.

Resolution No. 94-076 -- The Board of County Commissioners signed Resolution No. 94-076, a Joint City-County resolution revising the Missoula City-County Air Pollution Control Program Rules 401, 1401, 1423, 1424, and 1428, as per the attachment to the Resolution, to be effective upon approval by the State Board of Health and Environmental Sciences.

Resolution No. 94-077 -- The Board of County Commissioners signed Resolution No. 94-077, resolving that a wildland fire emergency is hereby proclaimed for all of Missoula County pursuant to the provisions of Title 10, Chapter 3, MCA, and that all procedures and authorization for Incident Commanders and law enforcement agencies to use extraordinary measures of the County Emergency Operations Plan are in effect.

Professional Services Contract -- The Board of County Commissioners signed a Professional Service Contract with Patricia Swan Smith, an independent contractor, for the purpose of performing all secretarial duties required for the Seeley Lake Refuse Disposal District, as per the terms set forth, for the period commencing June 1, 1994, through June 30, 1995, for compensation in the amount of \$10.50 per hour plus reimbursement for postage, supplies purchased, etc.

Employment Agreement -- The Board of County Commissioners signed an Employment Agreement between Missoula County and John Pemberton, whereby the County will employ John Pemberton as the Director of Personnel and Labor Relations of Missoula County to perform the functions and duties as agreed to between the Board and the Employee, as per the attachment to the Agreement, which represents examples of the duties and responsibilities of the Employee, but they are not meant to be all-inclusive or restrictive and may be amended, modified, or expanded upon, commencing August 1, 1994, and be subject to review on August 1, 1997, and every three years thereafter unless otherwise terminated under other provisions of the Agreement, at a salary agreed upon between the parties.

Other items included:

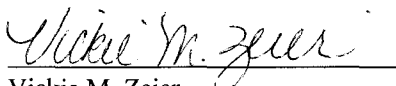
The Commissioners voted to adopt the Performance Appraisal of Appointed Department Heads Policy, as submitted by John Pemberton, Personnel Director, with the guidelines to be developed.

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

**FRIDAY, JULY 29, 1994**

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

Site Inspection -- In the forenoon, Commissioner Evans accompanied County Surveyor Horace Brown on a site inspection of Cayuse Court (Canyon Village No. 2) for the request to abandon Cayuse Court, as the street is not needed for access to the subdivision.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, AUGUST 1, 1994**

The Board of County Commissioners met in regular session; all three members were present in the morning. Commissioner Evans left late in the forenoon for Helena to attend a Highway Meeting there in the afternoon.

Resolution No. 94-078 -- The Board of County Commissioners signed Resolution No. 94-078, a resolution revoking an agricultural exemption for Donald F. and Vivian L. Klepper for a 22.5 acre parcel in the E1/2NW1/4 of Section 26, T15N, R20W, crediting the Kleppers with a family transfer exemption to apportion the subject property and surrounding property as he proposes.

Performance Appraisal of Appointed Department Heads Policy -- The Board of County Commissioners signed the Performance Appraisal of Appointed Department Heads Policy for the purpose of identifying job functions consistent with the position description and establish acceptable goals for performance, and to establish a performance appraisal process which will maintain and encourage improved performance, with the Department Heads to be evaluated at least once each year on the employee's anniversary date. The Policy was returned to John Pemberton, Personnel Director, for further handling.

**TUESDAY, AUGUST 2, 1994**

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated August 1, 1994, pages 4-35, with a grand total of \$66,336.09. The Audit List was returned to the Accounting Department.

**DAILY ADMINISTRATIVE MEETING**

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

Amendment to Contract -- The Board of County Commissioners signed an Amendment to the Professional Services Contract for the period from August 1, 1993, to June 30, 1994, with the Missoula County Sheriff's Department for participation in the DUI Enforcement Team, amending item 4. - Compensation for Services, increasing the total compensation, as per the items set forth in the Amendment.

Block Grant Report -- Chair Hart signed the Maternal and Child Health Block Grant Report for the period from 4/1/94 to 6/30/94, certifying that the report represents the services provided and expenditures made. The Report was forwarded to DHES in Helena.

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

**WEDNESDAY, AUGUST 3, 1994**

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

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Aleida Noble as principal for warrant #31126, dated June 24, 1994, issued on the School District #1 Payroll fund in the amount of \$291.21 now unable to be found.

**DAILY ADMINISTRATIVE MEETING**

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Service Contract between Missoula County and Richard Chapman, an independent contractor, for the purpose of developing a 5-7 minutes slide show presentation on Partnership Health Center, including approximately 70 slides and accompanying narrative, as per the terms set forth, for the period commencing July 20, 1994, through September 15, 1994, for compensation in the amount of \$1,250.00.

Agreement Amendment -- Chair Hart signed Amendment No. 2 to Cooperative Agreement number 16-93-007 between Missoula County and the Lolo National Forest signed by the County on 4-15-93 and the Forest Service on 4-16-93, amending the Agreement to include reimbursement for additional law enforcement services necessary due to suppression action required on wildfires occurring on National Forest Lands or on other lands for which the Lolo National Forest has protection responsibility, as per the terms and rate schedule set forth. The Amendment was returned to Don Morman in the Sheriff's Department for further signatures and handling.

Memorandum of Understanding -- The Board of County Commissioners signed a Memorandum of Understanding between Missoula County and the Retired Senior Volunteer Program regarding the coordination of volunteers for Missoula County, as per the items set forth.

Notice of Hearing -- Chair Hart signed a Notice of Hearing on the issue of whether or not the question of imposing a local motor fuel tax not to exceed two cents per gallon on gasoline sold to the ultimate consumer for use in motor vehicles used on public highways should be submitted to the electors at the election to be held on November 8, 1994, with the proceeds of the tax being used exclusively to help pay the local share of the cost of improving North Reserve Street, setting the hearing for August 24, 1994, at 7:00 p.m.

Contract -- Chair Hart signed a Contract between Missoula County and Wayne Hawthorne of LaserPro of Montana, whereby Wayne Hawthorne agrees to clean laser printers owned by the County as a public service in lieu of fines owed to the County in the amount of \$465.00, beginning on August 2, 1994. The Contract was returned to Jim Dolezal in Data Processing for further handling.

Private Road Easement -- The Board of County Commissioners signed a Private Road Easement granting to John E. and Beverly Reagan of Clinton a 10-foot wide private road easement spanning the Clinton Community Hall Property, COS 51, and providing private access to that parcel of land recorded in Micro. Bk. 4, Pg. 157, with the easement being perpetual and shall run with the land.

Conveyance of Easement -- The Board of County Commissioners signed a Conveyance of Easement for Right of Way, granting to Missoula Electric Cooperative, Inc., in consideration of \$1.00, the right to enter upon a strip of land 20 feet wide described as a portion of COS 51 in the N 1/2, NE 1/4, Section 27, T. 12 N., R. 17 W., PMM, for construction/operation/maintenance of a utility system, including the right to trim trees along said strip.

Other items included:

The Commissioners approved paying the County's share (30%) towards the cost of dust abatement for the Upper Carlton Creek Road.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:35 p.m. by Chair Fern Hart. Also present were Commissioners Barbara Evans and Ann Mary Dussault.

#### BID AWARD: REPLACEMENT OF WHITETAIL BRIDGE -- SEELEY LAKE -- SURVEYOR

Fern Hart stated that the bid award for the replacement of Whitetail Bridge in Seeley Lake was postponed as the bids came in higher than expected or budgeted.

#### DECISION ON: PROPOSAL TO CALL FOR ELECTION ON ISSUANCE OF GENERAL OBLIGATION BONDS TO ACQUIRE OPEN SPACE

Fern Hart explained that at the Public Meeting on July 27, 1994, the Commissioners postponed the decision until today's meeting relative to the proposal to call for the election on the issuance of general obligation bonds to acquire open space. Public comment was taken until 5:00 p.m. on Friday, July 29th. Several phone calls and letters, both in support and in opposition, were received.

Ann Mary Dussault moved and Barbara Evans seconded the motion to adopt the Resolution calling for an election on the question of whether or not Missoula County should issue its general obligation bonds in an amount not to exceed \$8,000,000 for the purpose of financing the cost of acquiring open space, conservation easements, park land, wildlife corridors, sensitive wildlife habitat and development rights throughout Missoula County and to pay the cost associated with the issuance of the bonds. The motion carried on a vote of 3-0.

#### DECISION ON: REQUEST TO ABANDON CAYUSE COURT - CANYON VILLAGE NO. 2

Fern Hart explained that at last week's Public Meeting, the Commissioners postponed the decision on whether to approve the request to abandon Cayuse Court in Canyon Village No. 2 in order to allow a member of the Board of County Commissioners and the County Surveyor to review the site.

Barbara Evans stated that she and Horace Brown, County Surveyor, went to the location and looked at the land. She stated she saw no problem with vacating the proposed road. On paper, it looked like a fine layout, but in reality, it wasn't. The new proposal, which would use the creek as the boundary for the lots, would be better for the creek and for the access to the lots in the subdivision.

Horace Brown agreed with Barbara's statement.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the vacation request on Cayuse Court located in the Southwest one-quarter of Section 21, T12N, R19W, in Canyon Village No. 2. From the beginning of Cayuse Court at the Easterly right-of-way of Singletree Lane to the end of Cayuse Court at the cul-de-sac at Lots 20 and 21 of Canyon Village No. 2, and further described in the road Book of the Missoula County Surveyor as map reference No. 94. The motion carried on a vote of 3-0.

#### DECISION ON: BOUNDARY RELOCATION - BERTLIN

Fern Hart explained that the decision on the request for a boundary relocation for the Bertlins was postponed from the Public Meeting on July 27, 1994. The boundary relocation is the same property in question as the previous request to abandon Cayuse Court. If approved, the boundary lines for the four parcels will be relocated which would change the access roads and would protect the creek.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Stanley and Mary Ann Bertlin to relocate boundaries between Tracts 18, 20, 21 and 22 in the Canyon Village No. 2 subdivision, based on the finding that the reconfiguration is a better way to separate the land and will protect Miller Creek. The motion carried on a vote of 3-0.

HEARING: PETITION TO CREATE MISSOULA COUNTY SEWER & WATER DISTRICT -- ORCHARD HOMES/TARGET RANGE AREAS

Michael Sehestedt, Deputy County Attorney, explained that the residents in the Orchard Homes/Target Range area have petitioned for a County water and sewer district. The district is north of Reserve Street, in the Target Range/Orchard Homes area. The petition has been verified as having the sufficient number of signatures. Notice of hearing was properly published and the matter is now before the Board of County Commissioners to hear both protests and support for the creation of the district. Additions or deletions to the proposed district boundaries will also be entertained. He recommended that the hearing be opened to public testimony. The Board should not act at this hearing, but hear testimony. Once the hearing is concluded, it must be submitted to the voters, no more than 90 or less than 75 days from the date of decision. It will be 90 days from the November election on August 10th.

Fern Hart stated that the Clerk & Records Office noted that the petition contained 953 valid signatures; there are 6,781 registered voters in the proposed district. 10% of the registered voters is 678. The number of valid signatures does meet the 10% requirement. The petition is successful. The hearing was opened to public comment.

Paul Laisy, resident of the Target Range area, said this has been a grass roots effort by the property owners in the Orchard Homes area. The general feeling is this area is a community unto itself. He said they wish to care for themselves and provide the services they may need. A sewer and water district can answer a lot of questions they have about protecting their aquifer and their drinking water. There is more than one way to do this. This group of homeowners did the same petition in 1988, which was defeated because the boundaries were changed by the Board of County Commissioners. This made it very difficult for the homeowners to get information out because the district was enlarged. The district failed in the County, but passed in the City.

Fern Hart asked if the petition is approved in the November election, what is the process to put this on the tax rolls? She asked what responsibility did the district have to the folks within the district?

Michael Sehestedt explained that if the majority of the voters approve the district, it will be created. Sewer and water districts are special purpose local governments and has the legal authority to provide sewer and/or water services within its territorial boundaries. The initial board will be selected by the Board of County Commissioners until the board can be elected at a regular election. If the board has on-going operational expenses, they must make a determination of how much money they will require in a fiscal year and certify this amount before the Board of County Commissioners. Notice is given by posting in five places in the district along with a mailing to the residents within the district of the amount requested and time and place of the hearing. The Board of County Commissioners will conduct the hearing and will either approve or not approve the levy requested by the district. The result of approval would be an assessment either on an area basis or on a taxable value basis against all of the property within the district. If a district wants to build capital facilities, it has the capacity to issue bonds. This would have to go to a vote before the electors following the normal bond election process. If the district is approved by the voters, the district will be included on the tax roles as an empty "vessel" as of the election. It will be created prior to the first of the year so the Assessor's Office will recognize it for taxing purposes for tax year 1995 or fiscal year 1996.

Barbara Evans asked, if the district is approved, how will the people get their names on the ballot to run for a position on the board?

Michael Sehestedt said board members may have to be appointed by the Commissioners until the subsequent election. There will have to be a special election.

Charlene Miller, President of the Target Range Homeowners' Association, urged the Commissioners to retain the boundaries of the district as presented. She stated that this is the neighborhoods first step in planning for their community which also displays their concern for the protection of the aquifer.

James Regan, resident of the Target Range area, asked about having to sign an annexation waiver from the City if a resident obtained a sewage permit.

Jim Carlson, Director of Environmental Health, said these were regulations passed by the City-County Health Board which required anyone who obtained a sewage permit for a new or expanded use would have to waive their right to protest City or County RSIDs for sewerage, but not for annexation. The waiver could be used by any legitimate public agency that would install sewer mains in the area.

James Regan said the newspaper commented that a resident couldn't protest City annexation if this district was created.

Arlene Harris, resident of South 7th Avenue, strongly encouraged the Commissioners to retain the eastern boundaries as presented. She said most of the residents are retired senior citizens who cannot keep up with increasing taxes.

Jack Fisher, resident of Lena Lane, asked about the formation of the district; is there an agenda immediately following the creation of the district that has not been communicated to the public? There are rumors that one of the big fields will be turned into a lagoon for sewage.

Paul Laisy stated he knew nothing of a proposal for lagoons. It is the consensus of the people who have worked hard on the district to have an entity that can study the area to see what is needed to protect the water. There are numerous ways to do accomplish this. Lagoons or land application could be a possibility. He said it is to their advantage that the district will be managed by people who live in the district. Board members must live in the district. When these decisions are made, they will affect those who are making the decisions.



Fern Hart said whatever system was agreed to, it would have to meet both state and local Health Department requirements.

Jim Carlson, Director of Environmental Health, said for the most part, the State of Montana regulates large systems.

Fern Hart asked if it were the agenda of the district to avoid annexation, would forming a district accomplish this?

Michael Sehestedt, Deputy County Attorney, said forming a district does not impact annexation. However, what may happen if there is an alternative sewer system developed, the one incentive to annex into Missoula City to connect to sewer service, would exist. Property within a sewer and water district can be annexed into a city. As a matter of law, forming a district is not something magic that will stop annexation. The key is not the creation of the district, but the establishment of a sewer system.

Joe Aldegare, Director of Public Works for the City of Missoula, said the petition has been validated for the creation of the district. The purpose of this hearing is to decide the boundaries of the district itself. In MCA Section 13-2208, which outlines the criteria by which land shall be included or not included within a district, states, "nor shall any lands which will not be benefited by such district be included in the proposed district." He said there are significant properties included in the proposed district which will not benefit and should not be included. He indicated on a map the boundaries of the proposed district as well as the boundaries of the City and what the City proposed to annex in the near future. There is somewhat of a contradiction in the boundary description as published. Larchmont Golf Course was included in the boundaries. Larchmont and Big Sky High School are currently served by City sewer. In the area east of Reserve Street are properties currently connected to the City sewer system; some have been annexed and some are under contract. In 1984, the City and County went through a process to adopt a 201 Sewer Facility Plan. In this plan, there was also a service area designated. This plan was basically guidance on how to plan for and provide sewer service to this particular area. Following the adoption of the 201 Plan, the City embarked on an expensive mission. The projected flows from the 201 Service Area was 9 million gallons per day. They started to invest in the waste water plant in an effort to prepare for the annexation of this area. The City spent in excess of \$12 million to raise the capacity of the plant from 6 million gallons a day to 9 million gallons a day and to update the system to be in compliance with discharge requirements. Currently, the City is processing approximately 6 1/2 million gallons per day; there is 2 1/2 million gallon capacity per day remaining. The City has extended sewer to many areas formerly in the County. Up until two years ago, Reserve Street had only one sewer main. Prior to the Reserve Street construction, the City spent approximately \$1 million to upgrade the system. They put in a new lift station and a new force main. They also installed another force main which would have the capacity to serve all the Target Range/Orchard Homes area. He said at the time it was relatively inexpensive to do it. He said they saved literally hundreds of thousands of dollars by doing this in advance of the construction. The facilities are in place and the plant has the capacity to serve the area.

Also, the City has a master plan on how to provide sewer to all of the properties. The community will continue to grow. The City has budgeted over \$100,000 to look at the 201 Service Area to update whether the boundaries are correct. He said they are looking at the Wye and the Target Range/Orchard Homes area. When a 201 area is examined, the logical places a sewer should go are considered. There are a lot of unanswered questions which need to be considered with this 201 update as well. There are much more stringent discharge requirements for the Clark Fork River. The waste water facility must be examined to see whether these requirements can be met. The City will also review different types of treatment facilities such as land application systems. Whether or not this proposed sewer is formed, the residents will have to be active partners in this process. The vast majority of the properties in the district will be unsewered in the County. The City is actively trying to annex properties west of Reserve Street by December of this year.

He said that the properties in the 201 Service Area would not receive benefit from the district because it will be served by City sewer. He suggested that the Commissioners delete these properties from the district. Also, he suggested that the City, the Commissioners, the residents and the Health Department meet to discuss the logical boundaries of the district.

Barbara Evans asked what areas in the proposed district were included in the City's boundaries?

Joe Aldegare showed the Commissioners the boundaries of both the City and the proposed district. The 201 Service Area Plan will provide for the areas' capacity needs. These properties would not receive benefit from the proposed district. These residents will actually be taxed twice--by the City and the district.

Barbara Evans asked that a map be provided which would show what the proposed district boundaries were in relation to the City's boundaries and what were the contested boundaries.

Ann Mary Dussault clarified that a portion of land east of Reserve Street is still in the County, but is intended to be annexed into the City. This land is wholly surrounded by the City.

Paul Laisy said the petition states that lands not within the City limits were intended to be within the boundaries of the district. Since the group laid out the district boundaries, the City's boundaries have changed.

Ann Mary Dussault asked if the petition describes the boundary to the east as the boundary of the City, which boundary did the group intend?

Paul Laisy indicated on the map which boundary the group intended.

Ann Mary Dussault clarified that the group intended that any islands created by the City boundaries would not be included in the district boundaries.

Paul Laisy said the properties would not be served by the district because it would not be of benefit to them. After the group had decided on the boundaries, Larchmont was annexed into the City. This is why it was initially included in the legal description.

Fern Hart asked when this area was to be annexed? Was it scheduled for December of 1994?

Joe Aldegare said there are on-going discussions with the neighborhoods; it is not a "done deal" yet. It is not final until the City Council takes action.

Fern Hart asked when these properties would receive services after annexation?

Joe Aldegare said the day of annexation the residents will receive City services. However, it will take time for sewer to be placed in the various areas. The City will work with the residents to put together a financial package for sewerage. He said one of the goals of the City is to reach a population of 50,000 people within the City. This would entitle the City to CDBG funds which equates to roughly \$800,000 a year. A portion of these monies could be put back into the sewer system. As a result, the residents would receive benefit from this.

Fern Hart asked if the City will have the capacity to sewer all of the Target Range/Orchard Homes area?

Joe Aldegare said the sewer lines that were just installed down Reserve Street have the capacity, but the waste water plant will have to be upgraded. The main itself is large enough. The 201 Study will determine what is needed. The Study will run concurrently with other studies such as growth management and the Transportation Plan Update. Growth will occur wherever sewer is installed.

Bruce Bender, City Engineer, said it is critical for the Commissioners to think from a benefit and an equity issue in regards to what gets placed in the district. If the main agenda for the new district is going to be a means to sewer this area, it would seem that it would be redundant to include properties that will receive benefit from the City. He suggested the boundary be moved to outside the 201 Planning Area. The community has spent thousands of dollars to sewer these areas. The plan was designed to sewer this area up to the year 2010. The City actually has expanded this capacity because they have addressed the infiltration issues.

Betty Toczek, resident of Missoula, presented two letters to the Commissioners that expressed concern about the proposed district..

Sherry Munther, 1295 Lena Lane, president of the River Park Homeowners' Association and representing eight families on Lena Lane, said they are opposed to sewage treatment facilities that would discharge into the Bitterroot River. This river cannot handle secondary treated sewage from several hundred households without seriously degrading river conditions further. She said they were also opposed to locating treatment facilities in suburban neighborhoods. She expressed the groups' concern that this issue has been promoted at such a low profile that until the legal notice was published, the group had not heard anything about the proposal. After checking with several neighbors, only a couple of people had heard about the proposal. There are people in this area who may not support the initiative for the district. She urged the Commissioners to consider a more comprehensive public involvement process before making a decision on this issue. She said the neighbors are open to learning more about the proposal and invited the group to talk to their homeowners' association. She said they want to know what benefit they will receive if they become part of the district. She read a letter from her husband, Greg Munther, who echoed her concerns. She read another letter from Alaca Rappe-Daniels, resident of 1810 Riverside Drive, who expressed concern about the proposal for the sewer and water district and the low profile with which it was presented to the people.

Kathy O'Brien, resident of the area and Grants Administrator for the City of Missoula, voiced concern about the process. She stated she had not heard or seen a petition until today. There are a lot of property owners in the area that do not support the creation of a sewer and water district. The information that people have received has not been in writing. There have been rumors that if this district is created, the neighborhood will not be annexed. When she asked various residents about the petition, the petition was referred to as the "annexation thing". There is a group that is opposed to annexation. She expressed her fear that these people are equating annexation with the petition to create a sewer and water district. The information on the district and annexation has to be very clear and in writing. She said several people have stated that they will not be able to afford the taxes if they are annexed. She spoke with Jim Fairbanks of the Assessor's Office, who indicated that there is usually about a 17% increase in the taxes upon being annexed. She wondered if it would be more cost-efficient for the majority of this area to be annexed and served by City sewer than creating a whole new district with a new sewer facility? She wondered what type of sewer facility would be considered? She stated that no permits would be allowed at this point to discharge into the Bitterroot River or the Clark Fork River. She expressed concern about the wording of the petition.

She said she heard rumors relative to funding sources for any sewer project in the district. She wondered what Federal grants they could be talking about. There are certain criteria and requirements that need to be met in order to obtain these grants. She asked what the percentage needed was to create the district, is it a percentage of the voters or of the population?

Michael Sehestedt said a simple majority of those voting on the question. There must be a turnout of 40% of the voters.

Alice Austin, resident of the Target Range area, stated that she and her husband oppose any plan to attempt to form a new sewer and water district in the Orchard Homes/Target Range area. She supported the comments against the proposal. Setting up a new district will not be beneficial for the aquifer. Missoula already has a plan to sewer this area. A great deal of money has already been spent for this effort. There is no sense spending more money for

another sewer and water district. She wondered how many dues paying members there were in the Orchard Homes Homeowners' Association?

Jim Carlson said the Health Board applauded any sincere efforts to try to sewer any portions of urban Missoula. Ground water issues and effects on ground water are of concern. He said it is the policy of the City/County Board of Health to endeavor to sewer areas of high density and of significant impact. They have no preference how an area is sewered, either as a result of City sewer or some other system. However, the board had some concerns relative to the kind of thought that goes into creating districts. He said some of the people involved in this process are more concerned with avoiding being annexed into the City of Missoula. He hoped that if the district was created, the board would concern itself with protection of the ground water and the surface waters in Missoula County. When the board considers the boundaries of the district, they must look very carefully at the law and reasonably consider what areas will benefit from the creation of the district. He commented on some of the areas in question. Many areas can be sewered by the City because the mains have been extended. He said it is hard to imagine that a sewer and water district could serve some of these areas without using the City's pipes. Would the City even allow them to use the pipes without some eventual arrangement such as annexation? The Highway Department will not allow the streets to be torn up due to the high cost. He said he doubted the State of Montana would allow SRF (State Revolving Funds) funds to be used in an area that already has all the facilities in place.

He commented about the northern boundary of the district which included the City sewer plant. He wondered why this was included? He said Larchmont Golf Course has been included as well. He said the district has the ability to tax land. There may be areas west of Reserve Street that will not likely ever to be sewered. The district may collect money from properties that will never receive a benefit. These properties are in the floodplain. There are residences in the floodplain that were placed there before the floodplain regulations. He suggested when drawing the boundaries that these be taken into consideration.

He said the Health Board wanted to ask that the future board members of the district cooperate as much as possible with the City. There are a lot of these areas included in the district that can be sewered much more cheaply than any other potential new entity could. He called the Commissioners' attention to MCA Section 7-13-2232 which indicated if there was any portion of the City in the district, it will increase the membership of the board by one which would be a representative of the City. This would at least help the communication between this board and the City toward finding the most economical means to sewer this area.

Barbara Evans asked about the status of the issue surrounding the City's waste water plant discharging into the river?

Jim Carlson said the Water Quality Bureau in the State of Montana are very concerned about nutrients in the river. Nutrients in the river result in the growth of plants and algae during the summer months. This results in the depletion of oxygen available for other aquatic organisms in the river. This can prove to be lethal for these other organisms.

Barbara Evans said if homes in the Target Range/Orchard Homes area are added to the waste water plant in Missoula, what will this do to the nitrate levels in the river?

Jim Carlson said with the City's present technology, the discharge into the river by the waste water plant will a little bit less than discharging into the aquifer. The homes will add significantly more to the waste water plant. He said the City will have to deal with these issues when they apply for a new permit.

A member of the audience asked if the boundaries are changed, will the petition have to be checked to see if the petitioners live in the new boundaries?

Michael Sehestedt explained that the petition grants jurisdiction. The adjusted district will be presented to the voters. The petition does not have to be changed or revalidated with boundary adjustments. Only people within the adjusted boundaries will be able to vote on the question.

Charlene Miller said the district representatives have every intention of working and cooperating with the public officials. They want to do what is best for their community. She said they tried to reach everyone. However, no matter how much publicity there is, it is hard to contact everyone. She stated their group was willing to work with the residents who did not get contacted.

Jim Carlson suggested that the hearing be held open for one week. It will take a while to decide on the boundaries of the district.

Michael Sehestedt said the matter can be postponed or continued up to four weeks. It must be decided no later than August 25th in order to present it to the voters on the November ballot.

There being no further testimony, Fern Hart closed the hearing to public comment. However, the hearing will remain open until the Public Meeting on Wednesday, August 10th.

Barbara Evans asked that the number of residents within the contested area be presented to the Commissioners by next week's meeting.

Fern Hart stated the representatives from the proposed district, as well as people from the various agencies need to sit down and discuss the boundaries.

HEARING - CERTIFICATE OF SURVEY REVIEWS: FAMILY TRANSFER -- ROBINSON -- TRACT 2 OF COS 3335.

Kathy Smith, Paralegal for the County Attorney's Office, explained that Lester and Joan Robinson submitted a request for a family transfer exemption for Tract 2 of COS 3335. This is a 53.03 acre parcel located at the intersection of Ninemile Road and Butler Creek Road. Mr. and Mrs. Robinson propose to transfer approximately 3.5 acres of the parcel to their son, Roy L. Robinson as a wedding present. The boundary actual acreage of the parcel to be created will be determined by the location of Butler Creek.

The history of the parcel is as follows: COS 3335 was filed in 1986 creating two parcels greater than 20 acres in size. Mrs. Robinson's maiden name is Demin and this parcel has been owned by the Demins' for a long time. In 1979, Margherita Demin quitclaimed the property to Robert Demin who then gave an interest to Victor Demin and Joan Robinson. The property was then quitclaimed into Mrs. Robinson's sole ownership in 1979.

According to the records kept by the Missoula County Surveyor's Office, the applicants have not used any exemptions to the Subdivision and Platting Act. However, Joan Robinson did create the two parcels greater than 20 acres in size as described.

The hearing was opened to public comment.

Joan Robinson said the ranch was purchased by her father in 1938 for the sole purpose of giving it to his children. She said she and her husband wish to share a portion of their property with their son who will be married this week. This parcel is in her sole ownership.

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

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request by Lester and Joan Robinson for a family transfer exemption for Tract 2 of COS 3335, based on the finding that the request does not attempt to evade the Montana Subdivision and Platting and contingent upon the transfer of the deeds to the family member. The motion carried on a vote of 3-0.

HEARING - CERTIFICATE OF SURVEY REVIEWS: BOUNDARY RELOCATION -- DENTON --TRACT 1-B OF COS 4298

Kathy Smith, Paralegal for the County Attorney's Office, explained that the parcels in question, owned by Mark A. and Verna R. Denton, are located in the Meadows of Grant Creek. Eric O. and Debra K. Anderson wish to enter into a contract for deed pertaining to Tract 1-B of COS 4298. Tract 1-B is a 24.38 acre parcel and the sale is contingent upon the parcel being split into two parcels. Therefore, Mark A. and Verna R. Denton propose to aggregate Tracts 1-3 and 1-4 of COS 3394, which are adjacent to Tract 1-B, and create a 4.34 acre parcel on the southwest portion of Tract 1-B. The remainder parcel would then be 20.04 acres in size. The proposed parcels 1-C and 1-D would be used for residential purposes and the proposed aggregated parcel is the subject of negotiations to place it under a conservation/open space easement.

The history of the parcel is as follows: COS 4079 was filed in May, 1992, by Dennis Washington creating six parcels greater than 20 acres in size. The Dentons purchases Tract 1 in January, 1993, and used the occasional sale exemption in November, 1993, to create a 5 acre parcel. Tracts 1-3 and 1-4 were also purchased in January, 1993.

According to the records kept by the Missoula County Surveyor, the applicants have used the exemptions to the Subdivision and Platting Act as described.

The hearing was opened to public comment.

Greg Martinsen, Martinsen Surveying, explained that the request would allow the same number of tracts as there are currently. The applicants just want to move the boundaries of the tracts. This will use one of the proposed development rights with the County.

Barbara Evans said it is clear that the number of parcels will remain the same; however, she expressed concern that the parcel was land not included in the arrangement with the County.

Mark Denton said this piece had been discussed. This was one of the development rights included in the overall picture. Nothing was put to paper. He said he thought it had been agreed to.

Barbara Evans said doing a boundary relocation is clearly allowable under certain circumstances. However, this may be better done through the subdivision process. The question remains whether a boundary relocation is the appropriate method to split the land and whether the property in question was part of the agreement with the County.

Greg Martinsen said there are a certain number of parcels with a certain number of development rights. This procedure is by far the simplest means to implement the use of these parcels. He said the Commissioners' review will be just as stringent as the subdivision review process on a summary plat. This may actually be a better situation because it aggregates two parcels up above into a larger parcel which makes it more attractive to use as a conservation easement. If this went through the summary plat process, there would still be two parcels on the hill with two building sites. By doing a boundary relocation, there stands to be only one building site on the hillside.

Fern Hart wondered if this lot was a part of the conservation easement.

Greg Martinsen said the two lots would be aggregated and would be within the bounds of the conservation easement.

Ann Mary Dussault asked if it was the understanding of the applicant that his interest in the Gleneagle transfer would be reduced by this transaction? The transaction that the County was negotiating didn't deal with this parcel, but with the other two. If the Commissioners allow the transfer of this equity to the other two parcels, then the equity interest in the Gleneagle transfer is reduced by one.

Mark Denton agreed with this statement.

Ann Mary Dussault said by allowing this transaction, the value of these parcels will be reduced to a single parcel. The value transferring to the Gleneagle transaction will be reduced.

Mark Denton said the value should be considered.

Barbara Evans expressed concern that there be a clear understanding of what is being agreed to.

Barbara Evans moved and Fern Hart seconded the motion to postpone action until the Public Meeting on August 10th on the request by Mark A. and Verna R. Denton to relocate boundaries on Tract 1-B of COS 4298, pending a clear understanding of the transaction. The motion carried on a vote of 3-0.

Barbara Evans asked that the applicants work with John DeVore, Administrative Officer, and the County Attorney's Office.

At this time, the Commissioners took a 10 minute break before the FY'94-95 Budget Hearing.

#### FINAL HEARING ON FY'95 BUDGET

Commissioner Fern Hart explained that testimony would be taken on the Missoula County FY'95 Budget. Also present were Horace Brown, County Surveyor; Doug Chase, Sheriff; Jane Ellis, Chief Fiscal Officer; Bob Brown, Director of the Historical Museum at Fort Missoula; Vickie Zeier, Clerk & Recorder; and David Pauli, Director of the Library.

The Public Hearing on the Proposed 1994-1995 Missoula County Budget was called to order by Chair Fern Hart.

The hearing was opened for public comment. Fern Hart asked if there was anyone who wished to comment on the proposed 1994-1995 budget. No one came forward to speak, and the hearing was closed.

Fern Hart explained that the hearing would be continued that evening in the Library Meeting Room at 7:00 p.m.

There being no further business to come before the Board, the Commissioners were in recess at 3:30 p.m.

#### CONTINUATION OF FINAL BUDGET HEARING -- 7:00 p.m. (Library)

The hearing was called to order at 7:00 p.m. by Chair Fern Hart. Also present were Commissioners Barbara Evans and Ann Mary Dussault, Administrative Officer John DeVore; Planning and Program Development Officer, Cindy Klette; Fiscal Officer, Jane Ellis; Library Director, Dave Pauli; County Surveyor, Horace Brown; and Sheriff Doug Chase.

Fern Hart noted that there were hand-outs available. She said this was the proposed budget, and the hearings would run and testimony would be accepted up until the time the budget was adopted on August 8th.

Jane Ellis, Fiscal Officer explained the charts and handouts she had prepared for the community budget meetings which refer to the service levels, and functions, of Missoula County. Fern Hart explained that after this hearing, the record would be kept open for written and oral testimony until the budget is adopted on the 8th of August.

The hearing was opened for public comment.

Jane Ellis, Fiscal Officer, explained the Charts and handouts she had prepared which explained the Missoula County Budget, the process of putting it together, and the functions of various Missoula County Departments.

Fern Hart asked that any Department Heads present speak to the audience about their particular budgets. She said that in the Commissioner's Budget, \$100,000 was requested for growth management and another \$100,000 to institute a County-wide building inspection program. \$45,500 was also being requested for a Special Projects Office.

A member of the audience who did not identify himself asked Jane Ellis for clarification on the Rural Planning Budget, and one-time grants that had been received by the County.

Doug Chase, Missoula County Sheriff, discussed enhancements he had requested in his budget, primarily for personnel, and miscellaneous equipment. He answered questions from the audience from persons who did not identify themselves. He noted that the growth in Missoula County was putting quite a strain on his department.

Jane Ellis explained the requests for the Clerk and Recorder/Treasurer's Office, having to do with remodeling to better serve the public, and additional employees to help cut down the number of people who have to wait in line.

Dave Pauli, Library Director, explained the functions of the Library, the high volume of use, and how much the Library depended on volunteers. He discussed the new Library Foundation, which he hoped would help the Library buy new materials in the future, but now, there is an immediate need for Library materials.

Bob Brown, Director of the Historical Museum at Fort Missoula, discussed the Museum's history, purpose, and needs.

Elaine Shea spoke in favor of the Library and its needs, and thanked the Commissioners for bringing the budget process to the people.

C.B. Abrahmson also thanked the Commissioners for making themselves available. He spoke in favor of the Library's budget requests.

Fern Hart thanked the audience and the participants for their participation, and recessed the hearing at 8:00 p.m.

#### THURSDAY, AUGUST 4, 1994

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

#### CONTINUATION OF FINAL BUDGET HEARING

Acting Chair Barbara Evans opened the hearing at 10 a.m. Also present was Commissioner Ann Mary Dussault.

The Budget Hearing on the Proposed 1994-1995 Missoula County Budget was opened for public comment. No one came forward to speak, and the hearing was closed.

#### FRIDAY, AUGUST 5, 1994

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Dussault was out of the office all afternoon. In the evening, Commissioner Hart attended the Law Enforcement Youth Camp Awards Ceremony at Camp Paxson near Seeley Lake.

Monthly Report -- Chair Hart examined, approved and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael Morris, showing items of fees and other collections in Missoula County for month ending July 31, 1994.

#### CONTINUATION OF FINAL BUDGET HEARING

The hearing was opened by Chair Fern Hart at 10:00 a.m.. Also present were Commissioners Ann Mary Dussault and Barbara Evans, Chief Financial Officer, Jane Ellis, and constituent, Dick Motta.

The hearing was opened for public comment.

Dick Motta apologized for his ignorance of the budget, and said that people have a tough time with understanding the process and getting to the meetings. He suggested that the budget should be written more in layman's terms. He said that his objective today was to help the Commissioners keep costs under control. He said that from the taxpayer's point of view, there had been a 100% increase in the last ten years. He asked questions about non-tax revenue and what increase there had been in 1983. He also asked questions relative the Water Quality District, the election of the Water Quality District members, who develops the budget, public health the capacity of the water table, increases in particular fees, the jail and related issues, and other line items in the budget. His concerns were addressed by the Commissioners and by Jane Ellis. He asked that the Capital Improvements Program information be added to the budget. He asked about salary increases, fringe benefits and other benefits to employees. Those questions were also answered by the Commissioners and by staff.

Michael Gonsoir had questions about I-105 and why it costs more to serve new residents than what the County collects from them in taxes.

Fern Hart said that people get far more services now than they ever did, because things cost more now than they ever did.

Michael Gonsoir said there had also been a substantial increase in appraisals.

Barbara Evans said that the County had lowered the mill levy at the same time, so no additional money had been raised.

Michael Gonsoir said he had recently moved back to Montana and was disturbed about all the changes.

Don Stinger said he had met with the Department of Revenue on behalf of AARP and he asked if there would be any tax relief. He noted that the State and Federal Government is mandating that Counties do more and more and that they do not provide funding for these mandates. He noted that the people in Helena that he had talked to were not aware of SID's, or how they worked.

Michael Gonsoir asked how much of the County budget was impacted by City Annexation.

Barbara Evans said the Road Department was primarily impacted.

Mike Sehestedt said he thought that upscale developments like Divot would be beneficial, but industry diminished the quality of life here.

Barbara Evans noted that industry provides jobs, which pays more on the tax base, and asked Mr. Gonsoir if he had any specific suggestions for the Commissioners. He did not, and wanted to discuss the impacts of I-105 and the budget process.

The Commissioners attempted to answer his questions and inform him as to the process and what projects the County planned to undertake in the new year and the proposed funding for those projects. They also explained all the charts and information that had been provided by Council personnel relative to the budget.

Dick Motta asked more questions about line items in the budget. His questions were answered by the Commissioners and staff. Explanations of revenue such as BPA funds, which had been contested for many years, and are not being spent on a one-time basis was also explained. He asked questions about the Planning Department's budget and money being spent on growth management. It was explained to him that the Planning Staff was already stretched to the limit on their regular work, and they could not do the additional research expected of them relative to growth management.

David Bailey said he thought that growth in the Missoula Valley was mild compared to some other areas, and that growth management will take some time to implement.

Dick Motta asked additional questions about the CBO Trust.

Fern Hart explained that the CBO trust was set up to support the network of public, non-profit agencies in Missoula for people who have the greatest need.

Barbara Evans suggested that if Mr. Motta had any further questions, he should put them in writing and talk to Jane Ellis, Chief Financial Officer for specific answers.

Michael Gonsoir said that he felt the budget would put an additional burden on newcomers.

Fern Hart said that was why the County is looking at assessing impact fees now, specifically for developing large areas or subdivision. A discussion about impact fees and Service Districts ensued.

No one else came forward to speak, and the hearing was recessed at noon and continued until 10:00 a.m. on August 8.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, AUGUST 8, 1994**

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

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming the Missoulian as principal for warrant #262296, dated May 22, 1994, issued on the Missoula County Health fund in the amount of \$60.00 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Interlocal Agreement -- The Board of County Commissioners signed an Interlocal Agreement between Missoula County and the City of Missoula regarding the allocation of local motor fuel taxes, and have agreed, if approved by the voters, to use the funding to accelerate the reconstruction and expansion of North Reserve Street from South Third West to Interstate 90 for the purpose of reducing traffic congestion and improving safety.

Professional Services Contract -- The Board of County Commissioners signed a Professional Service Contract between Missoula County and Eric Haines, an independent contractor, for the preparation and filming of two TV Public Service Announcements, as per the terms set forth, for the period commencing July 27, 1994, through August 9, 1994, for compensation in the amount of \$150.00. The Contract was returned to the Health Department for further signatures and handling.

Resolution No. 94-079 -- The Board of County Commissioners signed Resolution No. 94-079, a resolution to vacate Cayuse Court from the Easterly right-of-way of Singletree Lane to the end of Cayuse Court at the cul-de-sac at Lots 20 and 21 of Canyon Village No. 2, located in the SW1/4 of Section 21, T12N, R19W, PMM, Missoula County.

Resolution No. 94-080 -- The Board of County Commissioners signed Resolution No. 94-080, a resolution calling for an election on the question of whether or not Missoula County should issue its General Obligation Bonds in an amount not to exceed \$8,000,000 for the purpose of financing the cost of acquiring open space, conservation easements, park land, wildlife corridors, sensitive wildlife habitat and development rights throughout Missoula County and to pay the cost associated with the issuance of the bonds.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between Mark Denton and Missoula County for the purpose of implementing the recommendation received from Fish, Wildlife and Parks and the Five Valleys Land Trust to preserve the critical winter range for the elk herd in the Grant Creek drainage being impacted by the development in the area.



Extension Letter -- The Board of County Commissioners signed a letter to Andy Fisher of Eli and Associates approving a 60-day filing extension for Sullivan Lots, making the new filing deadline September 29, 1994.

Other items included:

CONTINUATION OF FINAL HEARING AND ADOPTION OF FY'95 BUDGET

The hearing was opened at 10:10 a.m. in Room 201 of the Missoula County Courthouse by Chair Fern Hart. Also present were: Barbara Evans, Ann Mary Dussault, Sheriff Doug Chase, Citizen Dick Motta, and two members of the news media.

Fern Hart acknowledged a letter from Jean Belangie Nye, thanking the Commissioners for the services to the Lolo Community.

Dick Motta asked Sheriff Chase several questions relative to the drug forfeiture funds. Sheriff Chase explained the grant and said that it may not be extended in further years.

A discussion about seizure of items value of items sold, administration of the program, the process of spending the money, sentencing by judges, and the need for a new jail ensued. Mr. Motta also asked questions relative to veterans burial, indigent burial, staff training, and computer needs and capabilities. John DeVore, Administrative Officer, explained those items in the budget.

Dick Motta asked questions of the County Surveyor, Horace Brown, about his various departments, their staffing, and capital expenditures. Horace Brown explained his department's functions and budgeting methods.

Dick Motta asked questions about Financial Administration, the Contingency fund, and how money was expended for the Ivan Vilensky incident. He was referred to Jane Ellis, Chief Financial Officer.

Dick Motta asked questions relative to the Extension Office. Staff and Commissioners explained that the Extension Budget had been reduced from previous years, and also received State and Federal funds. The office serves Missoula County residents by controlling weeds, providing education, and programs to help people live healthy, fuller lives.

Ann Mary Dussault explained what "non mandated" services are, and said that they are the first to be cut or eliminated in a financial crisis. As an example of "non mandated" services, she used the Fair, and the Museums.

Elaine Ingram said that it is her experience that people go to the Health Department, and Nursing Services first, instead of the Extension Service, and that she, and most people, don't know that those programs exist at the Extension Service.

Fern Hart said the Commissioners would take her comments under consideration.

Dick Motta asked questions about Larchmont, and asked what the revenues and costs were, and what the breakdown was.

John DeVore said that is a enterprise fund of Missoula County, and is not a part of the General Fund budget, except for the debt service, and that debt service is paid for directly from Larchmont. Also, Larchmont is on a different budget cycle.

Dick Motta asked other questions about Larchmont finances, and the debt services.

John DeVore explained the line items, and said that no mills are levied to support Larchmont, it is entirely self-supporting, and will be in a position to be paying revenue into the County very soon, probably within two years. He said that Larchmont is on solid financial footing, and is doing very well.

Dick Motta asked about the building permit system, and asked why, if there is already one in place, why is it necessary for the County to have one.

Fern Hart explained the County's position was that the building permits from OCD only covered the City and the 4 1/2 mile area range, and it was necessary for the County to be sure that all construction in the County met codes.

Elaine Ingram said that private builders and the construction industry should be able to take care of this.

Ann Mary Dussault discussed what had happened in Kalispell relative to County Building Permits.

Dick Motta asked about the County Poor Fund. The Commissioners explained what had happened in Missoula County relative to decisions made by the State this year, and discussed how the Poor Fund was a partnership between the County and the State.

There being no further testimony, the hearing was closed.

Barbara Evans said that for the record, she would like to note that 98% of the questions during this hearing did not specify what to fund and what not to fund. There were a lot of questions about line items, but taxes are not any more than is allowable under the constraints of I-105. She thanked the participants and the department heads who came to the hearings to explain the budget.

Ann Mary Dussault moved and Barbara Evans seconded the motion to adopt the budget for FY '94-'95. The motion carried on a vote of 3-0.

RESOLUTION NO. 94-085

The Board of County Commissioners signed Resolution No. 94-085, a resolution adopting a budget for Missoula County for Fiscal Year 1994-1995 as follows:

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 1994-1995, 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;

NOW, THEREFORE, BE IT HEREBY RESOLVED by this Board of County Commissioners that the Budget be approved and adopted, and that warrants be issued in accordance with the laws appertaining thereto.

IT IS HEREBY MOVED, SECONDED, AND CARRIED by this Board of County Commissioners that the resolution be adopted for Fiscal Year 1994-1995, as displayed in Attachments A, and B; and

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

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

WHEREAS, THE DEPARTMENT OF REVENUE has provided the County with a certified value of a mill in each taxing jurisdiction in the County;

NOW, THEREFORE, BE IT RESOLVED, that the final County Budget 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 by this Board of County Commissioners that the levies as detailed below be fixed and adopted for Fiscal Year 1994-1995, based on the value of a mill of \$138.138 County-wide, and a value of \$73.785 outside the city limits of Missoula.

IT IS HEREBY MOVED, SECONDED, AND CARRIED by the Board of County Commissioners "that the resolution be adopted, subject to the foregoing condition," for Fiscal Year 1994-1995 as detailed below:

<u>MISSOULA COUNTY-WIDE FUNDS</u>	<u>MILLS</u>	<u>ATTACHMENT</u>
General Fund	43.31	A and B
Bridge Fund	3.84	
Poor Fund	3.43	
Fair Fund	1.22	
Museum Fund	1.88	
Extension Fund	1.25	
Weed Fund	0.65	
Planning Fund	2.00	
District Court Fund	6.07	
Open Space	0.79	
Mental Health Fund	0.47	
Developmentally Disabled	0.08	
Aging Fund	0.67	
Park/Recreation Fund	0.65	
Risk Management	1.89	
Child Daycare	0.22	
Library	5.00	
<u>SUB-TOTAL</u>	<u>73.42</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
RSID Revolving	0.48	
G O Issue (Computer)	1.18	
<u>SUB-TOTAL</u>	<u>1.66</u>	
<u>TOTAL COUNTY-WIDE &amp; DEBT SERVICE LEVIES</u>	<u>75.08</u>	
Road Fund	13.83	
Health Fund	7.30	
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>21.13</u>	

DATED THIS 8th DAY OF AUGUST, 1994.

BOARD OF COUNTY COMMISSIONERS

/s/ Fern Hart

Fern Hart, Chair

/s/ Ann Mary Dussault

Ann Mary Dussault, Commissioner

/s/ Barbara Evans

Barbara Evans, Commissioner

APPROVED AS TO FORM  
AND CONTENT:

ATTEST:

/s/ Michael W. Sehestedt

Michael W. Sehestedt  
Deputy County Attorney

/s/ Vickie M. Zeier

Vickie M. Zeier  
Clerk and Recorder

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

**TUESDAY, AUGUST 9, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present in the forenoon. Commissioner Evans was out of the office all day, and Commissioner Hart left late in the forenoon to attend a Juvenile Detention Meeting in Kalispell. In the evening, the Commissioners participated in the Western Montana Fair Parade.

Monthly Report -- Chair Hart examined, approved and ordered filed the Monthly Reconciliation Report for Justice of the Peace, David K. Clark, for month ending July 31, 1994.

Monthly Report -- Chair Hart examined, approved and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing items of fees and other collections made in Missoula County for month ending July 20, 1994.

DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between Missoula County and the Missoula Food Bank for the purpose of purchasing basic needs assistance for indigent residents of Missoula County, as per the terms set forth, for the period from July 1, 1994, through June 30, 1995, with the total payment being \$16,000.00.

Notice of Hearing -- Chair Hart signed a Notice of Hearing on the application of Les Dyer, Charger Specialties, for a motor vehicle wrecking facility license for a facility to be located in the SE 1/4, NW 1/4, NW 1/4 of Section 8, T. 13 N., R. 19 W., south of I-90 in the area of Reserve Street and Grant Creek Road, setting the hearing for August 24, 1994, at 1:30 p.m.

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Terri Lee Rider in the amount of \$20,000.00, for the property located at 2128 Trail Street, Missoula, dated February 3, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

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

**WEDNESDAY, AUGUST 10, 1994**

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

Audit List -- Commissioners Hart and Dussault signed the Audit List, dated August 9, 1994, pages 4-35, with a grand total of \$78,258.99. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Charles Dunn as principal for warrant #31773, dated August 5, 1994, issued on the School District #1 Payroll fund in the amount of \$248.74 now unable to be found.

Monthly Report -- Chair Hart examined, approved and ordered filed the Monthly Report of Sheriff, Doug Chase, showing items of fees and other collections on account of civil business in Missoula County for month ending July 29, 1994.

DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Nightingale Estates, a subdivision located in the E1/2 W1/2 Section 22, T12N, R20W, PMM, Missoula County, a total gross area of 10.46 acres, with the owners of record being Lot 1B: G.E.S., Inc.; and Lot 1A: Ron and Therese Halls; with \$4,322.22 donated to the County Park Fund in lieu of required park.

Plat -- The Board of County Commissioners signed the Plat for Linda Vista Seventh Supplement--Phase 5, an urban residential subdivision located in the SW1/4, SE1/4 Section 12, T12N, R20W, PMM, Missoula County, a total area of 7.35 acres, with the owners/developers of record being the Lloyd A. Twite Family Partnership.

Resolution No. 94-082 -- The Board of County Commissioners signed Resolution No. 94-082, a resolution to accept real property (for Frontage Road) from the Nellie Driggs Trust, represented by Jess T. Michelson, Trustee, and Brent D. Michelson, Trustee, for public road and all other public purposes, located in a portion of the SW 1/4 of Section 36, T14N, R20W, PMM, Missoula County.

Professional Services Contract -- The Board of County Commissioners signed a Professional Service Contract between Missoula County and Drew Van Fossen, an independent contractor, for the purpose of graphic design for the Water Quality Booth Display, as per the terms set forth, for the period commencing July 15, 1994, through August 16, 1994, for compensation not to exceed \$525.00. The Contract was returned to the Health Department for further signatures and handling.

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Professional Services Contract between Missoula County and Britt Finley, an independent contractor, for the purpose of facilitating the Health Services Division in issues identification; establishing ground rules for future group development work; and follow-up work as needed, with two full sessions on June 29th and July 25th; as per the terms set forth, to be concluded by September 30, 1994. The Amendment was returned to the Health Department for further signatures and handling.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:35 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

BID AWARD: REPLACEMENT OF WHITETAIL BRIDGE - SEELEY LAKE - SURVEYOR

Bids were opened for construction of Whitetail Bridge in Seeley Lake at 10:00 a.m. on August 1, 1994. The results were as follows:

	Pre-Stressed Concrete <u>Bridge Alternate</u>	Corrugated Steel <u>Arch Alternate</u>
Herb Richards Constr.	No Bid	\$ 89,306.00
Frontier West Inc.	\$101,545.00	No Bid
Iroquois Industrial Inc.	\$151,800.00	\$173,600.00

The bid of Iroquois Industrial, Inc., carried a qualification of the construction period and was rejected as irregular. The staff recommended that the bid for the construction of Whitetail Bridge in Seeley Lake be awarded to Herb Richards Construction in the amount of \$89,306.00. There is \$90,000.00 in the bridge fund for this project.

Barbara Evans moved and Ann Mary Dussault seconded the motion to award the bid for the construction of the Whitetail Bridge in Seeley Lake to Herb Richards Construction in the amount of \$89,306.00 as the lowest and most responsive bidder and based on the recommendation of the Surveyor's Office. The motion carried on a vote of 3-0.

DECISION ON: COS BOUNDARY RELOCATION - DENTON

Fern Hart explained that the hearing was held at the Public Meeting on August 3, 1994. The decision was postponed until today's meeting to reach a consensus relative to the Grant Creek property exchange agreement between the Board of County Commissioners and Mark Denton. The agreement is on file in the Commissioners Office.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Mark A. and Verna R. Denton and Eric O. and Debra K. Anderson for a boundary relocation for three parcels for Tracts 1-B of COS 4298 and Tracts 1-3 and 1-4 of COS 3394, based on the Grant Creek property exchange agreement between the Board of County Commissioners and Mark Denton, and based upon the finding that the request does not attempt to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 3-0.

DECISION ON: RESOLUTION OF CONCURRENCE - AQUIFER PROTECTION ORDINANCE

Fern Hart explained that the Aquifer Protection Ordinance had been previously heard at a joint hearing before the Board of County Commissioners and the City Council on Monday, July 25, 1994.

Peter Neilsen, Environmental Health Supervisor, explained that the City Council adopted the Aquifer Protection Ordinance at their meeting on Monday night. He said there were some minor editing changes since Monday night's hearing.

Ann Mary Dussault moved and Barbara Evans seconded the motion to concur with the Missoula City Council's enactment of the Missoula Valley Aquifer Protection Ordinance and with its designation of the Missoula Valley Water Quality District as the administering agency for the ordinance on lands within the City of Missoula and all places within 5 miles outside of five miles outside the City limits that are within the boundaries of the Water Quality District. The motion carried on a vote of 3-0.

#### RESOLUTION NO. 94-081

The Board of County Commissioners signed Resolution No. 94-081, resolving that the Board of County Commissioners of the County of Missoula concurs with the Missoula City Council's enactment of the Missoula Valley Aquifer Protection Ordinance and with its designation of the Missoula Valley Water Quality District as the administering agency for the ordinance on lands within the City of Missoula and all places within five miles outside the City limits that are within the boundaries of the Missoula Valley Water Quality District.

#### HEARING: MEADOWLANDS -- PRELIMINARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that The Meadowlands is a proposed 6-lot commercial subdivision located in Section 28, Township 14 North, Range 20 West, east of Highway 10 just south of the Crossroads Truck Center at the Wye. The area of streets and lots comprises 23.08 acres; the six lots range from 2.23 to 6.23 acres in size. A 23-acre remainder parcel lies adjacent to the north and east of the lotted area. To the north, approximately one half of the remainder parcel is under construction for a truck parking area for the Crossroads Truck Center which is under the same ownership. To the east, part of the remainder parcel is utilized as drainfield and replacement areas for the Crossroads.

The lots will access to Thornton Drive, a proposed 24-foot loop street with two entrances on to Highway 10 that will be dedicated as a County street. The lots are proposed to be served by individual wells and septic systems. The zoning district of this property is C-C2 General Commercial, and the 1975 Missoula Comprehensive Plan designates the area as Light Industrial.

The Office of Community Development staff recommended that the preliminary plat of Meadowlands be approved, subject to compliance with the following conditions:

1. Plans for paving, grading, drainage, erosion control, street, and culverts shall be approved by the County Surveyor. *Section 3-2 and 3-4.*
2. All driveways, streets, and parking areas within the subdivision shall be paved. This language shall be included on the face of the plat and in all articles of conveyance to inform lot purchasers. *Section 3-2(1)(B) and (G).*
3. Street signs shall be placed at the two intersections of Thornton Drive and Highway 10, subject to approval of the County Surveyor. *Section 3-2(2)(F).*
4. Utility easement locations shall be approved by the appropriate utility and governing body and shall not be less than 20 feet in width unless a narrower width is approved by the appropriate utility and governing body. In addition to showing the location of the utility easement, the final 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 and easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, and across each area designated on this plat as "Utility Easement" to have and to hold forever." *Section 3-5 and 3-6.*
5. Approach permits for Thornton Drive shall be approved by the Montana Department of Transportation prior to filing of the final plat. *Comments of the County Surveyor.*
6. A fee of \$50 per lot shall be paid into the large diameter hose fund of the Missoula Rural Fire District. *Comments of the Rural Fire Marshal.*

#### VARIANCE REQUESTS

1) The applicant requests a variance to Section 3-2(3) of the Missoula County Subdivision Regulations which require that the right-of-way width for streets in commercial subdivisions is to be 80 feet. The proposed right-of-way width for Thornton Drive is 60 feet.

Mitigating efforts are to provide 2 approaches from a u-shaped access street to Highway 10 and the subdivision would be limited to six commercial lots. There is no further expansion of the development that is planned.

2) The applicant requests a variance to Section 3-2(3) which states that the road pavement width for rural commercial subdivisions shall be 32 feet in width. The proposed pavement width for Thornton Drive is 24 feet.

Mitigating efforts are to provide two approaches and limit the subdivision to six lots with no plans for future expansion.

Staff recommends denial of the above two variance requests. The permitted uses in this zoning district, coupled with the location of the subdivision, could potentially bring in commercial-type vehicles and large trucks which need wider street widths within which to maneuver. Of some concern in this regard is the northernmost curve on Thornton Drive which is sharper than a 90 degree turn. There are no plans to limit expansion, however there are no proposed covenants or other actual restrictions to limit expansion. Therefore, future expansion could possibly take place with new lot owners. There

is no minimum lot size in the C-C2 zoning district, and the Wye area is a growing commercial activity center. If the density becomes greater than two units per acre, the requirements would call for a 44-foot street with curb and gutter, and sidewalks would then become more of a necessity than they are with the proposed density. The County Surveyor prefers that these widths meet regulations for County streets. The Rural Fire Marshal has stated that 32 feet is preferable to 24 feet especially in commercial subdivision such as this, although the Uniform Fire Code Requirements require only 20 feet of clearance. He also commented that if a fire vehicle meets a large commercial vehicle on a 24-foot street, it may be difficult for the two to pass by each other especially at either of the two street corners. For these reasons, it is the opinion of staff that the developer should follow the regulation street and right-of-way width.

3) The applicant requests a variance to Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions, and that bikeways should be considered. The proposal is not to construct sidewalks or walkways.

Mitigating efforts are that a relatively low density (3.8 acres per unit) commercial subdivision is to be provided. The justification of no harm to the public is that since the subdivision is commercial, there will be little pedestrian movement between lots.

The staff recommended approval of this variance request, if the street is to be paved to 32 feet as opposed to 24 feet, as this would provide room for pedestrian traffic.

Chip Johnson, DJ&A, representing the developers and owners of the commercial development, commented that they concur with the conditions and staff report as set forth. He asked that the Commissioners vote favorably on the variance request.

The hearing was opened to public comment.

Barbara Evans asked the applicants if they would be willing to comply with the proposed Gateway landscaping regulations? These regulations will make the entrance to Missoula very appealing. She stated the committee wanted to start at the Wye. She stated she recognized that these regulations have not yet been adopted and the applicants do not have to comply with them.

Dave Campbell, one of the owners of the proposed subdivision, said they are going to try to do some landscaping that will fall into the Gateway landscaping plan. They will not have control over the style of building, but they will work with the County on the landscaping. He said they realize they do not have to comply with the regulations, but were willing to do so to make Missoula a more attractive and better place to live.

Barbara Evans said the regulations will require an installed water/irrigation system. There have been problems in the past when developments have landscaping, but have no method of irrigating it.

Dave Campbell said he hadn't had time to think about addressing this issue and didn't have a ready answer without the concurrence of the other owners.

A discussion followed relative to postponing the decision for one week in order to meet with the developers to come to an agreement for the landscaping. The developers did not feel they wanted to wait another week due to the time that has already passed in the process.

Barbara Evans stated she felt she could not support postponing the decision for one week because these regulations were not required. The Commissioners can only ask the developers to comply and hope that they will. The Commissioners must make their decision based upon the regulations already in place.

Ann Mary Dussault stated that it is within the discretion of the Commissioners to add conditions to a proposed subdivision. She suggested that the Board have further discussion on this matter.

Fern Hart said this is a dealing situation because the developers aren't required to comply with these proposed regulations. She stated this is a unique entrance to Missoula and she wanted to get a "toe-hold" on getting it done.

Dave Campbell said they have gone over and above what is required of them. They have already planned for the future by installing sewer. They have reduced six or seven driveways that accessed the highway to two accesses. He said they would like a decision to be made as soon as possible in order to be able to move forward with the proposal.

A discussion ensued relative to the final decision on this subdivision. A consensus was reached to discuss this further and take action on Friday, August 12, 1994 at 9:30 a.m. at a special meeting with the Commissioners and the developers.

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

Ann Mary Dussault moved and Barbara Evans seconded the motion to postpone action on the Meadowlands commercial subdivision to Friday, August 12, 1994 at 9:30 a.m. The motion carried on a vote of 3-0.

Ann Mary Dussault referred to the letter from Horace Brown, County Surveyor, that stated that in order to qualify for the 60 foot right-of-way, he asked that the landowners maintain the frontage through mowing, landscaping and watering. She wondered if this included underground sprinkling?

Chip Johnson said it did. This will be included in the covenants.

The Commissioners recessed as the Board of County Commissioners and reconvened as the Planning and Zoning Commission. Also present were members Horace Brown and Vickie Zeier.

HEARING: PLANNING & ZONING COMMISSION - ADDITION TO RESIDENCE IN ZD#4 - BLOOM

Sam Islam, Office of Community Development, explained that Planning and Zoning District No. 4 is a citizen initiated zone which was established in 1957. It requires that the Planning Board and the County Planning and Zoning Commission review and approve all improvements, developments, and creation of lots within the District for compliance with the ZD#4 regulations.

Mr. and Mrs. Chuck and Peggy Bloom's property at 601 Pattee Canyon Drive is in Zoning District #4. They would like to add a second story and two other small additions to their existing home. They also would like to hand dig a drainage ditch to keep water away from the basement.

The ZD#4 regulations state that the buildings may be maintained, altered, or enlarged, provided the use does not change to any other nonconforming use. The Blooms, with the additions, will continue to use the structure as a single family home.

The regulations further instruct the applicant to consider natural physiography in granting approval of any proposals for improvements. The two small additions will be made on a flat area. No mature trees will need to be removed. Therefore, the natural physiography will not be changed because of the additions. Furthermore, the digging of the ditch is not substantial enough to consider a conflict with the natural physiography.

The soil texture of the Blooms' property, however, is extremely variable. An on-site investigation should be conducted for development on such soil because of the wide variation of soil properties.

In addition, the property is just outside the limits of the study area for flood plain boundaries. This does not imply that areas outside the delineated flood plain boundaries or permitted land uses within such areas will always be totally free from flooding or flood damages. History has demonstrated that Pattee Canyon is subject to flooding. It would be advisable for the applicant to determine an approximate location for the 100-year flood plain since Pattee Creek flows through this property or consider building according to the requirements for structures within 100-year flood plain.

The Office of Community Development received no adverse comments from any of the reviewing agencies and adjacent property owners. The staff commented that they were not in a position to make a recommendation to the Board whether to approve or deny the Blooms' request because they felt that the criteria for approval as written in Zoning District #4 regarding the natural physiography of the area is vague, lacks standards, and needs clarification.

The hearing was opened to public comment.

Jay Kirby, Jay Kirby and Associates Architects, representing the Blooms, said the Blooms wish to add a second story, two small additions and hand dig a better drainage ditch around the uphill side of the home. He said originally, the house was constructed in the mid-1950s. The way the house was graded at that time was positive drainage away from the house up against the hill. Over a period of years, there was gradual sloughing of the cut slope which has degraded the drainage ditch to a point where there is a problem with the water coming against the home. At times, the basement has flooded. They propose to return the drainage ditch to its original state. This will involve hand excavation of about a foot. The original cut has almost healed; they do not want to make a mess of the slope. Their intent is to keep the slope as it now exists.

Horace Brown asked what the small additions would be used for?

Jay Kirby said one of the additions will be a 6 x 14 foot extension of the master bedroom. The other addition is a 4 x 6 x 6 foot addition which will be a booth off the kitchen. He said they tried to redesign the home to fit into the character of the wooded site. They will use a log design which will give the home a rustic feeling to tie in with an adjacent wood home.

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

Ann Mary Dussault moved and Barbara Evans seconded the motion to recommend that the Board of County Commissioners approve the request by Chuck and Peggy Bloom to add a second story and two other small additions to their existing home as well as hand dig a better drainage ditch around the uphill side of the home located at 601 Pattee Canyon Drive. The motion carried on a vote of 5-0.

The Planning and Zoning Commission was recessed. The Board of County Commissioners was reconvened.

Ann Mary Dussault moved and Barbara Evans seconded the motion to accept the recommendation by the Planning and Zoning Commission to approve the request by Chuck and Peggy Bloom to add a second story and two other small additions to their existing home as well as hand dig a better drainage ditch around the uphill side of the home located at 601 Pattee Canyon Drive. The motion carried on a vote of 3-0.

PROPOSED SUBMISSION OF SALE OF COUNTY PROPERTY TO FIVE VALLEYS LUTHERAN RETIREMENT HOMES TO THE ELECTORS

Michael Schestedt, Deputy County Attorney, explained that a request has been received from the Five Valley Lutheran Church that the County sell 160 acres of County property in the Spurgin Road property. The Commissioners had initially declined to go forward with the sale based on opposition in the area. Subsequently, substantial petitions were received requesting that the Commissioners put the question of sale on the ballot. The



Commissioners felt that this petition request was a sufficient showing of interest that would justify a public hearing on the question of whether or not the sale of the portion of the Spurgin Road property should be presented to the electorate. The Commissioners basically decided that if it was offered for sale, it would be offered subject to certain conditions. It would only be offered for sale for use as a retirement facility, and that it would only be offered for sale not less than the fair market price of the property. The fair market price has not been determined. If the decision is to go forward and if the electorate approves it, the fair market value will be established by a fee appraisal which means the County will hire a MAI or other qualified appraiser. The sale procedure from there will be subject to whatever restrictions the Commissioners put on the property. The property will then be offered at public auction to the highest bidder. If someone else wants to build a retirement center and outbids the Lutheran group, then so be it. The Commissioners have also indicated that should they decide to put it on the ballot, should the electors approve it, and should a sale be consummated, the proceeds from the sale will be used to buy other park and/or recreation and open space. The purpose of this hearing is to decide whether or not there is sufficient interest to justify submitting the issue to the electorate and determining the conditions, if any, upon which it should be so submitted.

Ann Mary Dussault said the community gardens are not involved in this proposal. The Board of County Commissioners is negotiating with the Equestrian Park for a 40 acre parcel of land in this area. This land is also not to be included in this discussion.

Fern Hart asked that the testimony be held to three minutes. The hearing was opened to public testimony.

Sharon Howe, representing the Five Valleys Lutheran Board of Directors, explained that for a number of years, local Lutheran churches have appointed delegates to the Five Valleys Lutheran Retirement Center Board to consider building Lutheran sponsored non-profit housing for senior citizens in Missoula. There are examples of this kind of housing in western Montana; one in Kalispell and one in Hamilton. Missoula Lutherans feel that there is a need in this community for the high quality Christian home for seniors that they have the national reputation of providing. Twenty-five percent of the nation's population is over the age of 50 and is the largest age segment and will continue growing for the next quarter century. The public need for senior housing has never been greater and will only increase as the population grows. At this time, she gave some statistics relative to the aging population in the nation and in the State of Montana.

She outlined the problems that are encountered as people grow older relative to housing, health and security and the need for congregate housing. Congregate housing for seniors is apartments or condos which provide housekeeping, some recreation, and or two meals a day. Examples of this type of housing in Missoula are Missoula Manor, the Clark Fork Manor, and the Village Senior Residence.

The Board of Five Valleys Lutheran Retirement Center appointed a company from San Francisco to do a market study in Missoula to determine whether or not there was a need for additional housing for seniors. The study showed that there are 283 federally subsidized senior apartments and 105 market rate units available which are currently occupied. At the time of the study, there was a waiting list for 36 of these units. The market study concluded that there is a demand for an additional 107 market rate units at the 1990 census population size. The proposed center would not be government subsidized, but would be rented at market rate.

She stated the group wanted to help meet this public need in the Missoula community by building a senior housing community in Missoula that will not only help the older residents, but will have the ability to expand as the population grows. The federal government is not increasing funds available for housing for seniors and the money is not available from local governments. Five Valleys Southern Retirement Center can fill the need at no expense to the community. She outlined the positive financial impact this project would have on Missoula. The group plans to spend more than \$10 million on the purchase of the land and the first phase three story congregate apartment building with between 100-125 apartments which would provide meals, housekeeping and recreational services. When this phase is complete, they will employ the equivalent of approximately 38 full-time employees with an annual payroll of about \$400,000. The center's annual expenses will directly benefit the Missoula community through the purchase of goods and services and will total about \$800,000 including salaries. These figures are just for the first phase, the congregate living apartments.

The residents will pay an entrance fee of about \$10,000, and a monthly rent of between \$900 and \$1,500 depending upon the size of the apartment and the number of people in it.

The second and third phases will add individual duplexes and triplexes as well as assisted living apartments and a skilled nursing home for people who need more help. These areas will not be built until the first phase is financially sound, which may take five years. Another market study will be necessary and a certificate of need will be required for the assisted living units and the skilled nursing home. The center will be built in a neighborhood kind of setting, with a nature trail, gardens tennis, a clubhouse, and the kind of environment which younger, active retirees would like to live in. As a retirement community, the variety of housing will meet the needs of seniors at different stages of their lives. This plan will fulfill a vision of "aging in place" which is a humanitarian vision of how people can be treated with care and sensitivity as they enjoy the last years of their lives. Their mission statement includes this goal: to provide retired citizens of all faiths comfort, dignity and security, all within a Christian community. She stated that the group is ready and willing to meet this public need with the high standard of care that they are known to provide.

Art Brackebusch, member of the Board of Directors, Five Valley Lutheran Retirement Center, showed the Commissioners a proposed site plan for the 80 acre site located on Spurgin Road. He explained that the group has searched for a site for a number of years to find a site that will fit into the needs of the residents. These needs include access to medical, shopping centers and recreational opportunities. Because the center will fill the concept of "aging in place", they need a rather large area. He said people want certain things from their retirement such as independence and security. A housing project must be designed which has a secured access such as fencing, landscaping, berms, trees, scrubs, etc. He said they want an open space design which would not have a high density. This facility would have a lot of open space and would also be adjacent to public lands. There is a high concentration

of public lands in this area. It would be to the benefit of Missoula County to sell the high value land and buy land in other areas around the County.

He said many people think that the Commissioners are selling the Equestrian Park; this is not true. The Equestrian Park will remain where it is. He urged that the Commissioners allow this issue to be decided by the voters of Missoula County.

Bonnie Lee, representing Missoula Aging Services, spoke in favor of the proposal which would provide options for seniors in the area. It would also address isolation issues and provide for the efficient deliver of health and personal care services. According to the 1990 Census, Montana's 60+ population is at 18% of the total. Nationally, the 60+ population is at 12% of the total. Montana's 60+ population is 50% above the national average. Therefore, they endorsed the project.

Beverly Solum said it was very important for her to have the option of someday living in this retirement center. She read a letter from her sister who also endorsed the sale of the Spurgin land for the project.

George Bailey, Superintendent of Target Range School, wondered if the land was sold to another group, could it be used for other means of housing? There could be significant impacts on Target Range School. It would not be fair to significantly impact the Target Range taxpayers.

Michael Sehestedt explained that should the Board decide to go forward with this proposal, the County would sell the land subject to restrictive covenants which prohibit its use for other than retirement housing. Because the land will be auctioned publicly, it is possible that some other group interested in providing retirement housing may end up owning the property. The property would not be sold on faith, but subject to limitations that would restrict its use to the general purposes as stated. The County cannot guarantee precisely what group will get the land. However, by selling the land subject to conditions, the Commissioners can furnish a guarantee that it won't be used for purposes that differ much from what is being proposed. A number of preliminary decisions must be made first such as whether or not to give this decision to the voters and if so, will it be approved? The minimum opening bid for the land is fair market value. If there are no bidders at fair market value, the Commissioners have the ability to negotiate a private sale thereafter for not less than 70% of the fair market value. He explained that the Union Square property was sold to the Lutherans for a children's home several years ago and was subsequently sold seven years later. This property was auctioned, but no specific restrictive conditions were attached to it. This raises an issue that has been of concern to the County; the property must be sold for one purpose.

Ethel Taylor, resident of Missoula since 1993, said she is in her 60's. Her husband passed away several years ago. Her son lives here so she moved to Missoula in 1993. She stated she spent all last summer looking for a place to live. She went to the three retirement homes and placed on a waiting list. She finally bought a home, but it is not what she wanted. She said she delivers Meals on Wheels in the Rattlesnake area. One of her stops has been on a waiting list for many months. She urged the Commissioners to consider putting the question on the ballot.

Gene Diemer, member of the Board of Directors of the Five Valleys Lutheran Retirement Center, said they have worked on this project for several years and was concerned that he would get too old to enjoy the center. He urged the Commissioners to give the group the opportunity to buy this land.

Carole Graham, Vice President of the Board of Directors of the Five Valleys Lutheran Retirement Center, said this proposal will not even touch the surface of the need for senior housing. There are people in Missoula who are very supportive and very much interested in doing this. Missoula has to be responsive to their seniors. Much has been done for the youth; there are soccer and baseball fields, etc. Missoula should give its seniors a chance to have what they want in their senior years.

At this time, Fern Hart requested those in support of the comments made so far, raise their hands. Approximately 35-40 people raised their hands in support of placing the question on the ballot.

The hearing was opened to opponents.

Charlene Miller, President of the Target Range Homeowners Association, said it was too bad that this meeting couldn't have been held in the evening so that other people could have attended. She stated she was not notified soon enough to tell people to be here. As a result, most of the residents who work during the day, could not attend. She expressed concern that the Lutheran group did not go to their homeowners association with their proposal. She said this group has not considered the community as a whole. The Target Range/Big Flat area has a lot of issues to work on. The Target Range/Big Flat community is not opposed to a retirement home. However, they felt there is a better area for the project. This area has a high concentration of sports fields. At night there are bright lights which are on until late at night as well as the noise from the games. The games from the high school, the American Legion ball fields and the activity at the Equestrian Park may not be conducive to peaceful living.

She said the association is concerned that the County will take less money for the property and buy open space with the proceeds; why buy what the County already has? It would be premature to sell the land before the passage of the open space bond issue. The Fort Missoula Plan has not been passed by the Commissioners. This should be done before any sale of land is done. Also, the Missoula County Parks, Recreation and Open Space Plan developed in 1976 names this area as recreational land for the community. More planning should be done before this land is sold. The City and County have gone to the expense of bringing in consultants to make recommendations for community planning. This is not an appropriate time to sell the land. She said there are growth management issues that need to be settled as well because there is a growth management crisis in Missoula. Another concern was that because this is a non-profit organization, they would be exempt from school taxes, road, fire and health taxes.

She said that the homeowners association is trying to get more involved in planning and growth management for their area. They wanted to have the opportunity to advance in their planning before this land was sold. This is not an appropriate time.

There is an existing retirement home, a skilled nursing facility, an assisted living home and apartments in their district. There are other areas in the County where a retirement home could be built where there is existing infrastructure. There will be larger problems with the traffic when the bridge goes through at South Avenue. Also, the high power lines in the area are of concern because there is the possibility that power lines are detrimental to a person's health. She said the proposed three story building would look totally out of character for this area.

She said most people cannot afford \$900 a month for a home. The low income residents must be addressed.

Richard Gotschalk, Chair of the Open Space Committee, said over the last several years, the committee has developed a vision for the urban of an open space system to address the long-range development as a community. One important component of this is a developed park system. A park system involves neighborhood level parks and community level parks. Community needs center around facilities for active recreation. Because active recreation involves organized leagues and tournaments, spectator and parking facilities, parks have to be on a fairly large scale which would support a variety of sports. In 1955, the County acquired the 160 acres from the Fort Missoula military reservation land. In 1976, the County adopted a Parks, Recreation and Open Space plan in which the following statement is found: "Fort Missoula military reservation land in Section 25, now owned by Missoula County, should be reserved for future public leisure time activities which include a community park when the need arises." The plan talks about the presence and absence of community park facilities. It recommended that lands such as those located on Spurgin should be reserved for a community park. This land is suitable in size and location along with the need for a community park. The community is rapidly expanding. Action should be taken now to preserve this site for park.

Additionally, he expressed concern that the proceeds of this sale would be used for purchase of other parks or open space. He said there is already a mechanism in place for obtaining neighborhood parks. Missoula needs open land at this scale which would be suitable for a community park. This land is suitable for a community park and is currently in public ownership. Land prices are going higher. Purchase of rural parks would not address the urban area park needs. If the Commissioners follow through on what has already been written down in the plans in the past, they will address the urban area needs.

He wondered why the Commissioners will put the open space bond issue on the ballot? By contemplating and acting upon this request, the Commissioners will jeopardize the passage of the open space bond in the fall. The Commissioners will also open themselves to the public perception that there must not be a need for open space or that the Commissioners will sell open space, but raise their taxes to purchase open space. He urged the Commissioners not to take the chance of jeopardizing both ballot issues.

Renny Malach, representing Little League Baseball, said the League is committed to assisting kids to become healthy, decent trustworthy adults. He said Missoula Little League fields have been rated in the top percentile in the United States. The League has grown from 14 teams 25 years ago to 59 teams this past season. The need for facilities keeps growing. The old County gravel pit was obtained and fields built with no cost to the County or the taxpayers. However, more fields are needed. He asked the County to provide the group with additional land that is zoned for public use as the land in question is. This land would be used to construct three additional fields. He urged the Commissioners to consider the need for recreation in a growing area. A good sports complex has been started on this land and should continue to do so. He said a retirement home is needed, but this land has been set aside for recreational purposes. There is other land available for housing.

Dale Dahlgren, representing the American Legion ball fields, showed the Commissioners where their fields were located in relation to the proposal. He explained their future proposal for their fields and land adjacent to the land in question. They will spend approximately \$1 million on the project. He said when they first approached the County about leasing the land, they had to obtain signatures from the whole surrounding neighborhood that they would not be opposed to the noise, the lights and the traffic created by the fields. The proposed improvements will create a lot of activity. There have been instances in the past where businesses have built only to have to move at a later date because the growing neighborhood around them protested the existing use. He said the American Legion does not want this to happen in this area. They will lose a lot of time, money and effort put into these fields.

Jerry Berrens, 2085 Edward Court, referred to the proposed revision of the Fort Missoula Plan which would encompass this area. This plan for the area should be addressed and finalized before any decision on this land takes place. As the community grows, the needs for recreational space will increase. A complete study of the community's recreational needs should be conducted before the community utilizes existing County lands. He said it is not the specifics of this plan he is opposed to--it is the location. County lands are precious and hard to come by. It is prudent to look to the future and anticipate other uses for this property. He said his family has felt the need for recreational land. This open space is utilized by the entire community as well as by out-of-state visitors.

He said the Lutheran Organization is a non-profit organization that may not pay County taxes. He said the moment restrictions are placed on a piece of property for a specific use, this has the potential of diminishing the value of the property. He said it seemed to him that it would be better to open the property to all bidders of all types. He said the proposal would be hooked to sewer, but would this property be annexed? If the group doesn't pay taxes, then the increased services to the project will not be paid for by taxes. He expressed concern that putting the Lutheran proposal on the ballot would jeopardize the open space bond issue on the November ballot. He said there are conflicting interests between housing needs for seniors and the recreational needs of the County.

Arlene Harris expressed concern that the organization was really addressing the housing needs of Missoula senior citizens when the monthly rents will be so high. The crucial need for housing is for a much lower income than the

Lutherans propose. People from outside of Missoula would come in to live in these homes. This would not alleviate the housing situation in Missoula.

Clayton Burtsfield, representing American Legion Baseball, commented on the construction of Limborg-Craig Memorial Field. At the time of construction, the group had to go door-to-door with a petition of approval for their proposal because of the noise, the traffic, and the lights generated by the project. There was only one household to protest the proposal. They have invested over \$350,000 with no cost to the taxpayers. Legion Baseball is expanding and will have additional teams within the next two to three years. There are between 4-5,000 people that will participate and use the fields. The land currently leased to the south of the existing fields will have to be utilized. They have developed the land into something Missoula can be proud of. If this proposal is approved he wondered if their group would become the "bad boys" on the block because of the noise, traffic and lights generated by the baseball fields?

David McEwen said great project--wrong place!

Susan Mathewson, resident on Tower Street, commented on the need for a community park in this particular neighborhood. It is important that there be a larger park area west of Reserve Street. Housing for senior is desperately needed, but other areas are available. However, this need must be addressed in affordable terms.

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

Fern Hart thanked the audience for their testimony. The Commissioners have a very difficult decision to make.

Barbara Evans said no testimony was given as to whether the issue should be placed on the ballot. The point of this hearing was to decide whether to place the issue on the ballot. After all the testimony, she said it seemed to her the fairest thing to do would be to put the issue on the ballot.

Barbara Evans moved and Ann Mary Dussault seconded the motion to resolve to submit for the sale of County property for elder housing on the November ballot to the electors. The proceeds of the sale of the property will go towards the purchase of other recreational property in the County. The motion carried on a vote of 2-1 with Fern Hart voting against the motion.

Ann Mary Dussault said the language should be clarified to state that the land would be restricted to a specific use--elder housing and that if approved, the proceeds would be used to acquire recreational property in other parts of the County.

Fern Hart said she could not support the motion because the strongest argument made has been that the project will not take care of the folks who are elderly and on a fixed income. Also, the County has a commitment to the passage of the open space bond. It will be the public perception that the Commissioners are selling land that will provide for open space land needs. She said she strongly supported the open space bond issue.

Barbara Evans said she also supported the open space bond issue. The reason the open space bond issue is on the ballot is to determine whether or not open space is important to the public. It is only fair that the folks get a choice on this issue as well. She stated that she would not vote to put this particular project in this particular space because this land should be reserved for park land and open space because the County already has it. It will appear to the public that the Commissioners are talking out of both sides of their mouth. However, the public has a right to vote on this issue because elder housing is a vital need in this community. The public must have their say on this issue.

CONTINUATION OF HEARING & DECISION ON: PETITION TO CREATE MISSOULA COUNTY SEWER & WATER DISTRICT - ORCHARD HOMES/TARGET RANGE AREAS

Fern Hart explained that the Commissioners heard testimony on a petition to create a Missoula County Sewer and Water District for the Orchard Homes/Target Range areas at the Public Meeting on August 3, 1994. Testimony was received since last week's Public Meeting both for and against the proposal. The Commissioners will accept any additional public comment on the boundaries of the district.

Barbara Evans said the Board asked that the groups involved look at some sort of compromise on the boundaries.

Fern Hart asked if a compromise was reached?

Jim Carlson, Environmental Health, said there was just a lot of information exchanged. He wondered how the residents living within the proposed area for future annexation by the City of Missoula could benefit from the district.

The hearing was opened to new testimony.

Paul Laisy, Target Range resident, reminded the Commissioners that this was the second attempt to form a district. Thousands of residents in this area have tried to get this issue on the ballot with the boundaries as submitted. He said they have no control over the City's annexation plans. Therefore, this boundary was left open to include properties that were not in the City. He suggested that the Commissioners hold an evening meeting in order to see what the residents along this corridor want.

Don Stinger, 245 North Davis Street, said there is a great deal of property on the map included in the district that has been annexed into the City. He said the area in question will be annexed into the City. Some of these people could be double taxed. These people should be advised of this.

Arlis Bolich, resident of the area in question, expressed concern about City annexation and urged the Commissioners to retain the boundaries as proposed. The residents in this area want to be governed by the County, not the City and they don't want their taxes to go up due to annexation.

Joe Aldegarie, City Engineer, explained the various maps that were displayed identified the proposed district boundaries. One map showed the boundaries of the City. The map provided by the proponents was drawn up months ago before annexations occurred. Between 30-40 properties proposed to be included in the district are currently connected to City sewer under contract, but have not been annexed. These properties would be paying double taxes.

Fern Hart asked if the properties to be annexed by the City were not included in the district, would there be enough votes to pass the district?

Joe Aldegarie stated that in order to reach a City population of 50,000, the City would have to annex all the areas they have proposed to annex.

Don Stinger said to create the district, the votes will have to come out of the boundaries as originally proposed by the group.

Fern Hart said if the boundaries are redrawn, the vote would come from the electors within the boundaries. The residents have submitted a petition for a sewer and water district which has been accepted by the Commissioners. The Commissioners must decide whether or not to redraw the boundaries based upon the testimony.

Ann Mary Dussault asked if the legal description and the map were consistent with one another?

Vickie Zeier, Clerk and Recorder, said the Surveyor's Office created the legal description on the petition and believed it followed the map. The boundary line on the east side of the district was not drawn because this is the boundary line of the City, which can change because of annexation.

Paul Laisy said at the time the petition was drawn, Larchmont Golf Course and other areas were not in the City. He said their group knew that the boundaries were going to change.

Ann Mary Dussault clarified that the legal description indicated any areas not in the City at the time the petition was submitted, if not annexed, would be included in the district.

A discussion ensued relative to the boundaries. The sewer plant north of Mullan Road was not included in the district boundaries.

Michael Sehestedt said once the boundaries were drawn, the group tried to obtain signatures from this area to qualify the petition. He said the fact that some of the properties included in the original proposal are now in the City doesn't impact the proposal. The question before the Commissioners was what areas will benefit from the creation of the district. The Commissioners need to make a determination of what areas should or should not be included.

Barbara Evans said about a third of the folks that signed the original petition are included in the proposed area for annexation by the City.

Paul Laisy said when the petition was being signed, many of these people had no idea what the City's plans were.

Carol Lynch, Target Range Homeowner, urged the Commissioners to put this issue on the ballot before the voters. The new sewer and water district should also form a board.

Ann Mary Dussault asked how a resident could petition out of the district once it was formed?

Michael Sehestedt explained that after the board of directors hold public hearings, they have the authority to determine whether or not to exclude the property. The initial board of directors is either elected the same time the district is voted upon or they are elected within 120 days after the district is approved by the voters.

Jim Carlson asked if a person wanted out of the district, would they have to get the blessing of the board of directors?

Michael Sehestedt said that appears to be the way it would occur.

Fern Hart asked about the properties in the floodplain which could not be developed; what benefit would these properties have from the district?

Jim Carlson said the district could protect the water underneath the land.

Michael Sehestedt said the properties may be able to be developed if they are not in the floodway and if sewer is available.

Fern Hart asked if there are a lot of large properties that are in the floodplain?

Jim Carlson said there is a significant amount of land in the floodplain.

Paul Laisy stated that if some properties are within both the City and district boundaries, the board has to be expanded by one member which would be appointed by the Mayor. Whatever district boundaries are decided upon, if properties with the City limits are included, then the board must be expanded.

A lengthy discussion ensued relative to the legal description and the submitted map of the district boundaries.

Barbara Evans moved and Ann Mary Dussault seconded the motion for purposes of discussion, to place the question on the November ballot of whether to create the Target Range/Orchard Home Sewer and Water District with the boundaries as submitted, minus Larchmont Golf Course, based on the fact that a valid petition was received from approximately 953 citizens that wish to create a sewer and water district. The motion was later withdrawn.

Barbara Evans said if the Board concedes that properties soon to be annexed within the City not be included, this in effect, says to the citizens that their government does not care what they want. She said the Commissioners are elected representatives. The residents have gone to a lot of trouble to draw the boundaries as they want them.

Fern Hart stated that she could not support the motion. She stated that infrastructure already exists in some of the areas in question. People that live in the City also support the County. She stated that these people will be taxed twice.

Barbara Evans commented that she thought it would be wise to vote against this district because the City will care for the sewerage needs. However, the citizens still have the right to vote on the question. It is up to the folks who don't want this district to provide enough information to the people who will be taxed twice. It is also incumbent upon the City to provide enough information and incentive to vote no on this issue.

Ann Mary Dussault said she probably would have agreed with Fern, but she referred to a letter from the City that upset her. At last week's Public Meeting, the Board of County Commissioners approved a subdivision in the Linda Vista area where sewerage is a major issue. During the course of approving the subdivision, the Commissioners granted a variance regarding curbs, gutters and street widths. When the developer went to finalize the contract sewer arrangement with the City, the City indicated that they would only grant the sanitary sewer permits if the road was constructed with curbs, gutters and street widths approved by the City Engineer. In discussing this with a representative of the City, she said apparently, this is an interpretation of a policy that neither the Board of County Commissioners, the County Administrative Officer, nor the City-County Health Department, knew anything about. She stated what angered her so much about this is that apparently this City policy takes away any method in the County for a variance with the Board of County Commissioners. If this is true, she stated she found it "fundamentally unacceptable". She said she has always supported the City's view that it needs to reach MSA standards, and that the City and County should cooperate in terms of protecting Missoula County's sole source aquifer. She commented if the City is electing to take away from citizens the power granted to the Board of County Commissioners, there is no option but to give the citizens some mechanism to deal directly with the City relative to these issues.

Joe Aldegarie responded that he hadn't seen the letter Ann Mary was referring to. This goes back a number of years when the City Council adopted a resolution which defined the conditions under which the City would provide sewer service in a County area. Prior to this time, it was strictly annexation if sewer service was provided. At this time, they changed the policy to allow the City to provide sewer service under contract. They also felt that one of the key conditions to sewerage was the waiver to the right of protest of annexation. This meant that eventually, the developments would be inside the City at some point in time. Included in this policy was that these areas meet the current standards for subdivisions within the City. For the last several years, City representatives have sat down with developers, and in most instances, have been able to inform them of the standards; in most cases, they have been met. Most of the Twite development has wide streets and curb and gutter. He said the dilemma occurred when it appeared as though the City was taking away the authority of the Board of County Commissioners. On this particular subdivision, the City staff has had discussions with the developer since May, 1994 pertaining to these conditions. He wondered if somewhere along the way this discussion got lost and the Commissioners weren't informed.

Barbara Evans expressed the hope that common ground and compromise could be accomplished during growth management discussions between the City and the County.

Ann Mary Dussault stated that this was not the issue. When the City Council hears an issue within the City, does the City Council have the authority to grant a variance, whether it is a variance to street widths, curbs and gutters? She stated the City would not withhold sewer to this area because the City Council granted the variance. In this case, the Board of County Commissioners granted the variance based upon the testimony given relative to the physiography of the land, the outlay of the streets, the addition of sidewalks on St. Thomas, etc. The City is saying that the developer has no option to even be heard relative to the variance because the form has been taken away. They are doing this under the authority of granting sewer. Sidewalks, curbs and gutters have nothing to do with providing sewer to protect the aquifer. This is the reason an Interlocal Agreement was signed between the City and the County. What happens on the old portions of Linda Vista on St. Thomas Drive, Eldora Drive, Jay Lane, and Helena Drive? These areas do not have sidewalks or curbs and gutters. Are the Commissioners going to be dealing with this issue in these areas as well? What are the differences?

Joe Aldegarie said the major differences is that in all the contract sewers, the City has never gone back and made the standards retroactive. Only with the new developments has the City tried to enforce their subdivision standards. He said the City standards are pretty much the same as County standards. The difference is the fact that the Board of County Commissioners granted the variance. He said if the Commissioners had been aware of the City's policy, a compromise could have been reached before the subdivision was approved.

Michael Sehestedt said that some City representatives knew this was coming up, but didn't bother to come to the hearing on that particular subdivision. Much testimony was taken, but the City was not present to testify. Through all of the discussion with the City, as well as the signed agreements, resolutions, etc., this City policy has never been suggested. He referred to the City's letter.

Ann Mary Dussault said the letter came from the Engineering Division at the City. She stated she reviewed the City's policy and concluded that the language was broad enough. The people who signed the sewer and water district

petition believe that creation of this district will protect them from annexation. She stated she does not believe that this is true. However, what this district will do is at least give these residents some level of negotiation with the City that was apparently taken away from the Commissioners. She stated she found this upsetting to have to deal in this manner. The City has placed the infrastructure down Reserve Street and the fact is, the residents between these two areas will not benefit from a sewer and water district. In fact, they will be paying twice. The Commissioners in this case, have no choice but to shift the power to another district that may have better success in dealing with the City.

Jim Carlson stated that his concern over this whole issue is that sewer services are provided as quickly and as efficiently as possible. When anyone who has control over infrastructure is using this for other purposes than for sewerage and groundwater protection, it will cause problems. Protecting groundwater and the other issues involved has nothing to do with territorial issues.

Ann Mary Dussault agreed with these statements. She said power has been used inappropriately. When the City makes certain requirements that are really under the purview of the governing body, in this case, the Board of County Commissioners, then there is a shift of power.

Fern Hart asked if curbs and gutters protect the aquifer?

Joe Aldegarie said no. However, this was a policy adopted by the City Council eight years ago. This is the first instance where a Commissioner decision contrasted with a City Council requirement. He said he thought these issues could be worked out and the policy can be changed.

Fern Hart hoped that the Growth Management Committee could designate annexation areas and the issues surrounding these. She said these issues will arise again. It is important that a method of dealing with this issue is found.

Joe Aldegarie said he was part of the group who drafted the policy years ago. They never envisioned a point where the City took power away from the County. He said he was willing to change the policy so that it wouldn't happen again.

Barbara Evans said this sewer and water district would not even be discussed if the City would agree to give contract sewer to anyone who wanted it. This is the only way to adequately protect the aquifer. If the City would grant contract sewer without requiring annexation, there would be no problem.

Joe Aldegarie commented that the policy has been relaxed over the years. The City deferred annexation on Linda Vista and Lincoln Hills. Changes are being made in the City's policy because the City wants more and more people on the sewer system.

Paul Laisy suggested that the boundaries be moved to the City limit boundary line on Reserve Street. He suggested that the people east of this line be allowed to petition into the district once it is formed.

Members of the audience complained that they had worked hard to get signatures and in good faith so that they would be included in this district.

Ann Mary Dussault stated that the residents believe that the creation of a district will stop annexation. The problem is, it won't stop annexation. This area is going to be annexed by the City. There is little or no question about this. If residents are included in both the City and district boundaries, the residents will end up paying twice.

Ann Mary Dussault moved and Fern Hart seconded the motion to adjust the boundaries of the proposed Orchard Homes/Target Range Sewer and Water District to reflect the most westerly boundaries of the City of Missoula to the west of Reserve Street. Also, that the area to the south of South Avenue be adjusted to exclude those areas annexed by the City to include those areas of Fort Missoula, Larchmont Golf Course, Divot Development lands, and the area between Old Post Road and South Avenue, with the understanding that residents within the boundaries of the City of Missoula could petition into the Orchard Homes/Target Range Sewer and Water District if it would be in their best interest to do so. The motion carried on a vote of 3-0.

Fern Hart explained that the question of whether to form a Orchard Homes/Target Range Sewer and Water District will be placed on the November ballot.

There being no further business to come before the Board, the Commissioners were in recess at 5:10 p.m.

#### THURSDAY, AUGUST 11, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present in the afternoon. Commissioner Evans was at the Fairgrounds all day, and Commissioner Hart attended a Mental Health Meeting at Fort Missoula in the forenoon.

Memorandum of Understanding -- The Board of County Commissioners signed a Memorandum of Understanding between the Montana Department of State Lands and the Missoula County Sheriff's Department, whereby the Dept. of State Lands agrees to reimburse the County for certain additional services performed in the prevention and suppression of wildland fires, in addition to their statutory and administrative duty to protect life and property by implementing all necessary phases of evacuation and access restriction to affected areas under the Missoula City/County Disaster Plan, as per the terms and reimbursement schedule set forth. The Memorandum was returned to Mike McMeekin in the Sheriff's Department for further signatures and handling.



General Project Development and Construction Agreement and CTEP Maintenance Agreement -- Chair Hart signed a General Project Development and Construction Agreement and the CTEP Maintenance Agreement between the Montana Department of Transportation and Missoula County for the development, construction, and maintenance of a Community Transportation Enhancement Program (CTEP) project, STPE 32 (19), titled Landscaping - Ninemile, including grading, construction of a stone wall and planting of trees and shrubs, as per the terms and conditions set forth, for a total estimated cost of \$23,200.00. The Agreements were returned to Horace Brown, County Surveyor, for further handling.

**FRIDAY, AUGUST 12, 1994**

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

SPECIAL MEETING -- DECISION ON MEADOWLANDS -- PRELIMINARY PLAT

At a special meeting held in the forenoon, the Commissioners took the following action on the Meadowlands subdivision Preliminary Plat after a discussion with the owners of the proposed subdivision. The decision was postponed from the Public Meeting on August 10, 1994:

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve Meadowlands Preliminary Plat based on the findings of fact in the staff report and subject to the following conditions:

1. Plans for paving, grading, drainage, erosion control, street, and culverts shall be approved by the County Surveyor.
2. All driveways, streets, and parking areas within the subdivision shall be paved. This language shall be included on the face of the plat and in all articles of conveyance to inform lot purchasers of this condition.
3. Street signs shall be placed at the two intersections of Thornton Drive and Highway 10, subject to approval of the County Surveyor.
4. Utility easement locations shall be approved by the appropriate utility and governing body and shall not be less than 20 feet in width unless a narrower width is approved by the appropriate utility and governing body. In addition to showing the location of the utility easement, the final 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 and easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, and across each area designated on this plat as "Utility Easement" to have and to hold forever."

5. Approach permits for Thornton Drive shall be approved by the Montana Department of Transportation prior to filing of the final plat.
6. A fee of \$50 per lot shall be paid into the large diameter hose fund of the Missoula Rural Fire District.
7. Property owners shall maintain the frontage on the Thornton Street right-of-way through mowing, landscaping and watering. This language shall either appear on the face of the final plat, be stated in the covenants, or included in an enforceable agreement with the County.

Ann Mary Dussault moved and Barbara Evans seconded the motion to amend Condition No. 7 as follows:

7. Property owners shall maintain the frontage on the Thornton Street right-of-way through mowing, ~~landscaping~~ and watering. This language shall either appear on the face of the final plat, be stated in the covenants, or included in an enforceable agreement with the County.

The amendment passed on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to add the following condition:

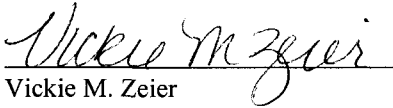
8. For purposes of creating and installing a landscaped corridor along the boundary of the property on Highway 10 (Lots 1, 2, 3 and 6), the developer shall submit to the Board of County Commissioners a landscaping plan where the aggregate of the equivalent of 25 feet of frontage along Highway 10 shall be landscaped and maintained through either underground watering or a drip system.

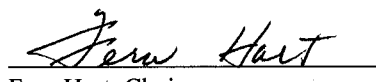
The addition passed on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request for two variances: 1) Section 3-2(3) pertaining to right-of-way widths in commercial subdivisions, and 2) Section 3-2(5)(A) pertaining to sidewalk and pedestrian walkways requirements. The motion carried on a vote of 3-0.

The main motion to approve Meadowlands subdivision subject to the amended conditions carried on a vote of 3-0.

Approval of Work Plan -- The Board of County Commissioners formally approved the Office of Planning and Program Development's FY'95 Work Plan as presented.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, AUGUST 15, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was on vacation the week of August 15th through the 19th.

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was signed:

Contract -- The Board of County Commissioners signed a Contract between the Missoula City-County Health Department and the Western Montana Regional Community Mental Health Center, Inc. for the purpose of coordinating comprehensive chemical dependency services including outpatient care, preventive public education service, emergency care and consultation to the residents of Missoula County, as per the terms set forth, for regular monthly payments of \$6,408.33 after receipt of required reports and documenting compliance with performance expectations, for the period from July 1, 1994, through June 30, 1995.

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

**TUESDAY, AUGUST 16, 1994**

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

DAILY ADMINISTRATIVE MEETING

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

- 1) the Commissioners voted to authorize John DeVore, Administrative Officer, to work with the Seeley Lake Solid Waste Management District Board to negotiate a buy-sell agreement with Kerry Drew for the purposes described in the memo dated August 3, 1994; and
- 2) a request from Herb Richards for a waiver of plat limitation to access Lot 9 across Lot 7 in the Double Arrow Ranch Phase VII Subdivision was discussed; Deputy County Attorney Mike Sehestedt will write a letter to the Double Arrow Homeowners Association for their review/comments of the request.

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

**WEDNESDAY, AUGUST 17, 1994**

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

DAILY ADMINISTRATIVE MEETING

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

Professional Security Services Agreement -- The Board of County Commissioners signed a Professional Security Services Agreement between the Missoula County Sheriff's Department and Mike Nicosia, Superintendent of Frenchtown School, for the purpose of providing uniformed officers for crowd control and general security duties at school functions, as per the terms set forth, for the period of the '94/95 school year.

Notice Inviting Proposals -- Chair Hart signed a Notice Inviting Proposals for RSID No. 8454, the construction of a sanitary sewer main extension to serve Block 1 of Maclay Addition, as per the items and terms set forth, setting the bid award for 2 p.m. on August 30, 1994.

Other items included:

As per the recommendation of Hal Luttschwager, Risk Manager, the Commissioners authorized settlement in the amount of \$4,000.00 in exchange for a release of all claims in the Kern v Western Montana Fair lawsuit, for a claim resulting from an incident on July 1, 1990, when Mr. Kern rode his horse into the County water truck on the track at the Western Montana Fair--his horse was severely injured and he suffered a bruised leg and emotional distress.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:35 p.m. by Chair Fern Hart. Also present was Commissioner Ann Mary Dussault.

BID AWARD: ASPHALTIC PLANT MIX - ROAD DEPT.

Fern Hart explained that the action requested was to award the bid for 4,200 tons of plant mix asphaltic concrete. The bids were opened Monday, August 15, 1994 at 10:00 a.m. with the following results:

JTL Group	\$59,920.00
Jensen Paving Co.	\$61,425.00

The bid results were based on 3,500 tons of asphaltic concrete. The staff recommended that the bid be awarded to JTL Group for \$71,904.00 as the lowest and best bid. There is \$100,000 budgeted for asphalt in fiscal year 1995.

Michael Sehestedt, Deputy County Attorney explained that the Road Department requested that the bid be awarded for 4,200 tons of plant mix in the amount of \$71,904.00. The quoted figure was based upon 3,500 tons. He said the County reserves in their bid documents the right to increase or decrease, up to 25%, while maintaining the unit cost. Horace Brown, County Surveyor, has exercised his option to acquire an additional 700 tons of plant mix.

Ann Mary Dussault moved and Fern Hart seconded the motion to award the bid for 4,200 tons of plant mix asphaltic plant mix to JTL Group in the amount of \$71,904.00 as the lowest and best bid. The motion carried on a vote of 2-0.

BID AWARD: STONE CHIPS - ROAD DEPT.

Fern Hart explained that the action requested is to award the bid for 5,780 tons of crushed cover aggregate-stone chips. The bids were opened Monday, August 15, 1994 at 10:00 a.m. with the following results:

JTL Group	\$76,300.00
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The bid results were based on 7,000 tons of crushed cover aggregate-stone chips. The staff recommended that the bid be awarded to JTL Group in the amount of \$63,002.00 for 5,780 tons of crushed cover aggregate-stone chips as the lowest and best bid. There is \$63,000 budged for this item in fiscal year 1995.

Michael Sehestedt, Deputy County Attorney, explained that the amount shown in the bid results was based the 7,000 tons of chips. The recommendation is for 5,780 tons of crushed chips. This is the most that can be purchased with the budgeted amount. The County reserves the right to increase or decrease by up to 25% while maintaining the same unit price.

Ann Mary Dussault moved and Fern Hart seconded the motion to award the bid for 5,780 tons of crushed cover aggregate-stone chips in the amount of \$63,002 to JTL Group as the lowest and best bidder. The motion carried on a vote of 2-0.

BID AWARD: AGGREGATE MATERIAL - ROAD DEPT.

Fern Hart explained that action was requested to award the bid for 2,850 cubic yards of aggregate material for the Road Department. The bids were opened Monday, August 15, 1994 at 10:00 a.m. with the following results:

Huset Construction	\$24,300.00
JTL Group	\$36,000.00
Jensen Paving Co.	\$38,960.00

The bid results were based on 3,000 cubic yards of aggregate material. The staff recommended that the Commissioners award the bid to Huset Construction in the amount of \$23,085.00 as the lowest and best bid. \$23,100 was budgeted for this item in the fiscal year 1995 budget.

Michael Sehestedt, Deputy County Attorney, explained that the amount shown in the bid results was based on 3,000 cubic yards. The recommendation is for 2,850 cubic yards of aggregate material. This is the most that can be purchased with the budgeted amount. The County reserves the right to increase or decrease by up to 25% while maintaining the same unit price.

Ann Mary Dussault moved and Fern Hart seconded the motion to award the bid for 2,850 cubic yards of aggregate material to Huset Construction in the amount of \$23,085.00 as the lowest and best bidder. The motion carried on a vote of 2-0.

BID AWARD: 9-1-1 REMODEL - POSTPONED FROM AUGUST 10TH

Fern Hart explained that four bids for the remodeling contract for the 9-1-1 Center were received in response to the solicitation. This solicitation included one deductive alternative which has been subtracted from the base of each bidder since this will be the basis of the bid award.

On August 9, 1994, the bids were opened for the remodel of the 9-1-1 Center with the following results:

Sirius Construction	\$91,660
Iroquois	\$83,350
D. Lower	\$77,720
Western	\$83,194

The staff recommended that the bid for the remodeling contract for the 9-1-1 Center be awarded to D. Lower Construction as the lowest and best responsive bidder. This bid is below the architect's estimate and well within the budget parameters.

Doreen Culver, Central Services, explained that the alternate bid of \$3,200 was for tearing down the old 9-1-1 Center if County workers were not available. This \$3,200 is in addition to the bid price for the remodel.

Ann Mary Dussault moved and Fern Hart seconded the motion to award the bid for the remodeling contract for the 9-1-1 Center to D. Lower Construction in the amount of \$77,720 as the lowest and best responsive bidder. The motion carried on a vote of 2-0.

Ann Mary Dussault moved and Fern Hart seconded the motion to authorize an additional expenditure of \$3,200 for the tear-down of the existing 9-1-1 Center in the event that in-house County staff is unable to accomplish that task. The motion carried on a vote of 2-0.

DECISION ON: PROPOSED CHANGES IN FEES FOR SEELEY LAKE REFUSE DISPOSAL DISTRICT - POSTPONED FROM JULY 27, 1994

On June 30, 1994, the Board of County Commissioners signed a Resolution of Intent to change the service fee structure for the Seeley Lake Refuse Disposal District. On July 27, 1994, the Commissioners held a hearing in Seeley Lake to hear testimony relative to the proposed changes in fees for the Seeley Lake Refuse Disposal District. Written testimony and phone calls were accepted until Friday, July 29th at 5:00 p.m. Action was postponed until today's meeting.

Ann Mary Dussault moved and Fern Hart seconded the motion to adopt the resolution to change the service fee structure for the Seeley Lake Refuse Disposal District. The motion carried on a vote of 2-0.

RESOLUTION NO. 94-083

The Board of County Commissioners signed Resolution No. 94-083, a resolution to change the service fee structure for the Seeley Lake Refuse Disposal District as follows:

WHEREAS, the Board of Directors for the Seeley Lake Refuse Disposal District is empowered to establish fees for the purpose of defraying the maintenance and operation costs of the refuse disposal district under MCA 7-13-231; and

WHEREAS, the Board of Directors for the Seeley Lake Refuse Disposal District has notified the Board of County Commissioners of its proposal to change the monthly fee structure for disposal service as follows:

1. Establish three rate categories - one for residential consumers, one for part-time residents and one for commercial consumers.
2. That the residential flat rate be changed from the current rate of \$126 per year for each household unit to \$90 per year.
3. That the part-time residential rates be changed from the current rate of \$63 per year for each household unit to \$45 per year.
4. That the commercial rate be from a one half unit base minimum to one established on a per yard as the rate base for FY'95, for every commercial business in the District.

WHEREAS, the Board of County Commissioners is required by 7-13-232 MCA to approve rates for the refuse disposal district after noticed and an opportunity for protest in accordance with 7-13-213 MCA.

WHEREAS, the Board of County Commissioners held a public hearing on July 27, 1994 in Seeley Lake on the proposed service fees, legal publication and notice requirements having been met in accordance with MCA 7-13-208 (1) and (2); and

WHEREAS, an opportunity for protest was allowed as provided in MCA 7-13-209 and 7-13-211. Ten (10) protests were received from the owners of property liable to be assessed for service;

NOW THEREFORE BE IT DECLARED that the Board of County Commissioners of Missoula County, Montana approves the change in fee structure as proposed by the Seeley Lake Refuse Disposal District, in accordance with Title 7, Chapter 6, Part 2 MCA.

A description of the boundaries of the district is included in the resolution on file with the Clerk and Recorder.

CONTRACT

The Board of County Commissioners signed a Contract between Missoula County and Herb Richards Construction, a sole proprietorship, for the purpose of constructing Whitetail Bridge SS-6A in Seeley Lake for compensation in the amount of \$89,306.00, as per the terms and items set forth, commencing work within ten calendar days following mailing of the "Notice to Proceed" and shall fully complete all the work contemplated within a period of 42 consecutive calendar days from the fifth day following the mailing of the Notice to Proceed. The Contract was returned to Doreen Culver, Central Services, for further handling.

RESOLUTION NO. 94-084

The Board of County Commissioners signed Resolution No. 94-084, a resolution extending the billboard emergency zoning for a period of one year unless sooner repealed or superseded by permanent zoning regulations.

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

**THURSDAY, AUGUST 18, 1994**

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated August 17, 1994, pages 4-39, with a grand total of \$128,401.74. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Tait W. and Deanna J. Jorgenson in the amount of \$20,000.00, for the property located at 2017 South 10th Street West in Missoula, dated August 11, 1994.

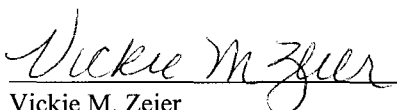
The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

Extension Letter -- The Board of County Commissioners signed a letter to Dick Ainsworth of PCI approving a filing extension for Kona East, conditioned by the same conditions stated in the previous letter of extension, dated May 9, 1994, and additional conditions listed in the letter (BCC-94-412), making the new filing deadline November 24, 1994.

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

**FRIDAY, AUGUST 19, 1994**

The Board of County Commissioners did not meet in regular session; Commissioner Hart was in Kalispell attending a Mental Health Board Meeting.



Vickie M. Zeier  
Clerk & Recorder



Fern Hart, Chair  
Board of County Commissioners

**MONDAY, AUGUST 22, 1994**

The Board of County Commissioners did not meet in regular session; Commissioner Dussault was on vacation August 22nd and 23rd, and Commissioner Hart was out of the office all day because of illness.

**TUESDAY, AUGUST 23, 1994**

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

Audit List -- Commissioners Hart and Evans signed the Audit List, dated August 23, 1994, pages 4-42, with a grand total of \$271,203.26. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Leota M. Fred as principal for warrant #223740, dated June 24, 1994, issued on the Payroll Fund in the amount of \$63.76 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Agreement -- Chair Hart signed an Agreement (DHES Contract No. 250016) between Missoula County and the Montana Department of Health and Environmental Sciences (DHES) for the purpose of providing local sanitary review of minor

subdivisions, as per the terms set forth, for the period from August 23, 1994, through June 30, 1995. The Agreement was forwarded to DHES in Helena.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and the Lead Penny Mining and Royalty Ent., an independent contractor, for the purpose of delivering and spreading 1500 yards of pit run gravel to Missoula County's Vehicle Graveyard at 8280 Deschamps Lane, as per the terms set forth, for the period commencing July 14, 1994, through July 30, 1994, for compensation not to exceed \$6,000.00. The contract was returned to the Health Department for further signatures and handling.

Resolution No. 94-087 -- The Board of County Commissioners signed Resolution No. 94-087, a resolution creating Rural Special Improvement District No. 8454 for the construction of a sanitary sewer main extension to serve Block 1, of Maclay Addition, Missoula County, as per the terms set forth.

Resolution No. 94-088 -- The Board of County Commissioners signed Resolution No. 94-088, a resolution to accept real property from U S West Communications, Inc. being that certain easement, signed by the Missoula County Commissioners on April 4, 1994, and recorded on April 4, 1994, in Book 410, Page 1326 records of Missoula County Montana and being within the utility area of the El Dorado Subdivision of East Missoula, Subdivision No. 939, located in a portion of the NE 1/4 of Section 24, T13N, R19W, PMM, Missoula County.

Easement -- The Board of County Commissioners signed an Easement, whereby the County grants to U. S. West Communications, Inc. a perpetual easement to construct, reconstruct, operate, maintain and remove such telecommunications facilities as may be required, over, under and across a 20' by 20' parcel of land located adjacent to the southwest property line of the utility area of the El Dorado Subdivision of East Missoula, Subdivision No. 939, located in the NE 1/4, Section 24, T. 13 N., R. 19 W., PMM, owned by Missoula County.

Resolution No. 94-089 -- The Board of County Commissioners signed Resolution No. 94-089, a resolution of intention to create Rural Special Improvement District No. 8918 for the maintenance of the sewer and water system serving the Lewis and Clark Subdivision of Missoula County, as per the items and terms set forth, setting the hearing date for September 7, 1994, at 1:30 p.m.

Resolution No. 94-090 -- The Board of County Commissioners signed Resolution No. 94-090, a resolution submitting the question of sale of a portion of the County owned tract at Spurgin Road for the purpose of providing a site for the construction of senior housing and to provide funds for the purchase of park, recreational and open space lands in other parts of the County to the electors at the November 8, 1994, election.

Resolution No. 94-091 -- The Board of County Commissioners signed Resolution No. 94-091, a resolution officially canceling Resolution No. 94-074 signed on July 27, 1994, proclaiming an emergency in the Grant Creek area, as Resolution No. 94-077 was signed on July 28, 1994, superseding Resolution No. 94-074, proclaiming an emergency for all of Missoula County and extends authority for Incident Commanders and law enforcement to exercise extraordinary measures as set forth in the County Emergency Operations Plan.

Approval of Proposal/Agreement -- Chair Hart signed approval of a Proposal/Agreement, dated August 17, 1994, submitted by Shannon Environmental Services to conduct a Phase I Environmental Site Assessment of the Nooney Property/County Shooting Range, Missoula County, for the purpose of meeting the requirements for due diligence associated with the Superfund Amendments and Reauthorization Act of 1986, as per the items and terms set forth. The Agreement was returned to the Sheriff's Department for further handling.

Agreement -- The Board of County Commissioners signed a Master Agreement between Missoula County and I.U.O.E. Local 400, Butte Teamsters Union Local #2, I.A.M. and A.W. Local #88 District 85, (County Road Dept.) covering the period from July 1, 1994, through June 30, 1996, for the purpose of promoting harmonious relations between the Employer and the Union; the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, fringe benefits, employee safety and other conditions of employment.

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Deborah Jo Fjelstrom in the amount of \$17,691.00, for the property located at 1715 South 8th Street West in Missoula, dated August 18, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

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

### WEDNESDAY, AUGUST 24, 1994

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

#### DAILY ADMINISTRATIVE MEETING

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

Agreement -- The Board of County Commissioners signed an Agreement between the Montana Department of Health and Environmental and Missoula County for the purpose of providing specialized services within Missoula County in

support of a comprehensive, statewide tobacco use prevention and control network, as per the terms set forth, commencing on July 1, 1994, and must be completed by November 30, 1994, for a total reimbursement to the County up to a maximum of \$13,996.00. The Agreement was forwarded to DHES in Helena.

Resolution No. 94-092 -- The Board of County Commissioners signed Resolution No. 94-092, a resolution to adopt a special County zoning district and to apply this zoning district to property known as the Fort Missoula Historic District. The Fort Missoula Historic District is located in Section 36, T13N, R20W, and a portion of Section 31, T13N, R19W, and is specifically that area included in the nomination to the National Register of Historic Places (National Park Service and Missoula County 1987). The rezoning includes various tracts as shown on the Exhibit attached to the Resolution.

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Gregory G. and Cheryl Jacobson in the amount of \$20,000.00, for the property located at 6108 Hillview Way in Missoula, dated August 19, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

Request for Full Reconveyance -- Chair Hart signed a Request for Full Reconveyance canceling the Trust Indenture by John and Mary Jo Diddel for Lot 1 of Target Range Gardens, given as security for subdivision improvements which have now been completed. The document was returned to Colleen Dowdall, Deputy County Attorney, for further handling.

Other items included:

the Commissioners denied a request from Dusty Deschamps, County Attorney, to be reimbursed for his purchase of gift certificates for his employees in recognition of their extraordinary service during a difficult time for the office, as this is an area where a precedent would be a fair-sized budget item.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

#### BID AWARD: DRILLING & INSTALLING MONITORING WELLS IN MISSOULA COUNTY - WATER QUALITY DISTRICT - POSTPONED FROM AUGUST 17TH

On August 15, 1994 at 10:00 a.m., bids were opened for drilling and installation of monitoring wells for the Missoula Water Quality District monitoring well network. Two bids were received as follows:

Western Water Works	\$45,115
Bolend Construction	\$45,725

Bids were previously opened for this project in June, but the bid was not awarded due to a lack of competitive bids and costs which greatly exceeded the projected budget.

The staff recommended that the Commissioners award the bid to Western Water Works, which was the low bidder and is qualified to perform the work.

Peter Neilsen, Environmental Health Supervisor, speaking for the Water Quality District, said the district has proposed to develop a dedicated ambient groundwater monitoring well network. This will be a network of approximately 40-50 wells that would be developed over the next several years depending upon budget capabilities. The purpose of this is to provide long-term water quality monitoring of the Missoula Valley aquifer. The wells will be used for the next 50 years. The district would like to drill their own wells, in the locations they want them in, and they be available to the staff over a long period of time in order to assess trends. In the past, the staff has used private or public wells. This network will ensure that they obtain the data that is most useful to them to manage the groundwater resource over the long-term. It is very important to have quality information with which to make sound decisions to manage the aquifer.

Ann Mary Dussault moved and Barbara Evans seconded the motion to award the bid for drilling and installation of monitoring wells for the Missoula Water Quality District monitoring well network to Western Water Works in the amount of \$45,115, as the lowest and best bid. The motion carried on a vote of 3-0.

#### BID AWARD: LIVE-SCAN FINGERPRINTER - SHERIFF'S DEPT. - POSTPONED FROM AUGUST 17TH

Lt. Clay Hopper, Detention Center, said approximately 18 months ago, the Detention Center began the process of researching live-scan fingerprinting. Such a system will allow higher quality fingerprinting than is now available with the traditional ink system. High quality fingerprints are essential in the identification of criminals. In addition, live-scan fingerprinting provides the ability to duplicate multiple fingerprint cards without the need to physically re-print the individual. Multiple fingerprint cards are required by both state and federal agencies each time a person is arrested.



Two bids were received for the live-scan fingerprinter as follows:

Identix, Inc.	\$45,075.00
Digital Bio Metrics, Inc.	\$49,950.00

The staff recommended that the bid be awarded to Digital Bio Metrics in the amount of \$49,950. The officers who have researched and operated both systems feel that Digital Bio Metric's system would better fill the needs of the Missoula County Detention Center. Additionally, the Montana State ID Bureau advises that other agencies in the Western Identification network, of which Missoula County is a member of, have purchased and are using the DBI system. The Missoula County Detention Center will be the first agency in Montana to use live-scan fingerprinting. In the future, the capability of electronically transmitting fingerprints to the Identification Bureau will be possible. This in turn will be interfaced with the Western Identification network and will allow the department access to fingerprint records from the seven western states for better identification of persons arrested in Missoula. Each company was able to reduce the original bid price of their system after adjusting for options that the department did not require at this time. In the interlocal agreement with the City of Missoula, the City has agreed to pay one-half of the acquisition costs and one-half of the annual maintenance cost of the fingerprint system.

Barbara Evans asked if the lower of the two companies is awarded the bid, will there be a problem networking with the agencies?

Clay Hopper said probably not. However, DBI is more user-friendly and has a few features that the other bid does not. He said it is not the capability of the machines, but the preference of the staff. He said he and his staff tested both machines. There are no great differences in the quality of the two machines, but DBI is more user-friendly.

Barbara Evans moved and Ann Mary Dussault seconded the motion to award the bid for the live-scan fingerprinter to Digital Bio Metrics, Inc. in the amount of \$49,950.00 based on the recommendation of the staff and with the recognition that the City of Missoula will pay half for the purchase and maintenance of the machine. The motion carried on a vote of 3-0.

Ann Mary Dussault said the County Attorney's Office has advised the Commissioners that under these particular circumstances, a bid can be awarded to the highest bidder.

#### CONSIDERATION OF HELLGATE PINES - SUMMARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that this proposal is for a 2-lot division of Lot 20 of Hellgate Pines No. 1, located in the SE 1/4 of Section 12, Township 12 North, Range 18 West, two miles southeast of the Turah Interchange next to the old Milwaukee right-of-way off I-90 about twelve miles east of Missoula. The original Hellgate Pines No. 1 is a 24-lot subdivision that was platted in 1970. Lot 20 of Hellgate Pines No. 1 covers a total of 2.8 acres, and is located on the south side of Hellgate Lane, a County gravel road of approximately 22 feet in width. The shape of the lot is long and triangular, and access to the rear lot will be off a private access easement that crosses Lot 20A along the east property line. Both lots are proposed to be 1.4 acres in size. A home, garage, well, septic, and a root cellar exist on Lot 20A. Lot 20B is currently vacant, however a home, well, and septic are planned.

The 1975 Missoula County Comprehensive Plan recommends this area may be developed up to a maximum of two dwelling units per acre. However, health regulations will establish densities where individual wells and septic are used, as is the case with this subdivision. This designation is primarily encouraged within activity centers and community focal points. Turah is an unincorporated town and residential development has grown on both sides of the I-90 interchange in the vicinity of this proposal.

The developer requested a variance to Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions. The submittal states that the County maintained gravel road has no sidewalk, and none is planned for the gravel road. The subdivision is low density and rural in nature. There is only approximately 100 feet of property frontage along the road. Staff recommends approval of the variance request for the reasons stated.

The developer requested a variance to Section 3-2(3) which states that right-of-way widths for County roads shall be 60 feet. The existing right-of-way width for Hellgate Lane is 54 feet, and was platted as such with the subdivision in 1974. The developer states that the width is sufficient for this semi-rural subdivision. Because this is an established right-of-way width for the entire length of Hellgate Lane, staff recommended approval of the variance request.

The Office Of Community Development staff recommend approval of the summary plat of Hellgate Pines Addition No. 1, Lots 20a and 20b, subject to compliance with the following conditions:

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor. *Section 3-2 and 3-4, Missoula County Subdivision Regulations*
2. The 54-foot right-of-way area shown on the plat shall be labeled "public right-of-way and public utility easement." *Section 3-2(H)*
3. A \$50 fee per lot shall be paid to the Missoula Rural Fire Department toward the purchase of a large diameter fire hose. *Comments of Rural Fire Chief.*
4. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:

"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."

*Section 3-5 and 3-6.*

5. The name Hellgate Drive was changed to Hellgate Lane by resolution Bk. 30 pg. 1099; this change shall be reflected on the final plat. *Comments of the County Surveyor.*
6. The final plat shall show a one-foot no-access strip along the road frontage of Lot 20A. *Comments of the County Surveyor.*
7. The following statement shall appear on the face of the final plat:  
  
"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID for any improvements to Hellgate Lane and may be used in lieu of their signatures on an RSID petition."  
*Section 3-2(G)(1).*
8. The driveway shall meet regulation standards, and shall have a minimum 20 feet of clear access for emergency vehicle passage. The driveway plans and turnaround shall be approved by the Missoula Rural Fire Chief.  
*Section 3-2(6).*

Fern Hart asked what the zoning was in this area?

Ron Ewart said it is unzoned, but is in the Turah Activity Circle. The Comprehensive Plan designates the area as suburban which recommends a density of up to two units per acre if the health regulations permit.

Fern Hart asked if the subdivision has been fully developed?

John Kellogg, Professional Consultants, Inc., representing the developer, Eric Newman, said at this time, a little over half the units are developed within this subdivision. He said the purpose of this request is to provide a building site for Mr. Newman for his house. He said the size of the lot corresponds with adjacent land. He said they are in agreement with the conditions as proposed by the OCD staff.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the summary plat of Hellgate Pines Addition No. 1 Lots 20A and 20B subject to the findings of fact in the staff report and subject to the following conditions:

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor.
2. The 54-foot right-of-way area shown on the plat shall be labeled "public right-of-way and public utility easement."
3. A \$50 fee per lot shall be paid to the Missoula Rural Fire Department toward the purchase of a large diameter fire hose.
4. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:

"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."

5. The name Hellgate Drive was changed to Hellgate Lane by resolution Bk. 30 pg. 1099; this change shall be reflected on the final plat.

6. The final plat shall show a one-foot no-access strip along the road frontage of Lot 20A.

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

"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID for any improvements to Hellgate Lane and may be used in lieu of their signatures on an RSID petition."

8. The driveway shall meet regulation standards, and shall have a minimum 20 feet of clear access for emergency vehicle passage. The driveway plans and turnaround shall be approved by the Missoula Rural Fire Chief.

The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request for the following variances for Hellgate Pines Addition No. 1 Lots 20A and 20B:

- 1) Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions; and

2) Section 3-2(3) which states that right-of-way widths for County roads shall be 60 feet.

The motion carried on a vote of 3-0.

CONSIDERATION OF: DEER PARK - SUMMARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that Deer Park Addition is a proposed 5-lot commercial subdivision of a 24.3-acre parcel located in Seeley Lake east of Highway 83, in the southeast 1/4 of Section 3 and the northeast 1/4 of Section 10, Township 16 North, Range 15 West. The property is wooded and vacant, being fairly level except for a steep, low area of riparian resource in the southerly portion. The property is unzoned and the Missoula County Comprehensive Plan designation is suburban. The property lies within the "activity area" of the Seeley Lake community as shown in this plan. The 1989 Seeley Lake Area Comprehensive Plan amendment also serves to guide development in this area and is discussed in the last section of the staff report and in agency review comments of the Rural Planning Office.

The lot sizes are between 2.5 and 10 acres; the 10-acre lot is pending a sale for a playhouse theater. Two shared approaches will provide access to the five lots. The covenants proposed for this development define the permitted commercial uses and the role of the Architectural Control Committee. The developer has submitted conceptual architectural, signage, and development plans as per staff suggestion.

The Office of Community Development staff recommended that the summary plat of Deer Park Addition be approved, subject to compliance with the following conditions:

1. Plans for paving, grading, and drainage shall be approved by the County Surveyor prior to filing of the final plat. *Section 3-2, 3-4.*
2. The following statement shall be shown on the face of the plat:  
  
 "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."  
*Section 3-5.*
3. Approach permits for a maximum of two access locations on to Highway 83 shall be approved by the State Department of Transportation prior to filing the final plat. *Comments of the County Surveyor.*
4. The Property-owner's Association Articles of Incorporation, By-Laws, Covenants, and Restrictions shall be approved by the Board of County Commissioners after review by the Rural Planning Office prior to filing of the final plat. They shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these conditions do not conflict. *Section 4-2(5)(D)(3).*
5. To protect the areas or riparian resource, there shall be no construction on Lot 5 within the No-Build Zone as outlined on Exhibit A; this area shall be shown on the face of the final plat. *Section 3-13(3).*
6. Within the appropriate sections, the covenants shall state that:
  - 1) A maximum of two ground signs with multiple business names may be placed along the highway frontage.
  - 2) A sidewalk shall be placed along the west storefronts, subject to approval of the Architectural Review Committee.
  - 3) Parking shall be generally placed to the rear of the buildings; any parking that is viewed from Highway 83 shall be screened with vegetation. All parking areas and drives shall be paved and connected throughout the subdivision. All lots shall have the right to use any portion of the parking and drives, and access easements shall cover all parking areas and drives.
  - 4) The building facade shall be designed for both the east and west-facing sides of the building so that "storefronts" are viewed from Highway 83 and the rear parking areas.
  - 5) Individual water service lines shall be extended to the right-of-way at the time of building construction. At the time water service is available for extension to serve this subdivision, all lots shall contribute equally to the cost of extending the main.
  - 6) A section of these covenants shall provide for the maintenance of the streets by the property-owner's association, subject to approval of the County Attorney's Office.
  - 7) The No Build Zone indicated on the plat shall remain in a natural state but may be reasonably maintained in order to protect the area as a riparian and wildlife resource.
  - 8) Barbecue pits shall not be permitted due to potential wildlife/human conflict.
  - 9) Flowers and ornamental shrubs may be susceptible to damage from wildlife unless properly fenced and protected. The planting of native vegetation is encouraged.
  - 10) No lot shall be used or maintained as a dumping ground, nor shall any rubbish, trash, or other waste be allowed to accumulate, except in wildlife-proof containers which shall be emptied and removed from the premises on at least a weekly basis. All garbage shall be stored in containers of metal, plastic or other suitable material which has sufficiently tight fitting covers to prevent the escape of noxious odors

and to prevent entrance or destruction by wild animals. Garbage cans placed outdoors for use by the general public shall only be approved wildlife-proof containers.

*Comments of RPO and OCD staff.*

7. Plans for fire protection shall be approved by the Seeley Lake Fire District Chief prior to filing of the final plat.  
*Section 4-1(11)(A), public health and safety.*
8. Sidewalks shall be installed at the time of building construction on each lot, and shall connect with adjacent sidewalks if present. The building plans shall show the sidewalk location at the time a zoning compliance permit is issued. *Section 3-2(5)(A).*

Andy Fisher, Eli & Associates, representing the owner and developer, Dave Stewart, agreed with the staff report with the exception of Condition No. 3 which limited the number of accesses. He said this property has a quarter of a mile of highway frontage. The two entrances shown on the drawing are 1,000 feet apart. If this were platted as a standard city block, it would have four accesses. He requested that a third access to the highway be added. He said the third access could be called a service entrance. Service and supply vehicles will have to use the same parking and access as the customers. It would be nice to have an additional access for service vehicles.

Barbara Evans asked if the developer doesn't get a third entrance, will the trees be cut to allow better visibility of the businesses?

Andy Fisher said the site has been thinned and is not thickly wooded. It will not require a great deal of thinning to be very visible. There is a pond on the southern end of the property.

Fern Hart commended the developer on the nice design of the proposed commercial subdivision. It will be an asset to the Seeley Lake community. She thanked the developers for working with the County.

A member of the audience who was a member of a recently organized committee formed to deal with the growth in Seeley Lake, commented that the group was concerned about the cosmetic affect of any new development. They wish to keep everything rustic so as to blend in with the surrounding community. He requested that they be able to see what the project is going to look like. He said the committee was not trying to halt the project, but merely wanted to see what the project proposed.

Andy Fisher said the project was reviewed by the Seeley Lake Community Council.

Ron Ewart suggested that the committee meet with Dave Stewart to discuss what his design plans are.

Ann Mary Dussault asked Horace Brown to respond to the access question.

Horace Brown, County Surveyor, explained that the highway is a State highway. He said it was entirely up to the State to approve more accesses. He said he had recommended a maximum of two accesses, but the final decision is up to the State.

Ron Ewart said he spoke with John Marron of the State Department of Transportation who indicated that it was state law that they have to give one access permit per lot unless it is otherwise determined by the approval of the subdivision. As far as the State is concerned, two versus three accesses wouldn't matter. However, he indicated that the State would go along with whatever the conditions of approval were.

Ann Mary Dussault asked where the third access would be located?

Andy Fisher proposed that the third service access be centered between Lots 2 and 3 which was between the other two accesses.

Ann Mary Dussault said if there is another access, no one would control who used the entrance.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the summary plat of Deer Park Addition, based on the findings of fact in the staff report and subject to compliance with the following amended conditions:

1. Plans for paving, grading, and drainage shall be approved by the County Surveyor prior to filing of the final plat.
2. The following statement shall be shown on the face of the plat:  
  

"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."
3. Approach permits for a maximum of three access locations on to Highway 83 shall be approved by the State Department of Transportation prior to filing the final plat.
4. The Property-owner's Association Articles of Incorporation, By-Laws, Covenants, and Restrictions shall be approved by the Board of County Commissioners after review by the Rural Planning Office prior to filing of the final plat. They shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required

by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these conditions do not conflict.

5. To protect the areas or riparian resource, there shall be no construction on Lot 5 within the No-Build Zone as outlined on Exhibit A; this area shall be shown on the face of the final plat.
6. Within the appropriate sections, the covenants shall state that:
  - 1) A maximum of two ground signs with multiple business names may be placed along the highway frontage.
  - 2) A sidewalk shall be placed along the west storefronts, subject to approval of the Architectural Review Committee.
  - 3) Parking shall be generally placed to the rear of the buildings; any parking that is viewed from Highway 83 shall be screened with vegetation. All parking areas and drives shall be paved and connected throughout the subdivision. All lots shall have the right to use any portion of the parking and drives, and access easements shall cover all parking areas and drives.
  - 4) The building facade shall be designed for both the east and west-facing sides of the building so that "storefronts" are viewed from Highway 83 and the rear parking areas.
  - 5) Individual water service lines shall be extended to the right-of-way at the time of building construction. At the time water service is available for extension to serve this subdivision, all lots shall contribute equally to the cost of extending the main.
  - 6) A section of these covenants shall provide for the maintenance of the streets by the property-owner's association, subject to approval of the County Attorney 's Office.
  - 7) The No Build Zone indicated on the plat shall remain in a natural state but may be reasonably maintained in order to protect the area as a riparian and wildlife resource.
  - 8) Barbecue pits shall not be permitted due to potential wildlife/human conflict.
  - 9) Flowers and ornamental shrubs may be susceptible to damage from wildlife unless properly fenced and protected. The planting of native vegetation is encouraged.
  - 10) No lot shall be used or maintained as a dumping ground, nor shall any rubbish, trash, or other waste be allowed to accumulate, except in wildlife-proof containers which shall be emptied and removed from the premises on at least a weekly basis. All garbage shall be stored in containers of metal, plastic or other suitable material which has sufficiently tight fitting covers to prevent the escape of noxious odors and to prevent entrance or destruction by wild animals. Garbage cans placed outdoors for use by the general public shall only be approved wildlife-proof containers.
7. Plans for fire protection shall be approved by the Seeley Lake Fire District Chief prior to filing of the final plat
8. Sidewalks shall be installed at the time of building construction on each lot, and shall connect with adjacent sidewalks if present. The building plans shall show the sidewalk location at the time a zoning compliance permit is issued.

The motion carried on a vote of 3-0.

#### HEARING APPLICATION OF LES DYER FOR A MOTOR VEHICLE WRECKING FACILITY LICENSE (SOUTH OF I-90 IN THE AREA OF RESERVE STREET AND GRANT CREEK ROAD)

Fern Hart explained that the Board of County Commissioners received a communication from the State Department of Health and Environmental Sciences which indicated there had been a request for a motor vehicle wrecking license from Charger Specialties which would need to be approved by the Board of County Commissioners. The notice of hearing was posted and noticed in the newspaper. Today is the day the Commissioners must make their decision on the question of permitting or denying the motor vehicle wrecking facility license for Les Dyer for the property south of I-90 in the area of Reserve Street and Grant Creek Road.

The hearing was opened for public comment.

Erma Dyer said she and her husband are requesting a motor vehicle wrecking license because they were told by the City that they should obtain this license. She said they are a small and do not advertise or operate as a wrecking yard. Their main goal is to reproduce parts for some of the older cars. Vehicles and the parts are kept on site to use as prototypes. They have tried for several years to build a fence around the yard, but their finances do not permit them to move any faster. She said they only received a 24-hour notice on the hearing; they have not heard anything since July 12th. She said in the next couple of months, they will be able to fence the remainder of the property.

Fern Hart thanked Erma Dyer for being present without much notice. The Commissioners did not have a long time either. They had to act quickly on the request.

Bud Hettich, staff planner at the Office of Community Development, gave some background history on the issue. A wrecking yard at this location goes back to 1988. A zoning compliance permit was issued years ago for Paul Engler. There were conditions of approval attached which required the parking area and access road to be paved by July 1, 1988 and that a wood fence be built to screen the inoperable vehicles and parts. There are four businesses located in this area. Jim Caras owns two of the parcels. When issuing the zoning compliance permit with conditions to the leasee with the owner's consent, it would be incumbent upon the user to follow through with compliance to the conditions. Would the new tenant, Charger Specialties, be responsible for following through with the conditions? Or would the owner, Jim Caras, be ultimately responsible?

Barbara Evans asked if Charger Specialties have leased the property long enough to be aware that there were requirements that needed to be met?

Bud Hettich said yes. The owner or previous lessee should have made them aware of it. It was their responsibility to pass this information onto the new lessees. It is the ultimate responsibility of the owner that these conditions be met.

Peter Neilsen, Environmental Health Supervisor at the City-County Health Department, said the Water Quality District and Junk Vehicle Program staff have reviewed this proposal and have recommended that the Board of County Commissioners deny the request. The Water Quality District staff indicated that there were a number of concerns with this facility from a water quality protection standpoint. These concerns include improper storage and handling of used motor oil; improper storage and handling of used carburetor cleaner; and floor drains in the shop which were connected to an injection well or to a septic system. This facility was ordered by the EPA to close the injection well by April 15, 1993. The department's records do not show that the closure has been completed. There have also been several problems related to compliance with the junk vehicle program which include numerous instances of trying to obtain compliance with the shielding regulations which requires that a facility that stores junk vehicles provide shielding. The lessees have done some temporary or partial shielding, parts of which have blown down in the wind. These have not been replaced in a timely fashion. The staff concluded that there has been a lack of attempt to comply and that granting the license would simply lead to a situation of non-compliance and revocation proceedings. In addition, public sewer service is not available at the location. The facility appears to have a history of non-compliance, including non-compliance to regulations designed to protect water quality. The improper storage and disposal of fluids poses a threat to the aquifer. He recommended that the motor vehicle wrecking facility license not be issued.

Fern Hart said the Commissioners received a letter from Richard Corrigan, Junk Vehicle Program Coordinator, who indicated that in October and November he had been in touch with the Dyers. He also recommended that the license not be granted. She mentioned another letter received from the Rural Planning Office staff who commented that the potential for natural resource disturbance would only affect the visual resource along North Reserve Street and potentially the groundwater beneath and surrounding the facility. This area is surrounded by property within the City of Missoula boundaries. The specific site has a zoning area that allows this type of use. Nonetheless, the staff commented that the lack of appropriate site conditions such as screening and other environmental and water quality protections measures caused them to recommend that the license not be granted.

There was also a comment from Bob Brugh, who has worked with the area along North Reserve. He commented that the area is becoming a retail center as well as the gateway to north Missoula. He commented that because the area is in the process of upgrading visually, as well economically, this kind of land use is not in the best interest for an entrance to Missoula.

Barbara Evans stated that she and Fern Hart went to visit the site. She said it is clear that the people who have had ownership or have leased the property did not have any concept of the requirements or they simply didn't care to comply with them. The conditions for the permit approval required the parking and access road to be paved by July 1, 1988 and the construction of a wood fence to screen the vehicles.

Colleen Dowdall, Deputy County Attorney, explained in 1988, the County Attorney's Office attempted to get screening for the property. She said the State also visited the site due to concerns as well. In terms of whether the Dyers need a motor vehicle wrecking facility license, she said the business does meet the definition of a wrecking facility in two sections of the statute.

Barbara Evans referred to the letter written by Richard Corrigan relating to the type of screening used and the efforts made by the staff. She said Mrs. Dyer's comments indicated to her that the applicants have no understanding of the laws or requirements. She said the oil barrels are still on the site and the fence is not finished. She said there is a lack of concern for the aquifer.

Barbara Evans moved and Ann Mary Dussault seconded the motion to deny the application by Les Dyer dba Charger Specialties for a motor vehicle wrecking facility license for the property located south of I-90 in the area of Reserve Street and Grant Creek Road, based on the lack of response from both the current and previous lessees of the property to respond to the agencies and requirements. The motion carried on a vote of 3-0.

Ann Mary Dussault said the Commissioners have determined that the proposed facility would significantly affect the quality of life of adjoining landowners and the surrounding community. Based on the testimony from the regulatory agencies, the Commissioners can make this determination.

#### RESOLUTION NO. 94-086

The Board of County Commissioners signed Resolution No. 94-086, a resolution opposing the granting of a license to Les Dyer of Charger Specialties to operate a motor vehicle wrecking facility at the site located in the SE1/4, NW1/4, Section 8, T13N, R19W.

#### HEARING: PLANNED VARIATION & PRELIMINARY PLAT - WESTFIELD SQUARE

Ron Ewart, planner at the Office of Community Development, explained on August 2, 1994 the Missoula Consolidated Planning Board voted 4 to 1 to approve the Planned Variation request for Westfield Square, subject to four conditions. Two requests for variances to the County subdivision regulations were each approved by a vote of 4 to 1. The Board voted 3 to 2 to recommend approval of the Preliminary Plat, subject to 15 conditions. Three letters from area neighbors were received by OCD. The central concern of the letters are of increases in allowable density on the property and traffic on the area streets.

Westfield Square is a proposed 21 lot residential subdivision on 4.75 acres located on the west side of Curtis Street between Wyoming Street and Applewood Lane. The property is described as Lot 2 of Curtis and Majors Addition. The

land is currently vacant except for a farm house and a shed which will be removed. This parcel and the surrounding area is zoned CRR-3 which allows up to four single family residential units per acre with a minimum lot size of 10,000 square feet. The Missoula Urban Area Comprehensive Plan designates the area as suitable for residential development at a density of up to six units per acre. The development will connect to City of Missoula sanitary sewer that exists on Curtis Street and Mountain Water will be extended to provide water service. This area is planned for annexation into the City of Missoula in December of 1994. Therefore, review comments have been solicited from both City and County agencies.

The developer requested a Planned Variation as per Section 8-13 of the Missoula County Zoning Resolution which allows the governing body to approve a request to modify space and bulk requirements to permit innovative approaches to housing and environmental design. Among other allowances, a Planned Variation may permit a reduction in minimum setbacks, lot widths and lot sizes while providing a density bonus of up to 10% above the maximum residential density allowed by the zone to allow flexibility in the project design. Some of these innovative approaches are, in this case, proposed landscaping, preservation of views and creation of open space.

The maximum allowable density in the CRR-3 zoning district for a 4.75 acre parcel is 19 lots. The proposal is to create 21 lots that average approximately 6800 square feet each. Westfield Court, a 32 foot street with curb and gutter, will serve the subdivision. Eleven of the lots are proposed to serve onto three small courts that are paved to 20 feet in a 20 foot private access and public utility easement. A variance to the street and right-of-way width requirements is being requested. Twelve of the lots are proposed to front onto common area of at three-quarters of an acre in size. Much of the common area is located along the northern boundary. The submittal states that this is to provide buffering for the half acre lots on Applewood Lane and wider side setbacks are designed along the southern boundaries to preserve views for homes on Wyoming Street.

This review recognizes that the neighborhood possesses unique characteristics in open space patterns between buildings that are remnants of its agricultural settlement pattern. The area is today in a transition to residential and potential residential infill development. Utilities, water, sewer, paved streets, schools, bus lines, and emergency services are readily available. It is sometimes a difficult task to strike the right balance and design a project that retains the open character of a neighborhood such as this and meet the community's adopted housing policy which is to cluster homes and make more efficient use of services and infrastructure. The staff has proposed changes to the proposal which may help balance open space concerns with housing needs.

The Missoula Consolidated Planning Board recommended the Planned Variation of Westfield Square be approved, subject to compliance with the following conditions:

1. The final lot design shall incorporate a design whereby, regarding the preliminary plat submitted to the Planning Board, Lots 13 through 17 are shifted to the west and Lot 19 removed. The remaining lots shall be renumbered, not to exceed a total of 20 lots. *Missoula County Zoning Resolution, Section 8.13(D)(10) and 8.13(D)(13), and comments of the Planning Board.*
2. A landscape plan that conforms with the requirements of Section 3.05 of the Zoning Resolution shall be approved by the Zoning Officer prior to filing of the final plat. *Missoula County Zoning Resolution, Section 8.13(D)(11).*
3. The developer shall install an underground sprinkler system and plant the street trees and common area to lawn as proposed, prior to filing the final plat, or this shall be included within an improvements guarantee. *Missoula County Zoning Resolution, Section 8.13(D)(11) and 8.13(D)(14)(d).*
4. The face of the final plat shall show, or Section 6 of the covenants shall state: Front and rear yard setbacks shall equal or exceed 12.5 feet, all setbacks adjacent to property not part of this site shall equal or exceed 25 feet, and side yard setbacks between property lines within the site shall equal or exceed 5 feet. *Missoula County Zoning Resolution, Section 8.13(D)(4) and developer's responses to Section 8.13(D)(5) and (6).*

The developer requests the following variances to the Missoula County Subdivision Regulations:

- 1) To Section 3-2(1)(I) which states that a private access lane that serves three or more lots shall be considered a private road. The standards for private roads are the same as for County roads. Section 3-2(3) states that the County road standards for an urban-suburban county subdivision are a 32-foot paved street with curb and gutter inside a 54-foot right-of-way. The developer proposes that three private access lanes, paved to 20 feet with no curb and gutter within 20-foot private access and public utility easements, provide access to three or more lots each.

The Planning Board recommended the variance request be approved provided that 1) the street has curb and gutter, the placement of which to be approved by the County Surveyor and the City Engineer, 2) that a 5-foot public utility and maintenance easement is placed along the boundary of the 20-foot private access and public utility easement, 3) the covenants provide a private maintenance agreement for the streets, to be approved by the City Engineer and the County Surveyor, and 4) that the covenants and street signs prohibit any parking on these lanes. (These provisions are stated as recommended conditions for the preliminary plat.)

- 2) To Section 3-2(3) which states that the right-of-way width requirements for a cul-de-sac street is 54 feet. The developer proposes Westfield Court, the main street in the subdivision to which the lanes access, to be dedicated as public and paved to 32 feet with curb and gutter with sidewalk along the south side. The street standards are met, however the right-of-way width is proposed at 40 feet.

The Planning Board recommended the a variance request be approved, although a modified, whereby 1) The right-of-way width for Westfield Court will be 44 feet, with room along the northern edge of the street for a future 5-foot walkway, and 2) a 5-foot public utility and maintenance easement is placed along the boundary of the Westfield Court right-of-way. (These provisions are included in the subdivision conditions.)



The Missoula Consolidated Panning Board recommended the preliminary plat of Westfield Square be approved, subject to compliance with the following conditions:

1. Plans for paving, grading, drainage, curbs, gutters, and sidewalks shall be approved by the County Surveyor and the City Engineer. *Section 3-2 and 3-4; area to be annexed into City in December 1994.*
2. A one-foot no access strip shall be placed along the east line of Lots 1 and 21. *Section 3-2(1).*
3. The Property-owner's Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict. *Section 4-2(5)(D)(3).*
4. The 10-foot utility easements shown along the boundaries of the subdivision shall be widened on the property to provide total easement widths of 20 feet unless a narrower width is approved by the appropriate utilities and governing body. In addition to showing the all easements, the following statement shall appear on the face of the final plat:  
  
"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever."  
*Section 3-5 and 3-6.*
5. Fire hydrant location(s) shall be approved by the Rural Fire Marshal and the City Fire Chief.  
*Comments of the Rural Fire Marshal, and paragraph 4 of the Uniform Fire Code Requirements.*
6. Section 1 of the Covenants shall state that sufficient area shall be provided for two (2) off-street parking spaces, and that no cars shall be parked in the cul-de-sac bulb of Westfield Court or on any part of either of the three access lanes. Street signs shall also be installed to inform residents and visitors that parking at these locations is not to be permitted. The signs are subject to approval of the Rural Fire Marshal and County Surveyor and shall be installed prior to filing of the final plat or included in the public improvements agreement. *Comments of staff, to provide fire apparatus turnaround and driving space.*
7. The following 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 owners to waive the right to protest a future RSID/SID for any improvements to Curtis Street, to include widening and the installation of curbs, gutters, and sidewalks, may be used in lieu of their signatures on an RSID/SID petition.  
*Comments of the County Surveyor.*
8. The proposed 20-foot public utility easement between proposed Lots 7 and 8 shall also be labeled a 20-foot public walkway easement. The section of private drive between this easement and Westfield Court shall also be labeled a public walkway easement. *Section 3-2(1)(E) and 3-6, and comments of Mountain Line.*
9. A standard street name sign shall be placed at the intersection of Curtis Street and Westfield Court to be approved by the County Surveyor prior to filing of the final plat, or included as part of the public improvements agreement. *Section 3-2(2)(F), and paragraph 5 of the Uniform Fire Code requirements.*
10. The private access lanes shall not exceed 150 feet unless an acceptable fire apparatus turnaround is provided.  
*Comments of the City Fire Chief, and paragraph 2 of the Uniform Fire Code Requirements.*
11. The water main shall be stubbed out within the 20-foot public utility easement located between proposed Lots 7 and 8. The proposed sewer line within the easement shall be moved toward the north within the easement to provide room for a future water main on the southerly side of the easement. *Comments of Mountain Water Company.*
12. An easement for the irrigation ditch shall be obtained from the appropriate agency and shown on the face of the final plat. *Section 3-6.*
13. Westfield Court shall have a 44-foot right-of-way that provides for a future 5-foot walk along the north side of the street. A 5-foot public utility and maintenance easement shall border the Westfield Court right-of-way and the private access easements along the three access lanes. *Comments of the City Engineer.*
14. The Covenants shall address private road maintenance, the language to be approved by the County Surveyor and the City Engineer. In addition, the following statement shall be placed on the face of the final plat:  
  
"The purchaser and/or owner if 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 City 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 City or County of Missoula.  
*Section 5-2(5)(C).*

15. Preliminary plat approval of this subdivision is conditional upon approval of the planned variation, and final approval is conditional upon compliance with the planned variation conditions as well as the subdivision conditions.

Nick Kaufman, WGM Group, representing T&T Construction, explained that there are actually three drawings of the proposal; 1) the original submittal; 2) a modified submittal based upon the recommendations from various agencies; and 3) the recommendation by the Planning Board. Two neighborhood meetings were held. He reviewed the surrounding area on an aerial photo and gave their reasoning for the design of the subdivision. This subdivision is very close to services, but there is still rural character. The neighborhood has expressed their desire for half-acre lots. However, the community, in the 1975 Urban Area Comprehensive Plan, recommended six units per acre. At this same time, the area was zoned CRR-3. In 1990, the Comp Plan was updated and recommended higher density housing for this area. The community adopted a plan for higher density residential development. He said the issue deals with housing inside the urban area where sewer and water are available.

He said many things were taken into consideration when designing this subdivision such as the preservation of views, open space, buffering, etc. He reviewed the differences between the three plats. The neighborhood had suggestions, many of which were incorporated into the design. However, what the neighborhood wanted was not consistent with the housing needs of this community. The Commissioners must make a decision of whether to go with a status quo subdivision or with a project that has been designed with clustering and open space.

He said they agreed with the staff report. However, they requested that Condition #1 in the Planned Variation be changed which removed one lot from the project.

The hearing was opened to public testimony.

Jeff Collins, resident of River Road, voiced concern that the Commissioners may feel they have to approve the developers' request for the absolute maximum density allowed under the zoning and Comp Plan. He agreed with the plan recommended by the Planning Board. He suggested that one lot be removed to allow for a continuous common area. He recommended larger lots because the surrounding lots are larger. He mentioned that with the right-of-ways, roads, and open space, the density bonus would increase to almost 30%--not 10% as stated by staff. He wondered how this subdivision could be considered affordable housing when the homes will sell for \$110,000? He wondered if the developers could delete just one lot to allow for more open space, but sell the lots for a little bit more?

Fern Hart stated that the staff interpreted the bonus as allowing 10% above the density of four units per acre. She stated that the regulations do not count the amount of land contained in the roads, right-of-way, etc., with respect to density.

Ron Ewart said the staff interpreted the density bonus at 10% over four units per acre.

Colleen Dowdall said the Planned Variation allows for a 50% reduction in minimum lot size.

Ann Mary Dussault wondered if people were allowed to walk on Mr. Collins' property? She said people have suddenly come to the notion that open space should be totally accessible to the public at-large rather than for the neighborhood.

Jeff Collins said there are no plans for open space or parks in this area at this time. Soon, this land will be gone.

Ann Mary Dussault stated that her comments were not in opposition to open space.

Colleen Dowdall said if the area was common area, it will be owned by the homeowners association and will be subject to their covenants as to who would have access.

Don Stinger, 245 North Davis, agreed there is a lack of dedicated park land in this area. He requested that Lot 15 be removed to allow for more openness to the subdivision. He voiced concern that the roads and walkways in the area are not sufficient.

Jim Iverson, landowner adjacent to the proposal, said the proposed density is ludicrous for this particular area. He said if the zoning allows 19 homes, then the residents will have to live with this. However, the developers are asking for variances and exceptions to the rules to try to stuff a bunch more homes on this property. When people cannot park on the street, the development is too dense. Will stuffing one or two more homes on the property really solve Missoula's housing crisis? There are many other developments proposed for this area that can compensate for these two homes. He talked about the neighborhood and how the present zoning came about. He voiced concern relative to the access and traffic situation. More density in this area will change the traffic flows. The Commissioners, by approving the proposal, may solve one problem, but will create another. He stated that whatever is created today, will be here forever. The Commissioners will change the atmosphere of the area forever if they allow the developers to stuff all these homes onto one piece of property. He urged the Board to approve 19 homes maximum, with the green space spread out to incorporate all the homes.

Bill Belkowski, 2205 Applewood Lane, agreed with Mr. Iverson's statements. He expressed concerns about access, safety of the children in the area, change in density, and insufficient roads. The open space will not compensate for the density of the homes. He urged approval of fewer homes, but larger lots. Half acre lots are marketable in Missoula.

Tom Booth, resident, stated concerns relative to density. The concept is good, but it does not fit the area. The area cannot handle new homes unless the roads, schools, etc., are improved. Much of the infrastructure should be updated in order to handle this density. He said out of all the surrounding and adjacent properties, his property will benefit the

most visually. These concerns should be weighed carefully because this subdivision will set the precedent for the other subdivisions that will be going in.

Wally Congdon, representing adjacent property owners, Jim and Norma Bauer, agreed with the comments made. He said another concern of the Bauers was the question of preserving parks and open space in perpetuity. If the Commissioners approve the proposed large common area and clustering rather than scattering the homes with larger lots, there is a concern that the park or common area would eventually be developed. He said there was a subdivision immediately to the east of this property where dedicated park property was resold and developed. He requested that the Commissioners require the developer to furnish some guarantee that the open space have a deed reservation placed upon it. He also requested that "no access strips" be placed along Curtis and Westfield at the access to terminate vehicular access to the park. This would eliminate the possibility of anything being built on this property as well. There is already proposed a "no access" strip along Curtis; this could be extended the length of Curtis Street.

There is also a discrepancy in the staff report relative to the question of parking. The staff report on page 15 recommended that "off-street parking" should be prohibited. What this should have said was "on-street parking".

He discussed the public access and public walkway proposed on Tract 7 and 8. The conditions propose that Tract 7 and 8 have a public walkway dedication on the easement for sewer and water, etc. There was a question about how this property would suddenly become public property. He said if a common area is placed on the east end of property, a public walkway may be appropriate as well. This would preserve the integrity of the entire neighborhood as well as the open space. This would also get some of the pedestrian traffic off Curtis.

He stated that the Bauers appreciated the setback distances on the southern and northern boundaries. He urged the Board to approve these setbacks because it will insulate the houses from the neighborhood.

Lynn Harris, 2207 Applewood Lane, spoke in opposition to the density proposed by this development. She stated that five homes will be placed adjacent to their back yard. If more homes are added to this area, traffic and safety concerns will increase. She thought that the developers would have better quality homes if they sat on half acre lots.

Jim Iverson said the marketability of the project is based upon this moment's financial considerations. He said the same land could be divided into larger lots which would complement the surrounding area. This would still be marketable. However, it would not yield the profit result that a higher density would yield. This is purely a money-making venture for the developer.

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

Barbara Evans asked for an explanation as to the purpose of a Planned Variation.

Ron Ewart said a Planned Variation allows for innovative approaches to housing and environmental design. It allows for approaches that may not be allowable if the developer chooses to strictly adhere to the zoning regulations. There are 15 criteria which have to do with things like creating more open space, landscaping, etc. These criteria would allow the development to be less traditional and more innovative. The developer, in return, receives a 10% density bonus. If this subdivision was brought in as a subdivision, the developer could only place 19 homes on this site. The developer proposed 21; the staff proposed 20. In this case, the density doesn't change much because of the Planned Variation, but the County would be unable to require landscaping, and cash-in-lieu of park land could be offered instead of common area or park land if the developer didn't propose the Planned Variation.

Barbara Evans stated that the Planned Variation is part of the subdivision regulations. The rules are in place. If the developer follows these rules, they should be entitled to the rewards. The proposed development exceeds the 1/9th dedication requirement for park land.

Nick Kaufman said the park area would be in excess of 33,000 square feet. He said the Planned Variation also allows for larger setbacks than are required in a regular subdivision. Views and visibility are increased in this project as well. The subdivision regulations encourage Planned Variations. The newly adopted Water Quality Regulations encourage hookup to sewer and water. This development will connect to sewer and water. The negative impacts of the development are internalized through the design. He said the developers are asking for 21 homes which is two more than the opposition wants. He wondered how the opposition would react if the developers were proposing 19 homes?

A discussion followed relative to a 20 foot utility easement at the east end of Small Lane. The proposal provides for a future option should there ever be an acquisition of a walkway to Small Lane. Also, addressing the concern about lighting, a street light will be provided at the main intersection of Westfield Square and Curtis Street. The other lighting would come from coach lighting on the individual homes.

Fern Hart suggested that the sidewalk proposed for the south side of the road be placed on the north side because it will have more use on this side.

Barbara Evans voiced concern about the parking situation on the two side streets. She wondered if there would be some way to accommodate parking in the garage, the driveway and additional parking spaces on the street? She referred to Condition #6 which provided for two off-street parking spaces.

Nick Kaufman suggested that "independent" be inserted in front of "parking spaces". This would facilitate two side-by-side parking spaces. This can be accomplished by design.

A discussion followed relative to the references to the paving, drainage and sidewalk which would be approved by the County Surveyor and the City Engineer. It was agreed that the City Engineer has no jurisdiction in the County until its annexed. If the area is annexed into the City, then it must be approved by the City Engineer only.

Nick Kaufman said the subdivision will meet the City sidewalk and street standards; the only variance requested was on the 44 foot right-of-ways.

Barbara Evans expressed concern that the City may not recognize this variance.

Nick Kaufman indicated that they could deal with this.

Horace Brown stated that the Commissioners can, by State law, reduce the width. The private drives meet the requirements if they are 24 feet wide. The main street right-of-ways do not meet the requirements, but it shouldn't be a problem.

A question arose concerning the location of the irrigation ditch. The ditch ran along the east side of Curtis Street and crosses the property. The irrigation ditch can either be expanded or abandoned; it will not go through the property.

Horace Brown said if the interior roads are considered alleys, they only need to have a 20 foot right-of-way. The Surveyor's Office does not maintain alleys. If an alley serves three or more residences, they have to be named according to the County's regulations.

Barbara Evans asked if four independent parking spaces would be sufficient language for Condition #6?

Nick Kaufman said if it was understood that this would include two parking spaces in the garage and spaces on the street. However, if this means four outside the garage, this would be a problem. Condition #6 proposed an amendment to the covenants regarding two off-street parking spaces.

Ann Mary Dussault asked Ginny Cass, Chairman of the Planning Board, why the Planning Board changed the open space configuration.

Ginny Cass stated that the middle diagram showed open space divided by a home. The Planning Board felt that it would be more beneficial if the open space was not split up. The Board suggested that one lot be removed and eliminate the need for another street or alley. The final diagram proposed only two alleys. The common area would be contiguous leaving the view areas remaining intact.

A discussion ensued relative to the three designs of the Planned Variation. Ann Mary Dussault commented that she preferred the design approved by the Planning Board, whereas, Barbara Evans preferred the original design submitted by the developers because it provided for more open space with more of the homes fronting on the open space.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the Planned Variation of Westfield Square based on the recommendation of the Planning Board, and subject to compliance with the following amended conditions:

1. The final lot design shall incorporate a design whereby, regarding the preliminary plat submitted to the Planning Board, Lots 13 through 17 are shifted to the west and Lot 19 removed. The remaining lots shall be renumbered, not to exceed a total of 20 lots.
2. A landscape plan that conforms with the requirements of Section 3.05 of the Zoning Resolution shall be approved by the Zoning Officer prior to filing of the final plat.
3. The common area shall be dedicated in perpetuity to the homeowners association and the developer shall install an underground sprinkler system and plant the street trees and common area to lawn as proposed, prior to filing the final plat, or this shall be included within an improvements guarantee.
4. The face of the final plat shall show, or Section 6 of the covenants shall state: Front and rear yard setbacks shall equal or exceed 12.5 feet, all setbacks adjacent to property not part of this site shall equal or exceed 25 feet, and side yard setbacks between property lines within the site shall equal or exceed 5 feet.

A discussion ensued relative to a proposed amendment to Condition #3 calling for a deed restriction to the common area. The amendment was withdrawn after the comment of the Deputy County Attorney as follows.

Colleen Dowdall stated the law requires that common area be dedicated in perpetuity.

Barbara Evans moved to amend the motion to amend the conditions of approval to approve 1) the original plat submission, based on the fact that it provides views and more consistent open space with more of the homes fronting on the open space than in the other two submissions; and 2) the density bonus of one home, making the total density at 21 homes. The motion failed for lack of a second.

Fern Hart moved and Ann Mary Dussault seconded the motion to amend the main motion to amend Condition No. 1 to approve the original design of the Planned Variation for Westfield Square for 20 lots with the elimination of Lot 18. The amendment carried on a vote of 3-0.

The main motion to approve the Planned Variation of Westfield Square based on the recommendation of the Planning Board, and subject to compliance with the amended conditions, carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the preliminary plat of Westfield Square, subject to compliance with the findings of fact and the following conditions:

1. Plans for paving, grading, drainage, curbs, gutters, and sidewalks shall be approved by the County Surveyor and the City Engineer.
2. A one-foot no access strip shall be placed along the east line of Lots 1 and 21.
3. The Property-owner's Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict.
4. The 10-foot utility easements shown along the boundaries of the subdivision shall be widened on the property to provide total easement widths of 20 feet unless a narrower width is approved by the appropriate utilities and governing body. In addition to showing the all easements, the following statement shall appear on the face of the final plat:

"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever."
5. Fire hydrant location(s) shall be approved by the Rural Fire Marshal and the City Fire Chief.
6. Section 1 of the Covenants shall state that sufficient area shall be provided for two (2) off-street parking spaces, and that no cars shall be parked in the cul-de-sac bulb of Westfield Court or on any part of either of the three access lanes. Street signs shall also be installed to inform residents and visitors that parking at these locations is not to be permitted. The signs are subject to approval of the Rural Fire Marshal and County Surveyor and shall be installed prior to filing of the final plat or included in the public improvements agreement.
7. The following 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 owners to waive the right to protest a future RSID/SID for any improvements to Curtis Street, to include widening and the installation of curbs, gutters, and sidewalks, may be used in lieu of their signatures on an RSID/SID petition.
8. The proposed 20-foot public utility easement between proposed Lots 7 and 8 shall also be labeled a 20-foot public walkway easement. The section of private drive between this easement and Westfield Court shall also be labeled a public walkway easement.
9. A standard street name sign shall be placed at the intersection of Curtis Street and Westfield Court to be approved by the County Surveyor prior to filing of the final plat, or included as part of the public improvements agreement.
10. The private access lanes shall not exceed 150 feet unless an acceptable fire apparatus turnaround is provided.
11. The water main shall be stubbed out within the 20-foot public utility easement located between proposed Lots 7 and 8. The proposed sewer line within the easement shall be moved toward the north within the easement to provide room for a future water main on the southerly side of the easement.
12. An easement for the irrigation ditch shall be obtained from the appropriate agency and shown on the face of the final plat.
13. Westfield Court shall have a 44-foot right-of-way that provides for a future 5-foot walk along the north side of the street. A 5-foot public utility and maintenance easement shall border the Westfield Court right-of-way and the private access easements along the three access lanes.
14. The Covenants shall address private road maintenance, the language to be approved by the County Surveyor and the City Engineer. In addition, the following statement shall be placed on the face of the final plat:

"The purchaser and/or owner if 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 City 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 City or County of Missoula.
15. Preliminary plat approval of this subdivision is conditional upon approval of the planned variation, and final approval is conditional upon compliance with the planned variation conditions as well as the subdivision conditions.

Ann Mary Dussault moved to amend the main motion and Barbara Evans seconded the motion to amend Condition No. 6 as follows:

6. Section 1 of the Covenants shall state that sufficient area shall be provided for two (2) additional and independent off-street parking spaces, and that no cars shall be parked in the cul-de-sac bulb of Westfield Court or on any part of either of the three access lanes. Street signs shall also be installed to inform residents and visitors that parking at these locations is not to be permitted. The signs are subject to approval of the Rural Fire Marshal and County Surveyor and shall be installed prior to filing of the final plat or included in the public improvements agreement.

The amendment carried on a vote of 3-0.

Barbara Evans moved to amend the main motion and Ann Mary Dussault seconded the motion to amend Condition No. 1, Condition No. 5, and Condition No. 14 to strike references to the City Engineer or the City Fire Chief. The amendment carried on a vote of 2-1 with Fern Hart voting against the motion.

The motion to approve the preliminary plat of Westfield Square subject to the amended conditions, carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance to Section 3-2(1)(I) which states that a private access lane that serves three or more lots shall be considered a private road. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance to Section 3-2(3) which states that the right-of-way width requirements for a cul-de-sac street is 54 feet. The motion carried on a vote of 3-0.

A discussion ensued relative to the sidewalk on the southern end of the plat. The question of whether or not the sidewalk should be moved to the northern end was discussed. It was concluded that because there were no intersecting streets on the southern end of the subdivision, the southern end would be safer for pedestrians. There is provision for the right-of-way on the northern end of the development for a sidewalk should one be needed in the future.

Barbara Evans stated when developers comply with the regulations, they are entitled to the rewards allowed through the law. This development will provide for open space, views, significant landscaping, etc. Missoula needs affordable housing as there is a shortage of housing. Heavier density developments should be closer to town because infrastructure is available. There are problems with the streets in this area and should be fixed.

Fern Hart said the design of the project was excellent. She stated she was pleased with the design and would use it as an example of how Missoula can develop sensitively. It is very hard for all concerned to look at the growth that is occurring. This is an opportunity to use land effectively.

HEARING - CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER - HORTON COS 1306 LESS THE PARCEL AS SURVEYED COS 2742.

Kathy Smith, Paralegal for the County Attorney's Office, explained that Vern H. Horton submitted a request for a family transfer exemption for COS 1306 less the parcel as surveyed COS 2742. The parcel is a 15.93 acre parcel and the property is located south of Missoula off Cochise Drive. Mr. Horton proposed to transfer approximately 5.79 acres of the parcel to his son, Curtis Clayton Horton.

The history of the parcel is as follows: Mr. Horton purchased the parcel in October, 1977, from Ray and Thelma Stoddard. In January, 1980, COS 2244 was filed creating a parcel greater than 20 acres in size. In April, 1982, COS 2742 was filed relocating the boundary on the parcel that was created through COS 2244. This parcel was then sold to Dr. Minnott Pruyn.

According to the records kept by the Missoula County Surveyor's Office, the applicant has used the exemptions to Subdivision and Platting Act as described in addition to an unrelated occasional sale exemption in July, 1990.

The hearing was opened to public comment.

Dr. Vern Horton requested that the Commissioners allow him to transfer this property to his son.

Fern Hart asked about the private access that ran across the parcels.

Dr. Horton explained that it is an easement road that extended from Cochise Drive and which serviced both parcel 1 and 2. It will serve as access for the adjoining property as well. He stated it was his intent to transfer the title to his son.

Barbara Evans explained that the Legislature requires that the County Commissioners determine whether requests for exemptions to the Montana Subdivision and Platting Act are an attempt to evade the law. In order to determine this, the Commissioners must look at both the history of the parcel in question and the history of the applicant.

Ann Mary Dussault asked about the original parcel.

Dr. Horton said the original parcel was 40 acres. He sold 24.73 acres to Dr. Pruyn in 1982. He is now proposing to give his son 5.79 acres.

Kathy Smith said the 24.73 acres was created as a parcel greater than 20 acres. The occasional sale is totally unrelated to the property in question.

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

Barbara Evans moved and Fern Hart seconded the motion to approve the request for a family transfer exemption to Vern H. Horton for COS 1306 less the parcel as surveyed COS 2742, a 15.93 acre parcel, contingent upon the transfer of the deeds to the family member and based on the finding that the request does not attempt to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 3-0.

HEARING - CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER - HARRISON - PARCEL LOCATED IN THE SW1/4NW1/4 AND THE NW1/4SW1/4 OF SECTION 22, T12N R20W

Kathy Smith, Paralegal for the County Attorney's Office, explained that Jim Harrison submitted a request for a family transfer exemption for a five acre parcel located in the SW1/4NW1/4 and the NW1/4SW1/4 of Section 22, T12N R20W. The property is located south of Missoula off Moe Road. Mr. Harrison proposed to transfer approximately 3 acres of the parcel to his son, Keli Ray Harrison, who currently resides on the proposed remainder.

The history of the parcel is as follows: Mr. Harrison purchased the parcel in its original condition in August, 1979.

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

The hearing was opened to public comment.

Jim Harrison said he wishes to transfer the deeds to a three acre parcel to his 21 year old son. He said his son is going to college, but in the future will build a home on the property. The land will be divided as proposed because a gully makes a natural dividing line. There is an access easement on the property to the proposed lot.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Jim Harrison for a family transfer exemption for a five acre parcel located in the SW1/4NW1/4 and the NW1/4SW1/4 of Section 22, T12N R20W, based on the finding that the request does not appear to be an intent to evade the Montana Subdivision and Platting Act and contingent upon the transfer of the deeds to the applicant's son. The motion carried on a vote of 3-0.

HEARING - CERTIFICATE OF SURVEY REVIEW: BOUNDARY RELOCATION - THERAPY ACRES

Kathy Smith, Paralegal in the County Attorney's Office, explained that Tracts 5B1, 5B2, 5B3 and 5B4 of COS 2086 are currently owned by Therapy Acres and are all approximately 3.21 acres in size. Tract 3C2 is owned by Jim and Janice Philips and is 7.74 acres. The parcels are located near Frenchtown, north of the Frenchtown Pond. Therapy Acres wishes to relocate the boundaries of parcels 5B1, 5B2, 5B3, and 5B4, 90 feet south into parcel 3C2 to create more attractive and safe building sites.

The history of Tracts 5B1, 5B2, 5B3 and 5B4 is as follows: COS 1608 was filed in January, 1977, creating 25 parcels greater than 20 acres in size. COS 1864 was filed in November, 1978, for Tract 5 of COS 1608, granting a family transfer from Bonnie Ford to James Ford, husband and wife. COS 2086 was filed in January, 1979, granting two family transfers to Patsy and Sandy Ford, daughters of James and Bonnie Ford, an occasional sale and remainder. The family transfer parcels were deeded to Patsy and Sandy Ford in August, 1979, and quitclaimed back to James Ford in August, 1983. A Deed of Distribution was filed in September, 1989, conveying the property to Bonnie Ford. In July, 1989, Bonnie Ford assigned all four tracts to Philip E. Schweber who then assigned the property to Therapy Acres.

The history of Tract 3C2 is as follows: COS 1608 was filed in 1977, creating 25 parcels greater than 20 acres in size. COS 1840 was filed by Grady Watkins in October, 1978, creating an occasional sale, family transfer and remainder. COS 1840A was filed by Ken Staninger in October, 1978, creating two family transfers and remainder to replace COS 1840. Tract 3C of COS 1840A was to be transferred to Beatrice S. Staninger, Ken Staninger's mother. Tract 3B was to be transferred to Mary E. Staninger, Ken Staninger's wife. In January, 1983, COS 2889 was filed by Beatrice Staninger creating a 1.55 acre occasional sale and 7.74 acre remainder.

According to the records kept by the Missoula County Surveyor, Therapy Acres, a general partnership, has not used any exemptions to the Subdivision and Platting Act. James W. and Janice G. Phillips have used the following exemptions: An occasional sale in 1977, an occasional sale and family transfer in 1978 and a family transfer in 1979.

The hearing was opened to public comment.

Barbara Evans asked about the pond located on the property.

Phil Schweber, representing the partnership of Therapy Acres, explained that they have stocked the pond with fish. They plan four building sites on the property. He said they also plan to place covenants on the property before the lots are sold.

Fern Hart asked about the cul-de-sac that serves the lots.

Phil Schweber said the cul-de-sac is used for access to other lots not shown on the map. The same number of lots will exist after the boundary relocation.

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



Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Therapy Acres to relocate the boundaries of parcels 5B1, 5B2, 5B3, and 5B4, 90 feet south into parcel 3C2, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 2-1 with Fern Hart voting against the motion.

Barbara Evans explained that there will be the same number of lots as a result of the boundary relocation. It will also turn undesirable land into buildable lots.

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

PUBLIC HEARING: TOURIST SEASON GAS TAX

The meeting was called to order at 7:00 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans. Others present included Horace Brown, County Surveyor; Kathy O'Brien, City Grants; Joe Aldegare, Missoula City Public Works Director; and Colleen Dowdall, Deputy County Attorney.

Joe Aldegare explained that North Reserve Street, from Third Street to Interstate 90, is part of a regionally important National Highway System, providing an important north-south transportation corridor. In addition, this portion of Reserve serves a rapidly developing commercial and industrial area. The Missoula community, through comprehensive planning and zoning, has determined that this area shall be a commercial and industrial area. With the improvements to the south end of Reserve, the street was redesignated as US Highway 93, and falls under the jurisdiction of the Montana Department of Transportation for any improvements.

The current traffic volumes on this portion of Reserve Street have exceeded the capacity of a two lane roadway. Severe congestion and traffic safety problems are now occurring and it is anticipated that traffic volumes will continue to increase as the area continues to develop.

The 1985 Transportation Plan adopted by the City and the County recognizes the need to provide the necessary infrastructure to accommodate this growth and includes recommendations to improve this roadway to four lanes, including sidewalks, bike lanes and bus stops. The benefits of an improved roadway include reduced congestion on Reserve, less pressure on other components of the urban street network, such as the Brooks/South/Russell Intersection, improved traffic safety, provision of bike lanes and sidewalks for non-motorized transportation, the addition of bus pull-outs, improved access to the commercial area, and improved air quality in the Missoula area.

The roadway is currently on the National Highway System and the responsibility rests with the Montana Department of Transportation. Given available state resources and other critical Montana highway system needs, it is expected that it would take 10 to 15 years before this project would be completed using traditional funding sources.

The Montana Highway Commission, through a partnering relationship, has committed to the availability of the necessary construction funds within two and one-half years, contingent on local contribution of \$4.2 million. A working group composed of federal, state, county and city officials and private businesses have explored various means to provide the contribution required of the local area towards the improvement of this roadway. The recommendations include a combination of a special improvement district assessment and a local option fuel tax dedicated specifically to this project. The City and County have entered into an interlocal agreement for the allocation of the funds collected from this tax to the North Reserve Street project.

The most recent preliminary cost estimates for the North Reserve Street project may reach \$21,025,700.00 with a tentative start date of 30 months if the community could contribute their share of \$4.2 million. The sources identified to provide the local contribution in the amount of \$4.2 million are:

\$1.5 million	Special Improvement District
1.0 million	Economic Development Grant
0.2 million	Enhancement Funds
0.8 million	CMAQ Funds
<u>0.7 million</u>	<u>Local Option Gas Tax</u>
\$4.2 million	TOTAL

The City Council has started the process to create a Special Improvement District of the property owners in the area. The Council approved a Resolution of Intention to create the SID. The letters to the affected property owners will be going out this week. There will be a public hearing on Monday, September 12, 1994. The final decision will be made on September 19th by the Council. He spoke about the Enhancement Funds which are a portion of highway funds which are allocated to cities and counties based upon criteria. These funds can be used in projects that include bicycle, pet facilities, landscaping, transit facilities, etc. The Federal Highway Administration has committed CMAQ funds because Missoula is non-attainment for carbon-monoxide. Some of the aspects of this project are eligible for CMAQ funding such as the sidewalks, wide shoulders for bikes, bus pull-outs, etc. This finance package had to be approved by the State Highway Commission; at their meeting today, they approved the funding package which includes a local option fuel tax.

The City Council reviewed the proposal and adopted a Resolution addressed to the County Commissioners in support of putting this gas tax on the ballot. The City and County have entered into an interlocal agreement that all the proceeds from this tax be directed to this project and that when the project is paid for, the taxes will end.

Kathy O'Brien, Grants administrator for City of Missoula, explained that due to the layoffs at the Champion mill in Bonner, the County has become eligible to take advantage of EDA funding for public works projects. The EDA requires that the unemployment rate exceed national levels of unemployment. She stated she would be submitting a pre-application form around the first of September. The EDA office in Helena reviews the preapplication package and

forwards it to the regional office in Denver where they may give pre-approval for the concept. If the concept is approved, the City will pursue this funding source and submit an in-depth funding package. Missoula will be competing with other economically depressed areas in the nation. However, they have received positive feedback from the EDA.

Barbara Evans explained that the Highway Commission approved the financial program at their meeting today in the amount of \$800,000. She stated that they have exhausted every other possibility. Other options had drawbacks. She said they have chosen the one cent gas tax for four months for four years because they recognized the community does not want to be taxed further. This is a proposal for a tourist season gas tax for one cent per gallon during the months of June, July, August and September for the next four years. During these four months, 31% of the gas sold in Missoula is purchased by tourists. She stated that she has been to Denver to speak with EDA representatives relative to the possibility of funding this project. They are very optimistic that the proposal will pass. If the gas tax passes the vote of the people, she stated she thought that the proposal would be successful. Within 2 1/2 years from the date of putting the proposal together, the contract will be let for the road. This is a very short time period given the extensive requirements for such a road.

The hearing was opened to public comment.

Cliff Phillips, owner of property on North Reserve Street, commented that the proposal for a one cent gas tax was not so bad after being mis-informed that the tax would be a 2 cent tax for 10 years. He suggested that the State finance it themselves.

Grace Lucas, Missoula resident whose daughter lives on Mullan Road, commented about the considerable time it takes to drive this way. The tourist gas tax is acceptable. She voiced her support and stated that the tax was necessary to improve this section of road.

Elmer Frame, resident and business owner on Reserve Street, stated that the businesses help to contribute to the traffic problem, so they should help with the solution. He supported the SID for the property owners along Reserve Street as well as the gas tax.

Nick Kaufman, property owner on Mullan Road, commented on the promises made by the Department of Transportation to improve Mullan Road. After eight years, the first phase of the road was finally completed. Based on this and other examples, he believed the Highway Department when they say it will take 13 years to improve North Reserve Street. He stated that he supported the tourist season gas tax because all in the community would contribute to it and benefit from it. The improvement of Reserve Street will relieve pressure from other arterials such as Russell, Orange, Higgins, Arthur and Madison. Secondary roads will also be relieved.

John Crowley, President of Washington Development, stated that he has personally witnessed the increase in traffic on Reserve Street. Washington Development owns a substantial amount of undeveloped property on north Reserve. The projects that are under construction currently are but a small fraction of the development that may take place in this area in the next two years. The current congestion is nothing compared to what is going to occur. Unless something is done at the local level in the way of action and commitment, no improvements will happen for a long period of time on Reserve Street. He expressed Washington Development's support and commitment to the SID and the local gas tax. He said no one is crazy about increasing taxes or SID's, but the alternative is even less palatable. The planning process for south Reserve Street took 17 years to come to fruition.

Don Stinger, 245 N. Davis Street, commented that he has seen Reserve Street grow since the 1950's. It took 40 years to get where it is now. However, the State cannot remove the overpass until they obtain the right-of-way. He spoke in support of the gas tax. He wondered if this tax would include diesel?

Barbara Evans stated that this is strictly a gas tax; no diesel is involved. The statutes allow only taxes on gasoline.

Frank Pfau, resident of 1323 Philips Street, stated that the Missoula area has some of the highest gas prices in the state. He expressed concern that this proposal is a reactive quick fix to a problem. The City and County is rushing in to fix this problem. He was concerned that if this project was rushed, it would not solve all the problems of Reserve Street. Rather than looking at one problem at a time, the City and County need to look at whole problem all at once.

Joe Aldegarie explained that south Reserve was completed first because of the expense involved. All of north Reserve was planned to be a commercial and industrial area. As part of this planning, all the subdivisions that went in were planned with this in mind. The roadways in these subdivisions are wider than normal, the asphalt is thicker than normal, the water and sewer systems were all planned for commercial and industrial. North Reserve was also included in the Transportation Plan of 1985. The fallacy to that plan were the projections of traffic growth which projected that by the year 2000, traffic volumes would exceed 20,000 cars a day. Missoula grew faster than anyone ever anticipated. Much of the commercial growth occurring now is occurring faster than anticipated. Reserve Street currently has approximately 22,000 cars per day. He said because of the increase in traffic, they are trying to do this project rather than other projects in the Transportation Plan. He said Reserve Street is a State highway and under State jurisdiction. This is positive because the National Highway System fund is larger than local funding. Missoula grew faster than planned. If anything, the situation was caused by a lack of foresight, not a lack of planning.

Frank Pfau wondered if Missoula would continue to grow beyond all expectations? Shouldn't the problem be solved now? The City and County should look at the broader picture.

Barbara Evans said the north end of Reserve Street would be constructed the same as the south end of Reserve, for road width, curbs, gutters, etc. The only thing it won't have is the high occupancy vehicle lane which would substantially increase the cost of the project.

The SID will be paid for by the property owners along the north Reserve property. She stated there is currently over \$1 million in support of the project without everyone being contacted. They need \$879,400 in order for the SID to be successful. She also said that because the State agreed to do this project, it moves projects for other areas to the back of the list behind the Reserve Street project. The State Highway Commission will take a lot of flack for this, but they were willing to put forth this effort because of a cooperative effort with the local governments in Missoula.

Fern Hart said if the Commissioners decide in favor, the question of a tourist season gas tax will be placed on a County-wide ballot issue. She thanked all the participants for their thoughtful comments and questions.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion that the Board of County Commissioners place the question of a Tourist Season Gas Tax on the November ballot as follows:

Shall the Board of County Commissioners be authorized to impose a motor fuel tax of one cent per gallon on gasoline sold in Missoula County to the ultimate consumer for use in motor vehicles on public highways during the months of June, July, August and September, for a period of four years. The proceeds of the tax will be used solely and exclusively to fund a portion of the local share of the cost of improving North Reserve Street. The collection of the tax will end at the end of September, 1998. If authorized the tax will be collected by Montana Department of Transportation by contract with the County in the same manner as other motor fuel taxes. Approval of the ballot measure will result in the completion of the North Reserve Street project approximately 10-15 years earlier than will be accomplished under traditional funding methods.

- o For a Motor Fuel Tax to Reconstruct North Reserve Street.
- o Against a Motor Fuel Tax to Reconstruct North Reserve Street.

The motion carried on a vote of 3-0.

Barbara Evans said that representatives from the City and County met many times with the Petroleum dealers in Missoula. They didn't wish to have any further taxes placed on gasoline, but recognized that it is necessary for Reserve Street to be improved. They suggested that the County tax in such a way that it wouldn't add taxes during the months oxygenated fuel is required. The State recommended the option of one cent per gallon for four months for four years. This tax isn't a tourist tax, but is a tourist season tax.

Ann Mary Dussault clarified that the taxes would be raised for four months during the months of June, July, August and September and would not exceed one cent a gallon of both leaded and unleaded gas. She asked if the taxes would be collected until the amount necessary is raised?

Barbara Evans said no one has a clear handle on how much will be raised in the four months. It may come up short of the \$700,000. However, the Highway Commission is still willing to accept it. When the four years are done, so is the tax.

Frank Pfau asked what would happen if the grant falls through?

Barbara Evans stated that it will take longer to find the money, but they will continue to look. The County cannot add one cent more or one day longer to the ballot language.

Joe Aldegare said the \$4.2 million is a fixed amount. If the project cost goes up, the amount will remain the same, unless some "frills" are added that the community wants.

Barbara Evans stated the Highway Commission indicated that the \$4.2 million is a fixed amount based on the project cost of \$12 million. They now think that the project will be approximately \$21 million. The Highway Commission indicated that they have agreed to stay with the \$4.2 million figure.

Joe Aldegare said in the creation of RSID, there is a clause included that states if the City does not go to construction within four years, the bonds will not be sold and the assessment will not be spread. This is a safeguard for property owners on north Reserve.

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

#### THURSDAY, AUGUST 25, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Dussault was on vacation August 25th and 26th.

#### DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Seeley Lake Community Council for the purpose of purchasing services which would advance and promote the interests and welfare of the residents of the Seeley Lake community in Missoula County, as per the terms set forth, for a total amount of \$4,830.00, commencing July 1, 1994, through June 30, 1995.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Friends to Youth for the purpose of counseling services for victims of incest and their families, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for a total amount of \$5,000.00, contingent upon receipt of Montana Board of Crime Control Grant Funds by Missoula County.

Resolution No. 94-093 -- The Board of County Commissioners signed Resolution No. 94-093, resolving that the question of whether or not to impose a motor fuel tax of one cent per gallon on gasoline sold within the County to the ultimate consumer for use in motor vehicles operated on public highway for four years during the months of June, July, August, and September, with the proceeds of the tax to be used solely and exclusively to fund a portion of the local share of the cost of improving North Reserve Street, be submitted to the people at the election to be held on November 8, 1994.

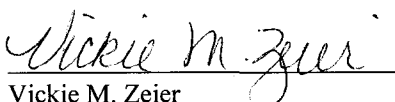
Other items included:

- (1) the Commissioners appointed Gerald Stone as a "regular" member of the County Zoning Board of Adjustment to fill an unexpired term through December 31, 1994; and
- (2) the Commissioners voted to recommend that a sign saying "No Jake Brakes" be placed on Upper Miller Creek Road.

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

**FRIDAY, AUGUST 26, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. In the forenoon, Commissioner Evans attended a conference call meeting of the Judicial Standards Commission held in Judge Ed McLean's office.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, AUGUST 29, 1994**

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

Indemnity Bonds -- Chair Hart examined, approved, and ordered filed the following Indemnity Bonds:

- 1) naming Missoula County as principal for warrant No. 001-5779759, dated June 29, 1994, in the amount of \$15,500.00 issued by the State of Montana Treasurer, now unable to be found; and
- 2) naming Missoula County as principal for warrant No. 001-5898724, dated August 8, 1994, in the amount of \$6,240.89 issued by the State of Montana Treasurer, now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Agreement -- The Board of County Commissioners signed an Agreement between the Montana Department of Health and Environmental Sciences and Missoula County on behalf of the Partnership Health Center, a division of the Missoula City-County Health Department for the purpose of administering an immunization project for children in Missoula County, as per the terms set forth, for a total reimbursement to the County up to a maximum of \$11,500.00, and must be completed by December 31, 1994. The Agreement was forwarded to DHES in Helena.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Timber Ridge Consulting, Inc., an independent contractor, for the purpose of successful teaching of a maximum of 100 90-minutes computer classes for Missoula County personnel, as per the items and terms set forth, for the period commencing July 1, 1994, through December 31, 1994, for compensation not to exceed \$7,000.00 for training and \$2,000.00 for contracted services.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the YWCA Domestic Violence Assistance Center for the purpose of purchasing comprehensive services for victims of domestic violence in Missoula County, as per the terms set forth, for the period from July 1, 1994 through June 30, 1995, for a total amount of \$7,500.00, contingent upon receipt of Montana Department of Family Services grant funds by Missoula County.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the YWCA Domestic Violence Assistance Center for the purpose of purchasing crisis intervention, shelter and related services for victims of domestic violence in Missoula County, as per the terms set forth, for the period from July 1, 1994, through June 30, 1995, for a total amount of \$12,622.00, contingent upon receipt of Montana Board of Crime Control grant funds by Missoula County.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Missoula YWCA for the purpose of purchasing basic needs assistance for

indigent residents of Missoula County, as per the terms set forth, for the period from July 1, 1994, through June 30, 1995, for a total amount of \$13,489.00.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and C. Curtis Blake, MD, an independent contractor, who will serve as the Partnership Health Center Medical Director, as per the duties and terms set forth, for the period commencing July 1, 1994, through June 30, 1995, for compensation at the rate of \$50.00 per hour, for an average of 8 hours per week for 26 weeks to a maximum of 208 hours. The Contract was returned to the Health Department for further signatures and handling.

Warranty Deed -- The Board of County Commissioners signed a Warranty Deed from Missoula County to Guy D. and Lori J. Hughes, purchasers of the following tax deed property: Tract 8C-1 of Certificate of Survey No. 2892, located in the NE 1/4 of Section 36, T. 14 N., R. 20 W., PMM, Missoula County.

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

#### TUESDAY, AUGUST 30, 1994

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated August 29, 1994, pages 4-31, with a grand total of \$129,802.25. The Audit List was returned to the Accounting Department.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Missoula Aging Services for the purpose of planning, coordination, and delivery of Aging Services programs in Missoula County, as per the terms set forth, for the period from July 1, 1994, through June 30, 1995, for a total amount of \$95,500.00.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Montana Court Appointed Special Advocate for the purpose of purchasing special advocacy services for children involved with the criminal justice system in Missoula County, as per the terms set forth, for the period from July 1, 1994, through June 30, 1995, for a total amount of \$5,000.00, contingent upon receipt of Montana Board of Crime Control grant funds by Missoula County.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Poverello Center for the purpose of purchasing basic needs assistance for indigent residents of Missoula County, as per the terms set forth, for the period from July 1, 1994, through June 30, 1995, for a total amount of \$15,000.00.

Plat -- The Board of County Commissioners signed the plat for Inlaw Acres, a subdivision plat located in the NE1/4, Section 6, T17N, R15W, PMM, Missoula County, a total of 15.29 acres (2 lots), with the owners of record being Donald J. and Ella M. Goodbread.

Plat -- The Board of County Commissioners signed the plat for O'Brien Creek Meadows No. 2, Phase 3, a subdivision plat located in the NE 1/4, Section 34, T13N, R20W, PMM, Missoula County, a net area of 10.0 acres, with the owner of record being John H. Diddel.

Resolution No. 94-094 -- The Board of County Commissioners signed Resolution No. 94-094, a resolution accepting real property from Dale E. Willis and Rosalie K. Willis for public park (Lolo area) and all other public purposes as shown on Certificate of Survey No. 4381 and the Warranty Deed being recorded with the Missoula County Clerk and Recorder in Book 422 Micro, Page 1772, located in the NE1/4 of Section 34, T12N, R20W, PMM, Missoula County.

Tri-Party Agreement -- The Board of County Commissioners signed a Tri-Party Agreement between the State Department of Transportation, Missoula County, and Montana Rail Link Inc. for the purpose of installing signal gate arms at the railroad crossing on Miller Creek Road (U.S. DOT 060 257Y - Milepost 4.20 - LS-Branch Line Missoula to Darby), as per the terms and conditions set forth. The Agreement was forwarded to the State Department of Transportation in Helena for further signatures and handling.

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

#### WEDNESDAY, AUGUST 31, 1994

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

#### BID AWARD: CONSTRUCTION BIDS - RSID NO. 8454 - SEWER MAIN EXTENSION TO SERVE BLOCK 1 OF MACLAY ADDITION

Fern Hart explained that the RSID staff recommended that the award of the construction bids for RSID 8454 for the Maclay Addition Sewer be postponed until Wednesday, September 7th.

HEARING: PETITION TO VACATE ALLEY - 2100 BLOCK OF KENT & NORTH AVENUE, 2000 BLOCK OF KEMP AND SCHILLING

Information received from Phyllis Browder, Recording Supervisor in the Clerk & Recorder's Office, explained that a petition to vacate "The 2100 Blocks of Kent and North Avenues and the 2000 Blocks of Kemp and Schilling Streets, located in Block 14 of Carline Addition No. 1, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof, Section 29, T13N, R19W."

The reasons for this request are as follows: "The abandonment of this alley is necessary and advantageous for the following reasons: There is a 31 year encroachment permit granted March 15, 1976 by the County of Missoula for lots 17 and 18 and the entire block appears to be encroaching upon the 30 foot right-of-way. There are four fences and two home which currently appear to be located on this right-of-way. The landscaping on these lots is useful for dust abatement and there are also some instances of this right-of-way being used for off-street parking. It would be a hardship for these property owners to vacate their respective encroachments."

The following landowners were notified of the hearing: Charles R. and Susan V. Timothy, Donald and Thelma Palmer, William J. and Vera Tabish, Bernice T. Abounader, Missoula Rural Fire District, James and Regina Kaiser, William E. Ambrose Jr., and David and Margaret Yuhas.

The hearing was opened to public comment:

Sandy Sickels, Goldkey Real Estate, has accepted a buy-sell on the property sitting in the alley right-of-way. This easement expires in 2020. All the people in the block are renters who use the alley as yards. No properties would have access problems if the alley were abandoned. It would also provide off-street parking for the home. Signatories on the petition are residents and owners of lots. There has been no negative feedback.

Don Palmer, owner of a 5-unit trailer court on North Avenue, stated he had no objection to vacating the alley right-of-way.

A discussion ensued relative to the existing homes on the property in question. There is a multi-family home and a single family mobile home located on the property. There is also a restoration business with a large shop.

Horace Brown commented that the whole alley right-of-way would be vacated. If the right-of-way is abandoned, the utility easements will remain.

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

Fern Hart explained the vacation procedure. One member of the Board of County Commissioners along with the County Surveyor must inspect the property in question before a decision can be made. The decision on the vacation will be postponed until the Public Meeting on September 7th.

PUBLIC COMMENT:

Will Snodgrass, Missoulians for a Clean Environment, talked about the dioxins in the soil at White Pine and called the situation of ... an international crisis. He alleged that the staff at the Health Department has attempted to down-play and cover the affects of this. He requested that the Commissioners, as overseers of the Missoula City-County Health Department, to make sure that when press releases are released, that they be reality based and also that any staff person involved in covering up the situation, they be terminated from their position.

PUBLIC COMMENT

Pam Cooper, resident of Petty Creek, thanked the County Surveyor for grading Petty Creek Road. However, it will not stay smooth and will need to be done again. She wondered why the County was taking so long to improve their road when other roads were getting upgraded? The residents are tired of beating their cars up and down this road. This road has not been relatively smooth for six years. She expressed concern about the logging trucks. She wondered if the County was receiving a portion of the 25% stumpage from the Forest Services roads that the logging trucks use? Where is the money going from these trucks? Obviously, this money is not allocated to repairing the roads in this particular area. The County is supposed to maintain the road. The County is also double taxing the residents because they pay taxes on the road and are expected to pay for any improvements to the road as well

Arlene Grindell, Petty Creek resident, said she is willing to drive on a dusty road in order to live in the beautiful area. She stated if the road is paved, there will be an increase in traffic causing the amenities available to the area to disappear. This has been a very dry year which has caused the road to be dustier than usual. The road isn't always like this. She wondered if there could be an alternative to paving such as placing magnesium compound on the road which would take care of the dust.

Jackie Ahearn, resident of Petty Creek, commented that the residents are not saying that the road should be paved, just fixed so any improvements made will last more than three days. While there has been more and more traffic on this road, it is the least maintained road in Missoula County. Also, because this is a through road from Interstate 90 to Highway 12, there are many out-of-state cars that use this road. The Alberton school bus which serves the area had to completely rebuild their bus. She also wondered where their taxes they pay for the road was going?

Horace Brown, County Surveyor, explained that in 1991 the County improved five miles of Petty Creek Road. However, the problem was finding a gravel pit in area. The County needs to have one to crush gravel for the road. Otherwise, the cost of the project would be prohibitive. There are other roads in the County just as bad as this one. The County is slowly putting gravel on these roads. Nine Mile got gravel last year. Elk Creek got some gravel on it this year. Regarding the

Forest Service funds, the County receives two-thirds of the 25% that the Forest Service gives back to the County which goes into the maintenance of the roads and buys materials and equipment. It costs approximately \$2,800 a mile to maintain the roads which includes plowing, sanding, mowing, etc. He said the County does not provide liquids for dust control. Rock Creek Road has been paved for 10 miles with millings. Some of these millings will be used on the lower three miles of Petty Creek in 1996. Regarding the comment concerning taxes paid by the property owner for the roads, he explained that for 20 acre lots in the area, between 21 cents to \$1.52 goes to the road fund. In the urban area, a small lot pays \$22.19. The average cost of magnesium chloride per mile is \$2,000 without any improvements to the road; the average cost of asphalt is between \$70,000 to \$250,000 per mile depending on how much has to be done to the road.

David Kennedy, Petty Creek resident, said the road is a dirty situation. He showed the Commissioners a photograph of the dust on the road. He said the residents are breathing in dust particulate. People come through pretty fast which throws a lot of dust and dirt in the air making it impossible to see. He said paving would only cause more of a traffic problem. He wondered what could be done? Should the residents form a committee to work with the County? He asked the Commissioners for help so that the enthusiasm presented at this meeting did not die.

Barbara Evans explained that last year the County tried to institute a dust abatement program in another area of the County. However, it was defeated by the residents by 2 to 1. The County has instituted a dust abatement program where the County will pay 30% of the cost of the dust abatement measures. This money is available on a first-come-first-serve basis. She addressed the amount of taxes paid by property owners into the road fund. If 1,000 residents lived in this area and paid \$38 a year for the roads, this wouldn't even pay for the magnesium chloride. The amount of tax dollars that are raised for the roads isn't enough to pay for all the roads in the County that need to be upgraded. The County is happy to participate with an organized group to improve the roads.

Pam Roberts, resident of Petty Creek, stated that Mineral County keep their gravel roads in good shape. Petty Creek Road is in bad shape. The situation with the school buses and the logging trucks is a disaster waiting to happen. Many people have been run off the road by the logging trucks. The residents deserve to have something done.

Mark Jordan, resident, agreed with the statements and stated that there are a multitude of problems with this road. Consideration should be given to reducing costs by paying a little bit more up front. How much does grading reduce maintenance costs? Government should spend a little bit of money up front to reduce costs in the long-term. He wondered if this road meets any sort of standards for safety. He said it is not feasible to pave 16 miles of road. However, something needs to be done.

Horace Brown explained that the County has road standards that must be met by new roads accepted into the County for maintenance. However, this particular road was accepted by the County for maintenance in 1974 when there were no road standards. This road does not meet County standards. He said this road is a logging road that has been upgraded.

Fern Hart said the County is dealing with more folks living in rural areas who seem to expect more for their tax money.

Horace Brown said both Mineral and Ravalli Counties receive more Forest Service funds than Missoula County as there is more timber cut in these counties. These funds are used for maintenance throughout the whole County, not just on one road. He said the funds are received in one lump sum and are used throughout the whole County.

Chris Gregory, resident, said before the heavy traffic, it was a better road. She stated that last year her family had six flat tires within days of grading. The sharp rocks cannot be dodged. She said that a tree stump that was originally used as part of the road fill is coming up in the middle of the road. In another place, the bedrock is coming through. The road needs gravel. More traffic will discover this so something must be done soon. She stated that the residents feel forgotten in the County. She said the people in Nine Mile get more attention than they do because there are more millionaires and movie stars that live up there. This may or may not be true.

Barbara Evans said this reasoning "does not cut the mustard". This is the first time the Petty Creek folks have been to see the Commissioners concerning this issue.

Donna Havington, resident of Petty Creek who lives with her mother, Arlene Grindell, spoke in agreement with the comments made. She voiced her concern about paving and the affects this would have on traffic. Paving would not be the way to go. This would increase the problems they already have. There are other cost effective alternatives. She urged the Commissioners to listen to the residents' concerns.

John Greenwood, 1475 Petty Creek Road, said the road has a Montana State designation of 507; why isn't the State maintaining this road? He asked a series of questions relative to the funds received from the State for reimbursement for county maintenance to state roads and the amount the County receives from the stumpage fees. The State receives a lot of road taxes from logging trucks regardless of whether the land is Forest Service land or private land. Doesn't Missoula County derive any benefit from these taxes?

Horace Brown said the County maintains a lot of roads with State designations which were turned over to the County years ago. The County does not receive reimbursement for the maintenance of these roads. He said the only money the County receives from the State are funds from a State gas tax. This is not for any special road, but for the number of miles of public roads within the County. Every county receives this money. Missoula County receives approximately \$323,000 a year. He said the gas tax is based on the number of miles of road which are public roads within the County. It has nothing to do with state roads that are maintained by the County. He stated that the amount of stumpage the County receives varies from \$129,000 to \$600,000 per year. The County only receives stumpage fees if the trucks run on Forest Service lands. He said the only funds the County receives is a portion of the gas tax; they do not receive any portion of road taxes.

John Greenwood said he paid taxes on seven head of horses, a portion of which went to roads. The road fund is deriving a lot more taxes from other than property taxes.



Horace Brown said the only taxes the Road Department receives is from the personal property or real estate.

John Greenwood said his neighbor put up some signs to slow the traffic. These signs were stolen. He wondered if the Forest Service can afford to dust oil the west fork of Petty Creek, why couldn't Missoula County afford to dust oil the little bit of road remaining?

Horace Brown said the only program available for dust abatement is through the RSID arrangement. The first three miles of Petty Creek will be paved with millings in 1996.

John Greenwood expressed concerns relative to safety due to the dust. Something needs to be done. He wondered if the residents could at least get speed control to slow these people down? If they could get some form of speed control, it would help with not only the dust problem, but with the safety problem.

Horace Brown said he was willing to put gravel down, but he needed a gravel pit. He said a few years ago, the County tried to purchase a gravel pit in this area. However, the owner wanted to sell above the appraised value. Enforcement would be up to the Sheriff's Department.

Barbara Evans stated that John Greenwood should speak with Sheriff Doug Chase who may be able to help with enforcement even though the department is short-staffed.

John Greenwood invited the Commissioners and Horace Brown to his place to record the number of vehicles and use radar to determine how fast the vehicles go.

Chris Crews, resident of Petty Creek, stated that he just had a flat tire the day before due to the road. He asked about the cost of magnesium chloride; did the cost include grading? He wondered how long the treatment would last? He wondered how long oiling would last?

Horace Brown said the cost included grading, sanding, plowing, mowing etc. He said the treatment would depend upon the road, but it would last from one to three years. If there is a good gravel source for the bed, it will last longer. The cost of the gravel is \$20,000 a mile. The gravel will be paid for by the County, but the treatment of magnesium chloride is an extra cost to the residents. Most treatments will last from one to three years. Oiling will last for one season. The oil has to be a special kind of oil and must be applied by an applicator. There would be no damage to Petty Creek because it soaks into the road.

Chris Crews expressed a willingness to work with the County and his neighbors on a dust abatement program of some sort. Something must be done. He wondered if a gravel source could be found, could the County move on this project?

Horace Brown said they hoped to spread gravel on the lower part of Petty Creek this year. He said the Road Department has just so many people and other roads are scheduled to be done this year. He said when the road was done in 1991, they fully expected to do the whole road, but they couldn't find a gravel source.

Ann Mary Dussault said if the residents decide to form a dust abatement district through an RSID, the County will share the cost. The County's share would be 30% on the assumption that funds are available. The residents must submit a petition with signatures from 60% of the residents. However, a 40% protest can stop the formation of the district. The County staff can help the residents to know what mechanisms to use, the drawbacks and benefits of an RSID, as well as the rules. The burden is distributed to all taxpayers in the district. The RSID mechanism is governed by law. If there is sufficient protest, the district will not be created. If there is not sufficient protest, the Commissioners can create it. The petition also has a maximum expenditure which cannot be exceeded. If the bids come in in excess of the petition amount, the whole process must start over.

Michael Sehestedt said the petition and the amount stated are jurisdictional. If the bids come in in excess of the petition amount, the County must stop the process, reject all bids and send the project back to the petitioners to make a decision on whether to go forward with higher amount or let the matter go. Typically, there will be a ball park top end and the contract will be bid with some alternatives or options. The contract can be cut to fit the needs of the district to get effective dust control. The majority support for a dust project most times is not really there. It is sometimes hard to push these types of projects through. This area has been divided by Certificate of Survey with the consequence of no subdivision review for roads, etc. When subdivisions are reviewed, the County imposes development costs as well as off-site road standards on each subdivision. Subdivision lots cost more than property divided through the COS process. However, in the end, the inadequacies of the parcels become evident and have to be dealt with, which can be quite costly to the residents. One perception has been that enforcement is needed to slow the traffic down to solve part of the problem. Traffic speed is a contributor not only to the safety on a road, but also to the amount of dust created on the road. It may be that speed surveys may help the situation.

A discussion followed concerning gravel and how long the gravel would last. Putting gravel down will not cut down the dust. A crushed gravel will stay on the road much longer than if it has been screened because it is not round. It may last 10 years before it has to be replaced. Some of the gravel on a few of the roads in the county has not been replaced in the last 20 years.

Patty Pluth, resident, agreed with the statements made, and voiced further concerns about safety and dust, which she said were not exaggerated.

Fern Hart asked for a show of hands of the people who would consider supporting participation in a dust abatement district. She stated that dust abatement is not a provided service in the County. However, the County will participate with the community who has organized to do this. About half of the audience raised their hands in support of a dust abatement district.

Will Snodgrass expressed concern about the impact on people's health from the dust and the use of road oil on the environment. The magnesium chloride works well.

Horace Brown said the County does not accept oil from just anywhere. The oil must be refined oil which does not have hazardous material.

Pam Pluth asked about the plans for the remaining portion of the road after the first three miles have been paved. She wondered why only three miles was going to be paved when there may be enough to do six miles? She voiced concern that people will not drive the speed limit even when the speed limit is posted.

Horace Brown said there are millings available which would cover the first three miles of Petty Creek. However, it depends on how many tons of millings are received. The County does not know how much they will receive. They can't use all the millings on one road. He said the County must be fair to the other residents in Missoula County who have the same problem. He wondered how he could choose between one area and another? The residents will get their fair share on each road. He stated that if he did all of one, he would get shot by the other. He said when five miles of Petty Creek was done in 1991, the gravel source came out of a corner that was cut out of the road. All of this gravel was used; there wasn't enough to finish the project. He said it would be helpful for the residents to note the times when there is the most traffic on the road.

A discussion followed with regard to residents petitioning into Mineral County. Missoula County must vote to place this issue on the ballot before the voters. However, Mineral County must vote to accept the area into the county.

Pam Pluth wondered if the residents could apply their own dust control?

Horace Brown said it is against State law to do this. It creates potholes in the road and makes the road more dangerous. If someone reports this, he stated he has no choice but to do something about it. It is against the law to put irrigation water on the road.

Pat Jordan wondered if Plum Creek could contribute towards the maintenance of the road since it is their trucks that cause much of the problem?

Horace Brown said any person can use the road because it is public. The west fork of the road belongs to the Forest Service. This portion was oiled because it was probably required by the Forest Service. He stated that on Forest Service sales, he required that they put down a dust palliative. He said he would contact Plum Creek.

Ann Mary Dussault stated that Champion is good about working cooperatively with residents when there is a timber sale. She suggested that it would be a good idea for the residents to talk to Plum Creek because they are worried about their public image as well. She recommended that the residents speak with Denny Sigars of Plum Creek. The Commissioners have an upcoming meeting with Plum Creek and this item could be placed on the meeting agenda.

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

**THURSDAY, SEPTEMBER 1, 1994**

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Commissioner Hart was out of the office in the forenoon due to a death in the family.

**DAILY ADMINISTRATIVE MEETING**

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and Missoula Youth Homes, Inc. for the purpose of purchasing substance abuse prevention services in Missoula County, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for a total amount of \$24,000.00.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and Extended Family Services for the purpose of purchasing services for children who are victims of domestic violence, abuse and neglect in Missoula County, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for a total amount of \$25,000.00, contingent upon receipt of Department of Family Services Domestic Violence Program grant funds by Missoula County.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and Community Care, Inc., for the purpose of purchasing alcohol and other substance abuse prevention services for youth in Missoula County, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for a total amount of \$22,422.00, contingent upon receipt of Montana Board of Crime Control grant funds.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the SOS Health Center for the purpose of mental health services for the residents of the Seeley Lake/Condon Valley communities in Missoula County, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for a total amount of \$3,000.00, contingent upon receipt by the SOS Health Center of Plum Creek grant funds.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and Child Care Resources, Inc., for the purpose of purchasing technical assistance and training to child care providers to better meet the developmental needs of young children; and to protect, maintain and improve the health of children in day care settings in Missoula County, as per the terms set forth, for a total amount of \$33,500.00, commencing July 1, 1994, through June 30, 1995.

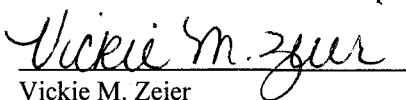
Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Betty's Professional Secretarial Service and Accent Secretarial Services, independent contractors, for the purpose of performing and providing secretarial services for the Missoula Consolidated Planning Board, the City Board of Adjustment, the County Board of Adjustment, and the Design Review Board, as per the services and tasks set forth, and as per the performance schedule and compensation outlined in the contract. The Contract was returned to the Office of Community Development for further signatures and handling.

Host Community Benefit Agreement -- Acting Chairman Evans signed a Host Community Benefit Agreement between Missoula County and Browning-Ferris Industries of Montana, Inc., whereby the County is willing to serve as a host community for the handling and disposal at the Landfill of waste generated outside of the State of Montana and/or within the State of Montana but outside of the geographical boundaries of the County in consideration of the host community benefits payable to the County, as set forth in Exhibit "B" attached to the Agreement, with the funds to be used for special projects or funding related to solid waste issues.

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

**FRIDAY, SEPTEMBER 2, 1994**

The Board of County Commissioners did not meet in regular session; Commissioners Evans and Hart were out of the office all day.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, SEPTEMBER 5, 1994**

The Courthouse was closed for the Labor Day holiday.

**TUESDAY, SEPTEMBER 6, 1994**

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

**DAILY ADMINISTRATIVE MEETING**

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between the Seeley Lake Solid Waste Management District and Rainbow Enterprises, for the purpose of purchasing property owned by Rainbow Enterprises for a solid waste transfer location and a Class III landfill to serve the needs of the district, as per the terms and conditions set forth, for a payment in the amount of \$2,200 per acre. The Agreement was returned to John DeVore, Administrative Officer, for further signatures and handling.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and Five Valleys Land Trust, Inc., for the purpose of purchasing services designed to protect wildlife habitat, riparian areas, and open space in Missoula County, as per the terms set forth, for a total amount of \$5,000.00, commencing July 1, 1994, through June 30, 1995.

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

Site Inspection -- In the afternoon, Commissioner Dussault accompanied County Surveyor Horace Brown on a site inspection for the request to vacate an alley located at the 2100 block of Kent & North Avenue and the 2000 block of Kemp and Schilling.

### WEDNESDAY, SEPTEMBER 7, 1994

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

Monthly Report -- Chair Hart examined, approved and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending August 31, 1994.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Mao Moua Ly as principal for warrant #224698, dated July 22, 1994, issued on the Missoula County Payroll Fund in the amount of \$22.78 now unable to be found.

#### DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and Women's Opportunity and Resource Development (WORD, Inc.) Supplemental Security Income Transition Program (SSIT) and Job Quest, for the purpose of purchasing basic needs assistance for indigent residents of Missoula County, as per the terms set forth, for a total amount of \$173,044.00, commencing July 1, 1994, through June 30, 1995.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Missoula Correctional Services, Inc., for the purpose of purchasing a Community Service Program in Missoula County, as per the terms set forth, for a total amount of \$51,722.00, commencing July 1, 1994, through June 30, 1995.

Contract -- The Board of County Commissioners signed a Contract between Missoula County and JTL Group, the lowest and best bidder, for 7,000 tons of crushed cover aggregate-stone chips material at the Missoula County Shop on Stockyard Road, as per the terms set forth, in the amount of \$63,002.00. The Contract was forwarded to Doreen Culver, Bidding Officer, for further handling.

Contract -- The Board of County Commissioners signed a Contract between Missoula County and JTL Group, the lowest and best bidder, for plant mix--asphaltic concrete, as per the terms set forth, in the amount of \$71,904.00. The Contract was forwarded to Doreen Culver, Bidding Officer, for further handling.

Contract -- The Board of County Commissioners signed a Contract between Missoula County and Huset Construction, the lowest and best bidder, for 2850 cubic yards of prepared aggregate material at the Ninemile Storage Yard, as per the terms set forth, in the amount of \$23,085.00. The Contract was forwarded to Doreen Culver, Bidding Officer, for further handling.

Agreement Amendment -- The Board of County Commissioners signed the following amendment to the Investment Management Agency Agreement, effective March 1, 1994, with First Interstate Bank of Commerce of Missoula, MT for the Missoula County Workers' Compensation Fund, to be effective for fees incurred on or after July 1, 1994:

Section 4.5 Compensation of Agent. The first sentence of the second paragraph, which says: "Fees shall be billed annually, at the close of the County's fiscal year, June 30 of each year." shall be deleted and replaced by the following: "Fees shall be charged to the account on a quarterly basis."

The Amendment was returned to Hal Luttschwager, Risk Manager, for further signatures and handling.

Agreement Amendment -- The Board of County Commissioners signed the following amendment to the Trust Agreement, executed August 25, 1980, with First Interstate Bank of Commerce of Missoula, MT for the Missoula County Health and Welfare Plan:

Effective for fees incurred on or after July 1, 1994; fees shall be charged to the account on a quarterly basis.

The Amendment was returned to Hal Luttschwager, Risk Manager, for further signatures and handling.

Bid Specifications -- The Board of County Commissioners signed the Specifications for 1994 CMAQ Paving of Streets and Alleys - Federal Aid Project No. CM 8199 (19). The document was returned to Doreen Culver, Bidding Officer, for further handling.

Other items included:

The Commissioners appointed Erwin Byrnes as a "regular" member of the Missoula Aging Services Governing Board to fill the unexpired term of Susan Reed, who has resigned, through December 31, 1995.

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

PUBLIC MEETING

The Public Meeting was called to order by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

BID AWARD: CONSTRUCTION BIDS -- RSID NO. 8454 -- SEWER MAIN EXTENSION TO SERVE BLOCK 1 OF MACLAY ADDITION -- POSTPONED FROM 8/31/94

Information received from Jesse Sattley, RSID Coordinator, explained that bids were received and opened on Tuesday, August 30, 1994, for the construction contracts for RSID #8454 for the Maclay Addition Sewer, as follows:

	<u>LS Jensen</u>	<u>Green Diamond</u>
Alternate #1	\$45,815.00	\$ NONE
Alternate #2	\$35,245.00	\$41,545.65

LS Jensen & Sons, Inc. was the only bidder for Alternate No. 1 with a Notice to Proceed date of 10/19/94 and the low bidder for Alternate No. 2, with a Notice to Proceed date of 4/1/95. The bid proposal submitted by Green Diamond did not comply with the requirement of Paragraph 1.4.15 which instructs the bidders to list their Contractor's License Number on the outside of the envelope. Mike Sehestedt, Deputy County Attorney, advised that Green Diamonds bid should be discarded. Therefore, LS Jensen was the only bid considered. The bid proposal allows holding the bids for 120 days and the project engineer requests that the contracts be awarded sometime in mid-December, 1994. In the meantime, the staff will advertise and sell bonds.

The staff recommended that the award of the construction contracts be postponed until mid-December of 1994.

Michael Sehestedt said typically, the County will award bids contingent upon the sale of the bonds. Apparently, in this case, they want to hold the bids.

Jesse Sattley explained if the County awarded the contract at this time contingent upon the sale of the bonds then the County would have to act within sixty days. He said the project will not start until April of 1995. The bids can be held for 120 days. The staff didn't know if the project could be completed this year. Two alternate bids were requested, one with a completion date of October and one of April, 1995. The second alternate bid was substantially lower.

Michael Sehestedt said there was no problem postponing the award of the bids. However, since Green Diamond's bid was rejected, he recommended that their bid bond be returned immediately.

Barbara Evans moved and Ann Mary Dussault seconded the motion to postpone the bid award for RSID #8454 for the Maclay Addition Sewer until mid-December as recommended by the staff and that the bid bond be returned to Green Diamond immediately. The motion carried on a vote of 3-0.

DECISION ON: PETITION TO VACATE ALLEY -- 2100 BLOCK OF KENT & NORTH AVENUE, 2000 BLOCK OF KEMP AND SCHILLING

Fern Hart explained that the decision on the vacation of the alley located in the 2100 block of Kent and North Avenue and the 2000 block of Kemp and Schilling was postponed from last week's Public Meeting to allow a member of the Board of County Commissioners and the County Surveyor to make a site inspection.

Ann Mary Dussault explained that she and Horace Brown, County Surveyor, visited the site in question on Tuesday, September 6th. She said to the untrained and trained eye it was very difficult to tell whether an alley existed. There are at least two structures that appeared to encroach on the right-of-way and the balance of the right-of-way is essentially landscaped and fenced.

Horace Brown agreed with Ann Mary's statements.

Ann Mary Dussault moved and Barbara Evans seconded the motion to grant the petition to vacate the alley located in "The 2100 Blocks of Kent and North Avenues and the 2000 Blocks of Kemp and Schilling Streets, located in Block 14 of Carline Addition No. 1, a platted subdivision in Missoula County, Montana, according to the official recorded plat thereof, Section 29, T13N, R19W." The motion carried on a vote of 3-0.

CONSIDERATION OF: MULLAN WAY -- SUMMARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that the consideration of the summary plat of Mullan Way was postponed until the Public Meeting on September 14th to endeavor to work out an agreement for an easement.

CONSIDERATION OF: COOMBS ADDITION -- SUMMARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that Coombs Addition is a proposed 2-lot division of Tract 6, Certificate of Survey No. 325. Tract 6 is a 10.1-acre parcel located south of Harpers Bridge Road in the SE 1/4 of Section 36, Township 14 North, Range 21 West. The proposed Lots 6A and 6B are planned to be 5.05 acres each, and both have an existing mobile home, well, septic system, and accessory buildings. Two sets of owners have had an undivided half interest in the existing parcel for over twenty years and would like to subdivide at this time. No new development or any changes are anticipated to occur with the subdividing of this property.

The area is zoned CA-3, which allows for residential development at a density of up to one unit per five acres. The Missoula County Comprehensive Plan for the property is Suburban Residential where land is not located in the Clark Fork River floodplain. The parcel fronts the Clark Fork at the southern property line, and most of the property is in the floodplain. The existing structures are located north of the floodplain boundary toward Harpers Bridge Road. The two proposed lots are very long and narrow, as their dimensions are approximately 140 x 1600 feet. The minimum lot width in the CA-3 zoning district is one-third the average lot depth, and the County Subdivision Regulations state that no lot shall have an average depth greater than three times its average length. To address the length-to-width ratio as required by the zoning, the owners applied for a variance to the County Board of Adjustment. On March 23, 1994 the Board voted 5 to 0 to approve the variance request; a copy of the minutes from the minutes are attached to this report. A variance request to the three-to-one ratio requirements of the Subdivision Regulations is requested as part of this submittal.

The Office of Community Development recommended approval of the following variance requests:

1) The developer requested a variance to Section 3-3(1)(E) which states that lots shall have a minimum width of 60 feet measured at the building setback line, and no lot shall have an average depth greater than three times its average width. The lots are 140 feet wide. The submittal states that because 70 per cent of the property is in the floodplain there is minimal land available for building sites. The existing dwellings also limit configuration of the lots. The lots meet the density and setback requirements of the CA-3 zoning district and because both lots have been developed for 20 years, granting the variance will not be injurious to the neighborhood. A variance to the length to depth ratio requirement of the zoning has been applied for and granted by the County Board of Adjustment. The staff recommended approval of the variance request to the subdivision regulations for the reasons stated, with the condition that the area within the floodplain is shown as a No-Build Zone on the plat.

2) The developer requested a variance to Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions. The applicant states that there are no sidewalks along Harpers Bridge Road, and because of the rural nature of the area sidewalks would be out of place and seldom used. The staff recommended approval of the variance request for the reasons stated, with the condition that the property owners waive the right to protest a future RSID for the installation of sidewalks.

3) The developer requested a variance to Section 3-2(3) which states that the pavement width for a road serving a rural subdivision shall be 24 feet. The applicant states that the existing pavement width of Harpers Bridge Road is approximately 20 feet. Harpers Bridge Road is basically a dead end road as the condemned bridge has no plans of being rebuilt. Much of the land in this area is located in the floodplain and is not developable, and the existing road adequately serves the current and projected traffic levels. The staff recommended approval of the variance request, conditional upon the RSID waiver statement on the plat for future improvements to Harpers Bridge Road.

4) The developer requested a variance to Section 3-2(3) which states that right-of-way widths for County Roads shall be 60 feet. The existing right-of-way width for Harpers Bridge Road is 40 feet. The County Surveyor states that this is what was dedicated some time ago, however he would prefer a 60-foot width. Obtaining an additional ten feet along this frontage would be a start; if ten feet can be obtained from the other side of the street then the total right-of-way width would be the regulation 60 feet. The staff recommended approval of the variance request, with the condition that the developer dedicate an additional 10 feet of right-of-way along the property frontage.

The Office Of Community Development staff recommended approval of the summary plat of Coombs Addition, subject to compliance with the following conditions:

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor. *Section 3-2 and 3-4, Missoula County Subdivision Regulations*
2. A \$50 fee per lot shall be paid to the Missoula Rural Fire Department toward the purchase of a large diameter fire hose prior to filing the final plat. *Comments of Rural Fire Chief.*
3. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In the event an easement does not exist for the power line that crosses the property, a 20-foot public utility easement shall be centered over the power line. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:

"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." *Section 3-5 and 3-6.*

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

"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID for any improvements to Harpers Bridge Road and may be used in lieu of their signatures on an RSID petition." *Section 3-2(G)(1).*

5. The driveway surface shall consist of a suitable base material and a minimum of 4 inches of 3/4" minus gravel. The width shall be a minimum 12 feet, with 20 feet of clearance for emergency fire vehicle access. The driveway plans and turnaround shall be approved by the Missoula Rural Fire Chief. *Section 3-2(6).*
6. The developer shall dedicate ten feet of right-of-way along the property frontage. *Section 3-2(3) and comments of the County Surveyor.*
7. The final plat shall show that the area of the property within the floodplain is a No-Build Zone where structures, roads, or any excavation is prohibited. *Section 4-1(11)(A), effects on the natural environment and public health and safety.*

Steve Inabnit, Eli & Associates, stated that the developer accepts all conditions as stated by the staff. The 100 foot driveway is located on the northern property line between the two lots.

A discussion ensued relative to the driveway access. The driveway centers the property line, but an easement would need to be shown on the plat. It was concluded that an additional condition be added to require a 30 foot easement. The subdivision regulations reads that a private road that would serve three or more lots would be 27 feet on the property line to total 54 feet in width; however, a private drive can be 27 feet in width. The County Surveyor recommended 15 feet on the property line for a total width of 30 feet.

Fern Hart asked about the septic tanks and drainfields.

Steve Inabnit said the questions from the Health Department have been addressed; they have State Health Department approval.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request for the variance to Section 3-3(1)(E) which states that lots shall have a minimum width of 60 feet measured at the building setback line, and no lot shall have an average depth greater than three times its average width. The motion carried on a vote of 3-0.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request for the variance to Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions. The motion carried on a vote of 3-0.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request for the variance to Section 3-2(3) which states that the pavement width for a road serving a rural subdivision shall be 24 feet. The motion carried on a vote of 3-0.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request for the variance to Section 3-2(3) which states that right-of-way widths for County Roads shall be 60 feet. The motion carried on a vote of 3-0.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the summary plat of Coombs Addition based on the findings of fact in the staff report and contingent upon compliance with the conditions as amended:

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor.
2. A \$50 fee per lot shall be paid to the Missoula Rural Fire Department toward the purchase of a large diameter fire hose prior to filing the final plat.
3. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In the event an easement does not exist for the power line that crosses the property, a 20-foot public utility easement shall be centered over the power line. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:

"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."

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

"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID for any improvements to Harpers Bridge Road and may be used in lieu of their signatures on an RSID petition."



5. The driveway surface shall consist of a suitable base material and a minimum of 4 inches of 3/4" minus gravel. The width shall be a minimum 12 feet, with 20 feet of clearance for emergency fire vehicle access. The driveway plans and turnaround shall be approved by the Missoula Rural Fire Chief.
6. The developer shall dedicate ten feet of right-of-way along the property frontage.
7. The final plat shall show that the area of the property within the floodplain is a No-Build Zone where structures, roads, or any excavation is prohibited.
8. A 30 foot driveway easement centered on the property line shall be shown on the face of the plat.

The motion carried on a vote of 3-0.

HEARING: INTENT TO CREATE RSID NO. 8918 -- MAINTENANCE OF SEWER AND WATER SYSTEM SERVING LEWIS AND CLARK SUBDIVISION

Information received from John DeVore, Administrative Officer, explained that during this last spring, the Lewis and Clark Homeowners Association contacted Missoula County to explore the possibility of creating a maintenance RSID to collect the fees necessary to operate the community water and sewer system which serves the area. The Association had been contacted earlier this year by the developer relative to his intent to discontinue operation of the system. The Association felt some type of formal system needed to be created to collect the fees, account for the revenue and insure the continued operation of the system. In May, the County received a petition signed by over 90% of the homeowners requesting the creation of the RSID. In July, the staff held a community meeting to discuss this issue further. Over 35 residents attended and all supported this solution to the problem. In order to determine the cost associated with this system, the staff contacted the engineering firm which designed the system to assess the current operating condition and provide an estimate of the annual maintenance cost. This firm estimated the annual cost to be \$9,773 or \$223 per lot per year. This includes the annual operational cost as well as an estimate of some needed repairs and improvements to the system.

No protests were received during the protest period which ended at 5:00 p.m., September 6, 1994. The staff recommended the creation of RSID No. 8918 for the maintenance of the Lewis and Clark Water and Sewer System.

The hearing was opened to public comment. There being none, the hearing was closed to public testimony.

Barbara Evans expressed concern about Missoula County getting involved in water and sewer districts. She said a mechanism should be established for a maintenance RSID in the event the County ends up with the district.

Ann Mary Dussault moved and Barbara Evans seconded the motion to create RSID No. 8918 for the maintenance of the sewer and water system serving the Lewis and Clark subdivision. The motion carried on a vote of 3-0.

HEARING: TRAILS END -- PRELIMINARY PLAT

Ron Ewart, Planner for the Office of Community Development, explained that Trails End Estates is a proposed 27-lot single family residential subdivision on 60.4 acres located in the West 1/2 of Section 19, T12N, R19W, on the west side of Trails end Road approximately 1/4 mile south of Upper Miller Creek Road. The subject property is known as Tracts 4, 5, and 6 of COS 4208.

The land is the site of the old KO Ranch, and is currently vacant except for a corral, fences and dirt roads. Miller Creek flows along the north edge of the property, and a slope rises along the south side. The Missoula Urban Comprehensive Plan, 1990 Update, designates most of the buildable area of the property as "Rural Residential --1 dwelling unit per 5-10 acres." The parcel and the surrounding area lies within the Miller Creek District Land Sensitive Zoning. Prior to this, the land was unzoned, however this special zoning came about as a response to requests for zoning to CA-3 in December 1992. The staff had maintained that a CA-3 Zone would not protect riparian and wildlife resources nor would it limit development near the powerline, therefore the Commissioners directed OCD to develop an alternative proposal that would allow most of the development to occur in the bottom land near Miller Creek. The Miller Creek District Land Sensitive Zoning was developed and then adopted in March, 1993, allowing a total of up to 61 units on approximately 298 acres.

The district allows residential development at set densities in four zones, while prohibiting development in areas of riparian and important wildlife resources and steep hillsides. Tracts 4, 5 and 6 are each just over 20 acres in size; together, they comprise the 60.4 acre subject parcel within which Zone B of the district. The resolution allows up to 27 single family residential units to be constructed in Zone B on these three tracts, while the land along Miller Creek and the adjacent slopes are designated as No Build Zones. The submitted preliminary plat and topographic map have been compared with file exhibits, and the buildable areas as outlined on the plat do coincide with maps in the file that show the zones, buildable areas, and permitted densities. The park land requirement will be met by the establishment of a 6.4 acre common area along Miller Creek. A total of 23.6 acres, or 39% of the property is to be included in common area or No Build Zone.

The lots are proposed to be served by Rodeo Road, a paved 24 foot cul-de-sac street of approximately 1900 feet in length with no curb, gutter or sidewalk. A variance is being sought to the maximum 1000 foot length limitation and the sidewalk requirement of the regulations, however the road section meets requirements for rural subdivisions. The lots are planned to be served by individual water and sewer systems.

The developer requested a Planned Variation as per Section 8.13 of the Missoula County Zoning Resolution which allows the governing body to approve a request to modify space and bulk requirements to permit innovative approaches to housing and environmental design. The reason for the Planned Variation request is to allow some of the lots to exceed

the 3 to 1 length-to-depth ratio which is a requirement of both the subdivision regulations and the Miller Creek District Land Sensitive Zoning.

On August 16, 1994 the Missoula Consolidated Planning Board voted 3 to 2 to recommend denial of the Planned Variation request for the above named item. The reason for the Planned Variation request is because some of the lots do not meet the 3-to-1 length-to-depth ratio requirement of the Miller Creek District Land Sensitive Zoning. The Planning Board was advised that they could continue and consider the Preliminary Plat, and that approval could be conditioned that the plat be reconfigured to comply with the zoning. There were three variance requests; to the cul-de-sac length which passed 4 to 1; to the sidewalk requirement which failed 4 to 1; and to the lot width-to-depth ratio of the subdivision regulations, which failed 3 to 2. The Board voted to recommend approval of the Preliminary Plat by a vote of 3 to 2. The conditions were accepted as proposed by staff with two exceptions. The Board recommended, by a unanimous vote, that Condition #7 be reworded to "The Preliminary Plat shall be altered so as to meet all conditions of the zoning regulations." (This would, in effect, erase the need for the Planned Variation of which the Board did recommend denial.) Additionally, the Board voted 4 to 1 to recommend an eighth condition prohibiting the installation of wood-burning stoves or wood burning devices. The following section lists the variance that was approved by the Planning Board, and the recommended conditions of approval for the Preliminary Plat.

The Office of Community Development recommended the Planned Variation of Trails End Estates be approved, subject to compliance with the following conditions:

1. A landscape plan that conforms with the requirements of Section 3.05 of the Zoning Resolution shall be approved by the Zoning Officer prior to filing of the final plat. *Missoula County Zoning Resolution, Section 8.13(D)(11).*
2. A management plan and maintenance agreement for the common area shall be approved by the Rural Planning Office and included with the property owner association documents. *Missoula County Zoning Resolution, Section 8.13(D)(14)(b).*
3. The common area shall extend along the northern boundary of Lot 14 for a width of 50 feet to the east property line of Lot 14. *Missoula County Zoning Resolution, Section 8.13(D)(13).*
4. The covenants shall state the following:
  - A) The minimum required front and rear setbacks are 25 feet, except that the minimum rear setback for Lots 1 through 14 is 50 feet. Minimum side yard setbacks are 7.5 feet and the maximum building height is 30 feet.
  - B) The No Build Areas shall be kept as open space, free of structures. For the purposes of this district, structure is defined as "Anything constructed or erected with a fixed location on the ground. Structures include all buildings, mobile homes, walls, signs, billboards, carports, etc.
  - C) The following uses are expressly permitted in the No Build Areas: Fences, roads under 10 per cent grade, utilities, water wells, land rehabilitation, weed control, recreational uses, and agriculture.

*Miller Creek District Land Sensitive Zoning Requirements. (50-foot rear yard setback to Miller Creek and road grades under 10 per cent are additions to the zoning requirements.)*

The applicant requested three variances to the Missoula County Subdivision Regulations as follows:

- 1) To Section 3-2(1)(I) which states that the maximum length of a cul-de-sac street shall be 1000 feet in rural subdivisions. The proposed length of Rodeo Road is approximately 1900 feet. The Planning Board recommends the variance request be approved provided that the cul-de-sac radius is 50 feet as proposed.

The Missoula Consolidated Planning Board recommended approval of the variance request to Section 3-2(1)(I)

- 2) To Section 3-2(5) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions, and that bikeways should be considered.
- 3) To Section 3-3(1)(E) which states that no lot shall have an average depth greater than three times its average width.

The Missoula Consolidated Planning Board recommended denial of the variance requests to Section 3-2(5) and to Section 3-3(1)(E).

The Missoula Consolidated Planning Board recommended the preliminary plat of Trails End Estates be approved, subject to compliance with the following conditions:

1. Plans for paving, grading, drainage, and sidewalks shall be approved by the County Surveyor. *Section 3-2 and 3-4.*
2. A one-foot no access strip shall be placed along the Trails End Road frontage of Lots 1, 2, and 27. *Comments of the County Surveyor*
3. The Property-owner's Association Articles of Incorporation, By-laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County

Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict. *Section 4-2(5)(D)(3).*

4. A 50-foot public utility easement shall be dedicated and centered over the exact location of the Montana Power natural gas transmission line and shall be approved by Montana Power. In addition to showing the location of all easements, the following statement shall appear on the face of the final plat:

"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever." *Section 3-5 and 3-6, and comments of Montana Power.*

5. The following 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 owners to waive the right to protest a future RSID for any improvements to Trails End Road or Miller Creek Road, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition. *Comments of the County Surveyor.*

6. A standard street name sign shall be placed at the intersection of Trails End Road and Rodeo Road to be approved by the County Surveyor prior to filing of the final plat, or included as part of the public improvements agreement. *Section 3-2(2)(F), and paragraph 5 of the Uniform Fire Code requirements.*
7. The Preliminary Plat shall be altered so as to meet all the conditions of the zoning regulations. *Planning Board recommendation.*
8. The installation of wood burning stoves or wood burning devices shall be prohibited. This language shall be stated as an irrevocable covenant, or stated on the face of the plat and in all instruments of conveyance. *Planning Board Recommendation.*

John Kellogg, Professional Consultants, Inc., representing the developer, said this subdivision is the first proposal after the Miller Creek Land Sensitive Zoning District was put into place. The master planning of this area has essentially been done. As a result, the proposal conforms to the zoning and has used the clustering concept within the district. The developers met twice with the residents of the area and incorporated their suggestions into the proposal. The main concerns expressed by the residents were concerns over the availability of water and the affects of this subdivision on the Miller Creek drainage. In response to these concerns, the developers hired Howard Newman, a hydrologist, to do an intensive study of the drainage. This study would determine how many wells could be drilled in this development and also what the nitrate levels would be as a result of septic systems from this subdivision. Mr. Newman identified that the impact of this development would not have an adverse affect on either the availability of water or the nitrate levels.

He said due to the cost involved, the developers decided to put in individual septic systems and wells. The cost of community water and/or septic systems is prohibitive in a subdivision of this size. In this case, a combined drainfield would have a more severe impact on the ground water than individual systems.

He commented about the issue of how the 'No Build Zones' could be dealt with. There are a number of overlapping values in the area along the creek. These natural values include scenic, wildlife, open space, recreational, etc. The only values on the steep slope are the scenic values. For this reason, this steep slope in the 'No Build Zone' was included in the lots. He said the steep slope was not included in the common area because the developer thought it was best to protect this area by individual homeowners rather than a homeowners association.

He said in general, the owners were in agreement with the staff's recommendation. However, he requested that out of the eight conditions, the reference to sidewalks in Condition #1 be deleted. He also commented on Condition #7, which referred to compliance with the zoning regulations. He requested that the steep hillsides be included in lots 16 through 21 rather than included as common area.

He said the Planning Board also brought up the concern over the installation of wood stoves in this area. This area is included within the Air Stagnation Zone and must conform to the regulations pertaining to wood burning devices within this zone. Condition No. 8 requires that no wood burning stoves be allowed, even those that conform to the regulations. He requested that the Commissioners reconsider the Planning Board's recommendation.

He referred to the conditions of approval for the Planned Variation. The first two conditions dealt with the common area and the management of the common area. He said it was their expectation that the conditions determined methods for maintaining the present vegetative cover within the common area, as well as attempting to mitigate the impact of people using the area. He said there was no anticipated recreational improvements intended for the common area. He commented on the landscape plan referred to in Condition No. 1 which would apply to the right-of-way on Rodeo Road. The staff recommended street trees or vegetation within the road right-of-way. The developers felt that while this idea was nice for a city street, in this case, it would cause an initial high cost of expense for irrigation. He said they didn't know where people would put their driveways, sidewalks, etc.

The staff had recommended that the common area be extended 50 feet to attach to adjacent land along the creek corridor which also is a no build area. He said the development prospects of this property to the east are minimal. It would be necessary to gain access across Miller Creek to further develop this property.

He referred to Condition #4 which would increase the designated 25 foot building setback along the northern tier of lots, to 50 feet. He said this is not necessary in light of the fact that the zoning just adopted addresses rear setbacks.

Regarding the sidewalk variance, he said the developers proposed to improve two accesses to the common area between lots 5 and 6 and lots 11 and 12. These lots will have the majority of the foot traffic within the development. The developers wondered if concrete sidewalks were necessary since they wouldn't go anywhere?

The hearing was opened to public comment.

Howard Newman, hydrologist, commented that he was hired to look at not only the proposed subdivision, but all of the land in the zoning district as well. He drafted a report on the impact of the septic systems from the proposed subdivision on the groundwater. He explained in detail how the groundwater flowed through the valley based on the surveys he had taken. He said he spoke to the residents of the area who have had problems with their wells above this property. Because of the characteristics of the groundwater, the residents above the proposed subdivision may have problems with their wells. However, based upon the information gained from the study of the groundwater, the developers will be able to site their septic systems and wells with no problems. The nitrates created by this subdivision are well within the limits as set by the State for non-degradation.

Ginny Cass, Planning Board, commented about the Board's deliberations on August 8th.

Fern Hart stated that she had visited the site that morning.

Colleen Dowdall, Deputy County Attorney, asked why the developers proposed to include the no build area in the lots.

John Kellogg said the no-build areas located on the lots are steep, with little vegetation, but fairly sensitive to foot traffic, etc. He said it was their feeling that the individual homeowners could deal with the problem rather than the homeowners association. This would allow the problems to be dealt with in a better manner. He addressed the 50 foot extension of the common area.

Ron Ewart said any time a Planned Variation is requested, 15 criteria are addressed in the subdivision regulations. He said if the common area was extended to the east, when the adjacent property is developed, there could be a common area that would adjoin the common area in question. This would allow for a cohesive common area instead of an area that would be divided. The common area would be more useable for recreational purposes.

Fern Hart asked if the ownership of Zone B was different than the ownership of Zone A?

John Kellogg said Zone A is owned by another person. The ownership of Zone B is split between two owners. The development potential of Zone A is extremely limited because a bridge would have to be built.

Fern Hart commented that it would be nice to have the Miller Creek corridor as a continuous common area.

John Kellogg said there is a maintenance cost involved in open space. He said this is a no build zone which cannot be built on. He spoke about the staff's recommendation for a 50 foot setback rather than the requirement of a 25 foot setback next to the creek. He said the closest the creek comes to the lotted areas was 100 feet on Lot 12.

He said because they requested a Planned Variation, they must comply with a list of criteria. One of the criteria requires that a landscape plan be prepared that conforms with the zoning ordinance and regulations. He said that the regulations state that single family lots are exempt from a landscape plan which would apply to this subdivision. However, the common area and the road right-of-way would come under the criteria for a landscape plan. The common area is addressed under Condition #2 which discusses a maintenance plan for the creek area. He said the landscape plan must refer to the swales alongside the road. At this point in time, the developers could not determine where the driveways, homes, etc., would be placed.

Barbara Evans said that when a developer requests a Planned Variation, they are expected to do something extra. She wondered what this subdivision would be required to do?

John Kellogg stated that with this particular subdivision, there hasn't been the typical give and take. In this case, they fit the criteria to allow the 3-to-1 length to width variance.

Barbara Evans asked Ginny Cass why the Planning Board recommended denial of the Planned Variation, but recommended approval of the preliminary plat?

Ginny Cass said the Board was concerned with the length of the lots. The Board could envision great, long expanses which would be fenced. She said this was too lovely an area to have 27 homes with 27 fences around the lots. The fences wouldn't be in character with the open space of the area. She stated she was personally in favor of extending the common area 50 feet to the east so that the residents would have a larger area. She stated that if the adjacent property were developed, this subdivision couldn't use it because common area is not public. The common area is private property that will belong to the homeowner's association. The association would not be able to sell it to an open space bond. She stated that common area preserves open space, but does not allow the public to use it. This is a problem for the community because the public expects to use open space.

Barbara Evans stated that the issue of common area versus park land dedication should be clarified to clear up confusion. Can common area be used by the general public? Or is it protected and used only by the homeowners association? She stated that just because someone has an open meadow does not give anyone the right to use it.

Colleen Dowdall said the reason for having a common area dedication is to pass the cost of using the area as well as the obligation to maintain it, onto the ones who use it. There are clearly areas that need to be protected from the public. She said it was her opinion that the subdivision was not exempt from the landscaping plan; it might be inappropriate in this case, but it is required. The landscaping plan must be approved by the zoning officer.

Ron Ewart clarified that the regulations in this case specify landscaping within the road right-of-way.

Colleen Dowdall said as part of the criteria for Planned Variations, it is required that the developer submit a landscaping plan. The plan needs to meet the requirements of Section 3.05 which states that there will not be a landscaping plan in any zone for single family use in any district. But, because the developers are attempting to modify the terms of a particular zone by means of a Planned Variation, that additional requirement is imposed. If the Planned Variation is denied, the landscaping plan would not be required.

Ron Ewart said the requirement is a part of the Planned Variation, and applies only to streets, roads and paths, not for the single lots. The single family lots will be landscaped by the lot owners.

Colleen Dowdall said if the Commissioners approve the Planned Variation, a landscaping plan could be required. The Planning Board basically recommended that the Planned Variation be denied, thus requiring that the plat be reconfigured to meet the zoning regulations relative to the 3-to-1 ratio. The developers could also go to the Board of Adjustments to obtain a variance.

Dick Ainsworth, Professional Consultants Inc., said they considered making the area in question common area. However, it was felt that the land would be better managed by the individual lot owners. The area cannot be built upon because it is in the no build zone. The staff agreed with this proposal. The useable, buildable portion of the lots fits within the 3-to-1 ratios. This area will be better protected if the individual lotowners managed the area. The hillside is very steep and is an unlikely casual walk.

Ann Mary Dussault suggested that fences running north and south be prohibited along the lot lines as long as the fencing could run along the road.

A discussion ensued relative to the fencing issue. The developers preferred to allow the fencing as lotowners would probably want to fence their lots.

Colleen Dowdall said the Commissioners have in the past restricted the use of fences where it will prohibit wildlife movement. This has been done either in the covenants or by an agreement with the County.

Dick Ainsworth said the Miller Creek Land Sensitive Zoning specifically permitted fencing in the no build zones. The owners planned to fence the lots.

Ann Mary Dussault said the area can be better managed by individuals. Also, she felt that the area should remain visually open without the fences running up and down the steep slope.

Brady Nelson, one of the owners of the subdivision, commented that he planned to build on one of the lots, which he wanted to fence. He wanted to keep his land private.

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

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the Planned Variation of Trails End Estates subject to the following amended conditions:

1. A landscape plan that conforms with the requirements of Section 3.05 of the Zoning Resolution shall be approved by the Zoning Officer prior to filing of the final plat.
2. A management plan and maintenance agreement for the common area shall be approved by the Rural Planning Office and included with the property owner association documents.
3. The common area shall extend along the northern boundary of Lot 14 for a width of 50 feet to the east property line of Lot 14.
4. The covenants shall state the following:
  - A) The minimum required front and rear setbacks are 25 feet, except that the minimum rear setback for Lots 1 through 14 is 50 feet. Minimum side yard setbacks are 7.5 feet and the maximum building height is 30 feet.
  - B) The No Build Areas shall be kept as open space, free of structures and fences between lots. For the purposes of this district, structure is defined as "Anything constructed or erected with a fixed location on the ground. Structures include all buildings, mobile homes, walls, signs, billboards, carports, etc.
  - C) The following uses are expressly permitted in the No Build Areas: Fences, roads under 10 per cent grade, utilities, water wells, land rehabilitation, weed control, recreational uses, and agriculture.

The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance to Section 3-2(1)(I) which states that the maximum length of a cul-de-sac street shall be 1000 feet in rural subdivisions. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance to Section 3-3(1)(E) which states that no lot shall have an average depth greater than three times its average width. The motion carried on a vote of 3-0.

Ann Mary Dussault explained that it was her intention to deny the variance to Section 3-2(5) to provide sidewalks and pedestrian walkways in order to require a walkway on the north side of Rodeo Drive. She explained that people would cross the road to access the common area by way of the two walkways. It would be safer to provide a walkway on the northern end so they could cross the road once to access the common area. She said the walkway design would be part of the zoning requirements and would not necessarily have to be a concrete sidewalk.

Colleen Dowdall said it was not necessarily the intent of the subdivision regulations to require a concrete walkway in rural subdivisions. The walkway could be asphalt, wood chips, etc. The developers could use innovative means to create a walkway to the common area.

Ann Mary Dussault moved and Barbara Evans seconded the motion to deny the variance to Section 3-2(5) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions, and that bikeways should be considered. The motion carried on a vote of 3-0.

Ann Mary Dussault asked Ginny Cass if the Planning Board's decision to recommend denial of wood burning stoves was an intent that this subdivision comply with the most recent regulations as adopted by the City and the County?

Ginny Cass said the motion was made by John Fletcher, who generally made this motion with the intent to eliminate wood burning stoves, period.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the preliminary plat of Trails End Estates based on the findings of fact and subject to compliance with the following amended conditions:

1. Plans for paving, grading, drainage, and sidewalks walkways shall be approved by the County Surveyor.
2. A one-foot no access strip shall be placed along the Trails End Road frontage of Lots 1, 2, and 27.
3. The Property-owner's Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict.
4. A 50-foot public utility easement shall be dedicated and centered over the exact location of the Montana Power natural gas transmission line and shall be approved by Montana Power. In addition to showing the location of all easements, the following statement shall appear on the face of the final plat:

"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever."
5. The following 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 owners to waive the right to protest a future RSID for any improvements to Trails End Road or Miller Creek Road, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition.
6. A standard street name sign shall be placed at the intersection of Trails End Road and Rodeo Road to be approved by the County Surveyor prior to filing of the final plat, or included as part of the public improvements agreement.
7. The Preliminary Plat shall be altered so as to meet all the conditions of the zoning regulations.
8. A walkway shall be provided on the north side of Rodeo Road. The walkway may be built of a soft surface material similar to gravel or wood chips and shall be approved by the County Surveyor.

The motion carried on a vote of 3-0.

Barbara Evans said the requirement banning wood stoves was not included in the motion to approve the preliminary plat. The Health Board is knowledgeable enough to know what should be required.

Ginny Cass stated that she felt in this particular case, this area is in a bowl which could collect a lot of smoke.

Fern Hart said these are new homes and would be limited to severe restrictions permitting only pellet stoves and gas stoves and fireplaces.

#### HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- STOUT -- COS 4059

Kathy Smith, Paralegal for the County Attorney's Office, explained that Fred J. and Gayle L. Stout submitted a request for two family transfer exemptions for COS 4059. The parcel is 20 acres in size and is located west of Missoula off Mullan Road near the Council Groves area. Mr. and Mrs. Stout proposed to transfer 5 acres to each of their daughters, Teresa L. Anderson and Julia A. Janssen.

The history of the parcel is as follows: Mr. and Mrs. Stout purchased the parcel in May, 1984, from Edward and June Dussault. In April 1992, COS 4059 was filed creating two parcels greater than 20 acres in size and an agricultural parcel.

According to the records kept by the Missoula County Surveyor's Office, the applicant has used the exemptions to the Subdivision and Platting Act as described above in addition to creating one or more parcels greater than 20 acres in size on unrelated property in August, 1991.

The hearing was opened to public comment.

Fred Stout commented that one of his daughters currently lives with her husband on the parcel in a mobile home, but wishes to build a home on the property. His other daughter will be able to build on the property in near future. He commented about past divisions of his property. He said he and his wife intend to build a home on the property in the spring. He said of his seven children, these two daughters were the most prepared to build on the property. The other five children are not prepared to build at this time. He said he is not trying to circumvent the system, but do some estate planning.

Barbara Evans explained that the Commissioners must determine whether or not the applicant is seeking to evade the Montana Subdivision and Platting Act by reviewing the history of both the parcel and the applicant.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Fred J. and Gayle L. Stout for two family transfer exemptions for COS 4059, based on the finding that the request does not attempt to evade the Montana Subdivision and Platting Act and contingent upon the transfer of the deeds to the family members. The motion carried on a vote of 3-0.

HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- DAVIS -- N1/2 OF THE NW1/4 OF SECTION 32, T16N, R20W

Kathy Smith, Paralegal for the County Attorney's Office, explained that James H. Davis submitted a request for a family transfer exemption for the N1/2 of the NW1/4 of Section 32, T16N, R20W. The parcel is an 80 acre parcel and the property is located north of Frenchtown off Mill Creek road. Mr. Davis proposed to transfer approximately 40 acres of the parcel to his 10 year old son, James Tyrone Davis.

The history of the parcel is as follows: Mr. Davis purchased the parcel in June, 1992, from Richard and Ivy Gardner, along with another 240 acres.

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

The hearing was opened to public comment.

Jim Davis requested that this application to transfer a 40 acre parcel to his 10 year old son be granted. He said there is plotted access to the property in question. He said he intends to transfer the deeds to his son.

Barbara Evans made a motion to approve the request. However, the motion died for lack of a second.

A discussion ensued relative to the age of the applicant's son and if a trustee was required in order to transfer deeds to a minor. By law, a child does not have the ability to hold land by his own right. It was suggested that the decision be postponed for one week to allow the staff time to research the matter.

Colleen Dowdall commented that evidence as to whether or not there is an attempt to evade is to look at the age of the child. If a child is a minor, this is evidence that there is an attempt to evade the subdivision law. If someone does create a parcel and it is immediately transferred back and sold, it is good evidence that the request was an attempt to evade subdivision review. If evasion does occur, the COS could be abandoned or vacated, but enforcement is a problem. If this wasn't an issue, these proceedings wouldn't have to be held. A person does not have the automatic right to use the family transfer exemption, but only has the right if the request is not an attempt to evade the law.

Ann Mary Dussault suggested that the decision be postponed for one week to give the staff the opportunity to research the matter further. She commented that this was merely an attempt to ensure that what was being recorded would occur since a minor child cannot act in his or her behalf.

Jim Davis commented that a trust was established for his son, although he didn't want the transfer to go through this mechanism to avoid the gift tax. There is no real property in the trust, but there are assets.

Ann Mary Dussault moved and Barbara Evans seconded the motion to postpone the decision for one week to allow the applicant and the attorneys time to work out a mechanism that would be satisfactory and to research what has been done in the past for a minor child. 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 3:55 p.m.

THURSDAY, SEPTEMBER 8, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was out of the office all day because of illness.



Audit List -- Commissioners Dussault and Evans signed the Audit List, dated September 8, 1994, pages 4-40, with a grand total of \$243,225.81. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

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

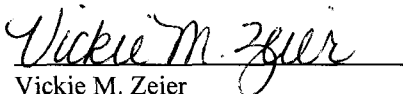
Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and Women's Place for the purpose of purchasing crisis intervention, counseling and advocacy services for victims of battering, sexual assault, rape and other types of personal violence in Missoula County, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for a total amount of \$10,000.00, contingent upon receipt of Montana Board of Crime Control grant funds by Missoula County.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and Women's Place for the purpose of purchasing comprehensive services to victims of domestic violence in Missoula County, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for a total amount of \$20,000.00, contingent upon receipt of Montana Department of Family Services grant funds by Missoula County.

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

#### **FRIDAY, SEPTEMBER 9, 1994**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners accompanied Will Kerling of the 5-Valleys Land Trust on a field trip to Mount Jumbo and the surrounding area.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

#### **MONDAY, SEPTEMBER 12, 1994**

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

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming the Missoulain as principal for warrant #262170, dated May 20, 1994, issued on the Weed Department fund in the amount of \$42.00 now unable to be found.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming the Missoulain as principal for warrant #262171, dated May 20, 1994, issued on the Planning fund in the amount of \$28.00 now unable to be found.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming the Missoulain as principal for warrant #262172, dated May 20, 1994, issued on the General Fund (Clerk & Recorder's Dept.) in the amount of \$28.00 now unable to be found.

Monthly Report -- Chair Hart examined, approved and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and other collections made in Missoula County for month ending August 19, 1994.

Monthly Report -- Chair Hart examined, approved and ordered filed the Monthly Report of Sheriff Doug Chase showing items of fees and other collections on account of civil business in Missoula County for month ending August 31, 1994.

#### DAILY ADMINISTRATIVE MEETING

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

Professional Services Contract -- The Board of County Commissioners signed a Contract for Professional Services between Missoula County and Erica Brown, an independent contractor, for the purpose of facilitating monthly dental screening clinics, attending monthly planning meetings, and assisting the Partnership Health Center in planning future dental program activities, such as sealant placements and cleaning, as per the terms and conditions set forth, commencing August 1, 1994, through December 31, 1994, for maximum compensation in the amount of \$950.00. The Contract was returned to the Health Department for further signatures and handling.

Contract -- The Board of County Commissioners signed a Contract between Missoula County and D. Lower Construction, the lowest and best bidder for the remodel of the existing 9-1-1 Center plus Alternate I (attached to the Contract), as per the terms set forth, in the amount of \$80,920.00. The Contract was returned to John DeVore, Administrative Officer, for further handling.

Contract -- The Board of County Commissioners signed a Contract between the Missoula City-County Health Department and the Missoula Indian Center, for the purpose of coordinating comprehensive alcohol services including outpatient care, preventive public education services, emergency care and consultation to residents of Missoula County, as per the terms set forth, in an amount up to \$9,504.00, commencing July 1, 1994, through June 30, 1995. The Contract was returned to the Health Department for further signatures and handling.

Contract -- Chair Hart signed a Contract between the Missoula County Domestic Violence Program and the Montana State Department of Family Services for the purpose of providing funding for a Domestic Violence Program which provides services to victims of domestic violence, as per the items and terms set forth, effective July 1, 1994, through June 30, 1995, for a total in the amount of \$37,000.00 to be paid for services under this contract. The Contract was returned to Leslie McClintock, in Human Services Programs, for further handling.

Modification of Agreement -- Chair Hart signed Modification No. 3 of Contract No. 340075 between Missoula County and the Montana Department of Health and Environmental Sciences agreeing to modify the terms of the agreement between them concerning administration of a local MIAMI project in order to facilitate fetal, infant, and child death review in the state by expanding the role of the Missoula City-County Health Department and to add the Department of Family Services as a signatory to the agreement, as per the items set forth. The Agreement Modification was forwarded to DHES in Helena.

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

**TUESDAY, SEPTEMBER 13, 1994**

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

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was considered:

the Commissioners met with Peter Templeton of Lolo and discussed the proposed Lolo Community Council Survey.

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

**WEDNESDAY, SEPTEMBER 14, 1994**

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated September 14, 1994, pages 4-36, with a grand total of \$134,775.97. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Donna Yelton as principal for warrant #57074, dated June 3, 1994, issued on the Missoula County High Schools fund in the amount of \$7.00, now unable to be found.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming the B. Dalton Book Store as principal for warrant #260667, dated April 11, 1994, issued on the Missoula County General Fund (Information Services) in the amount of \$135.80, now unable to be found.

Monthly Report -- Chair Hart examined, approved and ordered filed the Monthly Reconciliation Report for Justice of the Peace, David K. Clark, for month ending August 31, 1994.

DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Sunny Estates, a subdivision plat located in the NE1/4, Section 21, T19N, R16W, PMM, Missoula County, a net area of 37.94 acres, with the owners of record being Tom and Debra K. Pearson.

Resolution No. 94-095 -- The Board of County Commissioners signed Resolution No. 94-095, a resolution to vacate the alley in Block 14 of Carline Addition No. 1, located in Section 29, T13N, R19W, PMM, Missoula County.

Professional Services Contract -- The Board of County Commissioners signed a Contract for Professional Services between Missoula County and Scott Whitmore, DBA H & R Janitorial, an independent contractor, for the purpose of performing and providing janitorial services or tasks for the Weed Department, as per the items and terms set forth, commencing September 1, 1994, through August 31, 1995, for compensation in an amount not to exceed \$1,340.00. The Contract was returned to the Extension Office for further signatures and handling.

Budget Agreement -- The Board of County Commissioners signed a Budget Agreement between Missoula County and Montana State University Extension Service, whereby Missoula County will contribute the amounts specified for the purposes listed for the support of extension work in agriculture, home economics and related subjects, with Montana State University contributing the amounts necessary to pay the balance of the cooperatively financed salaries of County Extension Agents assigned to Missoula County, covering the period beginning July 1, 1994, and ending June 30, 1995. The Agreement was returned to Jerry Marks in the Extension Office for further signatures and handling.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

CONSIDERATION OF: MULLAN WAY -- SUMMARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that Mullan Way is a proposed 5-lot commercial subdivision of a 2.8-acre parcel located south of Mullan Road west of Mountain Supply, in the southeast 1/4 of Section 17, Township 13 North, Range 19 West. Lot B-1 is 0.96 acres in size and contains two residential structures and the office of Jay Raser, one of the owners/developers. A City of Missoula sanitary and sewer main lies along the south side of Mullan Road adjacent to the subdivision, and Lot B1 has an existing individual system. Lot B-1 is in the County and is zoned C-II, Light Industrial. The remaining four lots to the east, B-2 through B-5, are each planned to be just under a half acre in size. Lots B-2 through B-5 were annexed into the City and zoned to C-II Commercial in March, 1992 by Resolution No. 5263. M.C.A. 76-3-601(2)(C), as amended, states that if the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. Therefore, this 5-lot proposal will be reviewed for approval by the Missoula Board of County Commissioners as well as the Missoula City Council.

Adjacent to the south is the Clark Fork River, and the 100-year floodplain is located along the edge of the bank within the southerly portions of the lots. No construction, excavation, or filling is planned within the floodplain, and all structures will be located a distance of 15 feet back from the edge of the bank as per a 1991 condition of rezoning for this property. The adjacent property to the east, Mountain Supply, is zoned C-II Commercial in the City. The properties to the west are undeveloped land, newly constructed mini storage units, and the Daily packing plat, which are zoned C-II in the County. To the north, across Mullan Road, is a 40-acre vacant parcel that is also zoned C-II in the County.

Variance Requests:

1) Sidewalk requirement: The developer requests a variance to Section 3-2(5)(A) of the Missoula County Subdivision Regulations and the City of Missoula Subdivision Regulations which state that sidewalks and pedestrian walkways shall be provided in all subdivisions, and bikeways should be considered. The City Engineer states in an August 18 memo that the Office will recommend postponement for the installation of curb, gutter, and sidewalk because there is currently no preliminary design for the alignment of Mullan Road improvements. Approval of the variance is recommended with a condition that the lot owners waive the right to protest a SID/RSID for any future improvements to include widening, curbing, or the installation of sidewalk. Staff recommends approval of the variance request, conditional upon the waiver statement on the plat as recommended in this report.

2) Street standards: The developer requests a variance to Section 3-2(3) of both the County and City regulations which states that a commercial subdivision of this density requires a curbed 44-foot street. Mullan Road is 24 feet in width, and does not have curbing. As the City Engineer has indicated, there are no design plans for the street at this time. As more properties along Mullan Road become developed, the greater the need for improvements of Mullan Road. Approval of the variance request is recommended if the waiver statement regarding improvements to Mullan Road is included on the plat.

3) Right-of-way width: The developer requests a variance to Section 3-2(3) of both the City and County regulations which requires this type of subdivision to have a right-of-way width of 80 feet. The developer states that the establishment of additional right-of-way along the south side of Mullan Road would further constrain the use of the lots which are narrow in shape. The existing right-of-way width for Mullan Road is 60 feet which is adequate for serving the proposed subdivision. As more land along Mullan Road becomes developed, Mullan Road may be realigned along with other improvements and additional right-of-way would be obtained at a later time. Staff recommends approval of the variance request.

4) Areas of Riparian Resource Protection standards: The developer requests a variance to Section 3-13 of the Missoula County Subdivision Regulations which addresses measures to protect areas of riparian resource. The City of Missoula Subdivision Regulations do not have a riparian resource section at this time, therefore only Lot B-1 is required to comply with this requirement. The area of riparian resource encompasses a strip at least 50 feet wide on each side of a stream, lake, wetlands, or other body of water, measured from the high water mark. The area of riparian resource may extend further to include areas that require additional protection such as areas with steep slopes or erosive soils. The developer states that compliance with these regulations would cause undue hardship because his existing home and accessory buildings are already located within the area of riparian resource. The home is located within 15 feet of the top edge of the river bank. The side of the bank has rip-rap to help prevent erosion. The shape of the lot is narrow, as the width is less than 100 feet on the west end. The C-II zoning already requires 25 foot setbacks in the front and rear, and any further restrictions on setbacks would severely limit use of this lot. Staff recommends approval of the variance request.

The Office of Community Development recommended that the summary plat of Mullan Way be approved, subject to compliance with the following conditions:

1. Plans for paving, grading, and drainage shall be approved by the City Engineer and County Surveyor prior to filing of the final plat. *Section 3-2, 3-4.*
2. The following statement shall appear on the face of the plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner(s) to waive the right to protest a SID or RSID for any improvements to Mullan Road to include the installation of curbs, gutters, sidewalks, and the extension and installation of water mains and fire hydrants. This waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land described herein.

All documents of conveyance shall refer to and incorporate this waiver." *Comments of City Engineering and City Fire.*

3. Lots B-2 and B-3 shall share one approach to Mullan Road, and Lots B-4 and B-5 shall share one approach to Mullan Road. The approach permits shall be issued by the City Engineer prior to construction. *Section 3-2(10)(A), City and County Regulations.*
4. Lot B-1 shall contribute \$50 toward the large diameter fire hose fund of the Missoula Rural Fire District. *Comments of the Rural Fire Marshal.*
5. All structures shall be located a minimum of 15 feet from the upper edge of the river embankment. A No-Build Zone to this effect shall be shown on the face of the plat. *Condition of Resolution No. 5263.*
6. A vegetative buffer between the river bank and the future buildings shall be planted when the site is developed. A landscape plan showing the buffer shall be approved by the zoning officer prior to issuance of a building permit for each lot. *Condition of Resolution No. 5263.*
7. The developer shall grant a 15-foot public walkway easement along the existing bank of the Clark Fork River through Lots B-2, B-3, B-4, and B-5, and a 15-foot strip along the east property line of Lot B-1. *Section 3-6; recommendation of City Engineering and City Parks; this concept is addressed as a goal in the Non-Motorized Transportation Plan and the 1990 Missoula Urban Comprehensive Plan.*

He said Bill Wagner, attorney representing the developers, suggested language to replace the staff proposed condition #7 as follows:

The following statement shall appear on the face of the plat and in all instruments of conveyance:

"The developer, as a condition of subdivision approval, has irrevocably agreed, for himself and his successors and assigns, to grant the city a 10-foot wide public walkway easement along the existing bank of the Clark Fork River through Lots B-2, B-3, B-4, and B-5, and along the east property line of Lot B-1. Until the easement is actually conveyed by means of an acknowledged instrument executed by the developer or his successors or assigns, a conditional easement shall be shown on the face of the plat and shall be mentioned in all subsequent instruments of conveyance. The easement shall be not granted nor shall the easement area be available for public use unless and until a continuous public walkway easement from either Reserve Street or Russell Street to this subdivision along the Clark Fork River has been obtained. Once granted, the easement shall be perpetual, provided, however, that all rights to the easement area shall revert to the Grantor thereof, or the Grantor's successor's and assigns, if the City officially vacates the public walkway easement and further provided, however, that all rights to the easement along the east property line of Lot B-1 shall revert to the Grantor, or the Grantor's successors and assigns, if a continuous public walkway easement from Russell Street to Reserve Street along the Clark Fork River has been obtained."

Greg Martinsen, Martinsen Surveys, representing the developer, Jay Raser, agreed with the contents of the staff report, with the exception of the walkway issue. The language as proposed by Bill Wagner is a fair compromise.

Bill Wagner, attorney representing Jay Raser, said both the staff and the developers have come a long way on the road to this compromise. He said two proposals are before the Commissioners: 1) the staff's recommendation for a 15 foot wide public easement that would be granted at this time and 2) the developer's recommendation for a 10 foot wide easement that would occur when this becomes a reality. He said there is currently no walkway easement to the subdivision. However, eventually the walkway easement will be extended from either Russell Street to the subdivision or perhaps from Reserve Street to the subdivision. The developer proposed that if either of the proposals become reality, he will allow for the granting of the easement. He said many concessions have been made in drafting the proposed language. He said the developers propose that the easement be made available at no cost to the City. The present contention is whether the easement will be 15 feet or 10 feet. He said they suggested 10 feet because the easement is already within a 15 foot setback requirement area. If there is a 15 foot wide easement, he suggested that the owner probably will not landscape the area. There are inconsistencies between Condition #6 which requires landscaping of the 15 foot area and the fact that there will be a walkway easement through this area. If the easement area is to be established and a walkway installed, it will tear up some of the landscaping. Additionally, 15 feet through the four lots represents 8% of the entire land area of the subdivision. There were concessions made with respect to easements along Mullan Road. He requested that a 10 foot wide easement be approved. He said that the paved portion of the walkway through Caras Park is at most 9 feet wide. 15 feet is simply too large for this area. He said the walkway through this subdivision is actually a City issue. The walkway through the property is on City land. Mr. Raser is allowing for a walkway from the river corridor to Mullan Road for the County portion of the land. There is still the possibility there will not be a continuous walkway from Russell to Reserve Street. Regarding the issue of timing, he stated that this is an isolated subdivision. He suggested that the developers not be required to sign and grant an easement as soon as the subdivision is approved because it may never become a reality. They agreed that the easement document should be prepared by the City and/or County Attorney, that it be approved by the developer, that the exact location of the walkway be ascertained, and that the conditions of the easement be placed in the document. However, there is no reason for the document to be signed and be of record at this time. If the walkway becomes a reality, then there will be an irrevocable agreement on behalf of the developer that will be shown on the plat and will be reserved for walkway purposes.

Jay Raser, owner of the proposed subdivision, expressed concern relative to what he called glaring inconsistencies in policy in the development west of the subject property. Mini warehouses have been built with cyclone fencing over the banks of the river. The developer got a reduction from the Board of Adjustment on the setback requirement. He said he didn't foresee any connection of a walkway between Reserve Street and his development because of the adjacent development. The walkway should have been a condition of approval for this development as well. Also, the properties to the east have been developed by Mountain Supply and Bretz Trailer Sales. They have cyclone fencing with razor wire

over the river bank because people steal things by accessing the property from the river. He said neither of these businesses will be in a hurry to grant anyone access to the back of their property.

He stated that his property is very shallow to start with. The walkway easement would take 8% of his property. He said the river banks in this area are armored with the exception of his section of land. Because this bank is not armored, there will be continued erosion. He said two years ago he requested that his land be rezoned from industrial to commercial. At that time, the staff wanted vegetation planted to keep foot traffic off the bank. The open space group is working on a reclamation project for the gravel pit across the river. The City and County should consider the practicality of requiring walkways in certain areas where the land is constricted due to erosion.

He referred to the variances and explained that they requested the variances because there is no plan to improve this stretch of Mullan Road. This would be an inopportune time to pave, gutter and curb one small section of road when there are no plans to improve the road.

Fred Stout, potential buyer of the parcel, planned to construct an office building with additional office space available. He expressed concern relative to the security and aesthetics of the property. He said he was not in opposition to the proposed walkway easement. This will be an enhancement to the City. However, a 10 foot walkway would be adequate for this particular corridor. He said if there were a 15 foot setback, the project would be squeezed into the lot due to the setbacks on Mullan Road. He said it may be impossible to landscape if the easement is 15 feet. If the easement is granted now, it may stand for 15-20 years as a weed patch. He said that he could better landscape and protect the aesthetic value of the property by landscaping and buffering. He stated he may construct some sort of walkway for his employees out of bark or some other type of soft material. There is only about 400 feet from the access on Mullan Road to the river. He said some security will be compromised if there is a path through the back of the lots. He said he would be willing to put in landscaping and buffering if this easement could be granted in the future, rather than allowing the area to become a "no man's land". The extra five feet could be used for landscaping and buffering as well as fencing.

Fern Hart asked about the 15 foot easement. Does the total 15 feet have to be a walkway?

Ron Ewart said the staff hasn't established what type of walkway it would be or who would construct it. The developers have already satisfied the walkway requirement by waiving their right to protest the walkway along Mullan Road. It could be 15 feet wide. AASHTO regulations require 16 feet for pedestrian and bicycle use. 20 feet is actually preferred for a pedestrian easement.

Barbara Evans asked if the staff was recommending a walkway at the front and the back of the property? She stated a walkway in front of the property would be more appropriate than a walkway in back.

Colleen Dowdall, Deputy County Attorney, said the subdivision regulations require sidewalks and pedestrian walkways to be provided in all subdivisions and that bikeways should be considered. She said when these regulations were drafted, it was the intent that all subdivisions would be reviewed individually to determine what the needs of the subdivision and surrounding neighborhood were. It was meant to provide flexibility for developers and for the staff to be able to ask for things that would fit in a particular development. Under the regulations, the staff can ask for both.

Barbara Evans stated that if the City decided that a sidewalk in front would be more appropriate, this should be all that is requested given the fact that it is narrow property.

Greg Martinsen said the City specifically stated that they did not want curb or sidewalk on the front of the property because they did not have any plans for Mullan Road at this time. At some point in time when there is a design plan for Mullan Road, the City will require curb and gutter.

Michael Sehestedt, Deputy County Attorney, stated that the City requested both the walkway and the sidewalk which would be constructed at a later date in their second letter.

Ron Ewart referred to the memos from the City regarding the walkway easement. They requested that the easement be granted. The letter said nothing about putting the actual walkway in.

Colleen Dowdall stated that the City is on record as saying that they don't require the curbs and gutters at this time. However, they will require it at some time in the future. She asked if the County was not asking for the installation of the walkway at this time?

Ron Ewart said it was City Attorney's opinion that by asking for the sidewalk to be constructed within the easement would be pushing it too far.

Colleen Dowdall asked if the staff was requiring 15 feet of setback from the zoning and the 15 feet of walkway? Will the walkway occur within the 15 foot setback?

Ron Ewart stated that the walkway would occur within the 15 foot setback. They do not know what the material will be or how wide the walkway will be.

Bill Wagner clarified that the developers have obligated themselves to waive any right to protest an RSID for the sidewalk along Mullan Road. They are also willing to allow the City to place the walkway easement on the back of the property. However, they are requesting a 10 foot wide walkway.

Ann Mary Dussault asked about the conditional easement?

Michael Sehestedt said a conditional easement is placing of record a commitment that an easement will be granted upon the happening of a condition subsequent, which in this case is the development of a continuous walkway system which would make this a part of a larger whole rather than an isolated segment.

Colleen Dowdall expressed concern that an easement be prepared that is acknowledged and ready to record.

Michael Sehestedt said it is the developers' feeling that they don't want to create a situation in which there is unlimited right of public access.

Greg Martinsen said the developers have agreed that the easement document would be drafted in final form with the exact location of the walkway established. The document would be signed.

Horace Brown stated that the minimum AASHTO requirements for a walkway/bikeway was 10 feet.

Ann Mary Dussault suggested amendments to the language proposed by Bill Wagner. The language turned a negative statement into a positive one and did not change the intent of the condition. The agreement would be executed at this time.

Bill Wagner agreed with the minor changes to Condition #7 which appears in the motion to approve the summary plat.

Colleen Dowdall said the signed agreement could be recorded at the time the City needed the easement.

Ann Mary Dussault said the 10 or 15 foot easement is within the 15 foot setback required by the zoning. It is the developer's intent to back the buildings pretty close to the 15 foot setback with about 5 feet of the 15 foot setback landscaped. This implies that the easement will go to the edge of the bank which may be the worst place for it due to the erosion.

Jay Raser said this is a question of public safety. The bank will have to be armored at the time it is acquired for the walkway. As the erosion continues to occur, it must be addressed.

Nick Kaufman, WGM Group, said the issue is whether or not a walkway should be placed between the river and future buildings where people can't see other people on the walkway. Also, he stated that he didn't think people should be walking along this piece of river. If there must be a walkway connection, it should be placed in front of the buildings in this location. Putting the walkway five feet further from the river does not address the real issue of where the walkway should be.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance to Section 3-2(5)(A) of the Missoula County Subdivision Regulations and the City of Missoula Subdivision Regulations which state that sidewalks and pedestrian walkways shall be provided in all subdivisions, and bikeways should be considered. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance Section 3-2(3) of both the County and City regulations which states that a commercial subdivision of this density requires a curbed 44-foot street. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance to Section 3-2(3) of both the City and County regulations which requires this type of subdivision to have a right-of-way width of 80 feet. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance to Section 3-13 of the Missoula County Subdivision Regulations which addresses measures to protect areas of riparian resource. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the summary plat of Mullan Way, based on the findings of fact and subject to compliance with the following conditions as amended:

1. Plans for paving, grading, and drainage shall be approved by the City Engineer and County Surveyor prior to filing of the final plat.
2. The following statement shall appear on the face of the plat and in all instruments of conveyance:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner(s) to waive the right to protest a SID or RSID for any improvements to Mullan Road to include the installation of curbs, gutters, sidewalks, and the extension and installation of water mains and fire hydrants. This waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land described herein. All documents of conveyance shall refer to and incorporate this waiver."
3. Lots B-2 and B-3 shall share one approach to Mullan Road, and Lots B-4 and B-5 shall share one approach to Mullan Road. The approach permits shall be issued by the City Engineer prior to construction.
4. Lot B-1 shall contribute \$50 toward the large diameter fire hose fund of the Missoula Rural Fire District.
5. All structures shall be located a minimum of 15 feet from the upper edge of the river embankment. A No-Build Zone to this effect shall be shown on the face of the plat.

6. A vegetative buffer between the river bank and the future buildings shall be planted when the site is developed. A landscape plan showing the buffer shall be approved by the zoning officer prior to issuance of a building permit for each lot.
- ~~7. The developer shall grant a 15-foot public walkway easement along the existing bank of the Clark Fork River through Lots B-2, B-3, B-4, and B-5, and a 15-foot strip along the east property line of Lot B-1.~~
7. The following statement shall appear on the face of the plat and in all instruments of conveyance:

The developer, as a condition of subdivision approval, has irrevocably agreed, for himself and his successors and assigns, to grant the city a 10-foot wide public walkway easement along the existing bank of the Clark Fork River through Lots B-2, B-3, B-4, and B-5, and along the east property line of Lot B-1. This easement shall be conveyed by means of an acknowledged instrument executed and signed by the developer. This conditional easement shall be shown on the face of the plat and shall be mentioned in all subsequent instruments of conveyance. The easement shall be granted and be available for public use when a continuous public walkway easement from either Reserve Street or Russell Street to this subdivision along the Clark Fork River has been obtained. Once granted, the easement shall be perpetual, provided, however, that all rights to the easement area shall revert to the Grantor thereof, or the Grantor's successor's and assigns, if the City officially vacates the public walkway easement and further provided, however, that all rights to the easement along the east property line of Lot B-1 shall revert to the Grantor, or the Grantor's successors and assigns, if a continuous public walkway easement from Russell Street to Reserve Street along the Clark Fork River has been obtained.

The motion carried on a vote of 3-0.

#### HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- BAGNELL

Barbara Evans explained that due to her close friendship with a member of the Bagnell family, she could not participate in the hearing.

Kathy Smith, Paralegal for the County Attorney's Office, explained that Lyle and Barbara Bagnell submitted a request for four family transfer exemptions for a 20.51 acre parcel located in Section 26 T15N R22W as described in Book 226 Page 799, less the right-of-way for Interstate 90 and COS 2776, west of Huson, off Interstate 90. Mr. and Mrs. Bagnell propose to create three 4.6 acre parcels and one 3.5 acre parcel retaining the 6.18 acre remainder around their home. They propose to transfer these parcels to their sons, Timothy H. Bagnell, Colin P. Bagnell and Ryan C. Bagnell, and their daughter, Dana T. Bagnell. Another son, Scott Alan Bagnell, not part of this request, lives in the trailer located behind existing home on the 6.18 acre parcel.

The history of the parcel is as follows: Mr. and Mrs. Bagnell have owned the parent parcel since 1965. In 1982, they filed COS 2776 creating Tract A, a five acre occasional sale, and Tract B, 1.41 acre family transfer. Tract A was sold in 1982 to Albert and Virginia Brown with the right of first refusal to purchase Tract B. Albert and Virginia quitclaimed their interest to Tract B in June, 1983, and the parcel was then transferred to their son, Scott Alan Bagnell, on June 15, 1983. However, Scott Alan Bagnell transferred the parcel to Kenneth Unruh the same day and the parcel has been sold two times since that time.

According to the records kept by the Missoula County Surveyor's Office, the applicants have used the exemptions to the Subdivision and Platting Act as described.

The hearing was opened to public comment.

Nick Kaufman, WGM Group, representing the Bagnells, said the property fronts onto a paved road with utilities available. Twelve years ago, the Bagnells transferred a parcel to their son, Scott, who sold the parcel fairly quickly. They would now like to transfer the parcels in question to their children. He said the intent of the Legislature was that parents could transfer inheritance in the form of property to their children. The children have the right to do with the gift as they wish. He said twelve years ago, the Bagnells started their financial planning and gave a parcel of land to their son, Scott. Scott now lives on his parent's parcel in a trailer. This trailer will stay with the 6 acre parcel. He is not involved in the proposed transfers of land.

Kathy Smith stated that the title was transferred to Scott on June 15, 1983, who, not even a minute later as recorded by the Clerk and Recorder's Office, transferred the title to another party.

Fern Hart said during the Legislative session when the law changed relative to the Certificate of Survey policy, there was a big push by those involved to keep the family farm intact and in the family.

Colleen Dowdall, Deputy County Attorney, said that Parcel A was sold in 1982 with a Right of First Refusal for Parcel B to the buyers of Parcel A. This was done prior to the transfer to Scott Bagnell. This is what is most disturbing in this case. The folks had an agreement to sell Parcel B before the transfer.

Fern Hart referred to the proposed divisions of land and commented that it looked like a subdivision.

Nick Kaufman said if a person wants to give a parcel of land to a family member and waits 12 years to gift another member of the family, is this an evasion of the Subdivision Law? Would it not be reasonable for a parent to give a piece of real estate to a child which could be used for college tuition? He wondered if it was the right of the parents to give all their children the same inheritance?

Colleen Dowdall said it wasn't the transfer to Scott, but Scott's subsequent transfer that was the issue here.



Fern Hart said in the past, there have been requests for family transfer that look like subdivisions. However, due to the lack of history on the part of the applicant and the parcel, the request has been granted.

Kathy Smith said part of the problem was that the Certificate of Survey for the occasional sale and the family transfer was filed on July 20, 1982. They sold Tract A while a Notice of Contract to Purchase Land was filed on August 3rd with a Right of First Refusal to Tract B. This would indicate that they already had it in their minds to sell Tract B to the other purchasers, not the son.

Nick Kaufman wondered if this meant that the current request was guilty of the same?

Jolay Sherry, niece of the Bagnells, said the Bagnells did not try to evade the Subdivision Act; it was just something that came up. The Bagnells' children plan to move back to Montana to reside on the property. She said there are a lot of children in this family; this was the only way to divide the property.

Barbara Evans stated that another way of dividing land is to go through the subdivision review process through the Office of Community Development.

Ann Mary Dussault asked if this was a request for a gift or a transfer?

Nick Kaufman said this is a sale allowing for some transfer of value.

Ann Mary Dussault said it is very difficult to judge intent. There are two ways for the Commissioners to determine intent: 1) the history of the parcel and 2) the history of the applicants. Referring to the history of the parcel and the applicant, she stated that there is no question that the Bagnells attempted to evade the Subdivision and Platting Act. When there is a request for a division of property with a Buy/Sell Agreement with a Right of First Refusal on the gifted parcel that preceded the transfer of that parcel to the child, it is clear that the Bagnells attempted to evade the law. She stated that it is irrelevant whether or not the child chooses to retain or sell the parcel once it has been gifted to the family member. The history in this case cannot be ignored. Gifts to family members have historically been the chief way to evade the Subdivision law.

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

Ann Mary Dussault moved and Fern Hart seconded the motion to deny the request by Lyle and Barbara Bagnell for four family transfer exemptions for a 20.51 acre parcel located in Section 26 T15N R22W as described in Book 226 Page 799, less the right-of-way for Interstate 90 and COS 2776, on the basis of the history of the creation of Tract A and Tract B under COS 2776. The motion carried on a vote of 2-0 with Barbara Evans abstaining from the vote.

#### HEARING: HOME PROGRAM -- FLOODPLAIN ISSUE

Information received from Cindy Wulfekuhle, CDBG Coordinator, explained that a first time homebuyer under the Missoula City-County Affordable Homeownership Program (MCCAHP) wishes to purchase an existing home at 3417 Kehrwald (north end of Tower). The HOME Program, funding source of the MCCAHP, requires the MCCAHP to provide an opportunity to the general public to comment on any project that is in or may be affect by the floodplain. No action is required by the Commissioners other than to take public comment.

The hearing was opened to public comment.

Janet Grimes commented that that HOME Program was set up for FHA purchasers. FHA allows homes in the floodplain as long as the purchaser obtains flood insurance.

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

At this time, Commissioner Fern Hart left the meeting.

#### HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- MCEVOY

Kathy Smith indicated that no one was present to represent the McEvoy's.

Ann Mary Dussault moved and Barbara Evans seconded the motion to postpone the hearing on the request for the family transfer request for the McEvoy's until the Public Meeting on September 28, 1994. The motion carried on a vote of 2-0.

#### DECISION: CERTIFICATE OF SURVEY REVIEW -- FAMILY TRANSFER -- DAVIS

Michael Sehestedt, Deputy County Attorney, explained that Jim Davis was unable to attend, but had mailed correspondence that dealt with the family transfer to the Commissioners. Mr. Davis indicated that he intended to transfer property to an irrevocable trust for his son Tyrone, which would include trust documents and cover pages for a judiciary tax return for the trust which indicates that the trust is, in fact, in existence. He said it appeared as though the trust was set up for the benefit of the child. Nothing would indicate that it was a possible vehicle to evade the subdivision law.

Ann Mary Dussault said it was her understanding that when this has been done in the past, the Commissioners have required that the trustee be someone other than the parent. The trust should be managed in the interest of the child.

Kathy Smith, Paralegal for the County Attorneys Office, said by law, the parent can be a trustee.

Michael Sehestedt said this is a formal trust document and the parent is subject to the duties of the judiciary. It is a matter of law. If the parent breeches the trust, there is liability.

Barbara Evans referred to the memo written by Michael Sehestedt delineating the conditions of approval to the Subdivision and Platting Act relative to this request. She read a portion of the memo which stated, "A parent who purports to act as a conservator for a minor child provides bona fide assurances that the property will be managed on behalf of the child and not the parent." The applicant has provided legal documents and thus has provided the assurance that the trust will be managed for the child's benefit.

Michael Sehestedt stated that the irrevocable trust meets this test.

Kathy Smith said the trust creates more assurances than a family transfer to an adult child because it could end up being transferred back to the parent, etc. This provides a bit more assurance than the transfer to an adult child.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by James H. Davis for a family transfer exemption for the N1/2 of the NW1/4 of Section 32, T16N, R20W, a 40 acre parcel, to his son, James Tyrone Davis, a minor child, based upon the fact that the applicant has set up an irrevocable trust for the benefit of the child, and based upon the finding that the request does not appear to evade the Montana Subdivision and Platting, and contingent upon the transfer of the deeds to the child's trust. 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 3:00 p.m.

**THURSDAY, SEPTEMBER 15, 1994**

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

DAILY ADMINISTRATIVE MEETING

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

Certifications of Acceptance -- Chair Hart signed Certifications of Acceptance (8) for County Maintenance for the following:

- 1) Cathy Court, Road No. L-0819, ACM. No. 90-003B, located in T. 12 N., R.20 W., Section 12, with the limits of acceptance being .110 miles;
- 2) Flo Lane, Road No. L-0820, ACM No. 90-004A, located in T. 12 N., R. 20 W., Section 12, with the limits of acceptance being .047 miles;
- 3) Cathy Court, Road No. L-0819, ACM. No. 90-003A, located in T. 12 N., R. 20 W., Section 12, with the limits of acceptance being .181 miles;
- 4) D J Drive, Road No. L-0822, ACM. No. 94-0004, located in T. 12 N., R. 20 W., Section 12, with the limits of acceptance being .046 miles;
- 5) Linda Vista Boulevard, Road No. L-0805, ACM. No. 74-171B, located in T. 12 N., R. 20 W., Section 12, with the limits of acceptance being .080 miles;
- 6) Linda Vista Boulevard, Road No. L-0805, ACM. No. 74-0171C, located in T. 12 N., R. 20 W., Section 12, with the limits of acceptance being .181 miles;
- 7) Mark Court, Road No. L-0823, ACM. No. 94-0005, located in T. 12 N., R. 20 W., Section 12, with the limits of acceptance being .201 miles; and
- 8) Timothy Court, Road No. L-0821, ACM. No. 94-0003, located in T. 12 N., R. 20 W., Section 12, with the limits of acceptance being .063 miles.

The Certifications were returned to the Surveyor's Office.

Other items included:

- 1) Chair Hart signed concurrence on a letter to Hank D. Honeywell of the Federal Highway Administration from Druyvestein, Johnson and Anderson, Consulting Engineers, regarding the proposed Missoula County Airport Interchange project's environmental documentation re-evaluation under the provisions of 23 CFR 771.129 due to a change in the grade of West Broadway; and
- 2) the Commissioners approved pledging up to \$18,000.00 for down-payment assistance to low-income purchasers of homes under the Housing Development Program proposed by the Western Montana Regional Community Mental Health Center in Missoula, with the source of funds, in order of preference, being program income from the MCCAHP or CDBG Program income.

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

**FRIDAY, SEPTEMBER 16, 1994**

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

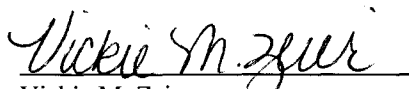
Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Western Montana Regional Community Mental Health Center for the purpose of purchasing mental health services for residents of Missoula County, as per the terms set forth, for a total amount of \$51,600.00, commencing July 1, 1994, through June 30, 1995.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Western Montana Regional Community Mental Health Center for the purpose of purchasing emergency crisis services to reduce the cost of petitions for involuntary commitments in Missoula County, as per the terms set forth, for a total amount of \$126,965.00, commencing July 1, 1994, through June 30, 1995.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Western Montana Comprehensive Developmental Center (CDC), for the purpose of purchasing developmental evaluation and treatment services for children in Missoula County, as per the terms set forth, for a total amount of \$12,350.00, commencing July 1, 1994, through June 30, 1995.

Resolution No. 94-096 -- The Board of County Commissioners signed Resolution No. 94-096, a resolution creating Rural Special Improvement District No. 8918 for the purpose of the maintenance of a community sewer and water system to serve the developments known as Lewis and Clark Subdivision of Missoula County, as per the items set forth.

Contract Amendment -- The Board of County Commissioners signed an Amendment to the Professional Services Contract between the City-County Health Department and the Sheriff's Department for participation in the DUI (driving under the influence) enforcement training programs, amending 2. Required Work or Product, and 4. Compensation for Services, as per the items and terms set forth. The Amendment was returned to the Health Department for further signatures and handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, SEPTEMBER 19 through THURSDAY, SEPTEMBER 22, 1994**

The Board of County Commissioners did not meet in regular session; Commissioner Hart was attending the MACo Annual Conference at Big Sky from the September 19-22, and Commissioner Evans was on vacation the week of September 19-23. The Weekly Public Meeting scheduled for Wednesday, September 21 was canceled as two of the Commissioners were out of town.

**FRIDAY, SEPTEMBER 23, 1994**

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated September 21, 1994, pages 4-45, with a grand total of \$410,680.17. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Scott Gooley as principal for warrant #57739, dated August 17, 1994, issued on the Missoula County Trust Fund in the amount of \$18.17 now unable to be found.

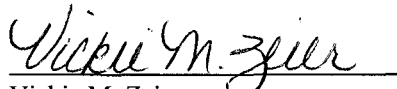
Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Joel Wentworth Scout as principal for warrant #1058, dated March 7, 1994, issued on the Greenough Potomac Fire Department Fund in the amount of \$42.00, now unable to be found.

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Jeff Swonson as principal for warrant #18361, dated September 1, 1994, issued on the Larchmont Golf Course Fund in the amount of \$276.99 now unable to be found.

Plat -- The Board of County Commissioners signed the Plat for Hellgate Pines Addition #1, Lots 20A and 20B, a platted subdivision located in the SE1/4 of Section 12, T12N, R18W, PMM, Missoula County, 2.85 acres, with the owners of record being Greg and Shelly Flesch, and the developer is Eric Newman.

Construction Administration Agreement -- Chair Hart signed a Construction Administration Agreement between the State Department of Transportation and Missoula County regarding the proposed construction of The Missoula County Paving Project (CM 8199[19]), setting forth the conditions that must be agreed to by the County and on record in order for the Federal Highway Administration of the U.S. Department of Transportation to participate in the construction of

said urban highway street project, as per the items and terms set forth. The Agreement was returned to Horace Brown, County Surveyor, for further signatures and handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, SEPTEMBER 26, 1994**

The Board of County Commissioners did not meet in regular session; Commissioners Dussault and Evans were out of the office all day.

**TUESDAY, SEPTEMBER 27, 1994**

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

Indemnity Bond -- Chair Hart examined, approved and ordered filed an Indemnity Bond naming Phyllis Swindell as principal for warrant #58313, dated July 9, 1994, issued on the Missoula County Clerk of Court Trust Fund in the amount of \$138.46, now unable to be found.

Indemnity Bond -- Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Wachovia as principal for warrant #014535, dated 5-23-94, issued on the Hellgate Elementary School District #4 fund in the amount of \$125.73 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Anderson-Bucklew Acres, a subdivision plat located in the SE1/4 of Section 16, T14N, R19W, PMM, Missoula County, a total of 10.07 acres gross and net area, with the owners of record being Neil S. and Iona L. Bucklew.

Plat -- The Board of County Commissioners signed the Plat for Wornath Orchard Tracts, Tract 9 amended, located in the SW1/4 of Section 2, T12N, R20W, PMM, Missoula County, a total of 3.54 acres gross and net, with the owner of record being Josie W. Potter, subject to conditions listed on the plat.

Memorandum of Agreement -- Chair Hart signed a Memorandum of Agreement between the Missoula County Park Board and The Friends of Westview Park, dated September 13, 1994, whereby the Park Board will provide matching funds up to \$2,500.00 for capital improvements in Westview Park as delineated in the application attached to the Agreement. The Agreement was returned to Leslie Bailey, Park Board Secretary, for further signatures and handling.

Professional Services Contract -- The Board of county Commissioners signed a Contract for Professional Services between Missoula County and the Seeley-Ovando Swan Health Center, an independent contractor, for the purpose of providing public health nursing services: nurse well child exams, and blood pressure screenings, as per the terms set forth, for compensation in the amount of \$1,000.00, commencing July 1, 1994, through July 30, 1995. The Contract was returned to the Health Department for further signatures and handling.

Agreement Modification -- Chair Hart signed Modification No. 2 of the Agreement between Missoula County and the Montana Department of Health and Environmental Sciences (No. 330229, as amended) for concerning the administration of an immunization action plan project, modifying the Agreement in order to extend it three months to coincide with the federal grant year, as per the items set forth. The Modification was forwarded to DHES in Helena.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Missoula Child and Family Resource Council for the purpose of purchasing services to benefit victims of domestic violence, abuse and neglect in Missoula County, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for a total amount of \$10,000.00, contingent upon receipt of Montana Department of Family Services Grant Funds by Missoula County.

Resolution No. 94-097 -- The Board of County Commissioners signed Resolution No. 94-097, a Budget Amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopted it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
(various accounts - as listed on the attachment to the Resolution in the Budget File)	\$12,495
<u>Description of Revenue</u>	<u>Revenue</u>
Tobacco Grant	\$12,495

Received DHES Contract No. 350134. Federal Catalog No. 93.283.

Satellite Agreement -- The Board of County Commissioners signed an Agreement between the Mineral County Health Department in Superior and the Missoula City-County Health Department, whereby Missoula County will perform the administrative and supervisory responsibilities for program operations and fiscal management of the WIC Program in Mineral County, as per the stipulations and terms set forth, from July 1, 1994, through June 30, 1995.

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

**WEDNESDAY, SEPTEMBER 28, 1994**

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated September 27, 1994, pages 4-42, with a grand total of \$152,364.65. The Audit List was returned to the Accounting Department.

**DAILY ADMINISTRATIVE MEETING**

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

Change Order #1 - RSID No. 8453 -- Chair Hart signed acceptance of Change Order #1 for the Linda Vista Sewer Project - RSID No. 8453 (contractor - Sharbono Construction), as per the ICOR's attached to the Change Order, increasing the contract price by \$14,937.50 making the new contract price \$1,131,118.50, and increasing the contract time by 10 work days making the date for completion of all work under the contract 11/23/94. The Change Order was returned to Jesse Sattley, RSID Coordinator, for further handling.

License Application -- Chair Hart signed the application for a Solid Waste Class III Landfill License Application on behalf of the Seeley Lake Refuse District certifying that the site of the planned solid waste management system located nine miles south of Seeley Lake is in accordance with local government zoning and ordinances. The application was returned to Byrl Thompson, Chairman of the Seeley Lake Solid Waste Management District, for further handling.

Certificate of Substantial Completion -- Chair Hart signed the Certificate of Substantial Completion for the Linda Vista Sewer Project - RSID No. 8452 for work done by 4 G Plumbing & Heating, with September 28th as the target date after Montana Power provides the power to the tanks on September 21st. The Certificate was returned to Jesse Sattley, RSID Coordinator, for further handling.

Other items included:

- 1) Chair Hart signed an Agreement with Unisys Corporation for delivery of the new mainframe computer;
- 2) the Commissioners appointed Anita Richards to fill a vacancy on the Seeley Lake Community Council to serve until the School Election is held in April of 1995; and
- 3) Chair Hart signed approval of a proposal and cost estimate by Shannon Environmental Services to conduct a Phase I Environmental Site Assessment at the Seeley Lake Waste Management District Class III Landfill and Transfer Station site for a lump sum fee of \$3,700.00. The document was returned to John DeVore, Administrative Officer, for further handling.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

**PROCLAMATION: DOMESTIC VIOLENCE AWARENESS MONTH**

Whereas, Domestic violence is devastating to victims and their families, yet is often kept secret, and;

Whereas, Assault by a spouse or partner is the most common cause of injury to women, and;

Whereas, Children who are victims or witnesses of domestic violence are often likely to be victims or abusers as adults; and

Whereas, Most assaults of family members are unreported to law enforcement or to service agencies, and;

Whereas, In Missoula County, over 1,000 incidents of domestic violence are reported every year, and;

Whereas, Ending domestic violence is a community responsibility.

Therefore, We, the Board of County Commissioners of Missoula County and the Mayor of the City of Missoula do hereby jointly proclaim October, 1994 as Domestic Violence Awareness Month and urge all citizens to be aware of the need for ending domestic violence whenever and wherever it occurs.

Kelly Slattery-Robinson, Shelter Coordinator for the YWCA Domestic Violence Assistance Center, thanked the Commissioners and the Mayor for recognizing society's monumental problem of domestic violence. She listed several events that would take place during the month of October which included a candlelight vigil for survivors and victims of domestic violence, a T-shirt contest for the local high schools, and the formation of a panel by the Women's Law Caucus at the Law School at the University of Montana on the issue of domestic violence.

Ann Mary Dussault moved and Barbara Evans seconded the motion to adopt the Proclamation proclaiming October, 1994 as Domestic Violence Awareness Month. The motion carried on a vote of 3-0.

#### BID AWARD: MAIN FRAME UPGRADE - DATA PROCESSING

Information received from Jim Dolezal, Data Processing Manager, explained that the current mainframe is over five years old, and after discussing the various options with the Data Processing Steering Committee, the proposed solution was to bid for a mainframe upgrade. The amount of the bid is within the budget that was approved for the upgrade. Only one bid was received from Unisys in the amount of \$400,490.00. The staff recommended that the bid be awarded to Unisys.

Jim Dolezal said the mainframe upgrade will last for the next five years. He said they will retain the peripherals and the disk drives, but will add additional storage and memory.

Barbara Evans moved and Ann Mary Dussault seconded the motion to award the bid for the mainframe upgrade to Unisys Corporation in the amount of \$400,490.00. The motion carried on a vote of 3-0.

#### AGREEMENT

The Board of County Commissioners signed an Agreement between Unisys Corporation, to sell and license products and services, and Missoula County, to purchase and license those products and services, as per the terms and conditions as set forth in the Agreement for the purpose of upgrading the mainframe. The Agreement was returned to Jim Dolezal, Data Processing Manager, for further handling.

#### BID AWARD: CMAQ PAVING -- ROAD DEPARTMENT

Bids were opened for a Congestion and Mitigation of Air Quality (CMAQ) paving project at 3:30 p.m. on Monday, September 26, 1994. The results were as follows:

JTL Group	Alternate 1	\$226,183.25
	2	\$268,312.50
Jensen Paving	Alternate 1	\$279,480.43
	2	\$312,408.54

The staff recommended the bid be awarded to JTL Group in the amount of \$226,183.25 as the lowest and best bid. This is a federal project and all but about 14% will be paid by federal funds. The fiscal impact for this project will be \$31,665. There is \$183,554.00 in the budget.

Horace Brown, County Surveyor, explained this money is the first available from the CMAQ funds. It took a year and ten months to put the request through. This particular project is for paving the streets and alleys east of Reserve Street that are in the County. The first alternate used double chip seal on the alleys and the second alternate used regular hot mix asphalt on the alleys.

Barbara Evans stated that she spoke with Mayor Dan Kemmis who indicated that he saw no problem paving these areas. However, he expressed concern that the areas would have to be torn up again when the sewer came through.

Horace Brown explained that the double chip seal can be graded up and put back with oil added to it. If asphalt is put down, it has to be torn up and crushed.

Barbara Evans requested that Horace Brown send a letter to the City informing them of the County's plans.

Barbara Evans moved and Ann Mary Dussault seconded the motion to award the bid for the CMAQ paving project to JTL Group in the amount of \$226,183.25, as the lowest and best bid. The motion carried on a vote of 3-0.

The Board of County Commissioners convened as the Planning and Zoning Commission. Present were Commissioners Fern Hart, Ann Mary Dussault, Barbara Evans, County Surveyor Horace Brown, and Clerk and Recorder Vickie Zeier.

#### HEARING -- PLANNING & ZONING COMMISSION: ZONING REQUEST -- ZONING DISTRICT #4 -- REQUEST TO CONSTRUCT A BARN AND RIDING ARENA BY CRAIG & LORNA MCCUNE ON PATTEE CANYON DRIVE

Jennie Dixon, Office of Community Development, explained that Craig and Lorna McCune have requested to construct a barn and riding arena as a residential use at property located at 3555 Pattee Canyon Drive.

The subject property is located approximately 1.5 miles up Pattee Canyon Drive from the intersection of Southwest Higgins and Pattee Canyon Road. The site is located on the south side of Pattee Canyon Road, approximately one-quarter mile beyond Lupine Road and before the Fort Missoula Timber Reserve and Larch Camp Road. This

property is accessed from Pattee Canyon Drive by a private drive. In March 1985, a request by Charles Eiseman to split off this five-acre parcel through occasional sale from a 19.5 acre parcel was unanimously approved by the Missoula County Regulatory Commission. This approval did not include review of the house, the road, or any future improvements.

The property is located in Planning and Zoning District #4 in Pattee Canyon. Permitted uses include accessory buildings incidental to a single family dwelling located on the land owned by the owner of the primary building, provided that such accessory buildings do not involve the conduct of any business, industry or commercial enterprise. Furthermore, any agricultural, horticultural or stock raising enterprise may not be carried on within the district, and in connection therewith buildings such as barns, sheds, etc. Again, such buildings shall not involve the conduct of any business, industry or commercial enterprise.

Zoning District No. 4, a citizen-initiated zoning district, was established on June 17, 1957, and requires that no lot be developed in conflict with the natural physiography (physical geography) of the area. The Planning Board and the County Planning and Zoning Commission must review and approve all improvements, development, and creation of lots within the Zoning District.

The Planning Board's responsibility regarding ZD #4 requests is to review the proposal for compliance with the existing regulations and to make a recommendation to the County Planning and Zoning Commission. These recommendations are then forwarded to the Planning and Zoning Commission, which consists of the three County Commissioners, the Clerk & Recorder, and the County Surveyor.

The applicant has stated that adjacent neighbors, Tawny and Eiseman, keep several horses each. Many county residential zoning districts permit agricultural uses on lots 5 acres or larger, including any and all structures needed to pursue such activities. OCD has received one letter from an adjacent property owner, Eiseman, in favor of the request.

The property appears to conform with the General Regulations of the zoning district. The use of the property is single family residential. The McCunes have indicated that the barn and riding arena are for personal use only and will not be used in the conduct of business. At five acres, the property meets the minimum lot size of three acres and the minimum lot width of 200 feet as required by Zoning District #4.

The 1975 and 1990 Missoula Comprehensive Plans do not address this part of the Pattee Canyon.

The County Surveyor, the Fire Department, and the Sheriff did not identify any concerns regarding this request. The Health Department commented that a final septic inspection was never performed, and therefore, the exact location of the septic system has not been determined. Jim Carlson of the Health Department suggested several conditions of approval to address this concern. The McCunes have indicated the septic tank is located under the deck of the house. Zoe Mohesky of Rural Planning has expressed some concern about the impact on wildlife in the area and has suggested several conditions in an attempt to mitigate this impact.

The General Regulations of ZD#4 state:

"No lot shall be developed in conflict with the natural physiography accordance with the following: no improvements shall be made without first submitting plans to the City-County Planning Board and the Zoning Administrator and approval obtained prior to beginning construction. The Planning Board is instructed to consider the physiography of the land in approval of roads, buildings, etc."

The property is a wooded lot on a north facing hillside which scales to approximately 25% slope on the topographic quadrangle (Attachment C). The barn and arena will be constructed on an area of approximately 5% to 10% slope. The new construction will result in a balanced cut and fill; that is, no fill material will need to be imported or exported from the site. The amount of fill to be cut from the upper end of the slope for the arena will be approximately 650 cubic yards of soil. This soil will then be placed on the lower end of the slope. The barn will also require some excavation of approximately 100 cubic yards of soil, and this too will likely be placed on the lower end of the slope. The McCunes have already removed some trees in anticipation of constructing the barn and arena. OCD would suggest that the fill placed on the lower end of the slope after the cut and fill not exceed 30% slope (from top to toe). Furthermore, this fill should be placed in such a way as to ensure the survival of the remaining trees on the hillside below the arena. This may require "dishes" in the fill around the base of the trees to allow the roots near the surface to "breathe". In an attempt to balance the disturbance of the natural physiography that will result from the proposed construction with the restoration of the natural physiography, OCD recommends that for each mature tree removed for the development that one tree, a minimum of four feet (4') in height, be replanted in the fill slope. This will also help to stabilize the fill slope, as will other vegetative plantings.

OCD does not make recommendations for project proposals in ZD #4 because the criteria for approval as written in Zoning District #4 regarding the "natural physiography" of the area is vague, lacks standards, and needs clarification.

Although OCD does not make a recommendation on a ZD #4 request, staff suggested seven conditions for the development should the request be approved, as follows:

1. The owners shall demonstrate to the Health Department's satisfaction that the proposal will not be constructed over any portion of the existing drainfield and that a building will not be placed over the septic tank.
2. The owners shall demonstrate to the Health Department's satisfaction that they have a site on the lot adequate to replace the existing drainfield.
3. All improvements shall be constructed in such a way that runoff from the barn and arena shall not reach any surface water, subject to the approval of the Health Department.



4. The fill placed on the lower end of the arena after the cut and fill shall not exceed 30% slope (from top to toe). This fill should be placed in such a way as to ensure the survival of the remaining trees on the hillside below the arena. This may require "dishes" in the fill around the base of the trees to allow the roots near the surface to "breathe".
5. For each mature tree removed for the development, one tree, a minimum of four feet (4') in height, shall be replanted in the fill slope.
6. Livestock feed (hay, alfalfa, pellets and grain) should not be accessible to wildlife. It should be stored indoors and when feasible, in wildlife proof containers.
7. Mineral blocks for horses shall not be permitted.

The hearing was opened to public comment.

Craig McCune agreed with the seven conditions as proposed by the staff. However, the first two conditions relative to the location of the existing drainfield may pose a problem. He said they know exactly where the septic tank is located and the proposal is not anywhere near that. The drainfield is actually located on an easement on an adjacent piece of land. When the drainfield was put in, it was a requirement of the Health Department that it be inspected and certified. The Health Department does not have that certification. The company who did the work also does not have the certification and believes that the Health Department misplaced the certification. He wondered if they would have to dig up the drainfields to demonstrate the location? Two reliable neighbors, Mr. Eiseman and Mr. Phil Tawney, witnessed the survey of the land where the easement was given, as well as the construction of the drainfield eight years ago. They have indicated a willingness to provide statements. The company that constructed the drainfield was unwilling to dig it up. The arena will be constructed in an area nowhere near the drainfield.

Jim Carlson, Environmental Health, explained that the Health Department wanted to see where the drainfield was located to make sure it is located in the existing easement. Also, they need to know if the correct amount of drainfield was installed. This is a protection for the homeowners. In some cases, when systems aren't inspected, it is because the contractor didn't put in enough drainfield. He stated that his department wasn't too happy with the excavator because they refused to dig the drainfield. He said there are too many coincidences which point to the fact that an inspection didn't take place--it wasn't marked off on the computer, a record wasn't in the file, the homeowner and the excavating company do not have a copy.

Barbara Evans asked if this piece of knowledge was worth tearing up their yard?

Jim Carlson said it is for the consumer's protection.

Craig McCune stated that the drains must have gone underneath the existing road. The field is located on the other side of the road. He said they haven't resolved how to obtain verification and the dimensions of the drainfield without quite an effort.

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

Ann Mary Dussault moved and Barbara Evans seconded the motion to recommend that the Board of County Commissioners approve the request by Craig and Lorna McCune to construct a barn and riding arena for residential use on a five acre parcel, located at 3555 Pattee Canyon Drive in Zoning District #4, subject to the following conditions:

1. The owners shall demonstrate to the Health Department's satisfaction that the proposal will not be constructed over any portion of the existing drainfield and that a building will not be placed over the septic tank.
2. The owners shall demonstrate to the Health Department's satisfaction that they have a site on the lot adequate to replace the existing drainfield.
3. All improvements shall be constructed in such a way that runoff from the barn and arena shall not reach any surface water, subject to the approval of the Health Department.
4. The fill placed on the lower end of the arena after the cut and fill shall not exceed 30% slope (from top to toe). This fill should be placed in such a way as to ensure the survival of the remaining trees on the hillside below the arena. This may require "dishes" in the fill around the base of the trees to allow the roots near the surface to "breathe".
5. For each mature tree removed for the development, one tree, a minimum of four feet (4') in height, shall be replanted in the fill slope.
6. Livestock feed (hay, alfalfa, pellets and grain) should not be accessible to wildlife. It should be stored indoors and when feasible, in wildlife proof containers.
7. Mineral blocks for horses shall not be permitted.

The motion carried on a vote of 5-0.

The meeting was adjourned as the Planning and Zoning Commission and the Board of County Commissioners reconvened.

Barbara Evans moved and Ann Mary Dussault seconded the motion to adopt the recommendation by the Planning and Zoning Commission to approve the request by Craig and Lorna McCune to construct a barn and riding arena for residential use on a five acre parcel, located at 3555 Pattee Canyon Drive in Zoning District #4, subject to the following conditions:

1. The owners shall demonstrate to the Health Department's satisfaction that the proposal will not be constructed over any portion of the existing drainfield and that a building will not be placed over the septic tank.
2. The owners shall demonstrate to the Health Department's satisfaction that they have a site on the lot adequate to replace the existing drainfield.
3. All improvements shall be constructed in such a way that runoff from the barn and arena shall not reach any surface water, subject to the approval of the Health Department.
4. The fill placed on the lower end of the arena after the cut and fill shall not exceed 30% slope (from top to toe). This fill should be placed in such a way as to ensure the survival of the remaining trees on the hillside below the arena. This may require "dishes" in the fill around the base of the trees to allow the roots near the surface to "breathe".
5. For each mature tree removed for the development, one tree, a minimum of four feet (4') in height, shall be replanted in the fill slope.
6. Livestock feed (hay, alfalfa, pellets and grain) should not be accessible to wildlife. It should be stored indoors and when feasible, in wildlife proof containers.
7. Mineral blocks for horses shall not be permitted.

The motion carried on a vote of 3-0.

#### HEARING: GARDEN CITY CHDO -- CDBG

Information received from Cindy Wulfekuhle, Housing and Community Development, explained that the action requested on this item is to take public comment concerning the County's sponsorship of a CDBG application on behalf of the Garden City Community Housing Development Organization (CHDO) and approve the Resolution of Authorization enabling submittal of the grant request to the State.

The Garden City Community Housing Development Organization (CHDO) through the Western Montana Mental Health Center has an option to purchase property located at 1421 Eaton Street. The proposal involves construction of nine four-plexes that will be available to households earning between \$5,000 and \$29,450 or 22 percent to 70 median income for the Missoula area. New construction is the most cost effective means of providing the units based on the lack of available housing stock in Missoula in the price range necessary to make housing affordable to households with the incomes being targeted.

The Mental Health Center has long been aware of the housing crisis in Missoula and more specifically how its clients are affected. As a means of helping clients with their housing needs, the Mental Health Center made the decision to become involved in housing. Of the 36 units at the site, nine will be for clients of the Mental Health Center. Affordability to all clients will be assured through silent second mortgages. The amount of the silent second mortgage will be the difference between the amount the purchaser can afford and the appraised value of the unit.

The total project cost is estimated to be \$2.7 million. Other proposed sources of funding include the HOME Program, \$400,000 plus administration, and Federal Home Loan Bank. Of the \$400,000 request for CDBG funds, approximately \$12,500 will be used for administration of the grant.

There will be no displacement of tenants from rental units at the site. The existing homes on the site are occupied by owners who are voluntarily selling the property.

The proposal is being reviewed as a subdivision and will be before the Planning Board next week. Office of Community Development staff have stated that they will be recommending approval of the subdivision. The site although in the County at this time, will be connected to City sewer and Mountain Water. It is a good example of infill development accessing available or nearby infrastructure services.

The purpose of the hearing is to take public comment, if any, on the request for CDBG funds and to act on the staff recommendation to approve the resolution authorizing submittal of the grant to the State. The grant must be in the mail next week and grant awards are anticipated in December or January. The CDBG Program has available, at the State level, just under \$1.8 million dollars. Historically, the State has been able to fund only about half of the projects seeking grants.

The hearing was opened to public comment.

Patty Kent, Director of Housing and Development for the Western Montana Mental Health Center and the Garden City CHDO, requested the assistance of the County to construct 36 units of new affordable housing located at 1421 Eaton Street. This is a project that the people of Missoula will need. The Mental Health Center has joined forces with the Missoula Housing Authority. A project of this size can benefit from the expertise of the Housing Authority. The Mental Health Center and the Housing Authority combined have committed up to \$60,000 of their own funds

towards the pre-development expenses of this project. Preliminary site planning and architectural elevations and infrastructure cost estimates have been initiated.

Ed Mayer, Chief Executive Officer of the Missoula Housing Authority, said the Housing Authority is committed to this project and has allocated \$30,000 to pre-development costs. The Housing Authority has entered into a pre-development agreement with the Garden City CHDO.

The housing demand of Missoula has far out-stripped their ability to provide housing to those most in need. This particular project will be a shining example of leveraging of limited non-profit resources into something that can be of long-term benefit to this community. The Housing Authority has taken a strong stance towards the development of additional housing. He urged the support of the Commissioners because the infrastructure funds provided by the CDBG grant is essential to their project.

John Bolich, representing several property owners in the area, expressed concern that at least five of the property owners adjacent to this proposal were not contacted. He sympathized with the shortage of time, but requested that the Commissioners postpone the decision to give the residents time to respond. He requested that the residents be able to review and comment on the proposal.

Colleen Dowdall, Deputy County Attorney, explained that the subdivision is on its way through the process, but it has not reached the point where public notification is required. There are two public hearings that will take place before the proposal itself is approved.

Patty Kent said she hand-delivered 48 notices to the adjoining property owners early in August. On August 10th, they also held a neighborhood meeting where only five people attended. She expressed a willingness to sit down with the residents to review the proposal with them. She said they tried to address the community early in the process. She stated that the first public hearing would be held before the Planning Board next week. The notification of this hearing was in the newspaper two Sundays ago.

Barbara Evans said the Commissioners are being asked to authorize the submission of the grant. This does not guarantee that they will get the grant, nor does it guarantee approval of the subdivision.

Don Stinger, 245 North Davis, stated that the proposal was in compliance with the current zoning. However, the parcel will be annexed into the City in December and the zoning will be changed at that time to comparable City zoning.

Fern Hart stated that the Commissioners have been asked only to approve authorization to submit a CDBG application on behalf of the Garden City CHDO. This is a County responsibility until the area is annexed into the City in December. The Commissioners must act on the request. The subdivision proposal will also be before the Planning Board and the Commissioners before annexation takes place.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to adopt the resolution of authorization to submit a Community Development Block Grant application on behalf of the Garden City Community Housing Development Organization (CHDO). The motion carried on a vote of 3-0.

#### RESOLUTION NO. 94-098

The Board of County Commissioners signed Resolution No. 94-098, a resolution of authorization to submit a Community Development Block Grant application on behalf of the Garden City Community Housing Development Organization (CHDO).

#### HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- MCEVOY

Kathy Smith, Paralegal in the County Attorneys Office, explained that Glenna McEvoy submitted a request for a family transfer exemption for a 3.8 acre parcel described in Book 271 Page 604, located near the Blackfoot River off Highway 200 northeast of Bonner. Ms. McEvoy proposed to split the parcel in half in a north/south direction and transfer one of the proposed parcels to her son, Carl McEvoy.

The history of the parcel is as follows: Ms. McEvoy purchased the parcel in 1973. According to the records kept by the Missoula County Surveyor's Office, the applicant has not used any exemptions to the Subdivision and Platting Act.

The hearing was opened to public comment

Glenna McEvoy stated that she wanted to keep this piece of property in the family as it was very unique. She said the property is located up the Blackfoot and the property has never been divided. The property is bordered by the river and the highway. Her son plans to use the land as recreational. There is an existing cabin on the property.

The Commissioners explained that the purpose for requesting the applicant's presence at the hearing was to ask questions and to determine whether or not the applicant was trying to evade the Montana Subdivision and Platting Act.

Ann Mary Dussault clarified that the intention was to transfer a portion of the parcel by deed to her son.

Glenna McEvoy stated that she had other children who would receive property located in another county which would be divided equally.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Glenna McEvoy for a family transfer exemption for a 3.8 acre parcel described in Book 271 Page 604, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act, and contingent upon the transfer of the deeds to the family member. The motion carried on a vote of 3-0.

HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- GRASSO

Kathy Smith, Paralegal in the County Attorneys Office, explained that Victor and Anni Grasso own a 15.38 acre parcel described in Book 50 Page 1582, less a 4.02 acre parcel as described in COS 1499, located south of Lolo just north of the Ravalli County line. They requested two family transfers and wish to transfer approximately 3.5 to 4 acres of the parcel to each of their sons, Stephen L. Grasso and John R. Grasso. The Grassos currently reside on what would become the remainder.

The history of the parcel is as follows: The Grassos purchased the original 19.4 acre parcel in 1973. In May, 1978, they filed COS 1499 creating a 4.02 acre occasional sale.

According to the records kept by the Missoula County Surveyor, the applicants have used exemptions to the Subdivision and Platting Act as described.

The hearing was opened to public comment.

Anni Grasso said she and her husband intend to gift a 3.5 to 4 acre parcel to each of their two adult sons. Her youngest son has immediate plans to build on the property, but her other son will eventually move onto the property. She stated she understood that the deeds must be transferred to her sons.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request for Victor and Anni Grasso for two family transfer exemptions for a 15.38 acre parcel described in Book 50 Page 1582, less a 4.02 acre parcel as described in COS 1499, located south of Lolo just north of the Ravalli County line, based on the finding that the request does not attempt to evade the Montana Subdivision and Platting Act, and contingent upon the transfer of the deeds to the family members. The motion carried on a vote of 3-0.

HEARING -- CERTIFICATE OF SURVEY REVIEW: BOUNDARY RELOCATION -- ANDERSON -- TRACTS 5A AND 5B OF COS 3969.

Kathy Smith, Paralegal in the County Attorneys Office, explained that G. Clark and Nancy Anderson submitted a request for a boundary relocation for Tracts 5A and 5B of COS 3969. The parcels are located up Pattee Canyon and are part of a more extensive ownership previously held by the Catlins. Mr. And Mrs. Anderson purchased the property in April, 1990, from Michael Catlin as Tract 5, a 27b acre parcel. In July, 1991, the Andersons created Tract 5B, a 5.81 acre occasional sale parcel, and Tract 5A, the remainder. Tract 5B was then sold to Randall and Cathy Blevins in 1992. There was apparently a problem with the easement across Tract 5B, in that it bisected the portion on which the Blevins wished to build, and subsequently, the contract was rescinded and the Blevins requested the return of all purchase funds plus interest and attorney's fees. This is still being negotiated among the parties' attorneys and, although the Blevins still retain ownership, they have given the Andersons written permission to market the property. The Andersons are requesting the boundary relocation in order to better conform to the existing easement and to create a more buildable lot. The proposed Tract 5B would increase in size to approximately 11 acres and they then intend to sell the new Tract 5B to Jan Woman who plans to request a family transfer to her daughter.

The history of the parcel is as follows: COS 3621 was filed in 1988 by the Catlins creating five parcels greater than 20 acres in size. In July, 1991, the Andersons filed COS 3969 creating an occasional sale and remainder as described.

According to the records kept by the Missoula County Surveyor, the applicants have used the exemptions to the Subdivision and Platting Act as described.

The hearing was opened to public comment.

Nick Kaufman, WGM Group, representing the Andersons, submitted aerial photos which showed the parcel as it currently existed and what the proposal would look like. He said when the Blevins purchased the property, they made the assumption that the easement could be vacated simply by an agreement with the Andersons. Unfortunately, the adjacent property has interest in the easement and couldn't be vacated. Because the easement cuts through the property as it does, and because there is a steep slope, there is not a suitable building site on Tract 5B as it is currently configured. The Blevins purchased the land intending to build in the middle of the property where the easement is located. The Blevins' attorney is working on rescinding their contract and getting a refund plus their attorney's fees. In order to reconfigure the property to include a building site, he proposed a boundary relocation. He said they are not asking for an increase in the number of parcels, but the addition of a building site. The easement is in perpetuity.

Nancy Anderson said she and her husband want to do what is right for this area. They do not want the area to develop into a dense subdivision. They wanted to have the ability to control the development of the property into larger lots.

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

Barbara Evans made a motion to approve the boundary relocation, which was seconded by Ann Mary Dussault. The motion was later withdrawn. Ann Mary Dussault expressed concern that the Commissioners be able to hear both requests by the Andersons for a boundary relocation and Jan Woman's request for a family transfer before a decision was made as they were related to one another.

At this time, a discussion ensued relative to the request for the boundary relocation. The following request for a family transfer exemption by Jan Woman is for this particular parcel and hinged on the approval of the boundary relocation. The Commissioners concluded that before a motion was entertained for the boundary relocation, the staff report concerning the family transfer request would be heard in order to get the whole picture.

Colleen Dowdall, Deputy County Attorney, said the two issues were separate and would require two motions.

#### HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- WOMAN

Kathy Smith, Paralegal in the County Attorneys Office, explained that Jan Woman submitted a request for a family transfer exemption for Tract 5B of a currently unfilled Certificate of Survey previously, COS 3959. Ms. Woman has entered into a contract to purchase Tract 5B, the subject of a boundary relocation for G. Clark and Nancy Anderson. Ms. Woman plans to purchase Tract 5B, which will become an approximately 11 acre parcel after the boundary relocation, and wishes to give half to her daughter, Jeannette Ross. Both Ms. Woman and Ms. Ross plan to build their homes on the land.

The history of the parcel is as follows: COS 3621 was filed in 1988 by the Catlins creating five parcels greater than 20 acres in size. In July, 1991, the Andersons filed COS 3969 creating an occasional sale and remainder. In September, 1994, the Andersons applied for a boundary relocation exemption to create a more buildable lot for sale to Jan Woman.

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

The hearing was opened to public comment.

Nick Kaufman, WGM Group, representing Jan Woman, presented an aerial photo which showed how the proposed division would look. He said Ms. Woman has never used the Certificate of Survey process. Both Jan Woman and her daughter, Jeannette, wish to build homes on the property.

Jan Woman said she and her daughter wish to live in the country. She wanted her to daughter to live in closer proximity to her. She stated they do not want to evade the Subdivision Law, they just want to live close to one another. She said she had one other son, but he owns his own home in Darby.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by G. Clark and Nancy Anderson for a boundary relocation for Tracts 5A and 5B of COS 3969, based on the finding that the request does not attempt to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 3-0.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Jan Woman for a family transfer exemption for Tract 5B of a currently unfilled Certificate of Survey, previously, COS 3959, based on the finding that the request does not attempt to evade the Montana Subdivision and Platting Act, and contingent upon the transfer of the deeds to the family member. The motion carried on a vote of 3-0.

#### PUBLIC COMMENT

Will Snodgrass, representing Missoulians for Clean Environment, spoke concerning the Environmental Division of the Health Department. He alleged that the Department failed to act in the interests of public and environmental health with respect to the Smith Drug Building remodel which could have had lead based paint. This paint was removed and could have resulted in wide-spread lead poisoning. He stated that the Health Department should have known at the time of removal that this could happen. The business was subsequently fined. He also spoke relative to his concerns about the issue of dioxins at White Pine Sash. He requested that a grievance hearing be held with the Health Department. He alleged that the Health Department has issued an illegal gag order; the private citizens of this County have been ordered not to speak about this issue. He stated he would do anything to bring this issue to the fore: Missoulians deserve to know the truth.

Don Stinger, 245 Davis Street, spoke about the City's annexation. The neighborhood will put together an information packet explaining the various methods of annexation and what it will mean for the residents. After the area is annexed, it will be zoned according to comparable City zoning. He asked for the Commissioners' cooperation concerning the annexation.

#### OTHER: TRANSFER OF JURISDICTION - SALISH KOOTENAI TRIBES

Michael Sehestedt, Deputy County Attorney, presented an agreement for the Board of County Commissioners to consider relative to facilitating a change in jurisdiction over misdemeanor crimes committed by Indians on the Reservation. The Salish-Kootenai Tribes ceded their criminal jurisdiction to the State of Montana in 1963. The Tribes now wish to take the criminal jurisdiction back. Non-Indians will still be subject to the non-Tribal courts.

Ann Mary Dussault moved and Barbara Evans seconded the motion that the Board of County Commissioners enter into the Memorandum of Agreement between the State of Montana, Flathead County, Missoula County, Lake County, Sanders County, City of Hot Springs, City of Polson, City of Ronan and the Confederated Salish and Kootenai Tribes of the Flathead Nation to provide for the implementation of tribal reassumption of exclusive jurisdiction over misdemeanor crimes committed by Indians. The motion carried on a vote of 3-0.

#### MEMORANDUM OF AGREEMENT

The Board of County Commissioners signed a Memorandum of Agreement between Missoula County, the State of Montana, Flathead County, Lake County, Sanders County, City of Hot Springs, City of Polson, City of Ronan and the Confederated Salish and Kootenai Tribes of the Flathead Nation to provide for the implementation of tribal reassumption of exclusive jurisdiction over misdemeanor crimes committed by Indians. The Agreement was returned to the State for further signatures and handling.

There being no further comment to come before the Board, the Commissioners were in recess at 3:10 p.m.

**THURSDAY, SEPTEMBER 29, 1994**

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

#### DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was signed:

Resolution No. 94-099 -- The Board of County Commissioners signed Resolution No. 94-099, a resolution stating that Missoula County concurs in the Montana Highway Commission's designation of a highway approximately 14.893 miles in length in Missoula County as Secondary Route No. 263 and in the future sections of this highway will be programmed for construction with State and/or Federal funds, as per the items set forth in the Resolution.

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

**FRIDAY, SEPTEMBER 30, 1994**

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

Resolution No. 94-100 -- The Board of County Commissioners signed Resolution No. 94-100, a resolution of authorization to provide down payment assistance on behalf of homebuyers participating in the Garden City Community Housing Development Organization (CHDO) Development at 1421 Eaton, Missoula, Montana, agreeing to provide up to \$18,000.00 of CDBG funds to assist the lowest income homebuyers purchasing housing in the Development.

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Randy Lee Johnson in the amount of \$14,291.00, for the property located at 3417 Kehrwald, Missoula, dated September 23, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

Authorization to Submit CDBG Application -- Chair Hart signed the Certifications for Application for the Montana Department of Commerce State Community Development Block Grant Programs, stating that the governing body has adopted or passed as an official act a resolution, motion or similar action authorizing the submission of the application, including all understandings and assurances contained, and directing and authorizing the signatory to act in connection with the application and to provide such additional information as may be required.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, OCTOBER 3, 1994**

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

Indemnity Bond -- Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Helen Richardson as principal for warrant #058107, dated 9-1-94, issued on the Clerk of District Court's Trust Fund in the amount of \$400.00 now unable to be found.

**DAILY ADMINISTRATIVE MEETING**

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Cathy Bartels, Pharm. D., an independent contractor, for the purpose of serving as a general resource on pharmacy and medication issues, updating patient drug education handouts and information, assisting with analysis of pharmacy volume tracking, assisting with monitoring price agreements with local pharmacies, advocating for PHC in local pharmacy community, and providing inservices to staff on pharmaceutical issues for the Partnership Health Center, as per the terms set forth, for the period from July 1, 1994, through June 30, 1995, (90 - 120 hours), for compensation at the rate of \$20.00 per hour. The Contract was returned to the Health Department for further signatures and handling.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the University of Montana Student Health Services, for the purpose of crisis intervention, counseling and advocacy services for victims of sexual assault, rape and other types of personal violence in Missoula County, as per the terms set forth, through June 30, 1995, for a total amount of \$6,000.00, contingent upon receipt of Montana Board of Crime Control Grant Funds by Missoula County.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Marvin Job, an independent contractor, for the purpose of applying water treatment to the sides of the fence, weeding around the fence, and remove gravel from the bottom of the fence at the Motor Vehicle Graveyard, as per the terms set forth, commencing September 15, 1994, through September 30, 1994, for compensation not to exceed \$525.00.

Collective Bargaining Agreement -- The Board of County Commissioners signed a Collective Bargaining Agreement between Missoula County and the United Food and Commercial Workers International, Local 1981, the City-County Library Bargaining Unit, for the purpose of promoting and continuing understanding between the employer, its employees, and the union, to provide for equitable and peaceful adjustment of differences which may arise, and to establish mutually agreed upon conditions of employment, as per the terms and conditions set forth, from July 1, 1993, through June 30, 1995. The Agreement was returned to John Pemberton, Director of Personnel and Labor Relations, for further handling.

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

**TUESDAY, OCTOBER 4, 1994**

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

Monthly Report -- Chair Hart examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for month ending September 19, 1994.

Monthly Report -- Chair Hart examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for the month ending September 30, 1994.

**DAILY ADMINISTRATIVE MEETING**

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Teresa Cooper Jacobs, an independent contractor, for planning, acquiring supplies, instruction and clean-up for classes offered to the public by the Missoula Museum of the Arts, as per the terms set forth, commencing January 1, 1994, through December 30, 1994, as required by class schedules, with compensation at the rate of \$10.00 per hour or \$7.50 per hour when co-taught.

Agreement to Sell and Purchase -- The Board of County Commissioners signed an Agreement to Sell and Purchase between Missoula County and Anthony Martinez for two lots in the 2300 Block on Fairview Avenue, Lots 32 and 33, Block 46, Carline Addition, for a total purchase price of \$13,000.00 (the Commissioners counter offer to the buyer's offer of \$10,500.00), as per the terms and special provisions set forth. The Agreement was returned to Scott Hollenbeck at Properties 2000 for further handling.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County, the City of Missoula, First Security Bank, Missoula Federal Credit Union, First Bank Montana, N.A., First Interstate Bank of Commerce - Missoula Office, Montana Bank, Western Federal Savings Bank of Montana, Security Bank, and First Federal Savings and Loan Association of Montana for the purpose of establishing sewer connection loan programs to eligible residents of Missoula County, as per the terms and provisions set forth under the scope of services for the City, the County, and the Financial Institutions, in order to secure and promote the general public health and welfare and for the public purpose of protecting the Missoula sole source water aquifer from contamination and pollution from sewer



septic tanks, with the Agreement remaining in effect until terminated in writing. The Agreement was returned to Chuck Stearns, City Clerk, for further signatures and handling.

Other items included:

- 1) the Commissioners appointed Anne Heilman-Rupkalvis as the Second Alternate Member and Al Cluck as the Third Alternate Member of the Missoula County Park Board through May of 1995; and
- 2) a request by Jeff Langan for an adjustment on the RSID's for the 11 lots in Chappelle Addition was approved by the Commissioners, pending or contingent upon the engineer's review.

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

### WEDNESDAY, OCTOBER 5, 1994

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated 10-04-94, pages 4-32, with a grand total of \$154,896.65. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was signed:

Plat -- The Board of County Commissioners signed the Plat for Southpointe, a residential urban-suburban subdivision of Missoula County located within the SE 1/4 SE 1/4, Section 12, T. 12 N., R. 20 W., PMM, a gross area of 15.898 acres, with the owners of record being Ronald M. and Cathy M. Corr.

Other items included:

The Commissioners approved payment of the NACo dues for 1995 (1/01/95-12/31/95) in the amount of \$1,236.00.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

#### BID AWARD: LONG DISTANCE SERVICE -- COMMUNICATIONS

On August 28, 1994, a solicitation for long distance service was sent out to request rates. On September 6, 1994, bids were opened with the following results:

US West	\$1,899.00/month
American Sharecom	\$2,820.64/month
Touch America	\$2,381.77/month
Affinity	\$2,961.30/month

Since US West was unable to provide the required service, the staff recommended that Touch America be awarded the bid for the service required by the County phone system, as the lowest and best bidder.

Bob Schieder, Facilities Manager, explained that US West only has service available within the state. The US West bid did not include any out-of-state calls. The Touch America bid had 304 total hours; US West had 211 hours. The staff did not want to work with two different operating companies. Touch America was still the best bid even if the service had been split between the two companies. The bid from Touch America appears higher, but it is actually based on more hours.

Barbara Evans moved and Ann Mary Dussault seconded the motion to award the bid to Touch America for the long distance service required by the County phone system in the amount of \$2,381.77, as the lowest and best bidder. The motion carried on a vote of 3-0.

The Board of County Commissioners convened as the Planning and Zoning Commission. Present were Commissioners Fern Hart, Ann Mary Dussault, Barbara Evans, County Surveyor Horace Brown, and Clerk and Recorder Vickie Zeier.

#### HEARING -- PLANNING & ZONING COMMISSION: REQUEST FOR VARIANCE ZD #12-A -- WILLIAM ELLEN -- REPLACE GARAGE

Bud Hettich, Office of Community Development, explained that a request was received by William A. Ellen, for a Variance to the setback and lot coverage requirements on property located on Lot 1, Block 3, Alff Addition, commonly known as 1707 27th Ave. The property is within Zoning District #12-A, which was established July 30, 1974. The required yard setbacks are: front 25 feet, side 15 feet, and the maximum lot coverage is 25%.

The Alff addition is a 22 lot subdivision platted within three blocks that were created from lots 3, 4, & 5 Cobban Dinsmore Orchard Homes #3, on May 7, 1957. On May 5, 1974, the subject property was further divided by metes and bounds description into lots 1A & 1B.

William A. Ellen proposed to construct a two-car garage to replace an existing substandard one-car garage. This proposal will require a variance to the front yard, side yard, and to the maximum lot coverage of 25%. The property is described as Lot 1, Block 3, Alff Addition, commonly known as 1707 27th Ave. The property is in Zoning District #12-A.

Zoning District #12-A was established by petition on May 5, 1957. This district requires a minimum front yard of 25 feet, side yards of 15 feet, and allows a maximum lot coverage of 25%.

27th Street splits at the south side of Block 3 and rejoins at the north side of block 3. This is the reason this particular lot has two front yards

The Alff addition is a three block-22 lot subdivision that was created on May 7, 1957 from lots 3, 4, & 5 of Cobban Dinsmore Orchard Homes #3. Then in the early 60's, this particular lot was further divided into 1A & 1B by metes and bounds description.

The applicant requested a variance for the following: the required front yard setback of 25 feet-be decreased to 11 feet; the side yard setback from 15 feet be decreased to 7 1/2 feet, and the maximum lot coverage of 25%-be increased to 35%.

He said it appeared as though several other properties within the Alff Addition do not fully comply with the setbacks and lot coverage, but still have the appearance of more openness on their property than the applicant would have should he be granted a variance for his proposed two-car garage.

The applicant presently has a single car garage that could be remodeled to provide for his needs, and enough room in the driveway to park an additional car.

The Board of County Commissioners may grant variances which will not be contrary to the public interest where, owing to special conditions, literal enforcement would result in unnecessary hardship.

Based on the standards governing ZD# 12-A, and land use inventory of the area, the staff recommended that the variance request be denied.

The hearing was opened to public comment.

William Ellen said he bought his grandmother's house and has lived in this area all his life. He said 27th Street was configured in a circle because his house was in the way. His grandmother donated the land for the road. There are actually two front yards which front 27th. He said his architect indicated that it would be extremely difficult to put another garage roof right next to the existing house because it would not provide for adequate drainage. The architect proposed a garage which would be attached to the house by a breezeway. The roof lines of the proposed garage would be the same as the existing house. He said the new garage would not extend any further into the side yard than the existing garage. The only change would be the front yard setback. The percentage of the lot coverage would also change because the proposed garage is larger.

Bud Hettich said when the regulations were written for this zone, the garage was considered as part of the percentage of total lot coverage.

A lengthy discussion ensued relative to the maximum lot coverage of 25% as contained in the regulations for Zoning District 12A. The applicant submitted a drawing which showed the lot and garage as proposed. The applicant included the dimensions of the lot and of the structures.

Michael Sehestedt, Deputy County Attorney, said the lot dimensions are in excess of 10,000 square feet. The structures calculate to approximately 2,200 square feet. The 25% lot coverage is not an issue. The only issue remaining is the setbacks.

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

Ann Mary Dussault said the maximum lot coverage is not an issue. The side yard setback from 15 to 7.5 feet is actually an existing condition. It exists with or without a new garage. The remaining issue is whether the front yard setback should be decreased to 11 feet.

A discussion followed relative to which yard was functionally Mr. Ellen's front yard. The remaining issue would be whether the functional front yard setback would be decreased from 15 to 11 feet. Bud Hettich explained his rationale of assigning two front yards to the property which was based on the regulations, not what would be practical.

Barbara Evans stated that the property's configuration is unusual. Mr. Hettich's recommendation is based on regulations. However, there are stipulations in the zoning that gives the Planning and Zoning Commission the option to approve a variance. The variance would not diminish the value of the property, but would increase the value. It is incumbent upon government to find compassion for unusual situations. She referred to a letter received from a County official which said they showed absolutely no compassion at all.

Ann Mary Dussault moved and Barbara Evans seconded the motion to recommend that the Board of County Commissioners approve the variance to the side yard setback from 15 feet to 7 1/2 feet and a front yard setback from 25 feet to 11 feet by William A. Ellen based on the following facts:

- 1) the house and garage existed prior to the implementation of the zoning;
- 2) the nature of 27th Street creates an unusual situation;
- 3) the proposal will improve the existing structure; and
- 4) the proposal does not appear to be inconsistent with the surrounding neighborhood.

The motion carried on a motion of 5-0.

The meeting was adjourned as the Planning and Zoning Commission and the Board of County Commissioners reconvened.

Barbara Evans moved and Ann Mary Dussault seconded the motion to accept the recommendation of the Planning and Zoning Commission to approve the request by William A. Ellen for a variance to the side yard setback from 15 feet to 7 1/2 feet. The motion carried on a vote of 3-0.

HEARING: REQUEST TO VACATE UNNAMED ROAD -- LOT 3 OF PROPOSED MEADOWLANDS SUBDIVISION-- CROSSROADS TRUCK CENTER

Information received from Phyllis Browder, Recording Supervisor, explained that a petition was received by the Clerk and Recorder's Office to vacate "Unnamed Road - Tract A" of Certificate of Survey #3615 located in Section 28, T14N, R20W, (also known as lot 3 in Meadowlands), extending from the easterly right-of-way of Highway 10 to the southerly boundary of lot 3.

The reasons for this request are as follows: "Roadway was never constructed and would not be constructed as it would serve no useful purpose given the location of Highway 10 and Interstate 90 with respect to this property."

The following landowners were notified of the hearing: Crossroads Truck Center and Missoula Rural Fire District.

The hearing was opened to public comment.

Chip Johnson, Druyvestein Johnson & Anderson, representing Dave Campbell and Bill Nooney, owners and developers of the subdivision, explained that after the subdivision was approved by the Commissioners, they continued to work through the platting process. The County Surveyor's Office reviewed the final plat and indicated that Commissioners' Journals in 1890 recorded an approval of a road through this area. This road cut across one of the lots in the subdivision for about 250 feet. He stated that he spoke with the adjacent landowners who indicated they were unaware of the existence of such a road. The road was never built. The petition does not describe the road beyond the subdivision's boundaries. In the past, the Commissioners have vacated this road on opposite sides of the property.

Horace Brown, County Surveyor, said there is probably even more of the road in existence outside the boundaries of the subdivision in question. Portions of the road have been vacated.

A discussion ensued relative to the vacation process. A question arose as to whether the Commissioners had the authority to broaden the petition to include the whole road.

Colleen Dowdall, Deputy County Attorney, said the petition does not require the signature of adjacent landowners to vacate. A member of the Board of County Commissioners and the County Surveyor must view the requested vacation and make a recommendation to the Board. They may also recommend the vacation of the remaining portion of the road. The notice given is for this particular request.

Horace Brown stated that notice must be given to adjacent landowners if another portion of this road is vacated. They may want to use the road.

Ann Mary Dussault moved and Barbara Evans seconded the motion to postpone action on the request to vacate "Unnamed Road - Tract A" of Certificate of Survey #3615 located in Section 28, T14N, R20W, to allow time for a member of the Board of County Commissioners and the County Surveyor to review the site. The motion carried on a vote of 3-0.

HEARING: SUBDIVISION REQUEST -- AMENDED PLAT OF LOT 2, DAWN ACRES

Ron Ewart, Planner at the Office of Community Development, explained that Dawn Acres is a proposed 2-lot single family residential subdivision of a 2.5-acre parcel located south of Kona Ranch Road, approximately 1/2 mile west of the Kona Bridge in Section 8, Township 13 North, Range 20 West. The subject property is known as Lot 2 of Dawn Acres, a 4-lot summary subdivision that was platted about 1976. This subsequent summary plat has been subjected to the public hearing requirement as provided for preliminary plats.

The property has frontage to Melody Lane on the south, as well as Kona Ranch Road to the north. A single family home is located on the south portion of the property accessing to Melody Lane, on proposed Lot 2B. A single family home is to be constructed on Lot 2A and will access to Kona Ranch Road.

The area is zoned CRR-1, with an allowable density of up to one residential unit per acre. The Missoula County Comprehensive Plan, 1990 Update, recommends a designation of Open and Resource. The property is located within the 500-year floodplain. The Clark Fork River is located about a half mile to the east, over which Kona Bridge passes.

There is a wide disparity between the Comprehensive Plan designation which takes in the floodplain areas and recommends a density of not more than one residential unit per 40 acres, and the zoning which allows up to one unit per one acre. Also, the lots are planned to be smaller in size than those that typify the surrounding area. After consideration of the review criteria and findings of fact, approval of this summary plat is recommended on the basis of available services and zoning allowances, while concerns over wildlife and the natural environment still exist. With further subdivision activity in this area, these concerns will not be lessened.

The Office of Community Development staff recommended that the summary plat of Dawn Acres Lots 2A & 2B be approved, subject to compliance with the following conditions:

1. Sanitary restrictions shall be lifted by the City/County Health Department and the State Department of Health and Environmental Sciences, specifically addressing the special sewer system design that is needed at this location. *Section 4-2(5)(B), and comments of the City/County Health Department.*
2. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor prior to plat filing. *Section 3-2, 3-4*
3. The following statement shall appear on the face of the plat:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute assent of the of the lot owners to waive the right to protest a future RSID for any improvements to Kona Ranch Road or Melody Lane to include walkways, based on benefit, and may be used in lieu of their signatures on an RSID petition."  
*Section 3-2(10)*
4. A 1-foot no-access strip shall be shown on the plat along the property fronting Kona Ranch Road except for the approved driveway location. *Section 3-2(10)*
5. A fee of \$50 per lot shall be paid into the large diameter hose fund of the Missoula Rural Fire District prior to filing of the final plat. *Comments of the Rural Fire Marshal.*
6. The developer shall give to each lot purchaser a copy of "Living With Wildlife", and the subdivision agency review letter from the Rural Planning Office, which address measures to protect wildlife and lessen the potential for human/ wildlife conflicts. *Comments of Rural Planning.*

The developer has requested a variance to Section 3-2(5) of the Missoula County Subdivision Regulations which states that sidewalks and pedestrian walkways shall be provided and bikeways should be considered. Reasons for the request are that this is a rural development and most pedestrian movement through the development will be oriented toward crossing between yards. There is little to draw pedestrians down the roadway, and Kona Ranch Road does not currently provide a good pedestrian walkway to connect with. Neither of the adjacent roadways have curbing or gutter, so there is nothing to tie the sidewalk to. The owners are willing to participate in any future RSID that would provide walkways along Kona Ranch Road. Staff is investigating approaches to the creation of rural pathways, and feels that in this case a pathway should be located in this area. A pathway plan would take some time, and could be funded through an RSID.

Staff recommended approval of the variance request contingent upon the owners waiving the right to protest an RSID for the installation of a walkway in this area, along or near either Melody Lane or Kona Ranch Road.

The developer requested a variance to Section 3-2(1)(G)(1) of the Missoula County which states that all unpaved roads shall meet County gravel road standards, which in this case would be a 24-foot road. Melody Lane is a gravel road of approximately 22 feet in width, in a 60-foot right-of-way. The developer explains that because the road dead-ends, traffic will be slowed and safety hazards minimized. The owners are willing to participate in an RSID for improvements to Melody Lane.

Staff recommended approval of the variance request if the waiver statement is implemented.

The hearing was opened to public comment.

Dick Mangan, 11400 Kona Ranch Road, expressed concern relative to the inconsistency of the proposal with the surrounding area. The surrounding properties are 10-20 acres in size. The proposed subdivision would create a 1.25 acre parcel. Everyone is on septic and individual wells; the issue of sewer and water must be dealt with. There is also a conflict with surrounding uses in the area with the proposal. There are a lot of cows and horses. He wondered if the residents of a smaller acreage tract would be tolerant of the noise created by weaning calves? He wondered if this would create an unsafe situation; speed limits on Kona Ranch Road were changed from 35 miles per hour to 45 miles per hour. Will the proximity to the road create an unsafe situation for children, animals, etc.? There is already conflict with the wildlife due to the development in this area.

John Kellogg, Professional Consultants, Inc., representing Kimberly Hall, stated that the area is being developed. The original Dawn Acres was divided in 1976 into 2 1/2 acre lots. The zoning allows lot sizes down to an acre in size. This proposal is in conformance with the current zoning. He said there is an established access point for Lot 2A onto Kona Ranch Road. Lot 2B currently uses the pre-existing access onto Melody Lane. He stated they are in agreement with the conditions as proposed by staff.

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

A discussion followed relative to the zoning and when it was established. The zoning was adopted by the Commissioners in 1976 or 1977.

Michael Sehestedt, Deputy County Attorney, said the CRR-1 zoning district was part of the general County Zoning Initiative under Chapter 47. The basic zoning classification document was adopted in 1976 or 1977. This did not mean that the area had not been previously zoned. The Comp Plan was updated in 1990.

A discussion ensued concerning the floodplain and whether the fact that the property is located in the 500 year floodplain should be stated on the plat.

Colleen Dowdall, Deputy County Attorney, explained that there are no restrictions on the 500 year floodplain and there are no notification requirements. However, the Commissioners could have this noted on the plat. The 100 and 500 year floodplain are determined by formulas provided by FEMA.

Ann Mary Dussault moved and Fern Hart seconded the motion to deny the preliminary plat of Dawn Acres based on the following reasons: 1) the most recent designation for this area is found in the 1990 Comprehensive Plan update recommending a designation of open and resource lands for this property; 2) the zoning is not in compliance with the Comp Plan and zoning does not automatically grant density; 3) this area is sensitive due to location along the Clark Fork River. Allowing the pattern of one acre lots in this area is not in the public interest. The motion carried on a vote of 2-1 with Barbara Evans voting against the motion.

Barbara Evans said to designate land as open and resource which is being used as residential doesn't make sense.

#### HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- KELLEHER

Kathy Smith, Paralegal in the County Attorney's Office, explained that Louis M. Kelleher submitted a request for a family transfer for Tract 1 of COS 2714, a 20.66 acre parcel located south of Highway 200 near Potomac. He wishes to create a 5.66 acre parcel for transfer to his wife, Donna L. Kelleher. The family home currently exists on what would become the 15 acre remainder and Mr. Kelleher wishes to sell the remainder along with the existing house and build a new house on the 5.66 acre proposed parcel. Due to smaller family requirements and an aging father, Mr. Kelleher no longer requires a large parcel of land.

The history of the parcel is as follows: the parcel was once part of the Pruyn Ranch and Tract 1 was originally a 20 acre aliquot parcel purchased by Mr. Kelleher in 1978. In April, 1979, Mr. Kelleher created a one acre parcel and in February, 1982, Mr. Kelleher relocated the boundaries between his parcel and the 40 acre parcel to the west creating the current 20.66 acre parcel.

According to the records kept by the Missoula County Surveyor, the applicant has used the exemptions to the Subdivision and Platting Act as described and an unrelated occasional sale and remainder in 1978.

The hearing was opened to public comment.

Barbara Evans explained that the Legislature has given the responsibility of determining whether or not the applicant is attempting to evade the Montana Subdivision and Platting Act to the Board of County. She said the staff brought the request before the Commissioners due to the fact that the applicant may wish to sell the property. The Commissioners must decide whether this is an attempt to either avoid or evade the Subdivision Act.

Louis Kelleher said they aren't really sure they will sell the property. This is in essence, an insurance policy for his wife. Their options are greater in the event something happens to him. This option will also enhance the property's flexibility. He said it would be nice to know if they did build a house on the other lot, they wouldn't have to move far. He stated his neighbors have all divided their property.

Barbara Evans commented the unfortunate fact remained that the Legislature changed the law last session making 160 acres the smallest section that could be split without going through the subdivision review process. The applicant's neighbors had to comply with a different set of laws.

A lengthy explanation and discussion ensued relative to the applicant's proposal.

Colleen Dowdall, Deputy County Attorney, stated that the applicant's signed affidavit indicated that he intended to sell the existing house and 15 acres. She said the request gives the applicant this option because the parcel was created.

Fern Hart said if the applicant can retain the option of either selling or retaining the parcel, this was not the proper use of a family transfer exemption. She stated it is the Commissioners' job to determine if it was the applicant's intent to subdivide the land for such an option.

Barbara Evans stated that there are two ways to split the land; by using the subdivision process through the Office of Community Development or by using a family transfer exemption.

Fern Hart stated that it looked as though the applicant wanted to gift the 5 acre piece to his wife in order to have the option of dividing the land to sell it.

Colleen Dowdall said if a person divides a parcel of land in any way, this is subdividing. The Legislature gave the option of allowing the family transfer exemption for those occasions when family members wish to either sell or gift to family members a portion of their land for purposes of keeping the land in the family. This particular purpose is not consistent with that intent. This is more consistent with dividing and selling the land which meets the definition of subdivision, not family transfer.

Louis Kelleher wondered why he couldn't gift his property to his wife who could, down the road, sell the property, just as a family member who received the property could sell in another situation?

Colleen Dowdall said this would be the option of the receiving party. However, if it occurred for the financial benefit of the individual who created the parcel, it would be an evasion of the Subdivision Law. The County would be placed in a position of voiding the transfer and the creation of the lot because it was a subdivision.

Louis Kelleher said he didn't think anyone would actually gift land to a family member if it wouldn't benefit them financially.

Colleen Dowdall said folks do to detract from their financial situation because they give property to their kids.

Fern Hart commented that this is what a family transfer is--to gift property to a family member. Sometimes families come in with four or more children.

Barbara Evans said there is a fine line between whether dividing the land should fall under the category of a family transfer exemption or under the Subdivision Law. The Commissioners must determine what the applicant's intentions are.

Louis Kelleher said the proposed division was part of his wife's insurance policy.

Colleen Dowdall stated that the applicant's wife would have the option to sell this property in the event of Mr. Kelleher's death anyway. The inheritance laws in the State of Montana would provide for his wife. She said the applicant can accomplish the same thing by going through the subdivision process.

Ron Ewart, Planner at the Office of Community Development, said he and Mr. Kelleher have had extensive discussions in the past relative to dividing this particular piece of ground. The applicant wishes to create a 5 1/2 acre tract. However, this area is designated in the Comp Plan as one unit per 40 acres--open and resource lands. This is substantially smaller than what has been allowed in these areas. He stated that the staff wouldn't feel comfortable recommending approval of a five acre split in a 1/40 designated area.

Colleen Dowdall said Mr. Kelleher's neighbors divided their land through the Certificate of Survey process; had they gone through subdivision review, they would not have been able to divide their land because the parcels did not comply with the Comp Plan. She stated that in the near future, the County may have a building permit system in place which may prevent anyone from building on the parcel if it isn't in compliance with the Comp Plan. If the applicant splits the property, they may create a parcel which cannot be built upon.

Louis Kelleher said he thought the Health Department would be responsible for determining if a home could be built on a particular parcel.

Colleen Dowdall said the Health Department deals with ground water and septic issues. These are not the determining or primary factor in dividing land. The Comp Plan and zoning must also be considered.

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

Ann Mary Dussault moved and Barbara Evans seconded the motion to deny the request for a family transfer for William Kelleher based upon the finding that the request appeared to attempt to evade the Subdivision and Platting Act. The motion carried on a vote of 3-0.

#### OTHER

Ron Ewart, Office of Community Development, wanted to ascertain the reasons for the Commissioners' decision to deny the subdivision request for Dawn Acres. He referred to the 1990 Comp Plan Update which stated that when reviewing development proposals, existing zoning takes precedent over land use designations in the urban area or neighborhood comprehensive plans. Therefore, it is essential that the appropriate zoning changes be made to implement the goals and objectives of the neighborhood plan. He said if the Comp Plan is not consistent with the zoning, then the zoning takes precedence over the Comp Plan designation. A decision to deny should be based upon reasons beyond the Comprehensive Plan designation.

Ann Mary Dussault stated that her motion to deny was fairly specific and was based on both the Comp Plan and with the natural resource designation of the area. She suggested that this issue be discussed at a staff meeting if the applicants or the staff wish the Board to reconsider their decision.

There being no further business to come before the Board, the Commissioners were in recess at 3:05 p.m.

Site Inspection -- Following the Public Meeting, Commissioner Evans accompanied County Surveyor Horace Brown on a site inspection for the request to vacate the Unnamed Road in the Meadowlands Subdivision.

#### **THURSDAY, OCTOBER 6, 1994**

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

#### DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was signed:

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between Missoula County and Professional Consultants Incorporated for the purpose of operating and maintaining the sewer and water system which serves the Lewis and Clark Subdivision, as per the terms and conditions set forth which are fully delineated in the Attachment filed with this Agreement, for compensation at the rate of \$200.00 per month for the basic services, with all other services to be billed for time and materials at the standard rate delineated in the rate schedule attached to the Agreement. The Agreement was returned to John DeVore, Administrative Officer, for further signatures and handling.

Other items included:

The Commissioners voted to change the County Policy on lodging costs--increasing the in-state lodging reimbursement to \$50.00 per night.

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

#### FRIDAY, OCTOBER 7, 1994

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

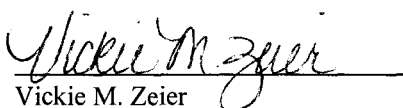
Monthly Report -- Chair Hart examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending September 30, 1994.

Monthly Report -- Chair Hart examined, approved, and ordered filed the Monthly Reconciliation Report of Justice of the Peace, David K. Clark, for month ending September 30, 1994.

#### DAILY ADMINISTRATIVE MEETING

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

Right-of-Way Agreements -- The Board of County Commissioners signed Right-of-Way Agreements (2) between Missoula County and Duane Reynolds and Carol M. and Edward C. Knudson for the Missoula County Airport Interchange Project (DPI 0195 (001), whereby U.S. West and Blackfoot Telephone must relocate their fiber optics and utility lines due to the proposed (re)construction of Highway 10 (West Broadway), and these landowners grant permission to enter and occupy their property for the project in exchange for a commitment by the Montana Department of Transportation and Missoula County to purchase the right-of-way actually used for utility purposes and future highway construction and to predicated any subsequent evaluation and offers to purchase on the condition of this property as it currently exists on this date. The Agreements were returned to Orin Olsgaard in the Special Projects office for further signatures and handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

#### MONDAY, OCTOBER 10, 1994

The Courthouse was closed for the Columbus Day Observed holiday.

#### TUESDAY, OCTOBER 11, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Dussault was out of the office all day. In the evening, Commissioner Evans attended a Transportation Demand Management Meeting held at the Florence School.

#### DAILY ADMINISTRATIVE MEETING

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Willard C. Neighbors, an independent contractor, for the purpose of contract administration and documentation to meet the requirements of the FHWA and the training of a County employee in contract administration, as per the terms set forth, for the period from October 1, 1994, through December 31, 1995 (the hours that a contractor doing the CMAQ [Congestion and Mitigation Air Quality] Paving Project is working on the project, for compensation not to exceed \$560.00 per week. The Contract was returned to the Surveyor's Office for further signatures and handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Anne Breum, DMD, an independent contractor, for the purpose of providing dental care to PHC patients, assisting in the development of PHC dental program policies and procedures, maintaining accessible patient dental records, participating in PHC sponsored training sessions, and providing a minimum of two inservices to PHC staff, as per the terms set forth, for the period from July 1, 1994, through June 30, 1995, for total compensation to a



maximum of \$15,000.00 at a rate of \$100.00 per hour. The contract was returned to the Health Department for further signatures and handling.

Approval of Site Assessment -- Chair Hart signed approval of a revised proposal and cost estimate from Shannon Environmental Services to conduct a Phase I Environmental Site Assessment for property bordering the Missoula Airport (Madsen Parcels B and C located south of West Broadway just east of the Missoula International Airport), as per the items and terms set forth, for a total cost of \$1850.00. The document was returned to Orin Olsgaard in the Special Projects office for further handling.

Other items included:

- 1) The Commissioners signed approval of a Memorandum, dated October 7, 1994, to Dusty Deschamps, County Attorney, from John Pemberton, Director of Personnel and Labor Relations, regarding the salary levels for the positions of Chief Criminal and Chief Civil Deputy County Attorney; and
- 2) The Commissioners approved a request from Phyllis Browder, Recording Supervisor, to dispose of lapsed financing statements from years 1973 through 1978 and the terminations are dated 1978 through 1981, as the seven-year retention period for these documents has lapsed.

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

### WEDNESDAY, OCTOBER 12, 1994

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:35 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

#### PRESENTATION BY MISSOULA COUNTY FIRE PROTECTION ASSOCIATION: PLAQUES FOR END OF FIRE SEASON

Scott Waldron and Dan Bailey of the Missoula County Fire Protection Association presented signed Monte Dolack prints to the Sheriff's Department, 9-1-1, and the Commissioners for their support and professionalism during this year's fire season.

Doug Chase, County Sheriff, thanked the Missoula County Fire Protection Association for their cooperation and professionalism during the fire season.

The Commissioners expressed their appreciation for the hard work of all the agencies involved.

#### DECISION ON: REQUEST TO VACATE UNNAMED ROAD - LOT 3 OF PROPOSED MEADOWLANDS SUBDIVISION - CROSSROADS TRUCK CENTER

Fern Hart explained that the hearing on this issue had been held at the Public Meeting on October 5, 1994. The matter was postponed to allow the County Surveyor and one of the Commissioners to view the site.

Barbara Evans explained that she didn't have a problem vacating the road as there was no sign a road should even be there.

Fern Hart referred to the letter written by Horace Brown, County Surveyor, who indicated that he was in agreement with the request to vacate the unnamed road based on the fact there was no requirement that this road remain a public access and that the neighboring properties have other legal accesses.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request to vacate "Unnamed Road - Tract A" of Certificate of Survey #3615 located in Section 28, T14N, R20W, based on the recommendation by the County Surveyor, that proper notification was given and that there was no protest by the affected properties. The motion carried on a vote of 3-0

#### HEARING: WILDROSE PRELIMINARY PLAT

Ron Ewart, Planner at the Office of Community Development, explained that on September 20, 1994 the Missoula Consolidated Planning Board voted 6 to 0 to recommend approval of the Planned Unit Development and Preliminary Plat of Wildrose.

Wildrose is a proposed 24 lot residential subdivision on 4.086 acres located in the NW1/4 of Section 20, T13N, R19W, on the east side of Davis Street to the south of Wyoming Street on part of the old Milwaukee Railroad. The property is described as Lot 15 of Cobban and Dinsmore's Orchard Homes No. 1.

The property now contains a single family house and three duplexes, all of which will remain, with individual lots. Seventeen single family detached homes are to be constructed, each with a garage and outdoor living area. The estimated market cost of the homes is \$83,000 to \$93,000. The average lot size is approximately 6250 square feet, and a common area of 8100 square feet is planned as a pocket park. The development will be served by Classic Court, a 24 foot cul-de-sac street with 2 foot type "L" curb and gutter. Classic Court is to be approximately 550 feet in length, within a 36 foot right-of-way. A 5 foot sidewalk is planned along the south side of the street. Davis Street is approximately 24 feet in

width and does not have curbing or sidewalk. The development will connect to City of Missoula sanitary that exists in Davis Street, and Mountain Water will be extended from third Street to provide water service. This area is planned for annexation into the City of Missoula in January, 1995 therefore review comments have been solicited from both City and County agencies.

This parcel and the surrounding area is zoned CRR-3, which allows up to four single family residential units per acre with a minimum lot size of 10,000 square feet. The Missoula Urban Area Comprehensive Plan designates the area as suitable for residential development at a density of up to six units per acre. The developer requests a Planned Unit Development at a density of up to six units per acre. The developer requested a Planned Unit Development as per Section 5.02 of the Missoula County Zoning Resolution which allows the governing body to approve a request which permits flexibility of design and increased density. The proposed minimum lot size is 4551 square feet and the average lot size is 6250 square feet, with an over-all density of 5.87 units per acre. The net density of the lotted area is just over six units per acre. The development is designed for maximum spacing between buildings, and a connection to the old rail corridor to the east is planned.

ORIGINAL PROPOSAL: 24 lots on 4.086 acres in CRR-3 zone, with PUD overlay, 28-ft back-back curb cul-de-sac street, sidewalk on south side, create small common area near center. One SFR and three duplexes exist, will be included in project on own lots, all 17 others are SFR detached.

STAFF RECOMMENDATION: Approve with conditions, redesign common area to 1/9th in SE corner to connect w/ vacant land, provide easement and walkway off cul-de-sac, extend sidewalk on south side, provide more off-street parking and eliminate on-street parking.

PLANNING BOARD RECOMMENDATION: Approve as recommended, with changes. Leave park as proposed, provide additional easement but not additional walkway, extend sidewalk, provide some additional parking but less than that recommended by staff, allow parking on Classic Court but not on access lanes.

THINGS ALL AGREE UPON: Streets and sidewalk, lot areas, design philosophy, PUD and Preliminary Plat proposal

THINGS LEFT TO BE RESOLVED: Park/ common area requirements, parking allowances.

The Missoula Consolidated Planning Board recommended the Planned Unit Development of Wildrose be approved, subject to the following conditions:

1. Street trees on 30-foot centers or less shall be installed by the developer along both sides of Classic Court prior to filing of the final plat, or this shall be included as part of the public improvements guarantee. *Section 8.07(7), Missoula County Subdivision Regulations*
2. The final plat shall show additional parking over that shown on the preliminary plat; one additional parking space per dwelling unit for each of Lots 8, 16, and 10 is necessary. *Section 8.07(7), Missoula County Subdivision Regulations*

The Missoula Consolidated Planning Board recommended the preliminary plat of Wildrose be approved, subject to the following conditions:

1. Plans for paving, grading, drainage, and sidewalks shall be approved by the County Surveyor. *Section 3-2 and 3-4.*
2. A one-foot no access strip shall be placed along the west line of Lot 9, except for the current access drive and Lot 10. *Section 3-2(1), and comments of the County Surveyor.*
3. The Property-owner's Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict. *Section 4-2(5)(D)(3).*
4. All easements shall be shown on the face of the plat. Easement widths shall be 20 feet unless a narrower width is approved by the appropriate utilities and governing body. In addition to showing the location of the easements, the following statement shall appear on the face of the final plat:

"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever." *Section 3-5 and 3-6.*

5. Fire hydrant location(s) shall be approved by the Rural Fire Marshal. *Comments of the Rural Fire Marshal, and paragraph 4 of the Uniform Fire Code Requirements.*
6. The following 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 owners to waive the right to protest a future RSID/SID for any improvements to Davis Street, to include widening and the installation of curbs, gutters, and sidewalks, may be used in lieu of their signatures on an RSID/SID petition. *Comments of the County Surveyor.*

7. The proposed 10-foot public walkway easement through Lot 16 shall be 20 feet in width and relocated on the property line between Lots 16 and 17. The 5-foot walkway along the south side of Classic Court shall be extended to the access lane serving Lots 15, 17, 18, and 19. *Section 3-2(1)(E) and 3-6.*
8. A standard street name sign shall be placed at the intersection of Davis Street and Classic Court, and at all intersections of Classic Court which serve three or more residences. A sign shall be placed on all access lanes prohibiting on-street parking. The street names and the signs shall be approved by the County Surveyor prior to filing of the final plat, or the signs may be included as part of the public improvements agreement. *Section 3-2(2)(F), and paragraph 5 of the Uniform Fire Code requirements.*
9. An easement for the irrigation ditch shall be provided to the appropriate agency and shown on the face of the final plat. A 4-foot chain link fence shall be constructed along the north side of the ditch easement where the easement crosses the property and along the south property line for the remainder of the property. *Section 3-6, and public health and safety.*
10. The Covenants shall address private road maintenance and the financial and decision making means for maintenance, the language to be approved by the County Surveyor. In addition, the following statement shall be placed on the face of the final plat:  
  
"The purchaser and/or owner if 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 City or 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 City or County of Missoula. *Section 5-2(5)(C).*"
11. The plans shall show access drives be paved to 20 feet within a 30-foot private access and public utility easement. The drives shall have L type curb and gutter with concrete gutter through the pavement adjacent to the garage accesses. The plans shall be approved by the County Surveyor. *Comments of the City Engineer.*
12. The right-of-way width for Classic Court shall be extended to 38 feet with a 5-foot public utility and maintenance easement adjacent to the right of way. *Suggestion of the City Engineer and OCD, to allow for future walk on north side of street and maintenance of walk and street.*
13. The developer shall grade, install a sprinkler system, spread four inches of topsoil, seed, and maintain the common area for one year or until the turf becomes established. Cash-in-lieu of park land dedication to bring the value of park dedication up to one-ninth of the combined area of lots shall be paid into the County park fund. *Section 3-8(2)(E)(4).*
14. Preliminary plat approval of this subdivision is conditional upon approval of the Planned Unit Development, and final approval is conditional upon compliance with the conditions of the Planned Unit Development as well as the conditions of the preliminary plat.
15. All utilities shall be placed underground except for the existing Montana Power high voltage line. *Section 3-5, and added recommendation of the Planning Board.*

The hearing was opened to public comment.

Nick Kaufman, WGM Group, representing the developer, agreed with the conditions as recommended by the OCD staff. He said this property is located on the old Milwaukee Railroad right-of-way. There are three existing duplexes on the property which will remain. They proposed a Planned Unit Development with 24 units on the property which equated to 6 units per acre. They met with the surrounding property owners to discuss design of the project. He urged the Commissioners to approve both the PUD and the preliminary plat as proposed.

Jamie Hoffman, Architect, explained that in most cases, an architect is not involved with the site development concept of a proposal. Times are changing because more scrutiny is being placed on the design of subdivisions. However, in this case, the owners recognized the necessity of addressing design issues. The developers solicited the ideas and the concerns of the neighborhood. They proposed and offered the neighborhood a better trade for more density. The design of the homes will be simple, yet will look to old ideas, old designs. All of the homes will have porches and places for people. The garages will be placed behind the homes. There will be many details included that will strive to replicate old, quality neighborhoods.

He said it appeared as though the neighborhood appreciated the trading that was accomplished to get a better subdivision for the area. The developer also recognizes that by developing a quality subdivision and by investing in site and architectural design, the area will receive a true sense of neighborhood that isn't typically seen in most subdivisions. He presented slides of homes in the area which showed concepts and design that would be used in the proposed subdivision. The homes were modest one and two story homes with porches and garages in the back.

Don Stinger, 245 North Davis Street, an adjacent property owner, spoke in favor of the project if the developer adhered to the conditions as recommended by the Office of Community Development staff.

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

A discussion ensued relative to a question pertaining to the existing 100 KB power lines in the area. All of the new utilities will be placed underground which is a requirement of all new subdivisions. However, the existing 100 KB power line cannot be placed underground. During the Planning Board meeting, concerns were raised relative to the width of the utility easement and the placement of the proposed sidewalk. A letter from a Montana Power Company representative

indicated that the width of the easement had not been defined. The letter also indicated that the sidewalk is proposed in the location of one of the existing power poles. Also, the tree plantings beneath and adjacent to the power lines can be addressed by limiting the mature type of tree to a maximum height of 18 feet. Montana Power Company recommended that the developers speak with the local City Forester or a nursery in the area to recommend species of trees that would limit the height. The developers proposed to change the design of the street so that the power line was not in the sidewalk and they have talked with the Urban Forester for the City of Missoula who recommended several species of trees.

The discussion continued relative to the 100 KB power line. There are many areas in the Missoula valley where these power lines run.

Nick Kaufman said they did extensive research on the power lines and are convinced there is not a problem.

Barbara Evans asked about the recommendation from the Planning Board relative to the additional parking for Lots 8, 10 and 16.

Nick Kaufman said they tried to create street-scapes. There are three lots that have individual driveways that front on the interior street. Concern has been expressed about adequate off-street parking. He said there is adequate parking for each of the homes. However, if someone has a party, the public street, which is of standard width, is available for parking. If these three lots have additional parking, it will reduce the inclination to park on the street and will allow for overflow parking in the event there is a party.

Fern Hart asked if the size of the existing power lines would interfere with television reception?

Nick Kaufman explained it would not. The Electro Magnetic Field (EMF) of the power line can be measured only to 50 feet from the line. Montana Power has been out to measure the EMF. There is no measurement at 50 feet. The lines will not be located over any of the homes. These power lines cannot be buried because it is a major expense and there is more Electro Magnetic Field if the line is buried than if it is overhead.

A discussion followed relative to the streets. The proposed subdivision does not front onto Curtis Street, but onto Davis Street. Davis Street is approximately 22-24 feet in width with adequate 60 foot right-of-way easements. Davis Street can be widened in the future.

Michael Sehestedt, Deputy County Attorney, commented that in the past, the City Engineering Office has imposed curb type and street width as a requirement for obtaining sewer service. He wondered if this had been addressed by the developers?

Nick Kaufman said the developers have worked with the City Engineer. There is a condition in the staff report that addresses this issue. The subdivision will meet the recommendations and requirements of the City Engineer and the County Surveyor.

A discussion ensued relative to the additional parking spaces for the three lots. The additional parking spaces are referred to in Condition #2 of the Planned Unit Development. The staff recommended one additional parking space per dwelling unit. The Planning Board voted to recommend that the Commissioners require one additional parking space for Lots 8, 10, and 16. The final recommendation to the Commissioners required one additional parking space for Lots 8, 10, and 16.

Ron Ewart said the staff was concerned that no parking be allowed on Classic Court due to the width of the street. However, at the Planning Board meeting, it was the consensus that parking could be allowed on one side of the street which would allow two cars to pass one another as well as allow room for a fire truck. He referred to Condition No. 8. The developer, at one time, had proposed parking only on the north side of Classic Court. He suggested that the language, "Classic Court shall have signs prohibiting parking on the north side of the street" be incorporated into Condition No. 8.

Barbara Evans expressed concern that at some point in time, the park needs of this community should be addressed.

Don Stinger stated that the City Planning and Zoning Committee has taken on the task of changing County zoning to comparable City zoning for those areas which will be annexed into the City this December. The Committee also discussed provisions for parks.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the Planned Unit Development of Wildrose Subdivision subject to the following two conditions:

1. Street trees on 30-foot centers or less shall be installed by the developer along both sides of Classic Court prior to filing of the final plat, or this shall be included as part of the public improvements guarantee.
2. The final plat shall show additional parking over that shown on the preliminary plat; one additional parking space per dwelling unit for each of Lots 8, 16, and 10 is necessary.

The motion carried on a vote of 3-0.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the preliminary plat of Wildrose Subdivision subject to the following amended conditions:

1. Plans for paving, grading, drainage, and sidewalks shall be approved by the County Surveyor.

2. A one-foot no access strip shall be placed along the west line of Lot 9, except for the current access drive and Lot 10.
3. The Property-owner's Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict.
4. All easements shall be shown on the face of the plat. Easement widths shall be 20 feet unless a narrower width is approved by the appropriate utilities and governing body. In addition to showing the location of the easements, the following statement shall appear on the face of the final plat:  
  
"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever."
5. Fire hydrant location(s) shall be approved by the Rural Fire Marshal.
6. The following 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 owners to waive the right to protest a future RSID/SID for any improvements to Davis Street, to include widening and the installation of curbs, gutters, and sidewalks, may be used in lieu of their signatures on an RSID/SID petition.
7. The proposed 10-foot public walkway easement through Lot 16 shall be 20 feet in width and relocated on the property line between Lots 16 and 17. The 5-foot walkway along the south side of Classic Court shall be extended to the access lane serving Lots 15, 17, 18, and 19.
8. A standard street name sign shall be placed at the intersection of Davis Street and Classic Court, and at all intersections of Classic Court which serve three or more residences. A sign shall be placed on all access lanes prohibiting on-street parking. The street names and the signs shall be approved by the County Surveyor prior to filing of the final plat, or the signs may be included as part of the public improvements agreement. Upon approval of the County Surveyor, Classic Court shall have signs prohibiting parking on the north side of the street.
9. An easement for the irrigation ditch shall be provided to the appropriate agency and shown on the face of the final plat. A 4-foot chain link fence shall be constructed along the north side of the ditch easement where the easement crosses the property and along the south property line for the remainder of the property.
10. The Covenants shall address private road maintenance and the financial and decision making means for maintenance, the language to be approved by the County Surveyor. In addition, the following statement shall be placed on the face of the final plat:  
  
"The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property-owners' association and that the City or 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 City or County of Missoula.
11. The plans shall show access drives be paved to 20 feet within a 30-foot private access and public utility easement. The drives shall have L type curb and gutter with concrete gutter through the pavement adjacent to the garage accesses. The plans shall be approved by the County Surveyor.
12. The right-of-way width for Classic Court shall be extended to 38 feet with a 5-foot public utility and maintenance easement adjacent to the right of way.
13. The developer shall grade, install a sprinkler system, spread four inches of topsoil, seed, and maintain the common area for one year or until the turf becomes established. Cash-in-lieu of park land dedication to bring the value of park dedication up to one-ninth of the combined area of lots shall be paid into the County park fund.
14. Preliminary plat approval of this subdivision is conditional upon approval of the Planned Unit Development, and final approval is conditional upon compliance with the conditions of the Planned Unit Development as well as the conditions of the preliminary plat.
15. All utilities shall be placed underground except for the existing Montana Power high voltage line.

The motion carried on a vote of 3-0.

HEARING: REQUEST BY HERB RICHARDS FOR WAIVER OF PLAT LIMITATION TO ACCESS LOT 9 ACROSS LOT 7 - DOUBLE ARROW RANCH PHASE VII

Herb Richards explained that this is a request of a formalization of an agreement with the Montana Department of Transportation to provide access to Lot 9 across Lot 7. Lots 1, 6, and 7 were purchased by the Montana Department of

Transportation. One of the conditions of the sale was the Highway Department would provide an easement to Lot 9 subject to the governing body's approval. He explained that this subdivision was done in the mid-1970's.

Barbara Evans said a letter was sent to the Double Arrow Association requesting comment.

Fern Hart said a letter was received from Stan NicholSEN, President of the Double Arrow Ranch, who indicated that the Board of Directors voted to support the request from Herb Richards.

Barbara Evans moved and Ann Mary Dussault seconded the motion to grant the request by Herb Richards for a waiver of plat limitation to access Lot 9 across Lot 7- Double Arrow Ranch Phase VII. 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 2:35 p.m.

#### THURSDAY, OCTOBER 13, 1994

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 10-13-94, pages 5-36, with a grand total of \$208,738.45. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

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

#### RESOLUTION NO. 94-101 -- FIXING TAX LEVIES FOR MISSOULA COUNTY FOR FISCAL YEAR 1994-1995

WHEREAS, the Board of County Commissioners of Missoula County, Montana, has approved and adopted the budget for Fiscal Year 1994-1995, 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 \$138,138 County-wide, and a value of \$73,785 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 1994-1995 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	43.31	A and B
Bridge Fund	3.84	
Poor Fund	3.43	
Fair Fund	1.22	
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	
Developmentally Disabled	0.08	
Aging Fund	0.67	
Park/Recreation Fund	0.65	
Risk Management	1.89	
Child Daycare	0.22	
Open Space	0.79	
Library	5.00	
<u>SUB-TOTAL</u>	<u>73.42</u>	
<u>MISSOULA COUNTY-WIDE DEBT SERVICE</u>		
RSID Revolving	0.48	
G O Issue (Computer)	1.18	
<u>SUB-TOTAL</u>	<u>1.66</u>	
<u>TOTAL COUNTY-WIDE &amp; DEBT SERVICE LEVIES</u>	<u>75.08</u>	
Road Fund	13.83	
Health Fund	7.30	
<u>TOTAL COUNTY-ONLY LEVY</u>	<u>21.13</u>	

CITY OF MISSOULA	135.96
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	22.98
MISSOULA RURAL	43.50
ARLEE/JOCKO VALLEY RURAL	10.66
FLORENCE-CARLTON RURAL	16.63
EAST MISSOULA RURAL	12.79
FRENCHTOWN RURAL	18.00
SEELEY LAKE	30.88
OTHER SPECIAL DISTRICT LEVIES	
SOIL CONSERVATION	1.45
S.O.S. HEALTH CENTER	9.00
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 ASSTN	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 13th day of October, 1994.

APPROVED AS TO FORM AND CONTENT:

BOARD OF COUNTY COMMISSIONERS

/s/ Michael W. Sehestedt  
Deputy County Attorney

/s/ Fern Hart  
Fern Hart, Chair

ATTEST:

/s/ Ann Mary Dussault  
Ann Mary Dussault, Commissioner

/s/ Vickie M. Zeier  
Vickie M. Zeier, Clerk and Recorder

/s/ Barbara Evans  
Barbara Evans, Commissioner

Addendum to Professional Services Contract -- Chair Hart signed an Addendum to the Professional Services Contract, Employee Assistance Program, dated June 16, 1994, between Missoula County and Vocational Resources, Inc. providing for an Employee Assistance Program for the employees of the Missoula Urban Transportation District, Mountain Line, effective November 1, 1994, amending the four sections (2 through 5) of the master contract as set forth in the Addendum. The document was returned to Hal Luttschwager, Risk Manager, for further signatures and handling.

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

#### FRIDAY, OCTOBER 14, 1994

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.

Vickie M. Zeier  
Vickie M. Zeier  
Clerk & Recorder

Fern Hart  
Fern Hart, Chair  
Board of County Commissioners

#### MONDAY, OCTOBER 17, 1994

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



DAILY ADMINISTRATIVE MEETING

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

Deed Restriction Agreement and Subordinate Deed of Trust - Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Wanda J. Campbell in the amount of \$4,099.00, for the property located at 712 South Avenue, Missoula, dated September 29, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Salvation Army, whereby the County will purchase basic needs assistance for indigent residents of Missoula County, as per the terms set forth, through June 30, 1995, for a total amount of \$10,550.00.

Addendum to Travel Policy - Policy No. 88-A -- The Board of County Commissioners signed an Addendum to the County Travel Policy, Policy No. 88-A, increasing the maximum reimbursement for in-state lodging to \$50 per night effective immediately, due to the increased costs of in-state lodging.

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

**TUESDAY, OCTOBER 18, 1994**

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

DAILY ADMINISTRATIVE MEETING

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and the City of Missoula for the purpose of participation of the Missoula City Police officers in the DUI (driving under the influence) enforcement training programs such as Standardized Field Sobriety Testing, as per the terms set forth, commencing September 1, 1994, through June 30, 1995, for compensation in an amount up to \$2,000.00.

Maintenance Contract -- Chair Hart signed a Maintenance Contract with WilTel Communications Systems, Inc. for the Northern Telecom Meridian 1 PBX and Meridian Mail Voice Processing system which serves Missoula County and City, at an annual rate of \$16,800.00, which reflects no increase in per port costs over 1993, and only a slight increase overall due to total port increase. The Contract was returned to Bob Schieder, Facilities Manager in Communications, for further handling.

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

SECOND HEARING: MACLAY BRIDGE ENVIRONMENTAL ASSESSMENT (LARGE COURTROOM -- MISSOULA COUNTY COURTHOUSE) -- 7:00 P.M.

(These minutes were taken by Carter & Burgess, Inc., 123 W. Spruce St., Missoula)

The Public Hearing was called to order at 7:00 p.m. in the Large Courtroom at the Missoula County Courthouse. The hearing was held to receive comments on the alternatives developed by the Citizens Advisory Committee (CAC) and Carter & Burgess to reduce the size of the project and its impacts on the neighborhood. The CAC worked on alternatives to the proposed roadway, bridge, bicycle and pedestrian facilities, and funding sources. The following is a summary of discussion:

Fern Hart began by calling the meeting to order and stated that the format of the meeting would be similar to that of other meetings held in the past. She asked that everyone be very sensitive to one another and requested that comments be as short and precise as possible.

Mike Worrall, of Carter & Burgess, Inc., began by summarizing the events from the last Public Hearing held on April 27, 1994, where the County Commissioners heard public comment on the Environmental Assessment. He explained that a complete study had been prepared for the replacement of the Maclay Bridge. The expected life of the existing bridge was less than 10 years due to increased use and continued deterioration of the bridge. Carter & Burgess was commissioned to perform a site selection study and to do an Environmental Assessment (EA) on the replacement of the Maclay Bridge. He explained that many concerns were raised at that hearing, prompting the County Commissioners to ask Carter & Burgess to meet with the CAC and enlist their help to identify ways to lessen the impacts of that bridge on the adjacent neighborhoods. He noted that the CAC was able to work constructively and their time and ideas were greatly appreciated. He explained that the County could not design the facility below certain standards for safety. A question was raised about the source from which these standards were determined. He explained that the American Association of State Highway and Transportation Officials (AASHTO) develops standards of roadway design based on common design practices. He then reviewed the refinements that were discussed from the meeting with the CAC. He pointed out that a change from the EA is that the new proposal does not have bicycle and pedestrian facilities on it. An alternative was developed to route bicycle and pedestrian traffic to the existing Maclay bridge. He explained that after this process, Carter & Burgess would prepare a document that

would go to the Federal Highway Administration (FHWA) that was made up of all the public comment received and would be reviewed by the FHWA. They would then make a determination as to whether or not a Finding of No Significant Impact (FONSI) was applicable or would require that an Environmental Impact Statement (EIS) be done.

Attendees of the meeting were encouraged to ask Mike informational questions if they could be answered briefly and clarify issues. One question that was raised was whether or not the speed limit could be lowered to 25 mph. Mike explained that the goal was to give the roadway the appearance of a facility in which people would not want to drive fast and that the proposed speed limit would remain at 35 mph.

Horace Brown answered a question raised concerning the walkways and the children who would walk along the proposed project site. He explained that the County now has projects identified to construct walkways along South Avenue to Humble Road, north on Humble Road and west on North Avenue to the existing Maclay Bridge.

Mike Worrall pointed out that there were a few inaccuracies with the artist's rendering that was presented at the meeting. He went on to explain what the inaccuracies were.

Fern Hart stated that this process had been on going for one year and three months. It was intended that the decision-making time would have been completed sooner than it had been but with all the interest, it was decided to have one more meeting of the CAC. The information from that meeting was brought to the Commissioners and it was then decided that one final public meeting would be held. She then moved that the meeting move forward so that testimony could be taken with the information currently available.

The hearing was then opened to new testimony.

David Fox commented that he had attended most of the meetings that had been held at Target Range School and felt that all involved were doing a great job. He stated, however, that he was surprised at the refinements that were proposed. He said he felt that gravel on the shoulders would not stand-up as long as if it were paved. He said he felt this was penny-wise and dollar-foolish. He commented that people in the County were clamoring for open space and in his opinion there could be no better open space than a walk across a bridge. He suggested letting the bridge open for bicycle and pedestrian use and also for people with physical impairments, and for wheelchairs. He said he felt the bridge should be able to be utilized by all the people.

Monte Means, resident at 4837 Hanson Drive, stated that walkways were necessary on at least one side of South Avenue to get children to and from Target Range. He stated that the bridge should also have walkways because bicyclists and pedestrians would use it anyway.

Charlene Miller, resident at 3416 South Avenue, expressed concerns about the safety of the children crossing South Avenue going to the grade school and high school. She said she felt that the safety of the children had not been addressed. She suggested a possible overpass or underpass to remedy this problem. She stated that there was a need to build walkways down to the high school. Charlene questioned what the time-frame would be to get these walkways in place.

Horace Brown reiterated that there would be walkways along both sides of South Avenue from Reserve Street to the hospital and a walkway on the south side of South Avenue which extends to the walkway already now in place at Target Range School. There would be a walkway on the south side of South Avenue to Humble Road. On Humble Road there would be a widening of pavement on both sides so that there would be walkways and bikeways on Humble to North Avenue. From North Avenue, walkways would be present to Maclay Bridge. He stated that the walkways would be done before the bridge was completed. He said he had applied for the funds for both walkways and estimated that it would be about 1½ years before the money would be available to build these. Money to build these walkways would come from the Congestion Mitigation Air Quality (CMAQ) funds and Community Transportation Enhancement Projects (CTEP). Those same funds were now being used to build walkways in Frenchtown and Seeley Lake.

Charlene Miller asked if a stop light would be possible to slow people down. She stated that it was something that really needed to be addressed.

Horace Brown responded that it would not be possible unless the traffic signal warrants were met.

Fred Stewart stated that the proposed refinements did not address the primary concern expressed by many citizens. He said he felt that the preferred alternative would generate traffic of such volume and composition that the character of the Target Range community would be degraded. He said he felt that the minimum engineering standards that had been set for this project would result in impacts on the community. The standards were in direct conflict with the quality of life the local residents currently have. He said he felt that his comments were not addressed from the last hearing. He said he felt that the noise, wetland impacts, and associated socio-economic impacts with this project would require an EIS before moving ahead. He suggested that before more money was spent on this project, it should be found out how this project fits into the overall growth management needs for Missoula valley by updating the Missoula Transportation Plan. As the current problems on North Reserve Street show, incremental changes in roads and access can result in unexpected consequences that permanently change the community. He said he felt that creating a transportation corridor through the heart of the Target Range community was neither thoughtful nor necessary to meet the community's needs. He then stated that the question that the consultants were asked to study was adequately addressed. He said he felt that the fundamental question that needed to be asked was what were the needs for the west side of Missoula, how do they fit into the overall transportation needs for the Missoula community, and how would this be addressed as a complete issue.

Dana Headapohl stated that the question that was asked of the consultant was too narrow. In her opinion, a large portion of the concerns were not addressed. She had concerns about the safety of the children and did not understand

why a stop light could not be put at a school if certain criteria was not met. She said she felt that the people should be able to have a stop light to ensure the safety of the children whether or not these criteria were met. She stated that the EA was wrong when it stated that there was no wetland impact on the property. She pointed out that this determination had not been made and she had that in writing. She was concerned about the overall accuracy of the EA. She said she felt that this project would have a significant environmental impact.

Horace Brown then answered the question concerning the signal light. The road was an urban road under State jurisdiction; therefore, the County could not make this decision without State concurrence. He encouraged the concerned people to write to the State to see if this issue could be resolved.

Barbara Evans pointed out that they had gone to the State to try to get the speed limit reduced in front of the Target Range School. She explained how difficult it was to try to get that issue resolved. Barbara offered her help to meet with the State to try to work something out concerning the stop light issue.

Dave Morey, a resident on the west end of South Avenue, expressed his concern for the safety of the children. He said he would like to see a walkway put in to ensure the safety of the children and others as well. He stated he was concerned about the access to the proposed roadway from the residents at the end of South Avenue and asked that this be addressed.

Mike Worrall responded that the grades of the accessing road along South Avenue were evaluated and it was found that they would work. He explained that a portion of Hanson Drive would be reconstructed and raised, however, they were able to tie to the existing ground before they reached the first driveway located on Hanson, south of South Avenue. He pointed out that there was a northern shift to the new road which in turn would allow them to tie in Hanson Drive.

Hal Ort commented that an access was needed and that a bridge was needed. He said he felt that the safety concerns as well as mitigation should be high priorities in order for the bridge project to be a success.

Penny Oncken voiced her concern that if something was not done, there would be a safety concern with the school buses since they would be routed to Blue Mountain Road. The children would be in more of a dangerous situation than if a bridge was not built.

Fern Hart stated that she had checked into the County's liability with respect to the Maclay Bridge. She pointed out that the best effort was being performed with a bridge that was past its time. The County was liable and a new bridge was needed.

Charles Stevenson spoke on behalf of his neighbors on the west side of Maclay Bridge stating that an access was necessary and that a bridge was needed. He would like to impact as few people as possible in order to achieve this, but to keep the children safe, a bridge was needed. He then asked Horace Brown about the plans for the trails.

Horace Brown responded that it would connect with the non-motorized trails that would be off-road. Further trail building would have to be done in the future through other projects. There was a way of getting a trail if the people requested it by funding it with the CTEP program. He addressed the question of the transportation plan and the Maclay Bridge by stating that a consultant would be selected to perform the Transportation Plan Update and it would include the Maclay Bridge. It would study the Maclay Bridge and its relationship to transportation in the urban areas.

Vick Dupuis questioned how a bridge could be built and then studied a year later in the Transportation Plan. He wanted to know if the building of the bridge would be deferred until this study was completed.

Horace Brown answered that the Maclay Bridge was now considered a part of the Missoula urban area and would be studied in relationship to all the other transportation needs in the urban area. The Transportation Plan would only look at funding sources for the Maclay Bridge and how it related to the rest of the transportation system in the urban area.

Jim Story expressed his concern about the safety of the bridge, the speed of traffic, and safety of Big Flat Road. He explained that last winter alone, three vehicles hit his mailbox. There was a large population of deer on Big Flat Road. He said he felt the speed limit must be enforced there.

Barbara Evans asked the group for a show of hands who thought that a bridge was needed. After seeing most of the hands in the group raised, she made the statement that a new bridge was needed for the safety sake of all people. She stated that a bicycle and pedestrian pathway was needed on at least one side of the bridge. She explained that there was not funding for the bridge at this time and she was not sure how soon it would be available. She expressed her apologies to the people who would be harmed by the bridge being built at the proposed location. Barbara stated that she realized that not everyone could be satisfied but that the County would be very poor leaders if the bridge was not built at the earliest opportunity.

Victor Dupuis stated that he didn't feel that the people who live on the west side need a safe and reasonable access and therefore a bridge was necessary. He went on to voice that a 'thoroughfare' was not necessary to service a small percentage of the west Missoula community. He said he felt that the chosen design would turn South Avenue into a 'thoroughfare' and drastically change the character of the Target Range neighborhood. He said he felt that the engineers chosen for the project had not adequately looked at all the possibilities for a low speed, adequate standard bridge in its present location.

Dana Headapohl said she felt that the 'strategy' all along had been the threat of no bridge being built. She said she felt that the engineering firm and the County had not adequately looked at all the options. She said she felt that this

last meeting was a very weak concession to significant public outcry and that the comment and concerns had not been heard or addressed.

Penny Oncken explained that serving on the Advisory Committee was a great learning experience. She said she felt that every option was looked into thoroughly and was convinced that the best location had been chosen.

Fern Hart closed the hearing by thanking everyone for coming. She noted that the testimony had shown how serious this issue was and appreciated all the comments and concerns that were voiced. She said she looked forward to a Transportation Plan that would adequately address the traffic and safety issues. She said she realized that not everyone's needs would be solved but, at this point, everyone had to do the best they could.

### WEDNESDAY, OCTOBER 19, 1994

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a Reserve Street Scoping Meeting held at Hellgate Elementary School.

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated 10-18-94, pages 6-36, with a grand total of \$347,603.37. The Audit List was returned to the Accounting Office.

#### DAILY ADMINISTRATIVE MEETING

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

Resolution No. 94-102 -- The Board of County Commissioners signed Resolution No. 94-102, resolving that the Unnamed Road in the Meadowlands Subdivision located in the SE 1/4 of Section 28, T. 14 N., R. 20 W., PMM, be vacated.

Agreement -- Chair Hart signed an Agreement between the Missoula City-County Health Department and the Butte/Silver Bow Unified Government for the purpose of conducting a childhood lead poisoning prevention program, as per the mutual covenants and stipulations set forth, commencing July 1, 1994, through June 30, 1995, with Butte agreeing to pay, for the completion of activities cited in the second year approved grant proposal, up to a total of \$47,500.00, with the source of funding for this agreement being a federal grant from the Centers for Disease Control, U.S. Department of Health and Human Services. The Agreement was returned to the Health Department for further handling.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and the Montana Department of Transportation for road improvements on Secondary Route S-263, locally known as Mullan Road - Frenchtown, to document the intent of the parties and sets forth the responsibilities of each in the development, funding, and administration of a Pavement Preservation Project to restore and/or extend the service life of a paved secondary highway, with the contract work to be accomplished during the 1995 construction season, depending on availability of funds. The Agreement was returned to Horace Brown, County Surveyor, for further signatures and handling.

Plat and Subdivision Improvements Agreement and Guarantee -- The Board of County Commissioners signed the Plat for Chappelle Addition, a rural residential subdivision located in the NE 1/4, Section 12, T. 12 N., R. 20 W., PMM, and being a portion of Tract 15, Massey McCullough Acres, Missoula County, a total area of 6.09 acres, with the owners/developers being Jeffrey M. and Lori J. Langan. The Commissioners also signed a Subdivision Improvements Agreement and Guarantee for improvements which remain to be completed in the subdivision (installation of curbs and gutters, paving of streets and engineering services), at an estimated cost of \$22,000.00, to be completed no later than two years from the date of the final plat approval, with a Montana Trust Indenture signed on October 3, 1994, encumbering Lot 3 of Chappelle Addition, given as security for completion of the public improvements and compliance with this Agreement.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

#### BID AWARD: GPS RADIOS - SURVEYOR'S OFFICE

Bids for the global positioning equipment for the Surveyor's Office were opened Monday, October 17, 1994, at 10:00 a.m. with the following results:

Navigation Electronics	\$84,060.00
Trimble Navigation Ltd.	\$54,391.00

Two bidders did not meet the bid specifications: Selby's Essco at \$55,553.00 and Inland Precision at \$55,461.00. The staff recommended that the bid be awarded to Trimble Navigation Ltd. Because they are the lowest and best bid. They will also purchase hardware/firmware software upgrade agreements as part of this bid. The amount budgeted for this item was \$73,000.00.

Chuck Wright, Land Surveyor, explained that the global positioning equipment is used for satellite surveying. It is a very accurate and is much cheaper.

Barbara Evans moved and Ann Mary Dussault seconded the motion to award the bid for the global positioning to Trimble Navigation Ltd. in the amount of \$54,391.00, as the lowest and best bidder. The motion carried on a vote of 3-0.

PROCLAMATION: "RED RIBBON DAY"

WHEREAS, the problems associated with illegal use of drugs have become prevalent in every community including the County of Missoula and the City of Missoula; and

WHEREAS, every community of the United States must turn its energies toward the battle against drugs in its own neighborhoods; and

WHEREAS, The National Federation of Parents for Drug Free Youth, Inc., national parent/community organizations, the CITY OF MISSOULA and the COUNTY OF MISSOULA are sponsoring the National Red Ribbon Campaign offering citizens the opportunity to demonstrate their commitment to drug-free lifestyles (no use of illegal drugs, no illegal use of legal drugs); and

WHEREAS, President Bill Clinton and Mrs. Clinton are the National Honorary Chairs and Governor Marc Racicot and Mrs. Racicot are the Honorary Chairs of Montana to provide national and state focus on a Drug Free America; and

WHEREAS, business, government, parents, law enforcement, media, medical, religious institutions, schools, senior citizens, service organizations and youth will demonstrate their continuing commitment to healthy, drug-free lifestyles by wearing and displaying Red Ribbons during this week-long campaign; and

WHEREAS, the City of Missoula and the County of Missoula further commit their resources to ensure the success of the Red Ribbon Campaign;

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the City of Missoula and the Commissioners of Missoula County, Montana, do hereby jointly proclaim October 23 through October 30, 1994, as Red Ribbon Week, and encourage their citizens to initiate and participate in drug prevention education activities, making a visible statement that we are strongly committed to a drug-free community.

BE IT FURTHER RESOLVED, that the Mayor of the City of Missoula and the Commissioners of Missoula County, Montana, encourage all citizens to pledge: DRUG FREE AND PROUD.

Ann Mary Dussault moved and Barbara Evans seconded the motion to adopt the Joint Proclamation by the City and County of Missoula proclaiming October 23 through October 30, 1994, as Red Ribbon Week. The motion carried on a vote of 3-0.

Mayor Dan Kemmis signed the Proclamation earlier in the day.

ADOPTION OF THEME DOCUMENT OF THE GROWTH MANAGEMENT TASK FORCE FOR THE COUNTY OF MISSOULA

Fern Hart explained that the theme document for the County of Missoula is a product of the Growth Management Task Force.

Barbara Evans read the major commitments of the Task Force as follows:

The Growth Management Planning Group recognizes the need to plan ahead in order to assure the well-being of our children and future generations. Currently Missoula is experiencing rapid growth and development, and we anticipate some measure of continued growth and change in the foreseeable future.

Throughout the process of growth and change, we must preserve the valued characteristics of our communities. It is our mission to achieve two equally important goals: 1) to protect our critical lands and natural resources (e.g., riparian resources, wildlife habitat, hillsides, air and water quality, and open spaces; and 2) to enhance human resources (e.g., health and safety, social, educational, recreational and cultural services, employment, and housing).

We pledge our commitment to address the challenges of growth and change with these goals always in mind. We pledge also to always work in full cooperation with our fellow Missoula City and County citizens.

Together we face a significant challenge to effectively encourage and direct development in accordance with our mission to enhance human and natural resources. A strategy for successfully managing growth in Missoula City and County depends upon our ability to guide three key forms of future development without exceeding the County's carry capacity: a) housing projects that will produce an adequate supply and variety; b) business activity that will provide good jobs and a reliable tax base; and c) infrastructure, including public works, human and educational services, and public uses of land such as parks and recreation. By meeting development objectives in these three areas, we can achieve a county-wide pattern of community-building, land use, and conservation that reflects the environmental, economic, aesthetic, and social values of Missoula County residents.

The effectiveness of our growth management strategy will depend largely upon our collective ability to address pertinent issues in an integrated, coordinated and on-going manner, and upon our ability to respond flexibly and intelligently to events that are unforeseen or beyond our control. Success will also depend upon the effective design and implementation of appropriate tools--both regulatory and non-regulatory--which can provide the means to manage and direct growth.

Ann Mary Dussault moved and Barbara Evans seconded the motion to adopt the Planning For Growth in Missoula County, the theme document produced by the Growth Management Task Force. The motion carried on a vote of 3-0.

Barbara Evans stated that the document is a theme document and can therefore be interpreted in different ways.

#### PUBLIC COMMENT

Sue Matthewson was present to ask a number of questions pertaining to the ballot issue on the proposed sale of County property located at Spurgin Road and Tower Street, the Equestrian Park, and other previously held County property in the area.

Michael Sehestedt and Colleen Dowdall, Deputy County Attorneys, answered her questions and met with her afterwards to further the discussion pertaining to County property located in the Spurgin Road and Tower Street area.

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

### **THURSDAY, OCTOBER 20, 1994**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners, representatives of MACo, and Commissioners from several counties in the western part of the state met with representatives of the State Department of Revenue at a meeting held in the Missoula County Courthouse.

#### DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Women's Opportunity and Resource Development, Inc. (WORD) Futures and F.H.I.N., whereby the County will purchase basic needs assistance for indigent residents of Missoula County, as per the terms set forth, through June 30, 1995, for a total amount of \$8,528.00.

Deed Restriction Agreement and Subordinate Deed of Trust -- Chair Hart signed a Deed Restriction Agreement and Subordinate Deed of Trust between Missoula County and the following for the purpose of providing HOME Investment Partnerships Program (HOME) funds to assist with downpayment, closing costs and, if necessary, mortgage reduction assistance, as per the terms and conditions set forth:

Elmer K. and Helen L. Moore in the amount of \$20,000.00, for the property located at 1724 South 12th Street West, Missoula, dated October 12, 1994.

The documents were returned to Cindy Wulfekuhle in Community Development Programs for further handling.

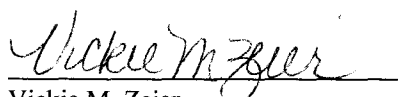
Other items considered:

- 1) the Commissioners voted to approve the draft Memorandum of Agreement on the Joint Facilities Agreement with the City of Missoula; and
- 2) the Commissioners authorized Mike Skinner of 2056 Sauter Lane to remove gravel from the Whispering Pines Park area to complete his driveway graveling project, as per an earlier agreement with area residents; however, the question of gravel removal will be referred to the County Park Board for resolution as the issue is causing some controversy.

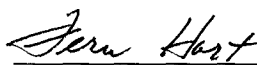
The minutes of the daily administrative meeting are on file in the Commissioners Office.

### **FRIDAY, OCTOBER 21, 1994**

The Board of County Commissioners did not meet in regular session. Commissioner Dussault was out of the office all day and Commissioner Hart was in Polson attending a Mental Health Board Meeting.



Vickie M. Zeier  
Clerk & Recorder



Fern Hart, Chair  
Board of County Commissioners

### **MONDAY, OCTOBER 24, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Dussault was out of the office the week of October 24th through the 28th.

Indemnity Bond -- Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Jeanne Twohig as principal for warrant #226227, dated 9-30-94, on the Missoula County Payroll Fund in the amount of \$814.98 now unable to be found.

Indemnity Bond -- Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Heather Swingley as principal for warrant #34244, dated 10-07-94, on the Target Range School Payroll Fund in the amount of \$84.16 now unable to be found.

#### DAILY ADMINISTRATIVE MEETING

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

Plat and Subdivision Improvements Agreement and Guarantee -- The Board of County Commissioners signed the Plat for Meadowlands, a commercial subdivision located in the NE 1/4 and SE 1/4 of Section 28, T. 14 N., R. 20 W., PMM, Missoula County, a total area of 22.13 acres, with the owners/developers of record being Crossroads Truck Center, Hi-Noon, Inc., William J. Nooney, President, and Dave Campbell. The Commissioners also signed a Subdivision Improvements Agreement and Guarantee for improvements which remain to be completed (installation of streets, landscaping and watering systems, paving of streets, and engineering services), at an estimated cost of \$96,000.00, to be completed no later than two years from the date of final plat approval, secured by a letter of credit issued to Missoula County by First Interstate Bank of Commerce, Missoula, in the amount of \$96,000.00.

Resolution No. 94-103 -- The Board of County Commissioners signed Resolution No. 94-103, a budget amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopted it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
2271-620-444806-111 Permanent Salaries	\$ 7,240
-141 Fringe Benefits	1,816
-206 Office Supplies	444
-214 Computer Supplies	500
-311 Printing	600
-314 Ads, Legal Publications	900
	\$11,500

<u>Description of Revenue</u>	<u>Revenue</u>
2271-620-331004 Children Immunization Project	\$11,500

DHES Contract No. 350151, Federal Catalog No. 93.268.

Resolution No. 94-104 -- The Board of County Commissioners signed Resolution No. 94-104, a budget amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopted it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
Various Accounts (as listed on the attachment to the original Resolution on file)	\$37,500

<u>Description of Revenue</u>	<u>Revenue</u>
2270-613-331137 Community Food & Nutrition Prog.	\$37,500

Department of Health and Human Services Grant No. 90EN0128/01, Federal Catalog No. 93.571.

Addendum to Agreement -- The Board of County Commissioners signed Addendum No. 1 to the Agreement for Professional Engineering Services, dated 7-07-93, between Missoula County and Druyvestein, Johnson and Anderson, amending the Agreement as follows:

Provide additional engineering coordination and inspection services to complete the Linda Vista (3rd Supplement) sewer project - RSID No. 8452, with an estimated cost of \$6,000.00.

The Addendum was returned to John DeVore, Administrative Officer, for further handling.

Addendum to Agreement -- The Board of County Commissioners signed Addendum No. 1 to the Agreement for Professional Engineering Services, dated 9-13-93, between Missoula County and Druyvestein, Johnson and Anderson, amending the Agreement as follows:

Provide additional engineering coordination and inspection services to complete the Linda Vista (3rd Supplement) sewer project - RSID No. 8453, with an estimated cost of \$14,000.00.

The Addendum was returned to John DeVore, Administrative Officer, for further handling.

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



**TUESDAY, OCTOBER 25, 1994**

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

**DAILY ADMINISTRATIVE MEETING**

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

Resolution No. 94-105 - The Board of County Commissioners signed Resolution No. 94-105, whereby the County accepts a donation from William Nooney of real property described as Portion A, W 1/2 NE 1/4, Section 34, T. 14 N., R. 20 W., PMM, COS 2059, which is located in the airport influence area and is of particular value to the County because it is adjacent to the law enforcement training area.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and Local Unit No. Two (Nurses) of the Montana Public Employees Association for the purpose of collective bargaining with respect to rates of pay, hours and other conditions of employment for the period from July 1, 1994, through June 30, 1996. The Agreement was returned to John Pemberton, Director of Personnel and Labor Relations, for further handling.

Other items included:

The Commissioners voted to apply to the State Department of Commerce, Building Codes Division, to be the agency which administers the building permitting program for Missoula County.

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

**WEDNESDAY, OCTOBER 26, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. In the forenoon, the Commissioners participated in a Work Session on Subdivision Revisions (Fire Standards and Travel Corridors).

**DAILY ADMINISTRATIVE MEETING**

At the daily administrative meeting held in the forenoon, the following item was considered:

The Commissioners reviewed and approved the review of the Motor Vehicle Department for fiscal years 1993 and 1994, as submitted by the County Auditor's Office. The Audit was forwarded to the Clerk & Recorder's office for filing.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present was Commissioner Barbara Evans.

**CONSIDERATION OF: HARRINGTON SUBDIVISION -- SUMMARY PLAT**

Ron Ewart, Office of Community Development, explained that Harrington Subdivision is a proposed 2-lot division of a 4.6-acre parcel located south of Third Street, 1.5 miles west of Reserve Street. The subject property is legally described as Lot 40 of Dinsmore's Orchard Homes Addition No. 5, in Section 24, Township 13 North, Range 20 West. Proposed Lot A is vacant and proposed to be one acre in size. Lot B is proposed at 3.6 acres and currently contains an existing single family home, accessory buildings, a well and an individual septic system.

The property is zoned CRR-1, which allows a maximum residential density of up to one unit per acre. The Missoula Urban Comprehensive Plan, 1990 Update, recommends a density of up to two dwelling units per acre. The development narrative in the submittal states that Lot 40 presently has a single family home with a garage, barn, and outbuildings. The bulk of the lot is a horse pasture. The owners, Pin and Ann Larson, wish to sell one acre of land to their daughter and son-in-law so they can build a new home to live in. No plans for future splits are proposed.

The developer requested a variance to Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions. The developer states that South Third West is a rural type road and has no sidewalks. This two-lot split does not warrant a pedestrian walkway system. Staff recommends approval of the variance request for the reasons stated.

The Office of Community Development staff recommended approval of the summary plat of Harrington Subdivision, subject to compliance with the following conditions:

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor. *Section 3-2 and 3-4, Missoula County Subdivision Regulations*
2. All new driveways shall be paved. *Health Department Regulation, paving requirements in the Air Stagnation Zone, paragraph 7 Rule 1401, and comments of the City/County Health Department.*
3. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:

"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." *Section 3-5 and 3-6.*

4. The following statement shall be shown on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner(s) to waive the right to protest an SID/RSID for the purpose of financing the design and construction of a public sewer benefiting said property, and may be used in lieu of their signature(s) on a SID/RSID petition. This deed restriction is granted to the County of Missoula in exchange for permission to discharge sewage into the ground until such time that public sewer is installed." *Health Department rules for WWTPSA (Waste Water Treatment Plant Service Area), and comments of the City/County Health Department.*

5. A STEP system shall be installed on Lot A, according to Health Department regulations, and a STEP service line dry laid on the lot to 3rd Avenue. *Property is in WWTPSA and STEP sewer area, and comments of the City/County Health Department.*
6. A fee of \$50 per lot shall be paid into the large diameter hose fund of the Missoula Rural Fire District. *Requirement of the Missoula Rural Fire District.*

Tim Wolfe, Territorial Engineering & Surveying, representing Ann and Pin Larson, the owners of the property, said they had no problem with the staff's recommendations.

A discussion ensued relative to the waiver of protest of annexation to the City of Missoula after hookup to City sewer.

Colleen Dowdall, Deputy County Attorney, said the Health Department recently passed new regulations requiring new subdivisions located in the Waste Water Treatment Service Plan Area to sign a waiver of the right to protest an RSID for the purpose of financing the design and construction of a public sewer. If a new home is located in this area, but is not planned to hook up to sanitary sewer, in order to have the sanitary restrictions lifted, they must have the waiver listed on the face of the plat. In order to hook up to City sewer, the lot owners must also sign a waiver of protest to annexation.

Michael Sehestedt, Deputy County Attorney, explained that once sewer is installed, health regulations require that the property hook up to sewer. The City will not allow the property to hook up to their sewer system without the waiver of the right to protest annexation to the City. He said until such time there is sewer in the ground where it will serve the property, it will not have any impact on the ability to protest annexation.

Barbara Evans asked about the staff's recommendation to dry-lay sewer. She stated she thought that until there were specific requirements for drylaying sewer, the Commissioners would not require sewer to be drylaid.

Michael Sehestedt said in this area, the City has established some specifications for sewer. In many areas, the planning for infrastructure has not preceded to the point where the specific location of the sewer lines is known. However, in this area, the sewer plan has been completed to this stage.

A discussion ensued relative to the staff's recommendation to drylay sewer to Third Street. The developer's representative did not object to drylaying sewer.

Colleen Dowdall said she thought it was clear that drylaying sewer line was not required and was not necessarily a good idea.

Michael Sehestedt recommended that the Commissioners strike this requirement.

Barbara Evans moved and Fern Hart seconded the motion to approve the variance request to Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions. The motion carried on a vote of 2-0.

Barbara Evans moved and Fern Hart seconded the motion to approve the summary plat of Harrington Subdivision, subject to compliance with the following conditions as amended:

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor.
2. All new driveways shall be paved.
3. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:

"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."

4. The following statement shall be shown on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner(s) to waive the right to protest an SID/RSID for the purpose of financing the design and construction of a public sewer benefiting said property, and may be used in lieu of their signature(s) on a SID/RSID petition. This deed restriction is granted to the County of Missoula in exchange for permission to discharge sewage into the ground until such time that public sewer is installed."

5. A STEP system shall be installed on Lot A, according to Health Department regulations, and a STEP service line dry laid on the lot to 3rd Avenue.

6. A fee of \$50 per lot shall be paid into the large diameter hose fund of the Missoula Rural Fire District.

The motion carried on a vote of 2-0.

CONSIDERATION OF: SORREL SPRINGS LOTS 35A & 35B -- SUMMARY PLAT

Ron Ewart, Office of Community Development, explained that the proposal is for a 2-lot division of Lot 35 of Sorrel Springs, located in the Southeast 1/4 of Section 21, Township 15 North, Range 21 West, approximately three miles northeast of Frenchtown. Sorrel Springs was originally platted in 1973 as a 34-lot subdivision with lot sizes of ten acres or greater. Since then, these original lots have been divided. Proposed Lot 35A is vacant and proposed to be 4.96 acres in size. Lot 35B is proposed at 6.32 acres and has an existing single family home and individual septic system. Water service is provided by the Sorrel Springs community water system.

The property is unzoned, and the 1975 Missoula County Comprehensive Plan designation is Rural Low Density, which recommends a density of up to one dwelling unit per ten acres. The Architectural Control Committee of the Sorrel Springs Homeowner Association has reviewed and given their approval of the subdivision.

1) The developer requested a variance to Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions. The developer states that Sorrel Springs Lane, a paved County road, has no sidewalk system. Buckskin Lane is a private gravel road, also without sidewalks. The area is characterized as low density residential and rural in nature. Staff recommended approval of the variance request for the reasons stated.

2) The developer requested a variance to Section 3-2(11)(B)(1) which states that access to the nearest publicly maintained paved road shall meet the paving standards of Section 3-2 for off-site access roads less than 500 feet in length. Section 3-2(1)(G) states that the governing body may grant a variance to the paving requirement if in that body's opinion the variance appears warranted. The subdivision is located east of and adjacent to Sorrel Springs Lane, and fronts to Buckskin Lane on the north. Buckskin Lane is gravel to 16-18 feet in width; it is a private road serving approximately 10 lots, and is therefore subject to County road standards. The developer states that the area is of low density (5 to 10-acre lots) and the effects of this subdivision will create only one new residence on the road. The driveway to the new residence will access Buckskin Lane less than 500 feet to the paved County road and will therefore have little effect on usage of Buckskin Road. Staff recommended approval of the variance request, if 1) the below request regarding gravel road standards and the attached condition are approved, and 2) the waiver statement for improvements to Buckskin Road is included on the plat as recommended by the County Surveyor.

3) The developer requested a variance to Section 3-2(1)(G)(1) which states that all unpaved roads shall meet County gravel road standards. Gravel road standards shall be the same as paved road standards with the omission of the asphalt or concrete surface. This requirement would therefore mandate the road be graveled to 24 feet in width. The right-of-way width shall also be the regulation 60 feet in width. Buckskin Lane is a private road, serving approximately ten lots. The existing right-of-way width for Buckskin Lane is 60 feet, meeting regulation, however the gravel road width is only approximately 18 feet. The developer states that the 24-foot width requirement is excessive for this two-lot subdivision, and the two lots access Buckskin Lane near Sorrel Springs Lane, which is paved to the regulation 24-foot width. Staff recognizes that the widening requirement to 24 feet may be economically difficult for these two lots to accomplish, however the Uniform Fire Code requires a minimum of 20 feet clear access. Staff recommended approval of the variance request, if the developer widens and graveles Buckskin Road to 20 feet to a point past the driveway entrance to Lot 35B.

The Office of Community Development staff recommended approval of the summary plat of Sorrel Springs, Lots 35A and 35B, subject to compliance with the following conditions:

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor. *Section 3-2 and 3-4, Missoula County Subdivision Regulations*
2. Buckskin Lane shall be widened and graveled with a minimum of four inches of 3/4" minus gravel surfacing to a point past the driveway entrance to Lot 35B, subject to approval of the County Surveyor. This shall be accomplished prior to filing of the final plat, or shall be included in a public improvements guarantee. *Condition of variance approval to Section 3-2(1)(G)(1).*
3. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:

"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." *Section 3-5 and 3-6.*

4. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner(s) to waive the right to protest a future RSID for any improvements to Buckskin Lane and may be used in lieu of their signatures on an RSID petition." *Section 3-2(11)(C)(2), and comments of the County Surveyor.*

5. The face of the plat shall show the location of Roman Creek with a 50-foot no-build/no excavation zone on either side of the high water mark. *Section 3-13.*
6. Lot 35A shall access to Buckskin Lane, and the approach permit shall be approved by the County Surveyor prior to construction. *Section 3-2(10)(A).*
7. At the intersection of Buckskin Lane and Sorrel Springs Lane the developer shall install street signs with the names of the streets, (green and white sign for public street, black and white for private street). A regulation stop sign shall also be installed. These improvements shall be subject to approval of the County Surveyor and accomplished prior to filing of the final plat, or contained within a public improvements guarantee. *Section 3-2(2)(F).*

8. The following statement shall be shown on the face of the final plat and in all instruments 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-owner's 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." *Section 5-2(5)(C).*

Scott Hollenbeck, Properties 2000, representing the owners, stated they agreed with the conditions as recommended by the OCD staff. He wondered what they needed to do relative to the public improvements guarantee because they did not want to have to dig it up again when they put the water line through.

Horace Brown, County Surveyor, said Buckskin Lane is to remain a private road and is paved for approximately 20 feet off Sorrell Springs Road. He said this is a private road and it is up to the Commissioners whether they want to require a public improvements guarantee. The County does not maintain the road because it is private.

Fern Hart said the road must be widened two feet due to fire standards.

Scott Hollenbeck said this may have already been done. The homeowners association was blading the road either yesterday or today.

Ron Ewart said the County Road Standards call for gravel.

Horace Brown said the standards also call for 24 feet in width. However, this is a private road. The road did not have to comply with County Road Standards unless they want it to become a public road. An RSID cannot be initiated on this road because it does not have a dedicated public right-of-way.

Scott Hollenbeck said they would like to put in the road improvements in the spring. It will cost approximately \$2,600 to widen the road.

Colleen Dowdall said the County cannot require a public improvements guarantee because the road is not a public roadway; it is a private road. The County cannot require that the improvements be done and inspected prior to the filing of the plat because the regulations give the County only the right to approve the plans. She suggested that the language on Condition #8 be changed to state, "the purchaser and/or owner of the lot or parcel understands and agrees that the private road construction has not been inspected by the County and maintenance and snow removal shall be the obligation of the owner or the property owner's association."

A discussion ensued relative to the question of whether the County could require the initiation of a dust abatement district on a private road. The County cannot require anything on private roads.

Barbara Evans wondered if more of the riparian regulations should apply to this subdivision?

Colleen Dowdall said no. The standards deal with roads in riparian areas.

A discussion followed relative to the width of the road. The road should be 20 feet in width to meet uniform fire code regulations. However, the road could be 18 feet in width with one foot of clearance on each side of the road.

Scott Waldron, Frenchtown Rural Fire Chief, said the road does not have a lot of brush on either side of the road.

Fern Hart suggested the road have a 20 foot clearance.

Scott Hollenbeck said the developers are prepared to improve the road in this manner. He referred to Condition #2 and wondered if the Commissioners could deal with the requirement of the public services guarantee.

Colleen Dowdall suggested that the language in Condition #2 be amended to state, "Buckskin Lane shall be widened to 20 feet and graveled with a minimum of four inches of 3/4" minus gravel surfacing to a point past the driveway entrance to Lot 35B subject to approval of the plans by the County Surveyor. ~~This shall be accomplished prior to filing of the final plat, or shall be included in a public improvements guarantee.~~

Horace Brown stated that he will be approving the plans before the road is built. Usually, the Surveyor's Office does not approve the plans until the developers are ready to build the road. The road needs to be widened and brought to County specifications. The plan can be approved this year, but the road will not be built until next year.

Michael Sehestedt said the staff has dealt with every possible contingency. The developer's plans will be reviewed by the Surveyor; the County does not have control over the private road and Condition #8 has been amended to address this clearly; Condition #8 requires language to be placed on the face of the plat which states that the construction of the roadway will be the responsibility of the homeowners association and will not be inspected or approved by the County.

Barbara Evans moved and Fern Hart seconded the motion to approve the variance to Section 3-2(5)(A) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions. The motion carried on a vote of 2-0.

Barbara Evans moved and Fern Hart seconded the motion to approve the variance to Section 3-2(11)(B)(1) which states that access to the nearest publicly maintained paved road shall meet the paving standards of Section 3-2 for off-site access roads less than 500 feet in length. The motion carried on a vote of 2-0.

Barbara Evans moved and Fern Hart seconded the motion to approve the variance to Section 3-2(1)(G)(1) which states that all unpaved roads shall meet County gravel road standards. The motion carried on a vote of 2-0.

Barbara Evans moved and Fern Hart seconded the motion to approve the summary plat of Sorrel Springs, Lots 35A and 35B, subject to compliance with the following amended conditions:

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor.
2. Buckskin Lane shall be widened to 20 feet and graveled with a minimum of four inches of 3/4" minus gravel surfacing to a point past the driveway entrance to Lot 35B, subject to approval of the plans by the County Surveyor. ~~This shall be accomplished prior to filing of the final plat, or shall be included in a public improvements guarantee.~~
3. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:  
  
"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."
4. The following statement shall appear on the face of the final plat and in all instruments of conveyance:  
  
"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner(s) to waive the right to protest a future RSID for any improvements to Buckskin Lane and may be used in lieu of their signatures on an RSID petition."
5. The face of the plat shall show the location of Roman Creek with a 50-foot no-build/ no excavation zone on either side of the high water mark.
6. Lot 35A shall access to Buckskin Lane, and the approach permit shall be approved by the County Surveyor prior to construction.
7. At the intersection of Buckskin Lane and Sorrel Springs Lane the developer shall install street signs with the names of the streets, (green and white sign for public street, black and white for private street). A regulation stop sign shall also be installed. These improvements shall be subject to approval of the County Surveyor and accomplished prior to filing of the final plat, or contained within a public improvements guarantee.
8. The following statement shall be shown on the face of the final plat and in all instruments of conveyance:  
  
"The purchaser and/or owner of the lot or parcel understands and agrees that private road construction has not been inspected by the County, and that maintenance and snow removal shall be the obligation of the owner or property-owner's 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."

The motion carried on a vote of 2-0.

#### HEARING: 1421 EATON -- PRELIMINARY PLAT

Ron Ewart, Office of Community Development, explained that 1421 Eaton is a proposed 37-unit multi-family residential subdivision on 2.35 acres, located on the west side of Eaton Street north of Mount Avenue and adjacent to Pope John XXIII Church. The property is legally described as a portion of Lot 13 of Cobban and Dinsmore Orchard Homes in Section 29, Township 13 North, Range 19 West, Missoula County. Existing on the property at this time are two single family homes and accessory buildings. All structures will be removed except for the northernmost single family home. A community center and nine buildings containing four residential units each of one, two, or three bedrooms will be constructed. Elevations and floor plans for each type of building are included in the submittal. Two

lots will be created; Lot 2 is to be 5500 square feet in area and contains the single family home that is to remain. Lot 1 will include the remainder of the property and proposed structures. All of Lot 1 will remain in common ownership as common space, and the individual housing units will be marketed as condominiums. The project will connect to Mountain Water and City of Missoula sewer, and is planned for annexation into the City in December, 1994. The development will access to Eaton Street at two locations; Eaton Street is currently paved to 24 feet.

The overall residential density for this project is proposed at 15.75 units per acre. The property and the surrounding area is zoned CR-2, which allows a maximum residential density of up to sixteen dwelling units per acre. Multiple family dwellings less than 36 feet in height are allowed in the CR-2 as a Conditional Use. The Missoula Urban Comprehensive Plan, 1990 Update, shows the area to be within the Urban Service Area while the 1975 Missoula Comprehensive Plan recommends a density of up to six units per acre. The 1980 Reserve Street Area Plan recommends a density of up to ten units per acre for this area.

The surrounding properties consist mainly of single family residential units, although there are fourplexes to the south of the church adjacent to this site. Mini-storage units and an auto repair shop are located along Eaton Street near the proposed development. The land adjacent to the west is currently vacant. There is somewhat of a mix of densities and uses, and this project is of a higher density than other developments or properties in this area. The developers are planning the site in a manner to help "meet the need for quality affordable housing in the Missoula community." Economies of scale that reduce overall building costs can result from increased density and this can be an important approach in trying to achieve housing that is actually affordable to most people in the community. Elements of design to help mitigate neighborhood concerns about increased density are also important considerations. Architectural elevations and floor plans are provided in the submittal; the design philosophy is to create homes with the appearance of Missoula's older neighborhoods and historic architectural elements. These plans are commendable and are considered a part of this approval although the site plan is more of a standardized multi-family development.

The developer requested a variance to Section 3-2(3) which states that the standards for an urban-suburban subdivision on a local street of 51-200 dwelling units call for a street width 40 feet from face to face of curb. Eaton Street is currently paved to 24 feet with no curb, gutter or sidewalk. The developer proposes that the lot owners waive the right to protest a future SID/RSID for any improvements to Eaton Street. Staff recommends approval of the variance request, provided that the waiver statement is included on the plat and a sidewalk is installed as per the recommended condition.

On October 4, 1994 the Missoula Consolidated Planning Board voted 7 to 0 to recommend approval of the Preliminary Plat of 1421 Eaton. The conditions as recommended by the Planning Board to the Board of County Commissioners, followed by the original staff report and conditions as were recommended by staff to the Planning Board. Attached are the Planning Board minutes of October 4 that pertain to this proposal.

ORIGINAL PROPOSAL: 36 condominium units in 9 buildings on Lot 1, and existing single family home to remain on Lot 2. Connect to sewer and water, provide 4-foot boulevard sidewalk and protest waiver for improvements to Eaton St.

STAFF RECOMMENDATION: Approve with conditions, submit a landscape plan, add a pedestrian easement along the west line, construct a 5-foot boulevard sidewalk.

PLANNING BOARD RECOMMENDATION: Approve as recommended, with changes. Take out the 10-foot easement along the west line, boulevard sidewalk to be 4 feet as proposed by the developer.

THINGS ALL AGREE UPON: Streets and sidewalk, building placement and design philosophy, Preliminary Plat proposal, compliance with zoning.

THINGS LEFT TO BE RESOLVED: Staff agrees with, or has no problem with, the changes made by Planning Board except that the boulevard sidewalk should be 5 feet as opposed to feet. (Normally, curbside walks are 4 feet, boulevard walks are 5 feet.)

The Missoula Consolidated Planning Board recommended approval of the following variance request:

The developer requested a variance to Section 3-2(3) which states that the standards for an urban-suburban subdivision on a local street of 51-200 dwelling units call for a street width 40 feet from face to face of curb. Eaton Street is currently paved to 24 feet with no curb, gutter or sidewalk. The developer proposes that the lot owners waive the right to protest a future SID/RSID for any improvements to Eaton Street. The Planning Board recommended approval of the variance request, provided that the waiver statement is included on the plat and a sidewalk is installed as per the below recommended conditions.

The Missoula Consolidated Planning Board recommended the preliminary plat of 1421 Eaton be approved, subject to the following conditions:

1. Plans for grading, drainage, streets, driveways, and sidewalks shall be approved by the County Surveyor. *Section 3-2, 3-4.*
2. The developer shall file Property Owner's Association Articles of Incorporation and, By-Laws, with proof of filing with the Secretary of State. The Articles of Incorporation, By-Laws, and Covenants shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana, that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict. *Section 5-2(4)(E).*
3. The following statement shall appear on the face of the plat and in all instruments of conveyance:

"Acceptance of a deed for a lot or unit within this development shall constitute assent of the lot owner to waive the right to protest a SID/RSID for street widening, curbs, and gutters to Eaton Street, based on benefit, and may be used in lieu of their signatures on a SID/RSID petition." *Comments of the County Surveyor, and condition of approval for variance to Section 3-2(3).*

4. Curbs and gutters shall be designed as part of an over all subdivision grading and drainage plan, to be approved by the County Surveyor. *Section 3-2(4)(A).*
5. The fire hydrant location(s) and turnaround/access provisions shall be approved by the Rural Fire Marshal. *Public health and safety, and comments of the City Fire Chief and Rural Fire.*
6. A landscape plan which conforms to Section 3.05 of the Missoula County Zoning Resolution, and the submitted landscape plan (Exhibit A) with the addition of 5-foot horizontal landscaped visual buffer along the north and south property lines, shall be approved by the zoning officer prior to filing of the final plat. *Section 3.05, Missoula County Zoning Resolution.*
7. The Missoula City-County Health Department shall approve the storm drainage plans. These plans shall be submitted to the Water Quality Board for Comment. *The District recommends grassed infiltration swales.*
8. A four-foot boulevard sidewalk shall be constructed east of and adjacent to the east property line that connects to both driveway accesses to Eaton Street. *Section 3-2(5)(A).*
9. The final plat shall show a sidewalk to be constructed along the north side, or north of, the southernmost parking lot that connects to the proposed walkway system. *Section 3-2(5), and comments of Mountain Line.*
10. A Conditional Use permit for this proposal shall be approved by the Office of Community Development.

The hearing was opened to public comment.

Patty Kent, Director of Housing and Development, Western Montana Mental Health Center, said the Mental Health Center is the parent organization of the applicant, the Garden City Community Housing Development Organization. She stated they concurred with the Planning Board's recommendations with one minor exception.

She explained that 1421 Eaton Street has come about as a direct result of the Missoula Housing Task Force planning and also as a direct result of the dire need for affordable housing in Missoula. The clients of the Mental Health Center have been particularly affected by the need for affordable housing because they are squeezed out by many working individuals and students and are unable to compete on many different levels. The Mental Health Center has responded by coming up with three different types of housing programs: 1) utilizing the Rental Assistance Program provided through Section 8 and the Shelter Plus Care, which are federal programs; 2) designing a program with the State Board of Housing to purchase rental units that will be available to the mentally ill on a long-term basis; and 3) designing a home ownership program which is culminated in this project. Home ownership is the only way to successfully integrate the mentally ill into the community on a long-term basis and promote their well-being and stability. She said they thought that 36 units was a bit more than the Mental Health Center wanted to take on at one time and looked to the Missoula Housing Authority to work with them on this project. This project will be integrated and will provide 9 home ownership units to the mentally ill at 22% of median income (between \$5-12,000 per year; 27 units will be available for purchase for working families, individuals and seniors earning between 50-80% median income (\$12-28,000). In order to achieve affordability for these families at this level of income, they have applied for over \$1 million in grants for this project to help underwrite the cost and allow it to deliver the finished project at a price that these families can afford. In other words, the bank will be looking for an income-to-debt ratio of approximately 30%. In order to allow them to take the best advantage of this, they worked with the State Board of Housing to have low interest financing available as well. They have a \$1.5 million in commitment set aside for this project at 2 3/4% for the mentally ill and 6 7/8% permanent mortgage financing for the 27 home ownership units. She stated the home ownership aspect of this project will make the biggest difference. If a person doesn't own anything, they won't care that much for what is around them. Those people who have worked hard for something will take pride in what they own.

She referred to Condition #6 which required a landscaping plan that conforms to Section 3.05. She stated they did not have a problem with this requirement. However, staff added the addition of a five foot horizontal landscape visual buffer along the north and south property lines. The zoning ordinance and conditional use permit, which has been approved, requires buffering those properties which are an existing residential use which exists only on the north side of this property. A church lies to the south. When the church was approved, visual screening was not required. The intent of the ordinance is to screen the neighboring properties to any adverse visual impact. The church agreed with the proposed use and supported the project. She requested that they not be required to provide that additional buffer along the south side of the property.

She stated they did not have a problem with the staff's suggestion that they go with a five foot boulevard sidewalk along Eaton. However, she suggested that this be left up to Public Works who will make the decision on the sidewalk.

James Hoffman, architect representing the Mental Health Center and the Housing Authority for site planning and architectural design and development of this project, said their design goals from the start were to create something that does not look like a low income project and that will invest the residents with a sense of regard and respect for their place of residence. This project will look like an older, established neighborhood and this will be a quality addition to the surrounding neighborhoods. He said they have tried to look at the older neighborhoods in Missoula that have a sense of quality and that add value to the City. This type of design is appropriate as it is an older neighborhood. This project will be a place for people, not a parking lot. The boulevard will not be used for parking. The parking will be away from the street. The construction of this property is market rate; there are no sub-standard materials or shortcuts that will be used. The grants will subsidize the cost of the project.



Ed Mayor, Missoula Housing Authority, said over the last three years the two agencies have worked together for the community to look at housing demands and housing dynamics. This project is the culmination of these efforts. He said in the last few years, it has been difficult to find property that is appropriately zoned and close to services and infrastructure. This parcel of land is one of the very few that meets the criteria. He emphasized the urgency in meeting the housing demands in Missoula. The waiting list at the Housing Authority continues to grow; there are 1,400 families on their waiting list. He encouraged the Commissioners' positive consideration.

Don Stinger, 245 North Davis, representing the Neighborhood Network, stated that he could not protest the project because the project fit in with County zoning. The Planning and Zoning Commission is considering lowering the density when it is annexed into the City.

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

Barbara Evans asked about the sidewalk issue. The Planning Board recommended four feet of sidewalk, but the staff recommended five feet.

Patty Kent said it was her understanding that Public Works makes the decision on the sidewalks. She stated they didn't have any concern as to whether the sidewalk was four or five feet; they will work with Public Works.

Fern Hart asked about the visual buffer for the north and south sides of the project.

Ron Ewart said the zoning regulations require that multi-family developments have a five foot wide landscape buffer between the multi-family use and the adjacent use.

A discussion ensued relative to the visual buffer. The buffer is part of the conditional use permit that must be issued by the Office of Community Development. The developers are being asked to buffer both the northern and the southern boundaries of the property. The developers questioned the recommendation by OCD to buffer the southern boundary. The conditional use permit has been approved and does not require buffering along the southern property line.

Ron Ewart stated if the conditional use permit has been issued, then this issue has been accounted for. He recommended that Condition #6 be deleted.

Colleen Dowdall said Condition #6 requiring buffering on the southern property line could be deleted. It is not required under the conditional use permit.

Barbara Evans moved and Fern Hart seconded the motion to approve the variance to Section 3-2(3) which states that the standards for an urban-suburban subdivision on a local street of 51-200 dwelling units call for a street width 40 feet from face to face of curb. The motion carried on a vote of 2-0.

Barbara Evans moved and Fern Hart seconded the motion to approve the Preliminary Plat of 1421 Eaton subject to the following amended conditions:

1. Plans for grading, drainage, streets, driveways, and sidewalks shall be approved by the County Surveyor.
2. The developer shall file Property Owner's Association Articles of Incorporation and, By-Laws, with proof of filing with the Secretary of State. The Articles of Incorporation, By-Laws, and Covenants shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana, that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict.
3. The following statement shall appear on the face of the plat and in all instruments of conveyance:  
  
"Acceptance of a deed for a lot or unit within this development shall constitute assent of the lot owner to waive the right to protest a SID/RSID for street widening, curbs, and gutters to Eaton Street, based on benefit, and may be used in lieu of their signatures on a SID/RSID petition."
4. Curbs and gutters shall be designed as part of an over all subdivision grading and drainage plan, to be approved by the County Surveyor.
5. The fire hydrant location(s) and turnaround/access provisions shall be approved by the Rural Fire Marshal.
6. ~~A landscape plan which conforms to Section 3.05 of the Missoula County Zoning Resolution, and the submitted landscape plan (Exhibit A) with the addition of 5-foot horizontal landscaped visual buffer along the north and south property lines, shall be approved by the zoning officer prior to filing of the final plat.~~
7. The Missoula City-County Health Department shall approve the storm drainage plans. These plans shall be submitted to the Water Quality Board for Comment.
8. A four-foot boulevard sidewalk shall be constructed east of and adjacent to the east property line that connects to both driveway accesses to Eaton Street.
9. The final plat shall show a sidewalk to be constructed along the north side, or north of, the southernmost parking lot that connects to the proposed walkway system.

10. A Conditional Use permit for this proposal shall be approved by the Office of Community Development

The motion carried on a vote of 2-0.

HEARING: MAHLUM'S RV PARK -- PRELIMINARY PLAT

Ron Ewart, Office of Community Development, explained that Mahlum's Jellystone Recreational Vehicle Camp Resort is a proposed 210-space RV park located approximately 1/2 mile northwest of the Wye and 800 feet west of Highway 93. The property is legally described as Tract B, Certificate of Survey #2045 in Section 29, Township 14 North, Range 20 West, Missoula County. Approximately 18 acres within the 40.55-acre parcel is planned to be developed in two phases as RV spaces, streets, and service/recreation area. The remainder of the parcel is to be left as open space. Phase I is to be completed by June of 1995, and if the economic outlook is feasible then Phase II would be completed by June 1996. The submittal states that the Mahlum family owns or is contracting to own approximately 90 acres in the immediate and contiguous area and the only plans for their holdings as of this date are to build the RV Park. The water system will be a multi-family system served by two wells and pressurized by a hydromatic tank. Sewer will be provided by a land application lagoon system with irrigation of stabilized effluent on a 20-acre alfalfa field across that Mr. Mahlum owns immediately to the north of this project. The park will be operated seasonally, and a 134 x 60-foot manager's mobile home lot is planned in the northwest corner of the development, for use only during the RV season.

The property is unzoned and the 1975 Missoula County Comprehensive Plan is Open and Resource, encourages the development of agricultural, recreational, and forestry activities with their usual associated uses. The property is also located within the Wye/O'Keefe Creek Area Plan where a designation of commercial and school/park is shown. Located across Highway 93 to the northeast is Jim & Mary's RV Park. A letter from Mr. Mahlum describes the need for more RV Parks in the Missoula area. The Wye, located approximately 1/2 mile to the southeast, is a growing transportation/commercial facilities hub. This proposal, therefore, is found to be in compliance with the Comprehensive Plans.

As shown on the preliminary plat, the park is to be located northwest of two hillsides so as to partially screen the development from views along Highway 93. The design specifications for construction, signage, and architecture will be as per those set forth by the franchise, Jellystone Park Camp Resorts, a copy of which is included with the submittal. Section 3-11 of the Missoula County Subdivision Regulations sets forth the standards for RV Parks. The regulation standards have been compared to those in the proposal and are found to be consistent.

The Missoula Consolidated Planning Board recommended that the preliminary plat of Mahlum's Jellystone Park Recreational Vehicle Camp Resort be approved based on compliance with the following conditions:

1. The water and sewer plans shall be approved by the City/County Health Department and the Montana Department of Health and Environmental Services prior to installation of systems. *Section 4-2(5)(B).*
2. Plans for grading, drainage, and streets shall be approved by the County Surveyor prior to construction. *Section 3-2, 3-4.*
3. The plans for fire protection to include a 2,000 gallon underground water storage tank, and emergency fire vehicle turnaround areas shall be approved by the Frenchtown Fire Chief prior to construction. *Public health and safety, and comments of the Frenchtown Fire Chief.*
4. Approach permits to Highway 93 shall be approved by the State Department of Transportation prior to construction. *Highway 83 is under State jurisdiction.*
5. A 60-foot public access and public utility easement shall be granted through Certificate of Survey 624A to cover Jellystone Avenue. *Section 3-2(3).*
6. The following statement shall appear on the face of the final RV park plans:  
  
"The area of Open Space as designated on these plans shall remain as such in perpetuity as long as the RV park is in existence or otherwise unless approved by the governing body. The open space area may include one single family residence." *Mechanism to ensure open space as shown.*
7. As proposed, the boundary relocation shall take place in order to provide area for the lagoon and buffer prior to construction of the lagoon. *Comments of staff.*
8. Landscaping shall be installed as shown on the plot plan for Phase I within both phases, prior to opening for business. *Section 3-11(3)(G).*
9. The final plans shall show 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 in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever." *Section 3-6.*
10. The following statement shall appear on the final plans:  
  
"The purchaser and/or owner of this parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner and that the County of Missoula is in no way obligated to

perform such maintenance or upkeep until the roads are brought up to County standards and accepted by the County Surveyor." *Section 5-2.*

11. A 16-foot gravel emergency access route with 2 feet of clearance on both sides of the road shall be constructed from the RV park to Waldo Williams Road subject to approval by the Frenchtown Fire Chief. *Second access, for public health and safety.*
12. The campground rules shall be revised so that guests are required not to leave garbage outside overnight, nor leaving pet food outside other than while the pet is eating. *Effects on wildlife.*
13. Utility easements shall be provided interior to the park, and approved by the appropriate utility companies prior to construction. *Section 3-6.*

The hearing was opened to public comment.

Gordon Sorenson, engineer representing the Mahlum family, commented on Condition #3, relative to fire protection. At the time of the Planning Board meeting, Scott Waldron, Frenchtown Fire Chief, required a 2,000 gallon underground storage tank. Since this time, he met with Mr. Waldron who requested the development provide two 3-inch post-type fire hydrants located by the entrance and one in the northern part of the property. This has been provided for in the water plans, as well as a third hydrant because they will have to extend the line to serve the second phase of the project. Mr. Waldron also requested that they provide 250 gallons a minute well capacity. The two wells combined will yield just under 250 gallons a minute.

He referred to Condition #10 relative to the private roads within the proposal. He said the roads will remain in private ownership because the interior roads serve the function of the business. There is no intent of these roads ever becoming County roadways.

He commented that they proposed to irrigate their stabilized effluent from the lagoons in the alfalfa field to the north. However, they have changed their proposal so that the effluent will go to the alfalfa field to the south-west. The total area of irrigation is four acres. The lagoons will be lined. The lagoons are sized for this particular development and they will have to build a second stabilization lagoon when the second phase is built.

Ron Ewart said he received a call from Elmer Frame, owner of the KOA Kampground, who spoke in support of the project. There is a real need for RV Parks in Missoula.

Dale Mahlum said a year ago when they sold their family business, they tried to think of ways to invest in a business that would benefit Missoula. They found that an RV park could potentially benefit Missoula. Ten years ago there were 260 RV spaces; currently, there are 260 spaces. The proposed location is located between two hills, so the neighbors won't see the park. They looked at franchising because they show how to get into the business and how to do it well. They chose Jellystone, which is the second largest RV park franchise in the United States. The franchise is designed for family campers. Jim and Mary's RV Park across the road from the proposed park is for adults only. He said they will strive to make the park one of the best. This park will be good for Missoula as it will stop much of the RV traffic that goes by.

He said they purchased two parcels of land for the project: one 40-acre parcel and one 20-acre parcel. The 20 acre parcel was to be used for the effluent. However, this will not work very well. They purchased another 6-acre parcel across from the Livestock Auction. The effluent will be placed in this location where no one will be affected by it.

Roger Hobbs, adjacent landowner, supported the project. It will be a real benefit to the community.

Grif Davies, adjacent landowner to the south and to the east, supported the project and thought it was a good blend between the commercial and the residential uses in the area.

Larry Johnson, previous owner of the 20 acres sold to the Mahlum family, said the proposed RV park is the best use of this land. He owns land adjacent to the project and will be the most exposed neighbor. He said there will not be a problem with pollution, emergency services, over-crowding the schools, or the surrounding neighbors. The Mahlums will provide a project that will be an asset to the community.

Tom Mahlum, Dale Mahlum's son, read a letter from Tom Bauer, an adjacent property owner, who supported the project.

Jeanette Manly, property owner to the north of the proposal, spoke in favor of the RV park. The 20 acre parcel which was previously proposed for the effluent, is adjacent to their land. She said Mr. Mahlum has agreed not to spread the effluent on this ground, but has purchased six acres for this purpose. This has not yet been memorialized in writing. She said there have been problems in the past marketing properties adjacent to effluent systems. The property values also tend to be cut in half if the property is residential.

Dale Mahlum said Jeanette Manly brought him a letter which she wanted signed relative to the agreement not to place to the effluent system on the 20 acres adjacent to their property. However, he could not see his attorney in that short a time period. However, they have purchased the 6 acre parcel and plan to place the effluent on this parcel. He said his word was good: he will not put effluent on this 20 acre parcel.

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

Barbara Evans said the El Mar Estates land application system has been in use for approximately 16 years. She stated in all those years, she has not had one complaint. She said this type of system is one of the best in existence and will

protect the rivers and the aquifer. She stated there is a shortage of RV parks as well as quite a diversity in quality of parks around the nation. This proposal will be beneficial to Missoula.

Fern Hart said Land Application Systems have less effect and will not pollute the aquifer. This system also allows for open space.

Ron Ewart addressed Condition #3 referring to underground water storage and suggested that the condition be amended to delete the requirement for a 2,000 gallon underground water storage tank. The developers propose to install three fire hydrants.

Barbara Evans moved and Fern Hart seconded the motion to approve the preliminary plat of Mahlum's Jellystone Park Recreational Vehicle Camp Resort based on compliance with the following amended conditions:

1. The water and sewer plans shall be approved by the City/County Health Department and the Montana Department of Health and Environmental Services prior to installation of systems.
2. Plans for grading, drainage, and streets shall be approved by the County Surveyor prior to construction.
3. The plans for fire protection will include three 3-inch type post type fire hydrants ~~to include a 2,000 gallon underground water storage tank,~~ and emergency fire vehicle turnaround areas shall be approved by the Frenchtown Fire Chief prior to construction.
4. Approach permits to Highway 93 shall be approved by the State Department of Transportation prior to construction.
5. A 60-foot public access and public utility easement shall be granted through Certificate of Survey 624A to cover Jellystone Avenue.
6. The following statement shall appear on the face of the final RV park plans:  
"The area of Open Space as designated on these plans shall remain as such in perpetuity as long as the RV park is in existence or otherwise unless approved by the governing body. The open space area may include one single family residence."
7. As proposed, the boundary relocation shall take place in order to provide area for the lagoon and buffer prior to construction of the lagoon.
8. Landscaping shall be installed as shown on the plot plan for Phase I within both phases, prior to opening for business.
9. The final plans shall show 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 in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."
10. The following statement shall appear on the final plans:  
"The purchaser and/or owner of this parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to County standards and accepted by the County Surveyor."
11. A 16-foot gravel emergency access route with 2 feet of clearance on both sides of the road shall be constructed from the RV park to Waldo Williams Road subject to approval by the Frenchtown Fire Chief.
12. The campground rules shall be revised so that guests are required not to leave garbage outside overnight, nor leaving pet food outside other than while the pet is eating.
13. Utility easements shall be provided interior to the park, and approved by the appropriate utility companies prior to construction.

The motion carried on a vote of 2-0.

#### HEARING: BUILDING HEIGHT REVIEW -- CLARIFYING THE DEFINITION OF BUILDING HEIGHT AND THE METHOD OF MEASUREMENT

Philip Maechling, Planner at the Office of Community Development, said this is a request from OCD to amend the building height definition in the County Zoning Resolution. The principle goal of this amendment is to have a uniform building height measurement method in the County and the City of Missoula and to have a building height measurement that takes into account the entire site, all the way around the building. He read the County's building height definition: "The vertical distance from the average elevation of a proposed finished grade at the front of a building to the highest point of a flat roof, the deck line of a mansard roof, or the mean height between eaves to the ridge for hip gable and gambel roofs." There is no mention of anything other than the front of the building which

would be typically the street side. In the City of Missoula, the height of a building means the vertical distance from the lowest ground elevation adjacent to the building to the highest point of the building. The County definition does not talk about the downhill measurement, but only the street side measurement. The net result of this is there are all kinds of building heights approved through some method of measurement consistent with the letter of the method of measuring, but there are 45 foot tall buildings that have a nominal measurement of less than 30 feet. This does not meet the intent of the various neighborhoods nor does it provide any kind of uniform method for looking at this.

He said in trying to make the building height regulations simpler and clearer, OCD has engaged the Missoula Society of Architects and some members of the building industry to come up with a uniform method or a uniform approach to measuring. The group agrees that there ought to be an absolute method of measurement. He said OCD feels that the method of absolute measurement is the highest point to the lowest point, not taking into account building slopes. He said there ought to be an alternative compliance form of measurement that would take into account specific site considerations such as a sloping site, but would also provide some ability to keep buildings from presenting themselves with a 40 foot high building element when the local zoning says 30 feet.

He said the original recommendation from OCD was to take the highest point to the lowest point using the existing grade which would be a fairly tight restriction for the height of a building. Most of Missoula was built to this standard. This is the simplest method because it is easy to provide finished grade rather than to provide a survey of the grade prior to construction. The Office of Community Development added a second recommendation: an alternative compliance method. This method is the vertical distance measured from the finished grade to a plane that is parallel to this grade. This maximum vertical distance is determined as "H-5 feet", with H being the maximum currently allowed height in the zoning district. This alternative would also 1) take into account adjacent building heights within 150 feet; and 2) setbacks from all setback lines are proposed.

He said the Missoula Society of Architects recommends using existing grade rather than finished grade for the established base point and that the building height be measured from a mid-point on the roof element.

The Planning Board created a hybrid of the two recommendations: the method would measure part way up the roof, then add the manipulated land form. This would allow a 45 foot tall building to be called a 30 foot tall building.

He said they are looking for flexibility in the system for measuring.

The hearing was opened to public comment.

Terre Meinershagen, representing the Missoula Society of Architects, said there has been much concern expressed by citizens who have to live next to structures that fall between the cracks of the current system. The Missoula Society of Architects became involved out of concern for design and to address some specific issues based on their experience. Very few of the homes that are built are designed by architects.

He said there should be two methods of height determination. The definition of height should be the same, but how it is applied should be left up to the applicant. He said the absolute method, the basic, simple method, would be used in 90% or more of the homes. The alternative compliance method will not be used on a flat site, but would be applied on a steeper site with a larger building. There is a need for flexibility in these homes, but control is also needed so they don't get out of hand. He said measurement from the existing grade is important because if a tall building is built and dirt is pushed up against it, it can be made to comply with the regulations; this escapes the intent of the regulation. The impact of the building on the slope would not change even though dirt was pushed against the building.

He said the Missoula Society of Architects proposed that the method of measurement measures to the mid-point of a sloped roof. The intent was not to allow a taller building; but that a flat roofed building may not be as tall as a sloped roofed building because the visual impact of the flat roofed building could be much greater than a sloped roofed building.

The architects' proposal deals with definition and method of determining the height of a building. When someone applies for a building permit, the height of the building is not addressed. It is addressed by zoning district.

He said he would personally prefer the existing grade measurement. However, in terms of implementation, he said he understood the problem this may cause, especially on sites that would require a survey which may be seen as too great a burden by developers. In the long run, he stated grading permits are needed to eliminate the amount of manipulation.

He said they have a problem with what the Missoula Planning Board recommended. He said it is the worst of both methods. The method would allow measurement from a finished grade which would allow manipulation of the site and would allow greater height by allowing measurement from part way up the roof instead of the absolute highest point of the roof. The Planning Board essentially changed the terminology and one phrase from existing grade to finished grade, which will undo everything that the Missoula Society of Architects were trying to accomplish.

He addressed the "H" in the alternative compliance method versus "H-5". He said the Missoula Society of Architects felt that it should be left at "H". H-5 is more restrictive than it needs to be. There are already restrictions in building. If H is at 30 feet, the peak would be lowered to 25 feet. This is not as flexible as it should be. He said most of the buildings will use the absolute method. Therefore, it will not be a burden to make a more complex method of measurement if a developer is trying to gain some advantage on a sloped site.

Jerry Stone, architect, said the Missoula Society of Architects had a concern about making restrictions that were too difficult. At the same time, they were concerned about what happened on the hillside. There may need to be a more complex method of working with hillsides to have well-designed buildings that work on hillsides. This is the reason

two forms of compliance were formulated. The absolute method is easy to understand and is easily complied with. The alternative method is a more complex plan and may require help from a professional. However, if someone builds on a hillside, it would be wise to consult a professional. He said mid-point to the roof is typically the method used across the nation for height ordinances. This makes the building appear lower. It allows buildings with a steeply pitched roof to be taller, but with lower eaves. The Uniform Building Code uses mid-point.

Steve Adler, architect, agreed with Jerry Stone and Terre Meinershagen's comments. He addressed the issue of whether to measure from existing grade or finished grade. The Society of Architects recommended measuring from the existing grade even though it is a little more difficult to enforce. This method tends to keep the building down. He requested that the public be able to review the final combination once the Commissioners make a decision. The Planning Board did not do this and changed language that was very significant.

Jack Nelson, a builder, wondered why the method of measurement was being changed? He said the problem exists because property owners on the downhill side of the hill complain. If this is the case, the people shouldn't have bought property downhill to an adjacent piece of property. He said he preferred measurement to be taken from the mid-point on the roof and from the finished grade. However, he recommended that a requirement be added to require no more than 20 feet without a break in the building. The building could be set back or a balcony could be created at this point. He said these regulations will cause nothing but confusion.

Colleen Dowdall, Deputy County Attorney, said the problem is that what the County is enforcing is not within the regulations. The County is doing something different.

Philip Maechling said the County requires measurement of an average roof to the average grade. The City and County are violating their own codes.

Colleen Dowdall said if the Commissioners chose to adopt the staff's recommendation, it would be an amendment to the definition. However, the architects' recommendation is to amend the definition as well as adding standards for applying the definition. This does not quite fit in the regulations. If the staff's recommendations are adopted, they don't have language that makes it clear as to how each of these methods are applied. The applicant gets to choose the alternative or the absolute. She recommended that the decision be postponed to give the staff time to work on these issues.

Fern Hart said the folks that look into a great wall of windows have a reason to want change. She said she would be willing to look at a way to make houses "step" down the hill.

She clarified that the Commissioners' decision is for a system of measurement that is consistent and that areas are zoned for height. This decision will not change the existing zoning. The Commissioners will decide how to measure the height of a building. The existing regulations do not have provision for "stepping down".

Barbara Evans asked why the Planning Board's recommendation was not the preferred method?

Terre Meinershagen said the method of measurement is okay, but if there is an absolute height, a flat roof can go all the way up to that height. A pitched roof has less visual impact than a flat roof. This method will lower a flat roof which will be more consistent with a pitched roof.

Jay Raser commented about the absolute method of measuring. A pitched roof is less offensive visually than a flat roof.

A lengthy discussion followed relative to the methods of measurement. The builders and the Society of Architects agreed on the method of measurement from mid-roof. However, they disagreed on whether or not the measurement should be taken from the finished grade or the existing grade. OCD and the builders recommended finished grade, whereas the architects recommended the existing grade. The discussion next focused on how these regulations would effect affordable housing on the hillsides. Simple homes can be built on the hillsides that would fit into the absolute standard of measurement. A larger home would use the alternative method.

Colleen Dowdall said the existing grade is important because this is where the existing homes are located; they aren't living on the fill. Variances to these regulations will go through the Board of Adjustments.

Barbara Evans moved and Fern Hart seconded the motion to postpone action on the building height review - clarifying the definition of building height and the method of measurement. 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 4:20 p.m.

#### THURSDAY, OCTOBER 27, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. During the day, Commissioner Hart spoke and served on a panel at the Leadership Missoula session.

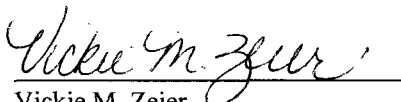
Audit List -- Commissioners Evans and Hart signed the Audit List, dated 10-26-94, pages 5-40, with a grand total of \$256,309.39. The Audit List was returned to the Accounting Department.

#### FRIDAY, OCTOBER 28, 1994

The Board of County Commissioners met briefly in the morning before Commissioner Hart left to attend the MACo District 10 & 11 Counties Meeting in Polson.

Plat -- The Board of County Commissioners signed the Plat for Sullivan Lots, a subdivision located in the NW 1/4 of Section 7, T. 13 N., R. 20 W., PMM, Missoula County, a total area of 19.84 acres, with the owner of record being Daniel L. Sullivan. Cash-in-lieu of park land was paid to the Missoula County Treasurer in the amount of \$4,083.75.

Contract -- The Board of County Commissioners signed a Contract between Missoula County and JTL Group, Inc., the lowest and best bidder, for constructing, grading, and paving of streets and alleys in Missoula County, the 1994 CMAQ Paving of Roads and Streets, as per the terms set forth, for total compensation in the amount of \$226,183.25. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

### MONDAY, OCTOBER 31, 1994

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

#### DAILY ADMINISTRATIVE MEETING

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Virginia Tribe, an independent contractor, for the purpose of providing facilitation of meetings for the Growth Management Planning Group; assisting with focusing issues, designing process, setting agendas, and reaching agreement about goals, objectives, and work plan; and working with and providing consultation to City and County Planning Staff, as per the terms set forth, commencing July 1, 1994, through June 30, 1995, for compensation not to exceed \$10,000.00. The Contract was returned to Cindy Klette, Director of Planning and Program Development, for further signatures and handling.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Partnership Health Center, whereby the County will purchase basic needs assistance for indigent residents of Missoula County, as per the terms set forth, through June 30, 1995, for a total amount of \$101,782.00.

Resolution No. 94-106 -- The Board of County Commissioners signed Resolution No. 94-106, a budget amendment for FY'94 for Junk Vehicles, including the following expenditure and revenue, and adopted it as part of the FY'94 budget:

<u>Description of Expenditure</u>	<u>Adopted</u>	<u>Budget</u>	<u>Amended</u>
2430-790-443000-304 Towing	\$22,818	\$5,445	\$28,263

<u>Description of Revenue</u>	<u>Revenue</u>		
2430-790-333188 Junk Vehicle	\$71,526	\$ 966	\$72,492
2430-790-383016 Transfer from CIP	<u>16,000</u>	<u>4,479</u>	<u>20,479</u>
	\$87,526	\$5,445	\$92,971

Resolution No. 94-107 -- The Board of County Commissioners signed Resolution No. 94-107, a budget amendment for FY'94 for the Sheriff's Department, including the following expenditure and revenue, and adopted it as part of the FY'94 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
State Prisoner Guard 1000-300-420230-150	\$27,244.30

<u>Description of Revenue</u>	<u>Revenue</u>
State Prisoner Guard 1000-300-333099	\$27,244.30

Policy Statement 94-B -- The Board of County Commissioners signed Policy Statement 94-B, the annual update to the Drug-free Workplace Policy, adopted by Missoula County on October 5, 1989, to comply with the Drug-Free Workplace Act passed by Congress in 1988, requiring that agencies or individuals who receive federal aid or who contract with the federal government adopt specific policies regarding the illegal possession and use of controlled substances. The Policy Statement was returned to Patty Baumgart in the Personnel Office for further handling.

Budget Transfers -- The Board of County Commissioners approved and signed the following budget transfer requests and adopted them as part of the FY'94 budget:

- 1) no. 94-006, a request to transfer \$16,950 from Court Operations - Raise Pool (\$8,876 from Permanent Salaries; and \$8,074 from Fringe) to District Court Judge Dept. #3 (Permanent Salaries - \$13,478; and Fringe - \$3,472) as the Court Master for Department #3 was budgeted at .5 FTE and should have been 1.0 FTE;



- 2) no. 94-022, a request from Risk Management to transfer \$12,000 from the General Fund Premium account to the Capital - Office Equipment account to purchase software;
- 3) no. 94-023, a request from the Sheriff to transfer \$68,000 from the Contingency fund to the Sheriff's Department (Overtime - \$29,341.47; Fringe - \$11,395.43; and Contracted Services - \$27,263.10) accounts to cover part of the cost of the Vilensky stand-off; and
- 4) no. 94-024, a request to transfer \$12,501.15 from the Financial Administration Permanent Salaries (\$10,268.27) and Fringe (\$2,232.88) to Rural Planning - EDA Permanent Salaries (\$10,268.27) and Fringe (\$2,232.88) to cover over-expenditure on the EDA Grant - Airport Industrial Park Project.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and the City of Missoula, whereby the City will remit the unused portion of tax increment urban renewal monies to Missoula County for Countywide Schools for FY 1994-1995 in the amount of \$41,743.43, unless tax increment property tax collections become significantly delinquent, which represents Missoula County's proportionate amount of the total tax levies lawfully set on property in the City's urban renewal district. The Agreement was returned to Chuck Stearns, City Clerk, for further signatures and handling.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and the City of Missoula, whereby the City will remit the unused portion of the tax increment urban renewal monies to Missoula County for FY 1994-1995 in the amount of \$32,373.29, unless tax increment property tax collections become significantly delinquent, which represents Missoula County's proportionate amount of the total tax levies lawfully set on property in the City's urban renewal district. The Agreement was returned to Chuck Stearns, City Clerk, for further signatures and handling.

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

**TUESDAY, NOVEMBER 1, 1994**

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

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Annette R. Taylor as principal for Warrant #59458 issued October 12, 1994 on the Missoula County Trust Fund in the amount of \$600.00 now unable to be found.

Monthly Report -- Chair Fern Hart examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for month ending October, 1994.

**ADMINISTRATIVE MEETING**

At the Administrative Meeting held in the forenoon, the following item was considered:

Lease Agreement -- Lease Agreement between Missoula County and the Missoula Softball Association and the Missoula Fast Pitch Association was discussed. Barbara Evans moved and Fern Hart seconded that the staff investigate the condition of the ball park and the possible reduction of the lease to one year. Motion carried on a vote of 3-0.

Other items included:

- 1) Letter of support for KUFM;
- 2) Letter to Jeff Langan regarding request to reduce RSID assessments for Chappelle Addition;
- 3) Letter to Glen Bumgardner regarding proposed development in Miller Creek Area.

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

**WEDNESDAY, NOVEMBER 2, 1994**

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated November 1, 1994, pages 6-39, with a grand total of \$223,384.16. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Lisa Anne Ray as principal for Warrant #59678, dated October 20, 1994, 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 items were signed:

Memoranda of Agreement -- The Board of County Commissioners signed two Memoranda of Agreement between Missoula County and William and Ramona Holt and Don and Kristin Cahalan (proposed well on the Holt property for additional water supply, and a water line easement across Cahalan property) for RSID 901 (Lolo Water and Sewer) as per the terms set forth. The Agreement was returned to John DeVore, Administrative Officer, for further signatures and handling.

Resolution No. 94-108 -- The Board of County Commissioners signed Resolution No. 94-108, a Resolution terminating emergency proclamation and attendant restrictions relating to wildland fire danger.

Resolution No. 94-109 -- The Board of County Commissioners signed Resolution No. 94-109 (correcting Resolution No. 90-108 which indicated a wrong Block No. in legal description), a Resolution vacating portions of Garfield and Wyoming Streets located in Section 20, T13N, R19W.

Other items included:

- 1) Letter of Intent to Participate in Community Oriented Policing (COPS AHEAD) grant. Ann Mary Dussault moved and Barbara Evans seconded the motion that Fern Hart sign the letter of intent by Sheriff's Department. Motion carried on a vote of 3-0. Letter was signed by Fern Hart and returned to Larry Weatherman, Undersheriff for further handling;
- 2) 24-Month Delinquent Tax Deed Properties -- Ann Mary Dussault moved and Barbara Evans seconded the motion that the County should take all six properties listed in the October 14, 1994 memo from Phyllis Browder, Recording Division Supervisor. The motion carried on a vote of 3-0.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioners Barbara Evans and Ann Mary Dussault.

PRESENTATION BY PEG SHEA

Representatives from the Missoula County Children and Families Service Providers were in attendance to present a plaque and to show their appreciation and thanks for Ann Mary Dussault's many years of leadership, support and caring.

Ann Mary Dussault thanked the group and stated that she appreciated the relationships that have been built not only with the various agencies, but with individuals as well. She said Missoula County's commitment to the people of this County has been accomplished due to the partnership that exists between Missoula County and the service providers.

DECISION ON: BUILDING HEIGHT REVIEW -- CLARIFYING THE DEFINITION OF BUILDING HEIGHT AND THE METHOD OF MEASUREMENT

Fern Hart postponed the decision on the building height review until the Public Meeting on November 30, 1994 to allow time for further review.

HEARING: CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- FARMER -- PARCEL 21 OF COS 351

Kathy Smith, Paralegal for the County Attorney's Office, explained that Lynn M. Farmer requested a family transfer exemption for Parcel 21 of COS 351, a 10.04 acre parcel located in the Elk Meadows Ranchettes northwest of Huson. She wishes to create a 5 acre parcel for transfer to her mother, Bernadette Farmer, who plans to build and will retain the remaining 5 acre parcel for her own residence.

The history of the parcel is as follows: COS 351 was filed in 1974 creating 55 parcels greater than 10 acres in size. The Comprehensive Plan designation is currently one dwelling per 10 acres. However, there are several plus or minus five acre parcels located in the area, most of which were created through the use of the occasional sale. There have been no other changes to the parcel since 1974 and Ms. Farmer purchased the parcel in September, 1994.

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

The hearing was opened to public comment.

Greg Martinsen, Martinsen's Surveys, said his client was aware that the Commissioners must determine whether or not the request attempts to evade the Montana Subdivision and Platting Act.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the family transfer exemption for Lynn M. Farmer for Parcel 21 of COS 351, a 10.04 acre parcel, contingent upon the transfer of the deeds to the family member, and based on the finding that the request does not attempt to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 3-0.

DECISION ON: LOCATION OF MACLAY BRIDGE

Barbara Evans read a document prepared by Carter and Burgess relative to the purpose and need for Maclay Bridge:

The proposed construction of a new bridge crossing of the Bitterroot River will improve safety and improve a connecting link in the area transportation system. This link will continue to provide access across the river if the bridge is closed to traffic.

The existing Maclay Bridge is a one lane bridge built in 1935 and does not conform to American Association of State and Highway Commission Officials (AASHTO) standards. Repairing the bridge to raise its structural rating cannot be accomplished without removing the super structure. Such improvement would constitute a total replacement of the bridge. The bridge's present load limit is ten tons (which limits the use of the bridge so the fire trucks are not able to use the bridge, and makes use by school buses only marginal), and is expected to deteriorate to five tons within the next eight to ten years, at which point it will be closed to all vehicular traffic. The proposed project will provide a bridge constructed to current design standards.

The proposed project is necessary to correct roadway deficiencies and existing safety hazards. There is limited sight distance and the horizontal curvature at the two approaches to the bridge lead to frequent accidents near the structure. This location has the most accidents in the area. There is a 90-degree left turn at the west end of the bridge which often causes drivers to slide off of River Pines Road under icy conditions. The 15 foot wide roadway does not allow safe passing distance between vehicles and bicyclists and pedestrians. In addition, emergency vehicles using the one lane bridge during peak traffic periods currently encounter delays.

Because of the existing bridge's load limits, many vehicles are currently forced to extend their drive time and distance to provide service to westside residents. Missoula Rural Fire District uses fire trucks in excess of 20 tons which exceeds the current bridge load limits. Rerouting necessary for these trucks adds an average of six minutes to response time. Homeowners' insurance rates increase incrementally for every five minutes delay in firefighters' average response time. Waste disposal vehicles used in the area also exceed the 10 ton limit and must incur additional costs to provide these services. School buses are right at the margin of the current load limit.

With no access in the vicinity of Maclay Bridge, a significant amount of the existing traffic would be diverted to Blue Mountain Road. Blue Mountain Road is longer and more hazardous than the existing route to access the west side. This alternate route would result in increased vehicle miles of travel for most drivers. Also, providers of emergency services, including police, fire and ambulance, would experience increased response time for residents in the westside area. School bus routes would be required to increase total trip mileage by about 28% with a round trip increase of up to one hour for some students. The school districts' annual cost of providing bus service would increase by approximately 20%.

Horace Brown recommended that the Commissioners approve the Preferred Alternate South #1. There were three alternates in the final study: North Alternate #1, South Alternate #1, and South Alternate #2.

Mike Worrall, Carter & Burgess, said the preferred alternative as described in the environmental assessment includes two lanes of traffic, one in each direction; new roadway constructed from Humble Road west to the intersection of River Pines Road, Big Flat Road, O'Brien Creek, and Blue Mountain Road. The South #1 alignment is a north-westerly extension of South Avenue which would intersect with the River Pines Road 90-degree bend adjacent to O'Brien Creek with the confluence of the Bitterroot River. Included in the travel lanes were the provisions for a separated pedestrian walkway, both adjacent to the roadway on the approaches and across the bridge. It also included paved six foot shoulders which provides a safety zone for errant vehicles and also room for bicycle traffic. It also includes minor roadway widening at the River Pines, O'Brien Creek, Blue Mountain Road intersection and some realignment to improve the operations of this intersection. It also includes filling, grading and minor widening along the east-west segment of River Pines Road to accommodate the two travel lanes, additional shoulder and pedestrian facilities. It includes the reconstruction of several access drives that currently access South Avenue along the proposed alignment.

Barbara Evans asked once the location is adopted, what is the next step?

Mike Worrall said Carter and Burgess will prepare a document which summarizes the study and the public comment that was received during the public comment period, as well as supplemental comment phase. This document will be sent to the Federal Highway Commission and reviewed for compliance with the National Environmental Policy Act. They will make a determination of whether to issue a finding of no significant impact or require an environmental impact statement to be completed. He said the review process itself is not long because it can be reviewed locally. However, the project needs to be placed on the Transportation Improvement Program in order for a conformity determination for air quality to be completed. They cannot make a decision on whether "FONSI" can be issued until they have the conformity determination.

A discussion ensued as to whether or not the Commissioners could modify the alternative. The Commissioners may modify the plan, but the decision that should be made today is what alternative to approve. The Commissioners were interested in modifying the plan to include pathways for pedestrians and bicycles.

Barbara Evans moved and Ann Mary Dussault seconded the motion to accept the recommendation from Carter and Burgess to approve South Alternative #1 as the chosen Maclay Bridge site, if and when Missoula County is able to construct the bridge. The motion carried on a vote of 3-0.

Barbara Evans stated that she was sorry that there was no way to provide for all the needs of the public without making some of the public unhappy.

Another discussion followed relative to including pedestrian walkways and bikeways on the bridge, while allowing for as small a bridge as possible. It was suggested that perhaps a walkway could be planned for only one side of the bridge. It was concluded that completely eliminating pedestrian and bike traffic on the proposed bridge was not a good decision for the future.

Horace Brown stated that bikeways must be on both sides of the road. Bikes cannot ride against traffic--it is illegal to do so. The bikeway must be on both sides, but the walkway, which is a separate bridge attached to the main bridge, could be on one side of the bridge or the other.

Mike Worrall suggested that the Commissioners could determine that in keeping with the goals of neighborhood, the County would try to minimize the size of the bridge while providing minimum, yet safe pedestrian and bicycle facilities. He said there are certain design standards that must be taken into account. The bicycles must be able to travel both directions.

Fern Hart said the actual construction of the bridge could take years because of funding. The Commissioners could indicate a concern to meet the needs of the entire community for bikes and walkways and would like to see these concerns addressed in the bridge construction. This goal is a part of the Commissioners' commitment. The Commissioners realize the neighborhood wants to keep the bridge to a minimum size. The Commissioners support a design which will include bike and walkways, while allowing the bridge to be as narrow as is safely possible.

Horace Brown said at the time the bridge is built, the design standards will be established by the public and the Board of County Commissioners. The main decision today is the location. This will enable the County to start the process of obtaining the necessary right-of-way in the next year or two to preserve the corridor.

Ann Mary Dussault wondered about the comments regarding the walkways along Hanson Drive.

Horace Brown stated that this was not a part of the bridge project. However, walkways can be constructed using enhancement funds. This is a project that can be started whether or not there is a bridge built.

Ann Mary Dussault stated that the walkway, whether done separately or in conjunction with the new bridge, should continue to Hanson Drive as reflected in the public testimony.

Horace Brown stated that the public testimony is now of record and the project can be included in the County's Capital Improvements Program.

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

**THURSDAY, NOVEMBER 3, 1994**

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

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was signed:

Addendum to Contract -- Chair Fern Hart signed an Addendum to the Contract between Missoula County and TRI Touch America Inc. for Long Distance Service for a 36-month period commencing November 1, 1994, as per the terms and conditions set forth. The addendum was then forwarded to Ray Lake, Sales Representative, at TRI Touch America, Inc.

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

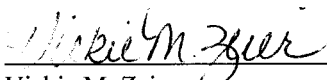
**FRIDAY, NOVEMBER 4, 1994**

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

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Our Designs, Inc. as principal for Warrant #1066 issued March 1994 on the Greenough Potomac Fire Dept. Fund in the amount of \$41.00 now unable to be found.

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming P.R.C.A. as principal for Warrant #262324 issued May 25, 1994 on the Missoula County Fair Fund in the amount of \$200.00 now unable to be found.

Monthly Reports -- Chair Fern Hart examined, approved, and ordered filed the Monthly Reconciliation Reports for Justices of the Peace, Michael D. Morris and David K. Clark, for month ending October 1994.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, NOVEMBER 7, 1994**

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

DAILY ADMINISTRATIVE MEETING

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

Change Order -- Chair Fern Hart signed Change Order #3 for Linda Vista Sewer (RSID #8453), Project No. 2627.01, Contract Date May 18, 1994, for Contractor Sharbono Construction. The new Contract Price will be \$1,163,117.50. The date for completion of all work under the contract will be December 26, 1994. The Change Order was returned to John DeVore, Administrative Officer, for further handling.

Agreement -- The Board of County Commissioners signed an Agreement between the County of Missoula and the Federation of Missoula County Employees for the period of July 1, 1994 through June 30, 1996, as per the terms set forth. The Agreement was returned to John Pemberton, Director of Personnel & Labor Relations, for further signatures and handling.

Agreement -- Chair Fern Hart signed a Standard Agreement between the Montana Highway Traffic Safety Administrator and the Missoula County Commissioners, which Agreement provides a more focused effort on youthful drinking and driving, and safety restraint use improvements. A copy of the Agreement was forwarded to Albert Gake, Highway Traffic Safety Division, Department of Justices, in Helena.

Resolution No. 94-110 -- The Board of County Commissioners signed Resolution No. 94-110, a Resolution of Intent to add a Planned Unit Development overlay within a "CRR-3" zoning district regarding the Wildrose proposed development, property described as Lot 15 of Cobban and Dinsmore Orchard Homes No. 1, located in the NW¼ of Section 20, T13N, R19W, P.M.M.

Other items included:

- \* the Commissioners approved Wally Congdon's nomination as the representative of the Missoula County Conservation District on the Missoula Valley Water Quality District Board through December 31, 1997.

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

**TUESDAY, NOVEMBER 8, 1994**

The Courthouse was closed for General Election Day.

**WEDNESDAY, NOVEMBER 9, 1994**

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

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Katie Finholm as principal for Warrant #013687 issued October 20, 1994 on the Missoula County Payroll Fund in the amount of \$69.11 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Resolution No. 94-111 -- The Board of County Commissioners signed Resolution No. 94-111, a Resolution relating to economic development revenue bonds (Blue Mountain Clinic) of the County in an Approximate aggregate principal amount not to exceed \$455,000; granting preliminary approval thereto; calling for a public hearing; and establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

Resolution No. 94-112 -- The Board of County Commissioners signed Resolution No. 94-112, a Budget Amendment for FY'95 for the D.A.R.E. Program, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure:</u>	No change in expenditure -- Required match (-365000-) was reduced and Federal share increased.
<u>Description of Revenue:</u>	2346-300-333097 (D.A.R.E. Grant)
<u>Revenue:</u>	\$6,153.00

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Michael D. Wood for the purpose of completing a body of research necessary to formulate Missoula County 1996-1999 Chemical Dependency Plan within the timeframe of 11/9 to 12/16 including analysis of the needs survey. Researcher will also be responsible for working with and providing consultation to County staff members working on the document, as per the terms set forth, for the period commencing November 9, 1994 through December 16, 1994 for compensation not to exceed \$2,800.

Interlocal Agreement -- The Board of County Commissioners signed an Interlocal Agreement prepared by the Urban Transportation District Board. The parties to this Agreement are the Missoula County Commissioners and the City of Missoula. The purpose of this Agreement shall be to allow the local governing bodies that are parties to this Agreement to determine the number of Urban Transportation District Board members, the terms of office, the selection of initial Board members, and the procedure for filling vacancies on the Board. The Agreement was forwarded to the City Clerk for further signatures and handling.

Cooperative Purchasing Agreement -- The Board of County Commissioners signed a Cooperative Purchasing Agreement between the City of Missoula and Missoula County for equipment and labor to connect the Street and Vehicle Maintenance Divisions into the County PBX switching telephone system for an amount not to exceed \$16,000.00, as per the terms and provisions set forth.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present was Commissioner Barbara Evans.

BID AWARD: OXYGENATED FUELS CONTRACT -- HEALTH DEPARTMENT

In October, the Health Department sent an invitation to bid for contracted services to seven companies to perform the duties involved with ensuring compliance with the oxygenated fuels program such as facility inspections and gasoline storage tank sampling. Three bids were received from companies who are all well-qualified to perform these duties as follows:

MCS Environmental	\$6,267.50
Envirocon, Inc.	\$5,350.00
Hazcon, Inc.	\$4,985.00

The staff recommended that the bid be awarded to Hazcon, Inc. in the amount of \$4,985.00 as the lowest and most qualified bidder.

Ken Anderson, Air Quality Specialist at the City/County Health Department, explained that the bid amount is \$4,985.00 to Hazcon, Inc. However, the Contract stipulates an extra \$240.00 be allocated with the contract. He recommended that the bid be awarded in the amount of \$5,000.

Barbara Evans moved and Fern Hart seconded the motion to award the bid to perform the duties involved with ensuring compliance with the oxygenated fuels program to Hazcon, Inc. in the amount of \$5,000.00, as the lowest most qualified bidder. The motion carried on a vote of 2-0.

#### CONTRACT

The Board of County Commissioners signed a Contract between the Missoula City-County Health Department and Hazcon, Inc., for the purpose of insuring compliance with Rule 1429 of the Missoula City-County Air Pollution Control regulations Sections 4a, and 7a-d, as per the terms and conditions set forth, for compensation in the amount of \$4,985.00 and other payments not to exceed \$240.00, commencing November 10, 1994 through February 28, 1995. The Contract was returned to Ken Anderson of the City-County Health Department.

#### HEARING: WIRTH ADDITION -- PRELIMINARY PLAT

Ron Ewart, Office of Community Development, explained that Wirth Addition is a proposed 8-lot single family residential subdivision on 6.8 acres, located north of St. Thomas Drive west of Upper Miller Creek Road and east of the Linda Vista area. The property is legally described as Lot 16 of Massey McCullough in Section 12, T12N, R20W, Missoula County, approximately one half mile west of the Missoula City limits. The project will connect to Mountain Water and City of Missoula sewer but will not be annexed into the City at this time.

The property and the surrounding area is zoned CRR-2, which allows a maximum residential density of up to two dwelling units per acre. The Missoula Urban Comprehensive Plan, 1990 Update, also recommends a density of up to two units per acre for this area. The proposed sizes of the lots are from 19,338 to 49,413 square feet.

1) The developer requested a variance to Section 3-2(3) of the Missoula County Subdivision Regulations which states that the road pavement width of rural subdivisions is 24 feet. The pavement width of St. Thomas Drive is approximately 22 feet.

The developer states that St. Thomas Drive is currently capable of handling the present traffic, although future development could warrant improvements to the road. It would not be equitable for this subdivision to bear the cost of improving the street alone, and if any improvements are to be done they should be accomplished within framework of an engineering plan for the entire street. As a mechanism to trigger these improvements, he is willing to initiate an RSID for the improvements and if the RSID fails then a statement to waive the right to protest an RSID for those improvements would be placed on the plat.

Because Wirth Addition has a density of development less than two units per acre, the subdivision is classified as Rural subdivision. Chappelle Addition, located adjacent to the south, is an Urban-Suburban subdivision which requires 32 feet of paving with curb and gutter. The City Engineer recommends that St. Thomas Drive, adjacent to the subdivision, be paved to 28 feet with 'L' type curb as a condition of this approval. It is the opinion of staff that improvements should be accomplished done so equitably and within a complete design of the entire street, and that a 28-foot street would be a reasonable width. The area is zoned at a density of two per acre, and densities along St. Thomas fall into both the Rural and Urban-Suburban categories.

The Planning Board recommends approval of the variance request for the reasons mentioned by the developer, if the RSID initiation/ waiver statement is required as per Condition #2..

2) The developer requested a variance to Section 3-3(1)(E) which states that no lot shall have an average depth greater than three times its average width. Lot 6 is somewhat triangular in shape and has an average depth of 386 feet. The rear lot width along the north property line is 11 feet. The lot frontage on St. Thomas Drive is 110 feet and the frontage along the south line of the subdivision is 104 feet. The straight-line distance of the lot width on the south end is approximately 190 feet, therefore the average width can be stated as being 100 feet.

The developer states that the narrow average length-to-depth ratio would not have a negative effect on this lot, as the lot area is nearly an acre in size. As shown on the supplemental data sheet there is ample space for a homesite, although the home would need to be situated toward the front of the lot.

The Planning Board recommends approval of the request for the reasons stated.

3) The developer requested a variance to Section 3-2(1)(I) which states that a private access lane that serves three or more lots shall be considered a private road. The County Surveyor recommends that Lot 6 access the road serving Lots 7 and 8. The developer had proposed that Lot 6 access directly on to St. Thomas Drive, as shown on the supplemental data sheet. This would have kept the number of lots using the private access lane to two. The developer is not opposed to the requirement of Lot 6 sharing the access, except that the common drive now becomes a private road and according to standards the road would be required to be paved to 24 feet. In this case, he feels it would not be reasonable to require the full pavement width for the full length of the road because Lot 6 will come off the road within a distance of approximately 50 feet. Because of the lot shape, the home can not be located much of a distance back on the lot.

The Planning Board recommends approval of the variance request if the access drive is paved to 20 feet to a point past the driveway location to Lot 6 off of the access lane as proposed in Condition #7.



On October 18, 1994 the Missoula Consolidated Planning Board voted 6 to 0, with one pass, to recommend approval of three variance requests and the Preliminary Plat of Wirth Addition. The conditions as recommended by the Planning Board to the Board of County Commissioners are listed on the following page. Attached are the original conditions as recommended by staff to the Planning Board as contained in the original staff report and Planning Board minutes of October 18. The variances and the conditions were left unchanged from the staff recommendation.

Original Proposal: 8 SFR lots on 6.8 acres, off St. Thomas Drive. Cash-in-lieu of park. Lots 7 and 8 share access, all others individual. Hook to sewer and water. Staff Recommendation: Approve with conditions, cash-in-lieu recommended because of parcel size and shape. Lots 6,7,& 8 share one access, and Lots 2&3 and 4&5 share. Place 5-foot walk along St. Thomas. Initiate RSID to improve St. Thomas. Planning Board Recommendation: Approve as recommended, with no changes. Things all agree upon: Street RSID is needed, sidewalk installment, lot areas, cash-in-lieu, Lots 6,7,& 8 share one access. Things left to be resolved: Developer asks that Lots 2&3 and 4&5 have own access.

The Missoula Consolidated Planning Board recommended that the preliminary plat of Wirth Addition be approved subject to compliance with the following conditions:

1. Plans for grading, drainage, streets, driveways, and sidewalks shall be approved by the County Surveyor. *Section 3-2, 3-4.*
2. The developer shall initiate a Rural Special Improvement District to improve St. Thomas Street to a 28-foot wide paved street with 'L' type curb and gutter. If this initiative fails, the following statement the following statement shall appear on the face of the plat and in all instruments of conveyance:  
  
"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to St. Thomas Drive and Upper Miller Creek Road, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."  
  
In the event the RSID passes and St. Thomas Drive is improved, the waiver statement shall still be shown on the plat regarding improvements only to Upper Miller Creek Road. *Section 3-2(11)(C)(2)(b).*
3. Fire apparatus turnaround plans for the access road to Lots 6, 7, and 8 shall be approved by the Rural Fire Marshal prior to filing the final plat. *Section 3-2(6)(D).*
4. A 5-foot sidewalk shall be constructed along the property frontage on St. Thomas Drive prior to final plat, or shall be included in a public improvements guarantee. The plans shall be approved by the County Surveyor prior to filing the final plat. *Section 3-2(5).*
5. All utilities shall be placed underground. Utility easements shall be a minimum of 20 feet wide and their location shall be approved by the appropriate utility and the governing body. In addition to the easement location, the following statement shall be shown on the face of the plat:  
  
"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 in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."  
*Section 3-5, 3-6.*
6. One-ninth of the fair market value of the unsubdivided, unimproved land shall be paid into the County Park fund, the amount to be determined by the County Assessor. *Section 3-8.*
7. The following statement shall appear on the face of the plat and in all instruments of conveyance:  
  
"All driveways shall be paved and not exceed 10 per cent slope. Lot 6 shall share the common access to Lots 7 and 8. This access lane shall be paved to 20 feet to a point past the driveway of Lot 6 off the access lane. The remaining pavement width may be less than 20 feet but not less than 12 feet, with a clear access width of 20 feet for emergency access. Lots 4 and 5, and Lots 2 and 3 shall share common accesses to St. Thomas Drive. Approach permits shall be approved by the County Surveyor prior to construction."  
*Comments of the County Surveyor, condition of Variance #3 approval, and Uniform Fire Code requirements concerning the 20 foot clear access.*
8. A one-foot no access strip shall be shown along the property frontage to St. Thomas Drive, except for the approved access locations. *OCD suggestion, to limit accesses as recommended by the County Surveyor.*
9. Due to concerns over existing high water pressure mains, either the lower pressure main to the southwest shall be extended to serve the subdivision or individual pressure reducers shall be installed in the homes, subject to approval of Mountain Water Company. *Comments of Mountain Water Company.*
10. The Private Access and Public Utility Easement shall be 30 feet in width, and shall also be labeled "Utility Easement Access." *Comments of OCD and the City Engineer.*

The hearing was opened to public comment.

Gilbert Larson, DJ&A, representing the developer, Gene Mostad, said they concur with all the conditions as stated by the OCD staff. However, they did not completely agree that the shared driveways between Lots 2 and 3 and Lots 4 and 5 are necessary because it will restrict the siting of the homes and the type of homes that can be built on these lots. He requested that the Board reconsider this condition.

Barbara Evans asked why cash-in-lieu of park lands was requested when the original submission recommended park land?

Ron Ewart said in the staff report to the Planning Board, Condition #6 suggested an overlook park. However, after visiting the site, the staff recommended that cash-in-lieu be given because of the topography. At the Planning Board meeting, the staff report was changed. The Planning Board went along with the recommended change.

Gilbert Larson said the preference is to go with cash-in-lieu of park land. He said they recommended cash-in-lieu because of the topography of the land. The nearest park is in Chappelle Addition about 300 feet away. The nearest useable park is Marilyn Park approximately one quarter of a mile away.

Fern Hart asked Horace Brown, County Surveyor, for his opinion on the shared driveway situation.

Horace Brown said the fewer number of approaches onto a street, the less accidents there are. He said he likes to see at least two residences sharing an access. There are less approaches onto the street and is therefore less hazardous.

Fern Hart asked about Condition #9 which referred to high water pressure mains.

Ron Ewart said Mountain Water expressed concerns relative to the high water pressure problem. Condition #9 addresses this problem.

Gilbert Larson said there is an existing water main in front of this property that has several properties hooked to it. The pressure in the main is greater than what is usually provided to a home. Each of the homes in the area have individual pressure reducers to reduce the pressure down to a common level.

A discussion followed concerning the access serving Lot 6 which is 20 feet long and accesses more than one lot. The developer voiced concerns about the impacts on the marketability of these lots, but indicated that it would not cause the developer not to move forward on the project. The variance to Section 3-2(1)(I), which states that a private access lane that serves three or more lots shall be considered a private road, was requested because one of the access roads serves three lots. This regulation requires a 24 foot wide paved road. The variance will allow the developers to pave to a width of 24 feet for 20 feet back; the rest of the road would be paved a normal driveway width. If the Commissioners don't require shared driveways, the variance will not be needed. If the variance is denied, there will be one more approach. The access road to Lots 7 and 8 has to cross Lot 6.

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

Barbara Evans moved and Fern Hart seconded the motion to approve the variance request to Section 3-2(3) of the Missoula County Subdivision Regulations, which states that the road pavement width of rural subdivisions shall be 24 feet. The motion carried on a vote of 2-0.

Barbara Evans moved and Fern Hart seconded the motion to approve the variance request to Section 3-3(1)(E) of the Missoula County Subdivision Regulations which states that no lot shall have an average depth greater than three times its average width. The motion carried on a vote of 2-0.

Barbara Evans moved and Fern Hart seconded the motion to approve the variance request to Section 3-2(1)(I) which states that a private access lane that serves three or more lots shall be considered a private road. The motion carried on a vote of 2-0.

Barbara Evans moved and Fern Hart seconded the motion to approve the Preliminary Plat of Wirth Addition be approved, subject to the following conditions:

1. Plans for grading, drainage, streets, driveways, and sidewalks shall be approved by the County Surveyor.
2. The developer shall initiate a Rural Special Improvement District to improve St. Thomas Street to a 28-foot wide paved street with 'L' type curb and gutter. If this initiative fails, the following statement the following statement shall appear on the face of the plat and in all instruments of conveyance:

"Acceptance of a deed for lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to St. Thomas Drive and Upper Miller Creek Road, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

In the event the RSID passes and St. Thomas Drive is improved, the waiver statement shall still be shown on the plat regarding improvements only to Upper Miller Creek Road.

3. Fire apparatus turnaround plans for the access road to Lots 6, 7, and 8 shall be approved by the Rural Fire Marshal prior to filing the final plat. 4. A 5-foot sidewalk shall be constructed along the property frontage on St. Thomas Drive prior to final plat, or shall be included in a public improvements guarantee. The plans shall be approved by the County Surveyor prior to filing the final plat.

5. All utilities shall be placed underground. Utility easements shall be a minimum of 20 feet wide and their location shall be approved by the appropriate utility and the governing body. In addition to the easement location, the following statement shall be shown on the face of the plat:  
  
"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 in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."
6. One-ninth of the fair market value of the unsubdivided, unimproved land shall be paid into the County Park fund, the amount to be determined by the County Assessor
7. The following statement shall appear on the face of the plat and in all instruments of conveyance:  
  
"All driveways shall be paved and not exceed 10 per cent slope. Lot 6 shall share the common access to Lots 7 and 8. This access lane shall be paved to 20 feet to a point past the driveway of Lot 6 off the access lane. The remaining pavement width may be less than 20 feet but not less than 12 feet, with a clear access width of 20 feet for emergency access. Lots 4 and 5, and Lots 2 and 3 shall share common accesses to St. Thomas Drive. Approach permits shall be approved by the County Surveyor prior to construction."
8. A one-foot no access strip shall be shown along the property frontage to St. Thomas Drive, except for the approved access locations.
9. Due to concerns over existing high water pressure mains, either the lower pressure main to the southwest shall be extended to serve the subdivision or individual pressure reducers shall be installed in the homes, subject to approval of Mountain Water Company.
10. The Private Access and Public Utility Easement shall be 30 feet in width, and shall also be labeled "Utility Easement Access."

The motion carried on a vote of 2-0.

#### RE-HEARING: DAWN ACRES -- SECOND SUMMARY PLAT

Fern Hart explained that this is a re-hearing of the summary plat of Dawn Acres that was denied by the Board of County Commissioners at the Public Hearing on October 5, 1994. Testimony was taken from the public.

Ron Ewart said Dawn Acres is west of Kona Bridge approximately 1/4 mile located in the CRR-1 zoning district.

Colleen Dowdall, Deputy County Attorney, said the motion to deny was made based upon the fact that the subdivision did not comply with the 1990 Urban Comp Plan Update, although it did comply with the zoning. However, the Comp Plan clearly states that if the Comp Plan and zoning do not match, the zoning should be followed. The developer asked for a re-hearing based upon this misunderstanding of the Comp Plan. She stated that the Board should allow public testimony in all matters and the subdivision can be reconsidered.

Fern Hart asked for public comment.

Debbie Denbleyker, an adjacent lot owner, said she originally bought the property 12 years ago because of the rural character of the neighborhood. This rural character has changed with the opening of Kona Bridge. The proposed subdivision would increase the number of neighbors in the area and will drastically change their standard of living. She stated the acre in question was listed and sold before the subdivision process had begun. She wondered how this could happen? She voiced concern about the required raised drainfield for the septic system. Will this have any impacts on the water supply? She said if this proposal goes through, they will be forced to consider splitting their two 2 1/2 acre parcels into four lots. This will ruin the quality of life in this area. There are plenty of subdivisions in town with one acre lots.

John Kellogg, Professional Consultants Inc., representing the developers, said two parcels are proposed; one 1-acre lot would front onto Kona Ranch Road and a 1.5 acre parcel would front onto Melodee Lane. The proposal is in compliance with the zoning for the area. He said the Health Department requires a shallow capped drainfield for this area because it is located in the 500-year floodplain. The drainfield will be raised approximately 18 inches. He stated that the developers have discussed selling the property to a potential buyer, but nothing has been finalized. There are a number of existing one acre lots in the area.

Colleen Dowdall said it would be appropriate to have a buy-sell agreement on the property contingent upon the approval of the subdivision; this does not violate any law. The property cannot be transferred because there is no property description. Property can be listed, but cannot be transferred prior to plat approval.

Patty Loudon, a broker at Trail Realty, said she listed the property for sale per the request of Kim Hall, subject to the final plat approval by the Commissioners and subject to all requirements as set forth by the Office of Community Development. She stated that Ms. Hall did not buy the property with the intent to subdivide, but unfortunately, there was a divorce in the family which made it necessary to split the property.

Debbie Denbleyker said it was her understanding that the new owner had to put money into escrow so that the current owner could put her foundation in for a mobile home. This sounds more final than a buy/sell agreement.

Patty Loudon said the current owner obtained a buy/sale agreement subject to final plat approval. The buyer agreed to put a certain amount of money over and above what is standard into escrow in order to show good faith to the lender. This was to give the lender more collateral. There was nothing finalized. If this request is denied, the buyer is not obligated to give this money to the seller. The money in escrow is with the lender and has not been transferred to the seller. There is only one structure on the property. The home proposed for the parcel will be of stick built construction on a permanent foundation that meets the requirements of the subdivision. It is not a mobile or modular home.

John Kellogg said they have been through the State Health Department and have received approval for the well and drainfield.

Colleen Dowdall said the State Health Department addresses the water quality issue. It is beyond the review of the Board of County Commissioners.

Fern Hart said she tried very hard not to approve the subdivision. This is an area that should not be as highly developed as it has been. However, the zoning district allows this type of development to occur. This zoning district was approved a long time ago. If this area was planned now, the County would do a much better job.

Dick Mangan, adjacent property owner to the north, asked if the Commissioners were mandated to follow the absolute letter of the law. He said elected officials should look at things as they exist today. The County has changed radically since 1970. He wondered if there could be an opportunity to use 1990 logic and doing what is right for the land now.

Colleen Dowdall said the residents could request a rezoning of the area. She explained that the subdivision was previously denied because it did not meet the Comp Plan designation. However, the Comp Plan states that if the zoning and Comp Plan do not match, the zoning is followed. The Commissioners cannot turn down the subdivision for failure to meet the density requirements. The Commissioners have the discretion to look at other issues with regard to the subdivision and determine whether it is an appropriate subdivision.

Dick Mangan said an aerial photograph of the area shows that while the request is legal, it is not appropriate. It is not consistent with the surrounding area. He stated he has cows and horses. People who live on one acre lots probably have different expectations than larger landowners.

Colleen Dowdall stated that a map is available that shows the actual land divisions. There are a number of one acre parcels. Folks may not be living on them now, but the potential is there. This division of land is not out of character with the area. The residents could request that this district be amended to a different density. However, it would not affect this subdivision.

Ron Ewart said the land has been zoned CRR-3 for almost 20 years now. The citizen-initiated zoning change would stop any further development activity of this kind in this area. The existing lots would be considered legal non-conforming lots.

Barbara Evans said the current residents live in an area that is zoned for this type of development which has been this way for close to 20 years. The realtor should have appraised potential buyers of this fact. If they didn't, it is incumbent upon the buyer to check the zoning to determine whether or not they want to buy in this particular location. She stated she can't in good conscience deny this subdivision based on regulations that have been in place for 20 years. If the Commissioners deny the subdivision and are taken to court and lose, the taxpayers will have to pay the bill.

Debbie Denbleyker said there is no flexibility allowed for in this process. She wondered about the purpose of this meeting if the Commissioners are only going to go by the letter of the law?

Colleen Dowdall explained that there is a difference between subdivisions and zoning. Zoning sets the density and uses of an area. Subdivision review looks at a number of criteria to determine whether it is appropriate to divide the land. One of the criteria is zoning. A subdivision must meet the zoning or the Comp Plan designation if there is no zoning. However, there are other criteria a subdivision must meet. People have personal property rights that allow them to divide their land if they meet all of the regulations. The Commissioners are required to conduct this hearing to look at all of the criteria to determine whether the landowners have met the criteria. If they have met the criteria, then the Commissioners have to acknowledge this and approve the subdivision.

Debbie Denbleyker said their land is more valuable if it is left at the current zoning at one per acre. This is a consideration, but not something they want to do.

Barbara Evans said the Commissioners are not unsympathetic, but there are rules that must be followed.

Barbara Evans moved and Fern Hart seconded the motion to reconsider and approve the summary plat of Dawn Acres Lots 2A & 2B, based on the finding that while the subdivision is not in compliance with the Comp Plan, the zoning allows the division, and based upon the findings of fact in the staff report, and subject to compliance with the following conditions:

1. Sanitary restrictions shall be lifted by the City/County Health Department and the State Department of Health and Environmental Sciences, specifically addressing the special sewer system design that is needed at this location.
2. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor prior to plat filing.

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

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the of the lot owners to waive the right to protest a future RSID for any improvements to Kona Ranch Road or Melody Lane to include walkways, based on benefit, and may be used in lieu of their signatures on an RSID petition."

4. A 1-foot no-access strip shall be shown on the plat along the property fronting Kona Ranch Road except for the approved driveway location.
5. A fee of \$50 per lot shall be paid into the large diameter hose fund of the Missoula Rural Fire District prior to filing of the final plat.
6. The developer shall give to each lot purchaser a copy of "Living With Wildlife", and the subdivision agency review letter from the Rural Planning Office, which address measures to protect wildlife and lessen the potential for human/ wildlife conflicts.

The motion carried on a vote of 2-0.

Colleen Dowdall stated that all staff reports and testimony of the Public Meeting on October 5, 1994, should become part of today's public record.

HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- MACLAY -- TRACT 1 OF COS 4269

Kathy Smith, Paralegal for the County Attorney's Office, explained that William R. Maclay, Sr. requested a family transfer for Tract 1 of COS 4269, a 20.46 acre tract located in the O'Brien Creek area west of Missoula. The parcel is an aliquot parcel created by deed in Book 333 Micro, Page 1446 through a retracement in 1993 (COS 4269). Mr. Maclay wishes to give a 10 acre parcel to his daughter, Mayvid Clara Maclay.

The history of the parcel is as follows: the parcels shown on COS 4269 were once part of the Maclay Ranch. Prior to 1974, the SE1/4 of Section 28, T13N R20W, was the parent parcel. Tracts 1,2,3,4 and Tracts A and D are aliquot parcels. The bottom portions of the land are platted as part of the subdivisions Mountain Creek Estates Phase Two and O'Brien Valley Estates. The O'Brien Creek area is under a density transfer agreement with the County Commissioners due to the various zoning requirements in the area. The subject parcel has two density transfer units or the ability to build two homes on the parcel. Tract 1 was previously owned by Fleta Elizabeth (Betty) Kenna, Trustee and William R. Maclay, Sr., and M. Josephine Maclay, co-trustees, and transferred to the sole ownership of William R. Maclay, Sr., in August, 1994.

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 1986, an agricultural exemption in 1987 and creating seven parcels greater than 20 acres in size.

The hearing was opened to public comment.

Nick Kaufman, WGM Group, representing the applicants, detailed the various land transactions and stewardship of the property in question by the Maclay family. The Maclays owned several hundred acres of land in the O'Brien Creek area which was subdivided by going through the major subdivision process and development rights were exchanged to adjacent acreage to better conform with the topography and to preserve open space. Mr. Maclay has owned this property for a very long time. His sister Betty Maclay is part of the trust. There are four children. They gave a parcel to their son and would like to give a parcel to their daughter. The Maclays are elderly and retired. The daughter would like to have a piece of the original ranch.

He said the Maclays have a history of taking land through subdivision review, putting sensitive land into open space, and working with Missoula County to reallocate density rights to places that are more suitable for wildlife, views and topography. He said he cannot see where the Maclays have in the past attempted to evade the Subdivision and Platting Act.

Fern Hart asked if there would be two density rights on the 10 acre parcel?

Nick Kaufman said there would be one density right on the property.

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

Barbara Evans moved and Fern Hart seconded the motion to approve the request by William R. Maclay, Sr., for a family transfer exemption for Tract 1 of COS 4269, subject to the transfer of the deeds to the family member, and based upon the finding that the request does not appear to attempt to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 2-0.

HEARING -- CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER -- BOURKE -- TRACT 63B FOR COS 3452

Kathy Smith, Paralegal for the County Attorney's Office, explained that Veronica Mary Bourke has requested a family transfer exemption for Tract 63B for COS 3452, a 10.2 acre tract located in the Meadows of Baron O'Keefe south of Evaro. Ms. Bourke wishes to split the parcel in half and create a +-5 acre parcel for gift or sale to her daughter, Mary Anstensen.

The history of the parcel is as follows: COS 1925 was filed by Geneva Cates in 1979 creating 62 tracts greater than 20 acres in size. Tract 63 was split in 1987 by a previous owner into two 10.2 acre parcels using the family transfer exemption. Tract 63A was the family transfer parcel and Tract 63B the remainder parcel. However, Tract 63A was never transferred to a family member and a corporate deed was filed by Citizens State Bank in March, 1992, selling both parcels as well as other property to Stanley C. Hendricksen. Mr. Hendricksen sold Tract 63B to Ms. Bourke in October, 1993.

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

The hearing was opened to public comment.

John Bourke, son of Veronica Mary Bourke, said his mother wishes to give half of the 10.2 acre tract to her daughter and sell the other half. The density in the surrounding area is between 3 to 5 acres in size. There is a lot of development occurring in this area.

Fern Hart said this transaction is to be part of the revocable trust.

Colleen Dowdall, Deputy County Attorney, said the trust currently owns the property. If approved by the Board, the ownership will be transferred to the daughter.

Fern Hart asked if the daughter planned to live on the property?

John Bourke said Mary Anstensen and her husband, who live on the coast, plan to build on the property within two years.

Barbara Evans explained that the Commissioners must determine whether or not the request is an attempt to evade the Montana Subdivision and Platting Act based upon the history of the parcel and of the applicant.

John Bourke said this is actually what will happen. Mary Anstensen and her husband may or may not actually live on the land.

Barbara Evans stated that the Meadows of Baron O'Keefe has been split by Certificate of Survey and never went through the subdivision review process. It ended up in litigation with the County. A settlement was made rather than waiting for a court decision.

Fern Hart said this decision was difficult for her because of the fact that the applicant plans to sell the remainder. It looked like a subdivision.

John Bourke said if they had planned to do a subdivision, it would have been divided into smaller parcels. The size of the proposed parcels will be 5 acres in size.

Colleen Dowdall said the Comp Plan recommends 1 unit per 40 acres. This is an area the County has looked at not developing because it is outside the building permit jurisdiction. The Commissioners denied a two parcel subdivision on 5 acres based upon non-compliance with the Comp Plan.

A lengthy discussion ensued relative to the request. The applicant argued whether or not the request actually conflicted with the intent of the family transfer exemption.

Colleen Dowdall said the intent of the family transfer legislation was to allow families to transfer pieces of property to their children, as a legacy to keep the property in the family name. The Commissioners must look at the applicant's intent.

Fern Hart said if Ms. Bourke gave her daughter the whole tract, it wouldn't be a problem. Ms. Bourke could also transfer the two proposed parcels to her son and daughter.

Barbara Evans stated that in her mind, the law clearly allows an applicant to use one family transfer exemption per family member per county. A subdivision can be a split of property. She said she would be willing to approve the division, but Fern Hart will not second a motion to approve the transfer. She said Ann Mary Dussault, not present for today's meeting, historically does not approve requests to divide land in the Meadows of Baron O'Keefe area.

Fern Hart said the daughter will probably build on the land and sell it. The remainder tract will have the same history. This is a subdivision.

Colleen Dowdall said the law allows the use of a family transfer exemption as long as the applicant does not intend to evade the Subdivision Law. She stated that the most bothersome aspect of this request is that the remainder parcel will be sold and will not be kept for Ms. Bourke to live on. The subdivision review process ensures that the parcel being sold has services provided and available.

John Bourke said the sale of the remainder will allow his mother to recoup her investment.

Colleen Dowdall said the land was purchased in 1993 and a well was placed on it. She wondered what Ms. Bourke's intent was when she bought the property?

John Bourke said they wanted to see what his sister's plans were. He stated his mother never intended to live on the property.

Barbara Evans said if Ann Mary Dussault was present, she would vote against the request. Rather than postpone the decision until the other Commissioner could be present, she stated she would make the motion to deny the request.

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

Barbara Evans moved and Fern Hart seconded the motion to deny the request by Veronica Mary Bourke for a family transfer exemption for Tract 63B for COS 3452, based on the finding that the request attempts to evade the Montana Subdivision and Platting Act. 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 3:10 p.m.

#### THURSDAY, NOVEMBER 10, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Dussault was out of the office all day. In the afternoon, Commissioner Evans attended a Juvenile Detention Meeting in Polson; and in the evening, she attended the Grand Reopening of the Airport Terminal.

Audit List -- Commissioners Barbara Evans and Fern Hart signed the Audit List, dated November 9, 1994, pages 5-40, with a grand total of \$117,154.78. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Connie Wright as principal for Warrant #33923 issued October 19, 1994 on the Missoula County SD#1 Payroll Fund in the amount of \$1,526.77, now unable to be found.

Monthly Report -- Chair Fern Hart examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending October 31, 1994.

Monthly Report -- Chair Fern Hart examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending October 31, 1994.

#### DAILY ADMINISTRATIVE MEETING

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

Modification of Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and the Montana Department of Health and Environmental Sciences for the purpose of modifying the terms of the agreement between them concerning the provision of services under the Maternal and Child Health Services Block Grant (DHES No. 340156, as amended), as per the items set forth. The Agreement was forwarded to DHES in Helena.

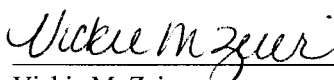
Other items included:

- \* A memo to John Pemberton stating that the Board of County Commissioners had determined that the position currently held by Orin Olsgaard would not be placed on an individual employment contract. By this directive, the Commissioners asked Mr. Pemberton's office to proceed to classify this position appropriately within the County Personnel Plan.

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

#### FRIDAY, NOVEMBER 11, 1994

The Courthouse was closed for the Veterans Day holiday. In the forenoon, Commissioner Evans participated in the Veterans Day ceremony held on the Courthouse lawn.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

#### MONDAY, NOVEMBER 14, 1994

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

Election Canvass -- In the forenoon, Commissioners Evans and Hart and Kathleen Breuer, Clerk of the District Court, canvassed the results of the General Election, which was held on November 8, 1994.

#### DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the afternoon, the following item was signed:



Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and David Bassler for the purpose of performing temperature soundings as needed at the Department of State Lands site, commencing December 1, 1994 through March 15, 1995, for compensation in the amount of \$22 for each sounding performed. The Contract was returned to the Environmental Health Department for further signatures and handling.

Other items included:

- \* the Commissioners appointed Jay Ottman as a "regular" member on the Missoula Aging Services Governing Board to fill the unexpired term of Susan Allen through December 31, 1996, at which time, he will be eligible for re-appointment to a 3-year term.

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

#### TUESDAY, NOVEMBER 15, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Dussault was out of the office from November 15-18. In the evening, Commissioner Evans attended a Transportation Demand Management meeting held at the Florence School.

Audit List -- Commissioners Barbara Evans and Fern Hart signed the Audit List, dated November 15, 1994, pages 5-34, with a grand total of \$181,493.03. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Jay Gordon as principal for Warrant #081453 issued October 7, 1994 on the Missoula County HCHS Payroll Fund in the amount of \$44.54, now unable to be found.

#### WEDNESDAY, NOVEMBER 16, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Dussault was out of the office through November 18.

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Richard Winters as principal for Warrant #40847 issued November 10, 1994 on the Missoula County Urban Transportation Fund in the amount of \$571.16, now unable to be found.

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present was Commissioner Barbara Evans.

#### BID AWARD: TOWING OF JUNK VEHICLES IN THE MISSOULA AREA

Richard Corrigan, Junk Vehicle Coordinator, provided the following information: bids were let and received in the prescribed manner for the removal and hauling of junk vehicles for the Missoula City-County Junk Vehicle Program. Bids were for the area covering all of Missoula County with the exception of those areas east of Greenough Hill on Highway 200 to the Powell County line and from Clearwater Junction to the to the Lake County line on Highway 83. This area may be added at a later time if required. The results of the bids were as follows:

Jack Brown dba Browns Towing -- \$25/vehicle -- local with an additional \$25 plus \$1/mile -- hauls farther than 5 miles from the Missoula City limits

The staff recommended approval of the bid from Jack Brown dba Browns Towing as the hauler for Missoula City-County Health Department, Junk Vehicle Program for the length of the bid contract #1.

Barbara Evans moved and Fern Hart seconded the motion to award the bid for the removal and hauling of junk vehicles for the Missoula City-County Junk Vehicle Program in the amount of \$25/vehicle for local hauls with an additional \$25 plus \$1/mile for hauls farther than 5 miles from the Missoula City limits, for the area covering all of Missoula County with the exception of those areas east of Greenough Hill on Highway 200 to the Powell County line and from Clearwater Junction to the to the Lake County line on Highway 83, to Jack Brown dba Browns Towing. The motion carried on a vote of 2-0.

#### BID AWARD: TOWING AND STORAGE OF JUNK VEHICLES IN THE GREENOUGH-SWAN VALLEY AREA

Richard Corrigan, Junk Vehicle Coordinator, provided the following information bids were let and received in the prescribed manner for the removal, hauling and storage of junk vehicles for the Missoula City-County Health Department Junk Vehicle Program, bids were for the area of Missoula County east of Greenough Hill on Highway 200 to the Powell County line, and on Highway 83 from Clearwater Junction to the Lake County line. Bids were received from the following:

Rainbow Enterprises	\$90 per vehicle
Al Woodward dba Al's Repair	\$50 per vehicle

The staff recommended approval of the bid from Al's Repair in the amount of \$50 per vehicle, as hauler for the Seeley Lake area for the Missoula City-County Health Department Junk Vehicle Program for the length of the bid

contract #2, with the provision that Mr. Woodward's storage yard be approved for licensing as a Motor Vehicle Graveyard within a reasonable time.

Barbara Evans moved and Fern Hart seconded the motion to award the bid for removal, hauling and storage of junk vehicles for the Missoula City-County Health Department Junk Vehicle Program for the area of Missoula County east of Greenough Hill on Highway 200 to the Powell County line, and on Highway 83 from Clearwater Junction to the Lake County line, to Al's Repair in the amount of \$50 per vehicle, with the provision that Mr. Woodward's storage yard be approved for licensing as a Motor Vehicle Graveyard within a reasonable time. 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 1:35 p.m.

**THURSDAY, NOVEMBER 17, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Dussault was out of the office through November 18.

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Electronic Services Unlimited as principal for Warrant #23390 issued September 7, 1994 on the Missoula County General Claims Fund in the amount of \$904.00, now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

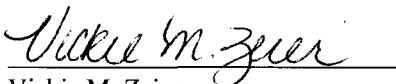
Change Order -- Chair Fern Hart signed Change Order #1 for Linda Vista Sewer (RSID #8452), Project No. 2591.01, Contract Date May 18, 1994 for Contractor, 4 G Plumbing & Heating Inc. The new Contract Price will be \$125,293.27. The date for completion of all work under the contract will be August 30, 1994. The Change Order was returned to John DeVore, Administrative Officer, for further handling.

Employment Agreement -- The Board of County Commissioners signed an Employment Agreement, dated November 17, 1994, between Hal K. Luttschwager and the Missoula County Commissioners for the purpose of employing Hal Luttschwager as the Risk Manager, as per the employment duties and functions set forth, and as per the terms and conditions set forth in the Agreement.

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

**FRIDAY, NOVEMBER 18, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart attended a Mental Health Board Meeting in Superior during the day; and later in the afternoon, Commissioners Evans and Hart attended the Library's 100th Birthday Celebration held at the Library.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, NOVEMBER 21, 1994**

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

DAILY ADMINISTRATIVE MEETING

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

Rural Road Mileage Certification -- The Board of County Commissioners signed a letter to the Secondary Roads and Statistics Bureau, Montana Department of Transportation, certifying that the rural road mileage in Missoula County, exclusive of the Federal-Aid Interstate and Primary Systems, amounts to 1556.928 miles. The Certification was returned to Horace Brown, County Surveyor, for forwarding to Helena.

Standard Application (INTERCAP Revolving Program) -- Chair Fern Hart signed the Standard Application between the State of Montana Board of Investments and Missoula County for the INTERCAP Revolving Program for the purchase of a new mainframe computer, 7 motor pool cars, 11 Sheriff vehicles, and 9-1-1 remodeling, having a total project cost of \$922,000. The Application was returned to John DeVore, Administrative Officer, for further handling.

Bid Award -- Ann Mary Dussault moved and Fern Hart seconded the motion that the Board of County Commissioners award the bid to Rainbow Enterprises for road and site maintenance for the Seeley Lake Solid Waste Management District as the lowest and best bid which met all bid specifications. The motion carried on a vote of 3-0.

Extension Letter -- The Board of County Commissioners signed a letter to Dick Ainsworth of Professional Consultants, Inc. approving a filing extension for Kona East, Phase IV, making the new filing deadline February 22, 1995.

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

**TUESDAY, NOVEMBER 22, 1994**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioners Evans and Hart traveled to Pablo where they met with representatives of the Salish-Kootenai Tribe, area County Commissioners et al, regarding signage issues on the Flathead Reservation.

Audit List -- Commissioners Ann Mary Dussault and Fern Hart signed the Audit List, dated November 22, 1994, pages 4-35, with a grand total of \$118,797.74. The Audit List was returned to the Accounting Department.

**WEDNESDAY, NOVEMBER 23, 1994**

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

DAILY ADMINISTRATIVE MEETING

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

Change Order -- Chair Fern Hart signed Change Order #2 for Linda Vista Sewer (RSID #8453), Project No. 2627.01, Contract Date May 18, 1994 for Contractor Sharbono Construction. The new Contract Price will be \$1,158,907.50. The date for completion of all work under the contract will be December 26, 1994. The Change Order was returned to John DeVore, Administrative Officer, for further handling.

Agreement -- Chair Fern Hart signed an Agreement between Missoula County and the Montana Department of Health and Environmental Sciences (DHES) for the purpose of developing a local breast and cervical cancer (BCC) early detection plan through a local broad-based BCC coalition, as per the items and terms set forth, for the period from November 23, 1994 through September 29, 1995, with payment from DHES being up to a maximum of \$8,000. The Agreement was forwarded to DHES in Helena.

Resolution No. 94-113 -- The Board of County Commissioners signed Resolution No. 94-113, a Resolution authorizing the Chair of the Board of County Commissioners to sign and submit an application for federal assistance to establish a revolving loan fund.

Plat and Subdivision Improvements Agreement -- The Board of County Commissioners signed the Plat for Wildrose Subdivision, a subdivision of Missoula County located in the NW¼ of Section 20, T13N, R19W, P.M.M., a total area of 4.086 acres, with the owners/developers of record being Collin K. Bangs, Kenneth W. Bangs, and Carolyn Stevens. Cash in lieu of park dedication was received by the County Treasurer the amount of \$2,274. Also signed was a Subdivision Improvements Agreement and Guarantee for improvements which remain to be completed in Wildrose Subdivision between Missoula County and B & L Corp. for installation of paved internal street and common driveways, sewer and water mains, street trees, street signs, and common area improvements at an estimated cost of \$212,434.99. The improvements shall be completed no later than one year from the date of the final plat approval and is secured by an irrevocable letter of credit in favor of B & L Corp.

Other items included:

- 1) the Commissioners signed on the Memorandum to MACo Board of Directors regarding their concurrence with the proposed MODS Project (requesting that DOR abide by all provision of House Bill #50). The Memorandum was forwarded to the MACo office in Helena;
- 2) the Commissioners re-appointed Jack Meyer to a 5-year term as a "regular" member on the Airport Authority through December 31, 1999.
- 3) the Commissioners re-appointed Charles Deschamps, Bill Nooney, and Betty Jo Johnson to a 2-year term as a "regular" members on the Fair Commission through December 31, 1996;
- 4) the Commissioners approved the Larchmont Golf Course Budget as submitted for 1995.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioners Ann Mary Dussault and Barbara Evans.

CONSIDERATION OF: GREEN ACRES ADDITION (SUMMARY PLAT) POSTPONED FROM 11/16/94

Philip Maechling, Office of Community Development, explained that Green Acres Addition is a proposed 2-lot division of a 33.10-acre parcel located approximately 3/4 mile west of Reserve Street between Highway 10 and Interstate 90, adjacent to and west of Westview Acres Mobile Home Park in Section 6, Township 13 North, Range 19 West, and Section 1, Township 13 North, Range 20 West, Missoula County. The triangular-shaped parcel of land is vacant, irrigated pasture ground. The property is bounded by private roads on two sides which allow temporary access until such time that the Expressway, a frontage road serving the land north of the airport and the proposed I-90 interchange, is constructed along the west edge of the property. The submittal states that the subdividers have no specific use for the lots at this time and are dividing the parcel as part of the land purchase agreement.

The property is zoned CI-1 Light Industry which accommodates light manufacturing, processing, fabrication, repairing, assembly, storage, transportation facilities, and commercial uses with large land requirements. The Momont Industrial Park, located to the northwest across from the airport, is seeking expansion as part of the Missoula Airport Development Park and is also zoned CI-1. In this area is a mixture of land that is zoned for both residential and industrial purposes, and there is a mix of vacant land and land that is in use. The 1975 Missoula Urban Area Comprehensive Plan designates the area as Urban Single Family Residential with a density of up to six dwelling units per acre. The area is in a transition from agricultural to residential and light industrial and the comprehensive plan is not congruent or up to date with the zoning. The general use pattern of the overall area is becoming light industrial, and the eventual uses of this property are planned to conform to its CI-1 zoning.

#### VARIANCE REQUESTS

1) The developer requested a variance to Section 3-3(1)(F) of the Missoula County Subdivision Regulations which states that side lot lines shall be at substantially right angles to straight street or road lines and radial to curved street or road lines.

The developer explained that an end result of this subdivision is to front these two lots on the expressway, when completed. The only side lot line in the project being created is at an angle to the future expressway. However, it is parallel to both the south and north line, which already exist. Also these lots, due to their size are better suited to be parallelograms in shape, rather than trapezoidal, as a right angle line would make. Further, it was a condition of Bill Wheeler when this purchase was negotiated that the original 10 acres would be the southerly most 10 acre parcel, parallel with the south line.

The staff recommended approval of the variance request, provided that the statement regarding street intersections at substantially right angles be placed on the face of the summary plat as recommended above.

2) The developer requested a variance to Section 3-2(3) of the Missoula County Subdivision Regulations which state that the road pavement width for industrial use subdivisions shall be 32 feet.

The street that will serve the development is the future Expressway. It is unlikely that any development will occur until the Expressway is completed along the property frontage. Staff recommends that no traffic related to this development use any of the streets within the Westview Mobile Home Park. The Expressway will be built to standards, and will serve this development.

The staff recommended approval of the variance request, if the lot owner(s) waive the right to protest an RSID for any improvements to the Expressway (although the street is to be constructed with State and Federal funds.)

3) The developer requested a variance to Section 3-2(3) of the Missoula County Subdivision Regulations which states that the right-of-way width for industrial uses shall be 120 feet.

The existing right-of-way width for the Expressway is 60 feet, and the County Chief Administrative Officer has stated that the planned right-of-way width is to be 100 feet. Therefore, 40 more feet are needed, (20 on each side) in order to meet the planned width.

The staff recommended approval of the request, provided that the developer dedicate 20 feet of right-of-way along the property frontage with the future expressway.

The Office of Community Development staff recommended that the summary plat of Green Acres Addition be approved based on compliance with the following conditions:

1. A fee of \$50 per lot shall be donated to the large diameter fire hose fund of the Missoula Rural Fire Department. *Comments of the Rural Fire Chief.*
2. The following statement shall be placed on the face of the summary plat and in all instruments of conveyance:  
  
"This development shall not create any traffic usage, construction or otherwise, of streets within the Westview Acres Mobile Home Park. The traffic pattern shall utilize the Expressway for ingress and egress."  
*Concerns for health and safety of residents.*
3. The following statement shall appear on the face of the summary plat and in all instruments of conveyance:  
  
"Acceptance of a deed for lot within this subdivision shall constitute assent of the lot owner(s) to waive the right to protest a RSID for any improvements to the Expressway, based on benefit, and may be used in lieu of their signatures on an RSID petition."  
*Mechanism to help with any improvements beyond State and Federal construction.*
4. The following statement shall appear on the face of the summary plat and in all instruments of conveyance:  
  
"Any subsequent subdivision of land within these properties shall be subject to the public hearing requirements. Development shall provide landscaping and buffering as per Section 3.05 of the Missoula County Zoning Resolution, and all streets shall intersect at substantial right angles."  
*Section 4-3, and 3-2(1)(K)(2), Missoula County Subdivision Regulations, and Section 3.05, Missoula County Zoning Resolution; and to make future lot owners/ developers aware of requirements.*
5. Twenty feet of right-of-way shall be dedicated along the property frontage of the future Expressway.  
*Mechanism to provide the needed right-of-way width and variance request.*

Gordon Sorenson, representing the developers, stated they had no opposition to the staff report. The developers have no plans for development. This is a real estate investment. They have negotiated an arrangement whereby they will purchase 33 acres. They have agreed to put a sizable amount down on the property that will release 10 acres with the down payment. They will own this property free and clear. He said provision has been made to give the seller a right-of-way easement on the east side of the property. This easement will be shown on the plat, but a road will not be built at this time.

Barbara Evans asked if people had a right to access onto Expressway?

Horace Brown, County Surveyor, said they would have to apply for an approach permit.

Colleen Dowdall, Deputy County Attorney, said the applicants do not have development plans at this time. However, the purpose of this division is for financing to have the 10 acre lot that is free and clear.

Ann Mary Dussault asked about the third variance request which was satisfied in Condition #5. The second variance was satisfied by Conditions 2 and 3.

A discussion ensued relative to the first variance request. The staff recommended that the variance be granted provided that the statement regarding street intersections at substantially right angles be placed on the face of the summary plat. The intersection must be at a right angle. Any approach permits would be subject to this condition and would be subject to approval by the County Surveyor.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve Green Acres Addition based on the findings of fact in the staff report and subject to compliance with the following conditions:

1. A fee of \$50 per lot shall be donated to the large diameter fire hose fund of the Missoula Rural Fire Department.
2. The following statement shall be placed on the face of the summary plat and in all instruments of conveyance:  
"This development shall not create any traffic usage, construction or otherwise, of streets within the Westview Acres Mobile Home Park. The traffic pattern shall utilize the Expressway for ingress and egress."
3. The following statement shall appear on the face of the summary plat and in all instruments of conveyance:  
"Acceptance of a deed for lot within this subdivision shall constitute assent of the lot owner(s) to waive the right to protest a RSID for any improvements to the Expressway, based on benefit, and may be used in lieu of their signatures on an RSID petition."
4. The following statement shall appear on the face of the summary plat and in all instruments of conveyance:  
"Any subsequent subdivision of land within these properties shall be subject to the public hearing requirements. Development shall provide landscaping and buffering as per Section 3.05 of the Missoula County Zoning Resolution, and all streets shall intersect at substantial right angles."
5. Twenty feet of right-of-way shall be dedicated along the property frontage of the future Expressway.

The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request for a variance to Section 3-3(1)(F) of the Missoula County Subdivision Regulations which states that side lot lines shall be at substantially right angles to straight street or road lines and radial to curved street or road lines, subject to condition that the statement regarding street intersections at substantially right angles be placed on the face of the summary plat. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request for a variance to Section 3-2(3) of the Missoula County Subdivision Regulations which state that the road pavement width for industrial use subdivisions shall be 32 feet. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request for a variance to Section 3-2(3) of the Missoula County Subdivision Regulations which states that the right-of-way width for industrial uses shall be 120 feet. The motion carried on a vote of 3-0.

#### HEARING: CIRCLE H - PRELIMINARY PLAT - BUTLER CREEK AREA

Philip Maechling, Office of Community Development, explained that the Circle H Ranch proposed Planned Unit Development and subdivision is located east of Butler Creek Road and north of Interstate 90. The property is legally described as 731.2 acres shown on COS No. 2610 and 240.28 acres shown on COS 2614, located in Section 25 and 26, T14N, R20W and Section 30, T14N, R19W. The request is to create a Planned Unit Development with a total of 76 single family "cluster lots" within a total of 18 "clusters" located in the lower areas within a parcel of 825 acres. Each cluster lot is circular and just over a half acre in size, within which a custom home would be constructed. The remaining 90 percent of Circle H Ranch will be in conservation easement, managed by the Five Valleys Land Trust. Circle H Ranch will be in conservation easement, managed by the Five Valleys Land Trust. There will be one entrance off Butler Creek Road, and the two main roads on the site are to be paved to 24 feet while the access roads are to be 20 feet in width. The developer plans to paved to 24 feet while the access roads are to be 20 feet in width.

The developer plans cooperate with the County to pave Butler Creek Road to a 24 foot County standard from the end of the existing pavement north to the entrance of the subdivision. The land is sloping with variable grades, vegetated mainly with native grasses and Ponderosa Pine in the draws. The project will be developed in seven phases. The developer requests preliminary plat approval to the year 2002.

This is also to initiate a Rural Zoning District as per Chapter VI of the Missoula County Zoning Resolution, entitled "Section 6.05 East Butler Creek Foothills". The district would allow the 76-lot PUD on 825 acres, an equestrian park on 90 acres located along Butler Creek road, and a future "quality attached housing component" on a 57 acre site off Goodan-Keil Lane in the southwest corner of the subject property. This request is not to give approval to develop the attached housing at this time. This review only recommends an allowance for future attached housing at an appropriate density as part of this zoning request. Any approvals for the attached housing would result only after a complete submittal request, public hearings, and the ability to connect with municipal sewer. Allowances of density and design would have to be approved by the governing body at the time of submittal.

The land is unzoned in the County. The Butler Creek Area Comprehensive Plan Amendment, 1994, is the guiding principle for development in this area. The recommended densities for the area are the same as for the Missoula Urban Comprehensive Plan, 1990 Update. Recommended densities are for one dwelling unit per 5-10 acres along Butler Creek and the flats, while the hillsides are Open and Resource land. The purpose of the Butler Creek Comprehensive Plan is to lay a framework for development based on the close proximity of a future I-90 interchange and industrial land near the airport, combined with the overall reality of increasing needs for housing. COS activity has resulted in several adjacent lots around 5 acres in size, and the property itself is currently divided into 20-acre parcels by deed description of aliquot parts. Chapter I-G of the Butler Creek Plan lists thirteen Land Use Goals for the area.

After analysis of compliance with the goals and objectives of the Plan, the proximity to services and future development, and the reality of existing land divisions of the property and surrounding properties, the staff found that the overall philosophy and design standards of the proposal meets the criteria outlined in the Butler Creek Comprehensive Plan Amendment.

#### ZONING AND PLANNED UNIT DEVELOPMENT

The developer has requested a rural zoning district as per Chapter VI of the Missoula County Zoning Resolution. There are currently four sections in Chapter 6. Section 6.01 states that the purpose of the chapter is to establish rural zoning districts wherein compatible uses of land may be located and grouped to create, protect, or maintain a living environment for the citizens of 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.

The other three sections of Chapter 6 list the specifications of other rural zoning districts; Section 6.02--Valley West Community Development District, Section 6.03--Special District 2, Section 6.04--Kona East Residential District, and if approved, the Zoning Resolution would be amended to include Section 6.05--East Butler Creek Foothills.

The Office of Community Development staff recommended that the Planned Unit Development of Circle H Ranch and the proposed Rural Zoning District "East Butler Creek Foothills" be approved, subject to the following condition:

1. The quality attached housing phase may not be constructed until a design with an appropriate density allowance is approved by the governing body after full PUD amendment and subdivision review.

Janet Stevens, Interim Director of Office of Community Development, explained that this was a recommendation, the developer is not bound by this. This recommendation will give the developer a sense of what the County wants as far as design.

Philip Maechling said the Office of Community Development staff and the Missoula Consolidated Planning Board recommended that the preliminary plat of Circle H Ranch be approved, subject to the following conditions:

1. Plans for paving, grading, and drainage shall be approved by the County Surveyor. *Section 3-2 and 3-4.*
2. The Property-Owner's Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict. *Section 4-2(5)(D)(3).*
3. All easements shall be shown on the face of the plat. The streets and roads shown on the plat shall be labeled a 60-foot private access and public utility easement. Easement widths shall be at least 20 feet unless a narrower width is approved by the appropriate utilities and governing body. In addition to showing the location of the easements, the following statement shall appear on the face of the final plat:

"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever." *Section 3-5 and 3-6.*

4. Fire hydrant locations, water supply pressure, turnarounds, and residential sprinkler systems shall be approved by the Rural Fire Marshal. *Comments of the rural Fire Marshal, and paragraph 4 of the Uniform Fire Code Requirements.*

5. Driveways shall not exceed 10 percent in grade constructed to 12 feet wide with a 20 foot full clearance width. Driveways that exceed 150 feet in length shall have a turnaround subject to approval of the Rural Fire Chief. *Section 3-2(6).*

6. A standard street name sign shall be placed at the intersection of Butler Creek Road and Chinook Drive, and at all intersections of named streets within the development. The street names and the signs shall be approved by the County Surveyor prior to filing of the final plat, or the signs may be included as part of the public improvements agreement. *Section 3-2(2)(F), and paragraph 5 of the Uniform Fire Code Requirements.*

7. The trail system and recreation site locations shall be approved by the Office of Planning and Program Development. *Suggestion of staff, due to concerns in comments.*

8. The Board of County Commissioners shall approve the Declaration of Covenants and the mechanism to manage and preserve the common area/conservation easement as perpetual open space and wildlife habitat. *Proposed by developer under PUD requirements.*

9. The Covenants shall address private road maintenance and the financial and decision making means for maintenance, the language to be approved by the County Surveyor. In addition, the following statement shall be placed on the face of the final plat:

"The purchaser and/or owner of the lot or parcel, understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property owners' association and that the City or 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 City or County of Missoula." *Section 5-2(5)(C).*

10. Prior to construction of a portion of Spatter Works Drive that accesses Polar Star Cluster, the developer shall initiate vegetative enhancement strategies as recommended by Land and Water Consultants. The strategies shall contain provisions for tree planting in the upper regions of the site provide for re-seeding of certain areas, and provide for shrub planting in the areas containing springs. Said strategies must be approved by the Department of Fish, Wildlife and Parks.

11. Cluster lots shall not be located within the center draws or drainage ways. (See lots S-1 or Lot M-2) *OCD comment on the natural environment.*

12. Section 22 of the covenants, starting with Section B shall state "the use or installation of any residential solid wood burning device is prohibited unless the device is a wood stove that meets the emissions standards necessary to qualify for a Class I permit as specified in Section X-4100 of the Missoula City-County Air Pollution Control Program; and Item C in its entirety, and Item D in its entirety.

13. Item 4 of the covenants shall contain a statement that combustible roofs are not permitted; specifically wood shakes and shingles and similar materials are to be prohibited from use in this subdivision.

The hearing was opened to public comment.

Jay Raser said the concept for this project was arrived at with a different approach. The property was conveyed to Circle H in 20 acre parcels. However, the developers were interested in doing something different. They wanted to try clustering the homes. The design process included inventorying the property with respect to its historic uses of agricultural and grazing, wildlife habitat, and use by smoke jumpers for the past 30 years. After three meetings with the homeowners associations in the area and numerous site tours, they finally came up with the design. The developers also contracted with Land and Water Consulting to do a resource inventory as well as worked several other conservation easement groups before entering into negotiations and an agreement with Five Valley Land Trust.

The project is located between Interstate 90 and Butler Creek. When the property was conveyed to Circle H Development, there were forty-nine 20-acre aliquot parts on the property. There is significant elk habitat on the upper reaches of the property. This property abuts the property owned by Washington Corporation which has a large conservation easement located on it. This conservation easement will correspond with the Circle H conservation easement. He said they have tried to recognize the attributes of the property and incorporate them into the overall design. They wish to use the elk habitat as one of the amenities of the property.

He said at one time they considered using existing County roads; however, they now plan to utilize an entrance off Butler Creek Road. The lots are not the usual rectangular shape because they didn't want the practice of staking out one's property by fencing to continue in this particular subdivision. The clusters of homes are spread throughout the 780 acres of common area. The vast majority of the common area is developable; it is quality open space.

He said they met with the Department of Fish, Wildlife and Parks to discuss the elk habitat. During one of their first meetings, they overlaid the elk habitat over their plat map and modified their design by moving one cluster of homes an additional 400 feet to the north to allow the elk to move through the area. In addition, they have tried to enhance the existing habitat and wildlife use on the property. He said this has been done in conjunction with Five Valleys Land Trust. When a person buys a lot, they buy 1/76th interest in the entire project. They have also tried to work with the adjacent landowners to maintain the existing livestock use on the property which allows the property to be maintained and the wildfire danger to be kept down as well.



Nick Kaufman, WGM Group, representing Circle H Group, stated that the developers concurred with the staff report and the staff's recommendation for Condition #1 pertaining to the zoning and the note regarding the percentage of recommended disturbance in certain categories of slope. He suggested that this condition be a recommendation only, not part of the regulations. Condition #13 was recommended by the Planning Board and states, "Item 4 of the covenants shall contain a statement that combustible roofs are not permitted, specifically, wood shakes and shingles and similar materials are to be prohibited from use in this subdivision." He stated there may be a better way of handling this concern. He said they have been working with Bill Lindstrom of the Rural Fire District, who stated they have adopted fire codes relative to combustion ratings for roofs. Bill Reed, District Fire Chief, recommended in a letter to the Commissioners dated November 3, 1994, that Condition #13 be revised to state, "Item 4 of the covenants shall contain a statement that roof construction shall be of Class A or B materials and approved by the fire agency having jurisdiction. Wood shakes and shingles and similar materials are to be prohibited from use in this subdivision." He requested that the Planning Board's recommendation be amended to reflect the language suggested by Bill Reed.

He said this is a unique project that addresses much of the value of an existing open space in Missoula. It allows for residential development in a manner which enhances the existing resources. The design is not only a result of a design team hired by the developer, but is a result of agency input as well.

Cass Chinske, 727 Cherry, spoke in support of the adoption of the PUD and subdivision as presented. He said in 1981, he worked with the Marbut family to establish the wildlife preserve and conservation easement on the west and east side of Grant Creek Road. Approximately 780 acres are in fee simple ownership of the National Wildlife Federation. Another 1600 acres are in conservation easement that adjoin this property and proposed PUD. The protected elk habitat in this proposal is excellent. This will allow the elk and other species to maintain a reasonable existence as this area is developed. He said this is the finest proposal he has ever seen in western Montana. A lot of effort has gone into the design and sensitivity of the habitat, wildlife corridors and the view shed from the residents surrounding the proposal. He urged the Board to approve the proposal in order to encourage other developers to do the same.

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

Janet Stevens, Interim Director of the Office of Community Development, said this project has taken a considerable amount of time. The developers took a big risk by taking well over a year to put a proposal together. This proposal is very significant and exemplary. She thanked the developers for allowing the agencies to review the proposal in a cohesive way.

Barbara Evans expressed concern relative to the Planning Board's recommendation pertaining to woodstoves. The City-County Health Department has adopted regulations pertaining to air quality. She wondered whether this area would be covered by the current Health Department regulations?

Colleen Dowdall, Deputy County Attorney, explained that the covenants contained a provision that was outdated. The Planning Board made this amendment to the covenants so that it would not reference the health codes no longer in effect. She said this area may be in the non-attainment zone and would be subject to current regulations.

Ann Mary Dussault stated that if this property is located within the non-attainment zone, then Condition #12 is redundant. This area is also within the City's 4 1/2 mile limits, so building permits would be required for construction.

Jay Raser stated that the property is located within the Air Stagnation Zone. There was an error in the covenants. He stated they never had any intention of doing anything different than the current regulations.

Barbara Evans stated that she has been at the County for a very long time and had never seen a finer subdivision. The sensitivity to the elk habitat and other wildlife by placing the residences in clusters has been beautifully done. The developers have worked hard with all of the agencies far and above what is required.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the Planned Unit Development and the proposed Rural Zoning District "East Butler Creek Foothills", subject to the following condition:

1. The quality attached housing phase may not be constructed until a design with an appropriate density allowance is approved by the governing body after full PUD amendment and subdivision review.

The motion carried on a vote of 3-0.

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the preliminary plat of Circle H Ranch, subject to compliance with the following conditions:

1. Plans for paving, grading, and drainage shall be approved by the County Surveyor.

2. The Property-Owner's Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict.

3. All easements shall be shown on the face of the plat. The streets and roads shown on the plat shall be labeled a 60-foot private access and public utility easement. Easement widths shall be at least 20 feet unless a narrower width is

approved by the appropriate utilities and governing body. In addition to showing the location of the easements, the following statement shall appear on the face of the final plat:

"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever."

4. Fire hydrant locations, water supply pressure, turnarounds, and residential sprinkler systems shall be approved by the Rural Fire Marshal.

5. Driveways shall not exceed 10 percent in grade constructed to 12 feet wide with a 20 foot full clearance width. Driveways that exceed 150 feet in length shall have a turnaround subject to approval of the Rural Fire Chief.

6. A standard street name sign shall be placed at the intersection of Butler Creek Road and Chinook Drive, and at all intersections of named streets within the development. The street names and the signs shall be approved by the County Surveyor prior to filing of the final plat, or the signs may be included as part of the public improvements agreement.

7. The trail system and recreation site locations shall be approved by the Office of Planning and Program Development.

8. The Board of County Commissioners shall approve the Declaration of Covenants and the mechanism to manage and preserve the common area/conservation easement as perpetual open space and wildlife habitat..

9. The Covenants shall address private road maintenance and the financial and decision making means for maintenance, the language to be approved by the County Surveyor. In addition, the following statement shall be placed on the face of the final plat:

"The purchaser and/or owner of the lot or parcel, understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property owners' association and that the City or 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 City or County of Missoula."

10. Prior to construction of a portion of Spatter Works Drive that accesses Polar Star Cluster, the developer shall initiate vegetative enhancement strategies as recommended by Land and Water Consultants. The strategies shall contain provisions for tree planting in the upper regions of the site provide for re-seeding of certain areas, and provide for scrub planting in the areas containing springs. Said strategies must be approved by the Department of Fish, Wildlife and Parks.

11. Cluster lots shall not be located within the center draws or drainage ways. (See lots S-1 or Lot M-2)

~~12. Section 22 of the covenants, starting with Section B shall state, "the use or installation of any residential solid wood burning device is prohibited unless the device is a wood stove that meets the emissions standards necessary to qualify for a Class I permit as specified in Section X 4100 of the Missoula City County Air Pollution Control Program; and Item C in its entirety, and Item D in its entirety.~~

~~13. Item 4 of the covenants shall contain a statement that combustible roofs are not permitted; specifically wood shakes and shingles and similar materials are to be prohibited from use in this subdivision. roof construction shall be of Class A or B materials and approved by the fire agency having jurisdiction. Wood shakes and shingles and similar materials are to be prohibited from use in this subdivision~~

The motion carried on a vote of 3-0.

Ann Mary Dussault said it is very common to see areas developed by Certificate of Survey. If traditional means of development are always used, the majority of Missoula's amenities will be destroyed. The owners and developers of this property have taken a risk. This risk has resulted in a product that is very fine.

Fern Hart said this kind of development has been sorely needed for quite a while and it will become a model for future developments.

#### HEARING: SCATTERED PINES - PRELIMINARY PLAT - LOLO

Philip Maechling, Office of Community Development, explained that Scattered Pines is a 6.3 acre proposed subdivision of 14 single family residential lots. It is located in Lolo, above Ridgeway Drive and adjacent to the Lolo water reservoir site in Section 27, T12N, R20W. The 1975 Lolo Land Use Plan designates this area as residential with a maximum density of up to six dwelling units per acre. The actual proposed overall density is approximately 2.5 units per acre. The average lot size is approximately 13,000 square feet, and a park area of 0.6 acres is planned for dedication to the homeowners' association. Because the density is greater than two units per acre, the subdivision is classified as urban-suburban.

The subdivision will be served by Pine Shadow Court, a 32 foot paved street with curb, gutter, and sidewalk along the south side, within a 60 foot right-of-way. An access driveway to serve Lots 13 and 14 is shown connecting to the cul-de-sac which is to be paved to 12 feet with four feet of clear access on either side. Both of these roads will be aligned over existing dirt roads. The proposal is located within Lolo RSID 901, and will connect to that public sewer and water system. The slope of the land is approximately 18% overall and vegetation is mainly small evergreens and

prairie grasses. The proposed subdivision marks the westernmost extent of the current boundary of RSID 901 and of the Lolo planning area boundary for the six dwelling units per acre density district; beyond is Open and Resource designation.

The developer requested a variance to Section 3-2(3)(A) which states that the minimum right-of-way for the turnaround radius of the cul-de-sac shall be 50 feet, and the minimum pavement width of the turnaround radius shall be 35 feet. The developer proposed a 45 foot right-of-way radius instead of a 50-foot radius. The pavement width would still be the regulation 35 feet, and the 10 feet of right-of-way area around the pavement would allow room for snow removal. The reduction in right-of-way would allow for more buildable area on Lot 8.

The staff recommended approval of the variance request.

At its November 1, 1994 meeting, the Missoula Consolidated Planning Board recommended 4-3 that the preliminary plat of Scattered Pines be denied. The general reasons for the recommendation were due to effects on public health and safety and local services. There is no second access to this subdivision and to the larger neighborhood. Ridgeway has no sidewalks and is in need of maintenance. There is congestion at the intersection of Ridgeway and Highway 93.

The Office of Community Development staff recommended that the preliminary plat of Scattered Pines be approved, subject to compliance with the following conditions:

1. Grading, drainage, erosion control, sewer, water, street, street names, and driveway plans shall be subject to approval of the County Surveyor. *Section 3-2 and 3-4, Missoula County Subdivision Regulations.*
2. The covenants, by-laws, and declarations shall bear the certification of the attorney who prepared or reviewed them, that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations; and that the provisions do not conflict. *Sections 4-2(5)(D). Covenants were not submitted, yet are recommended to be submitted and approved for control and maintenance of the common area, and for inclusion of wildlife interface information for advice to future homeowners.*
3. The covenants shall include the recommendations to homeowners listed in the section of the staff report entitled "Effects on Wildlife", and the method of development and perpetual maintenance of the common area. The covenants shall be reviewed by the Office of Planning and Program Development and the County Attorneys Office, for recommendation to and approval by the Board of County Commissioners prior to filing of the final plat. *Mechanism to insure compliance with recommendations of information to be included in the covenants.*
4. All utilities shall be placed underground, and the public utility easement statement contained in Section 3-5 of the Missoula County Subdivision Regulations shall be shown on the face of the final plat. *Section 3-5.*
5. Sewer and water plans shall be approved by the RSID 901 supervisor prior to filing of the final plat. *Comments of the City/County Health Department.*
6. The final plat shall contain a statement that grades of driveways shall not exceed 10%. *Section 3-2(6)(B).*
7. The 0.7 acre park area shall be deeded to a property-owners' association for development and maintenance. The area designated as "park" on the proposed plat shall be re-labeled as common area. *To fulfill park dedication requirements in a manner to provide for development and maintenance.*
8. The following shall appear on the face of the plat and in each instrument of conveyance, and shall run with the land:  
  
"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner(s) to waive the right to protest a future RSID for any improvements to Ridgeway Drive." *Mechanism to help pay for needed improvements to off-site street.*

The hearing was opened to public comment.

Gilbert Larson, Druyvestein, Johnson and Anderson, representing Andrus Development, said the key items that were reviewed at the Planning Board meeting on November 5th were the access to the area and the condition of Ridgeway itself, as well as the approach onto Highway 93. It was the Board's concern that the problems of this area should be addressed before development continues to the west. However, he said this subdivision is at the western-most extreme of the Lolo Land Use Planning Area boundary. This area will not be developable without a change to the Comp Plan. Also, this proposed development is at the western-most extent of the 901 boundary area. Any properties to the west will require annexation into the 901 RSID area. There would be quite a few steps necessary before additional development could occur. He said this proposal is for 2.5 units per acre in an area designated as 6 units per acre.

Regarding Ridgeway, he said the road should be improved. However, he said they discussed the road with the Surveyor's Office who indicated that Ridgeway is safe as it exists and is able to serve this additional subdivision. This subdivision will not intensify or add to the concerns that exist. A second access would certainly be advantageous to the neighborhood. This proposal will only enhance the opportunity. More residents will help to spread the load and make it feasible to update the road sometime in the future. He said whether this subdivision is approved or denied, there will still be problems with the road. He said they must rely on the opinions and the advice of the Surveyor's Office. The determination has been made that the number of proposed units will not increase the safety problem that currently exists. The buyers are required to sign a waiver of the right to protest improvements to Ridgeway. He said this area is within the Comprehensive Plan; the proposal is in compliance.

Regarding the variance, he said there is a unique situation on this property concerning a 60 foot easement to the water tower. He said they have requested a 5 foot reduction in the right-of-way for the cul-de-sac. They will provide the full 35 foot radius paved cul-de-sac. A person driving the cul-de-sac will not notice the difference, but it will allow a little more buildable area and will allow better siting for the home.

Dave Pengelli, attorney representing the owners of the property to the west of the proposed subdivision, Dwayne and Cynthia Spethman, said their property is within the boundaries of Lolo RSID 901. He said on October 3, 1994, he wrote a letter to John DeVore, Administrative Officer of the County, requesting some clarification on the status of his clients' availability for hookups in the RSID. He said he has not yet responded. He said his clients own five separate lots lying north, west and south of the west boundary of the subdivision. He expressed concern about continued access into his clients' property. The developers contend there is an easement through this subdivision onto the Spethman's property for access. He wondered if this was adequately covered in this proposal. He said his clients do not believe the subdivision should be approved until these concerns have been dealt with.

Doug Hadnot, resident of Lolo, expressed concern about the congestion on Ridgeway and the intersection at Highway 93. This intersection is very dangerous. He asked that the Commissioners to at least put on hold all further developments in this area until these issues could be addressed and solved.

Fern Hart said the Commissioners have received a large number of letters from the residents of Lolo.

Heidi Christiansen, resident of Lolo and a member of the Lolo Community Council, said 2.5 units per acre would be wonderful if the existing infrastructure could handle it. She said the residents of Lolo would like the opportunity to resolve these problems before further development occurs. The State Highway Department has indicated that the intersection of Ridgeway and Highway 93 will be aligned within 2 years. After this time, another study will be done to determine the need for a light. Until this time, this intersection will continue to be a danger. Captain Don Mormon of the Sheriff's Office recommended that the neighborhood have an emergency access for emergency vehicles only. Under the subdivision regulations, the Commissioners may deny a subdivision based upon existing hazardous conditions that present a danger to the public health and safety such as vehicular traffic hazards or congestion. She stated that this proposed subdivision has not created the existing problems. However, these problems must be resolved before further development can occur on the hill. She requested that the residents be given time to resolve these problems.

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

Barbara Evans asked Horace Brown to detail the efforts made by the County pertaining to the Ridgeway/Highway 93 intersection.

Horace Brown, County Surveyor, said the State will use safety money to align Glacier and Ridgeway. They have worked on this project for the last two years. The project at this time is under the authority of the County. The County will turn this back to the State because they do not have engineers available that can design street intersections that have signals. The State will do the design for the intersection. He didn't know if the cost of a light was included in the project, but the State has indicated that a light will be installed. He said the intersection will be aligned in approximately two years. However, the timing will depend on obtaining the right-of-way.

Barbara Evans said an owner of a crucial piece of land for the right-of-way has not been willing to sell at the appraised price. The County has had three appraisals completed on this property alone. She said they ask the question monthly on the status of this project.

She stated she had mixed emotions about this proposal because of the problems on Ridgeway. She expressed concern about the road maintenance in the wintertime. She wondered if the sanding could be done prior to people leaving for work in the morning.

Horace Brown said the sander that services Ridgeway also sands roads in the Miller Creek area before going to Lolo. The bus routes are the first roads to be serviced. He said the sanders start at 5:00 a.m. The standard shift starts at 5:00 a.m. If they have to start sooner than this, they may end up paying overtime.

Barbara Evans stated that she understood the residents' concerns because she has lived in this area. However, she stated she resisted the idea of penalizing one developer for a problem that has occurred over many years. The developers must meet certain regulations. If these regulations are met, the County has no basis to deny the subdivision. Litigation costs the taxpayers money.

Ann Mary Dussault asked the developer's representative to address the issue of access through the property.

Gilbert Larson explained that there has been an access filed through the COS process through the site. They have maintained the exact dimensions of this easement on the plat as it was filed in the COS. They have not moved the easement.

He said it was his understanding that this subdivision was the westernmost property in the boundaries of RSID 901.

Barbara Evans asked, if the Spethmans decide to develop their land, will they access the property through the easement on the proposed subdivision?

Ann Mary Dussault said whether or not the Spethmans property is inside or outside the RSID, is irrelevant. They essentially have property they can build on assuming they can get Health Department approval. Their property has

already been divided through COS. Five homes could be placed on these homes now if they could obtain septic approval. These lots also can currently use the easement to access Ridgeway.

Gilbert Larson said this easement is currently being used for access. They will have to go through subdivision review to go beyond five units on the five lots.

David Pengelli explained there has been a project underway to get an easement recorded that involves the Spethmans, the Evansons and the developers. The current owner of the development, for whatever reasons, did not sign the easement agreement. This has been the concern--the apparent refusal to sign the easement agreement. He said the Spethmans have a recorded easement that was granted to them by a prior owner several years ago. However, it is not consistent with what is shown on the plat. The Spethmans want to clear up the confusion.

Colleen Dowdall, Deputy County Attorney, said the existence of the easement does not impact the subdivision. This subdivision has been reconfigured to correspond with the easement. The easement has stayed in the exact location. There is really no issue with the easement. The plat shows the easement.

Gilbert Larson explained that a year ago, the developers came in with a proposal that was located on a portion of the property. They attempted to move the easement, but were unable to do so. This proposal allowed the developers to use the land a little more fully. However, they were unable to reach a consensus. The owners at this time were able to purchase an additional piece of ground adjacent to the project. This made the development feasible. Instead of 16 lots on 5 acres, they are proposing 14 lots on 6 acres. The easement is exactly the same as was recorded on the COS. The lower lots will be accessed through the easement. They are allowed to have two lots that access through a paved driveway. The road currently exists and accesses the water tank.

Fern Hart asked if the Spethmans had requested annexation into the RSID 901 area?

David Pengelli said his clients have been paying into RSID 901 for three hookups for the past 15 years. He stated they have three hookups available to them; however, they do not know where these are located.

Fern Hart asked if Ridgeway was due for repairs or maintenance by the Road Department?

Horace Brown said the road will not be widened. The Road Department has done some overlays in Lolo and they plan to do some more. Within the next couple of years, they will chip seal Ridgeway.

Fern Hart said this road is very dangerous during the winter.

Colleen Dowdall said there is a requirement in the staff report that future lot owners of this subdivision will waive their right to protest future improvements to Ridgeway. An RSID needs to be created to improve the full length of Ridgeway.

Horace Brown said some of the subdivisions should contribute toward the improvement of this road; the County can only do so much with the limited funds available. Although subdivisions provide tax money, they also have a lot of traffic which requires a lot services. It costs a lot of money to service the old subdivisions and repair the streets. There are over 500 miles of road, 260 miles of which are paved. These must be maintained as well as the streets in Lolo. He stated that if he promised one area sanding by a certain time of the morning, he would have to promise other areas as well. The Road Department services the roads as fast as they can.

The discussion relative to Ridgeway continued. The Commissioners continued to express concern pertaining to the dangerous winter conditions on Ridgeway. The sanders could start before 5:00 a.m., but this would require overtime. This may not help in some instances as the snow may fall after sanding occurs.

Barbara Evans expressed concern about the fire danger.

Gilbert Larson said a letter was received from Bill Reed of the Rural Fire District requiring that the subdivision's fire hydrant have adequate pressure. The area within this subdivision is within the Lolo Fire District. However, they may have to adjust their boundaries slightly to include Lot 9. There were no concerns expressed about a fire danger in this area. The Sheriff's Department had concerns about one access and encouraged the neighborhood come up with another access. He said these issues make it hard to advise a client when they are told by the agencies that the services will be adequate and available to the subdivision. The developers have met all of the rules. They are in compliance with the Comp Plan. As a result of the subdivision process, much is learned about what is currently wrong with the conditions in the area. If there is a problem with these services, approval or denial of the subdivision is not a part of the existing problem. In fact, he said this subdivision will improve the situation by taking a good step forward to upgrade Ridgeway.

Fern Hart expressed concern that this subdivision will cause an impact on the school.

Ann Mary Dussault asked about the developers' intent for this property.

Gilbert Larson said the lots will be pre-sold and custom built for the buyer. It is the intent of the developers to start marketing the lots as soon as the subdivision is approved. However, this is market-driven. Within the next two years, the majority of the units should be built and occupied. A reasonable goal would be completion by the fall of 1996.

Ann Mary Dussault asked Horace Brown if the intersection at Ridgeway and Highway 93 would be improved by the fall of 1996?

Horace Brown said it was doubtful that the intersection would be improved by this time. It depends on the length of time it will take the State to buy the right-of-way. He stated he could not estimate how much time it would take.

Ann Mary Dussault said the OCD staff did not feel that an additional 14 lots would exacerbate the existing problems. It would be different if there were 100 lots.

Philip Maechling said given the percentage of change from the existing condition, the change is not at a level where the number of trips would be increased by more than 3.5% or less. A 3.5% change was not enough to suggest that the infrastructure was so weak that this project in particular should be denied.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the variance to Section 3-2(3)(A) which states that the minimum right-of-way for the turnaround radius of the cul-de-sac shall be 50 feet, and the minimum pavement width of the turnaround radius shall be 35 feet. The motion carried on a vote of 2-1 with Fern Hart voting against the motion.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the preliminary plat of Scattered Pines, based on the findings of fact in the staff report and subject to compliance with the following conditions:

1. Grading, drainage, erosion control, sewer, water, street, street names, and driveway plans shall be subject to approval of the County Surveyor.

2. The covenants, by-laws, and declarations shall bear the certification of the attorney who prepared or reviewed them, that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County Subdivision Regulations; and that the provisions do not conflict.

3. The covenants shall include the recommendations to homeowners listed in the section of the staff report entitled "Effects on Wildlife", and the method of development and perpetual maintenance of the common area. The covenants shall be reviewed by the Office of Planning and Program Development and the County Attorneys Office, for recommendation to and approval by the Board of County Commissioners prior to filing of the final plat.

4. All utilities shall be placed underground, and the public utility easement statement contained in Section 3-5 of the Missoula County Subdivision Regulations shall be shown on the face of the final plat.

5. Sewer and water plans shall be approved by the RSID 901 supervisor prior to filing of the final plat.

6. The final plat shall contain a statement that grades of driveways shall not exceed 10%.

7. The 0.7 acre park area shall be deeded to a property-owners' association for development and maintenance. The area designated as "park" on the proposed plat shall be re-labeled as common area.

8. The following shall appear on the face of the plat and in each instrument of conveyance, and shall run with the land:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owner(s) to waive the right to protest a future RSID for any improvements to Ridgeway Drive."

The motion carried on a vote of 2-1 with Fern Hart voting against the motion.

Ann Mary Dussault said this is a difficult issue, but it falls into the category of a threshold issue. There are a number of issues regarding Ridgeway. The Board of County Commissioners may solve the financial issues pertaining to the roads by allocating general fund money to the Surveyor's Department. However, some of the issues pertaining to the infrastructure that won't be addressed by the time the scope of this project is complete, but will be done a couple of years after the subdivision is built out. She stated that the subdivision complies with the Comp Plan, it has access to sewer and water, and there are developable lots surrounding the proposal. Based on this, she stated she felt this was an acceptable in-fill development that does not over-burden the existing infrastructure in the community.

Fern Hart asked if sprinklers would be installed in the park?

Gilbert Larson said they have not discussed sprinklers, but a park maintenance RSID will be set up.

#### HEARING - CERTIFICATE OF SURVEY REVIEW: AGRICULTURAL EXEMPTION - MOLAND

Kathy Smith, Paralegal for the County Attorneys Office, explained that Leif A. and Marlene E. Moland submitted a request for an agricultural exemption for Tract 1, Parcel B of COS 4065, a +-3.5 acre parcel located west of Huson on the old Chicago, Milwaukee, St. Paul and Pacific railroad right-of-way. The parcel exists in two pieces, Parcel A and Parcel B, and Mr. and Mrs. Moland wish to create an agricultural exemption on Parcel B for sale to a prospective buyer. The prospective buyer has requested to purchase the property under an agricultural exemption and as the property is located near an electrical substation, the parcel is not suitable for much else. Mr. and Mrs. Moland reside on the east portion of the property or Tract 1, Parcel A.

The history of the parcel is as follows: the parcel was once a part of the railroad right-of-way and Mr. and Mrs. Moland purchased the parcel as a +-4.5 acre parcel in 1989. In 1992, COS 4065 was filed creating a one acre occasional sale in the middle of the property. This left the remaining parcel which exists on both sides of the occasional sale.

According to the records kept by the Missoula County Surveyor, the applicants have used exemptions to the Subdivision and Platting Act as described.

The hearing was opened to public comment.

Nick Kaufman, WGM Group, representing the Molands, explained that the applicants bought a piece of the old Milwaukee right-of-way and built their retirement home on one end. In 1992, they were given permission to use an occasional sale exemption. This long parcel was adjacent to property owned by Chuck Stennerson who reached an agreement with the Molands where he would buy a portion of this right-of-way through a boundary relocation. Before this could be accomplished, Mr. Stennerson lost his property through bankruptcy. His brother, Marvin Stennerson, has acquired the old homestead and other holdings. Marvin Stennerson would like to have the property in question for agricultural use.

He explained that the occasional sale, when it split the property, actually split the property so that the occasional sale parcel was in the middle of the property. The remainder parcel, located on either side of the occasional sale had the same property description. The Molands wish to create an agricultural exemption on the remainder parcel.

A discussion ensued relative to the proposed parcel and whether Mr. Stennerson intended to place a billboard sign on the property. It was concluded that the property in question was not in a location that would allow traffic to see a billboard from the freeway.

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

Barbara Evans moved and Ann Mary Dussault seconded the motion to approve the request by Leif A. and Marlene E. Moland for an agricultural exemption for Tract 1, Parcel B of COS 4065, a +-3.5 acre parcel located west of Huson, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 3-0.

#### HEARING - CERTIFICATE OF SURVEY REVIEW: FAMILY TRANSFER - BOYER

Kathy Smith, Paralegal for the County Attorneys Office, explained that this is a consideration of a request for a family transfer and subsequent security exemption for a parcel described as that irregular parcel of land being the remainder of that land described within that deed recorded in Book 135 at Page 638 less that 2.63 acre parcel recorded in Book 225 at Page 170 and also less that land described in Book 173 at Page 944 located in Section 33, T15N R21W for Joseph N. and Evelyn H. Boyer.

The Boyers own a +-14 acre parcel located west of Frenchtown off Mullan Road. The Boyers wish to sell approximately 12 1/2 acres to their daughter, Lisa Riesenbeck, and retain the remaining 1 1/2 acres. Ms. Riesenbeck has lived on the property since 1986 and both proposed parcels will remain in their current use, as single family residences. If the family transfer is approved, Ms. Riesenbeck would like to request approval of a security exemption parcel and mortgage 4 acres of the new parcel to update her home.

The history of the parcel is as follows: the parent parcel was originally 217.4 acres and purchased by the Boyers in 1944. They sold 200 acres of the parcel to their son, Joe Boyer, Jr. in 1982 and have continued to live on the remainder since its original purchase in 1944.

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

The hearing was opened to public comment.

Gordon Sorenson, representing the Boyers, explained that in the 1940's, the Boyers purchased 217 acres. In 1962, the Boyers deeded 2.61 acres to one of their daughters, who divided this parcel with her sister. In 1982, they sold the 200 acres of river bottom property to their son, Joe, Jr. They Boyers have retained 14.5 acres. For the last 12-15 years, their daughter, Lisa Riesenbeck, has been paying for a portion of the land. It has since been paid off. Lisa has been living on the property in a mobile home for the past few years. She would like to sell the mobile home and build a three bedroom home on the property. The use and occupancy will remain the same. The septic system was recently put in and meets all the codes and conditions. The Certificate of Survey will go through Health Board review; the Mortgage Survey does not. He said it is not their intent to evade the Subdivision and Platting Act.

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

Ann Mary Dussault clarified that the Commissioners only approve the family transfer; the mortgage exemption is a separate process.

Kathy Smith said the mortgage exemption is usually handled through the County Attorney's Office. However, the mortgage exemption can be approved with the family transfer.

Ann Mary Dussault moved and Barbara Evans seconded the motion to approve the request for a family transfer and subsequent security exemption for a parcel described as "that irregular parcel of land being the remainder of that land described within that deed recorded in Book 135 at Page 638 less that 2.63 acre parcel recorded in Book 225 at Page 170 and also less that land described in Book 173 at Page 944 located in Section 33, T15N R21W" for Joseph N. and Evelyn H. Boyer, based upon the finding that the request does not appear to evade the Montana Subdivision and Platting Act, and contingent upon the transfer of the deeds to the family member. The motion carried on a vote of 3-0.



HEARING: REVISIONS TO SUBDIVISION REGULATIONS - FIRE STANDARDS AND TRAVEL CORRIDORSFire Standards:

Barb Martens, Office of Community Development, reviewed the proposed amendments to the County Subdivision Regulations pertaining to fire protection. She explained that in the past when subdivisions have been submitted, OCD has received concerns from the different fire jurisdictions. It was the belief that in areas of wildland residential interface, subdivision standards were inadequate to deal with public safety issues. Approximately one year ago, the OCD and the County Attorneys Office started meeting with a number of fire officials throughout the City and the County, which included fire chiefs, representatives from the Department of State Lands, and the Forest Service, to develop a set of proposed standards that could be incorporated into the Subdivision Regulations.

She said that after the staff report went out one week prior to today's hearing, there were some comments and letters received expressing concerns over some of the proposed standards. A book was provided by Scott Waldron of the Frenchtown Fire District to illustrate how these standards would look if they were incorporated into the Subdivision Regulations.

She explained that the wildland residential interface (WRI) fire situation exists anywhere that structures are located close to combustible wildland vegetation where a fire can spread from the vegetation to structures, or vice versa. The distance between structures directly affects how fast a wildfire can spread. A WRI can vary from a large housing development adjacent to combustible wildland vegetation, to a structure or structures surrounded by combustible wildland vegetation.

The staff recommended an addition to the Purpose and Intent Statement which would discuss the reduction of risk of fire damage. Also, they recommended that five new definitions be added that clarifies some of the standards that have been adopted. Under General Standards, the addition of the words, "Uniform Fire Code" were suggested. Also, there are new standards that will deal with access routes for fire protection within the wildland residential interface areas, road widths, driveway widths, unobstructed areas and unobstructed vertical height standards. In this section there are a number of different types of water systems that may be used or proposed if acceptable by the Fire District to deal with fire protection issues. There is also allowance to look towards and consider using open space, such as picnic areas, trails, and recreational sites, as fuel breaks or fire protection green belts. There is a recommendation that suggests wording that could be incorporated into the covenants in areas of wildland residential interface that have some guidelines for future lot purchasers if they build in these types of areas. The suggestions deal with types of plantings, roof construction, and thinning guidelines.

The hearing was opened to public comment.

Chuck Gibson, City Fire Chief, spoke in support and urged approval of the fire standards into the Subdivision Regulations. He said officials in the County feel strongly that the area will have another disaster such as what occurred in the Pattee Canyon area in the 1970's. However, these standards will help to mitigate these problems. These standards also apply to the City.

John Agner, Seeley Lake Ranger District, was supportive of the proposed amendments. The Double Arrow Landowners Association have asked for assistance in implementing these standards in their area. He spoke in support of the standards; these standards will help reduce the problem in the urban interface.

Tad Kolwicz, fire specialist in the Department of State Lands, said along with the Forest Service, the department provides wildland fire protection. He spoke in support of the proposed amendments.

Scott Waldron, Frenchtown Fire Chief, spoke in support of the amendments and thanked the staff for their hard work.

Nick Kaufman, WGM Group, said the Department of State Lands, and the Rural and City Fire Departments have always been reasonable and easy to work with. He said developers do not have to be disturbed about these guidelines which are long overdue.

Colleen Dowdall, Deputy County Attorney, suggested corrections on page 5 in the middle of the page beginning with "species of special concern". She suggested that the language, "outweighs the danger of wildfire;" be added. She thanked the fire agencies that were involved with the project.

Jay Raser said what has been proposed is what was employed in the Circle H Ranch subdivision. He said it is good to have regulations to go by instead of trying to figure it out.

Colleen Dowdall stated that Dick Ainsworth, Professional Consultants, Inc., had requested that the Commissioners not act on the amendments until next week in order to give the public an opportunity to review the amendments.

Ann Mary Dussault inquired about page 4 of the fire standards, located at the top of the page. The language would read, "the governing body may require the developer to enter into a development agreement to ensure future compliance or require that the covenants contain a provision that allows the County to enforce these standards." The remainder of the sentence should be struck.

Fern Hart stated that written testimony pertaining to the fire standards would be accepted until next Monday, November 27, 1994.

Travel Corridors:

Zoe Mothesky, Office of Planning and Program Development, explained that the primary travel corridor standards were developed at the request of the Board of County Commissioners. The Board saw a need to have standards in place as subdivisions were proposed along highly visible routes. Once adopted, these proposed standards would apply to all subdivisions along corridors as defined in the regulations. Under the proposed regulations, there are three types of standards that would apply to the subdivisions that fall along these corridors: landscaping standards, setback standards, and design standards. She said there have many comments made relative to the standards from the public as well as from members of the development community. Many of these comments have been incorporated into this draft. Most of the amendments are primarily word changes for clarification.

She explained that she received correspondence from people who couldn't attend today's hearing. Correspondence was received from SAVE (Save Americans Visual Environment), and Jim McGrath of the Missoula Bicycle and Pedestrian Advisory Board.

She passed out the proposed standards and explained that the new language was italicized and deletions were struck out.

The hearing was opened to public comment. There being no comment, the hearing was closed.

The Commissioners thanked the staff, the various fire agencies and the development agencies for their participation in the development of the fire and travel corridor standards.

Fern Hart said the Board would continue to accept written testimony on the travel corridor and fire standards until 5:00 p.m., Monday, November 28, 1994. A decision will be made on both the travel corridor and fire standards on Wednesday, November 30th.

There being no further business to come before the Board, the Commissioners were in recess at 4:05 p.m.

**THURSDAY, NOVEMBER 24, 1994**

The Courthouse was closed for Thanksgiving Day.

**FRIDAY, NOVEMBER 25, 1994**

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

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Beverly Robertson as principal for Warrant #7212 issued June 9, 1994 on the Missoula County Desmet General Fund in the amount of \$60.31, now unable to be found.

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming Zepher Press as principal for Warrant #21310 issued May 10, 1994 on the Missoula County General Claims Fund in the amount of \$22.95, now unable to be found.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, NOVEMBER 28, 1994**

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

**TUESDAY, NOVEMBER 29, 1994**

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

Indemnity Bond -- Chair Fern Hart examined, approved, and ordered filed an Indemnity Bond naming State Compensation Insurance as principal for Warrant #40892 issued November 10, 1994 on the Missoula County Urban Transportation Fund in the amount of \$6,379.19, now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Modification of Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and the Montana Department of Health and Environmental Sciences for the purpose of modifying the terms of the agreement between them concerning tuberculosis services (DHES No. 340270, as amended), as per the items set forth. The Agreement was forwarded to DHES in Helena.

Special Weed District Grant Application -- Chair Fern Hart signed a Special Weed District Grant Application to the Montana Noxious Weed Trust Fund for the purpose of rebuilding a roadside sprayer, adding a ground-oriented metering system and chemical injection. The total project cost is \$14,786, with a total grant request of \$5,000 and total matching

funds of \$9,786, to be funded for 1 year. The Application was returned to the Weed Department for further signatures and handling.

Agreement -- Chair Fern Hart signed an Agreement between Missoula County and the Montana Department of Health and Environmental Sciences (DHES) for the purpose of assisting Missoula County to conduct its own air pollution control program pursuant to Section 75-2-301, MCA, as per the items and terms set forth, for the period from July 1, 1994 through June 30, 1995, with payment from DHES being up to a maximum of \$61,763. The Agreement was forwarded to DHES in Helena.

Agreement -- The Board of County Commissioners signed an Agreement between The County of Missoula and Local Unit Number One of the Montana Public Employees Association for the purposes of collective bargaining with respect to defining the wages, hours and other working conditions of the employees of Local Unit Number One, as per the items set forth, for the period from July 1, 1993 to June 30, 1995. The Agreement was returned to John Pemberton, Director of Personnel and Labor Relations, for further handling.

Amendment to Agreement -- Chair Fern Hart signed Amendment No. 1 to the Inmate Telephone Service Agreement No. SEA-910422-0028 between U.S. West Communications, Inc. and Missoula County Detention Center, with an effective date of June 3, 1991, amending the Agreement as per the terms set forth. The Amendment was returned to Mike O'Hara in the Sheriffs' Department for further signatures and handling.

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

### WEDNESDAY, NOVEMBER 30, 1994

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

Audit List -- Commissioners Fern Hart and Ann Mary Dussault signed the Audit List, dated November 30, 1994, pages 4-41, with a grand total of \$149,386.16. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

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

Agreement -- Fern Hart signed a Site Occupation and Use Agreement between The University of Montana and the Historical Museum at Fort Missoula relative to the Woodsmen Team setting up a Forestry Competition Grounds, as per the terms set forth.

Policy Statement -- The Board of County Commissioners signed Policy Statement No. 94-C, a policy and procedure for the evacuation of Missoula County Buildings in response to fire, bomb threats, criminal activity or earthquakes.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Rebecca H. Deschamps for the purpose of participating in the Partnership Health Center Formulary Committee, as per the terms set forth, for the period commencing July 1, 1994 through June 30, 1995 for compensation in the amount of \$20 per hour.

Other items included:

- 1) Chair Fern Hart signed the November 10, 1994 letter from Pat Holt, acknowledging and accepting the amendment regarding placement of fill on the Holt property.
- 2) the Commissioners re-appointed Jack Chambers and Gladys Hardin to 3-year terms as a "regular" members on the Missoula Aging Services Governing Board through December 31, 1997.
- 3) the Commissioners re-appointed JoAnne Stewart to a 3-year term as a "regular" member on the Lolo Mosquito Control Board through December 31, 1997.
- 4) the Commissioners re-appointed Tom Blunn and Kendall Cleaves to 2-year terms as a "regular" members on the Missoula County Zoning Board of Adjustment through December 31, 1996.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioner Barbara Evans and Commissioner Ann Mary Dussault.

#### POSTPONED: BID AWARD: SEVEN PATROL CARS - POLICE PACKAGE (SHERIFF'S DEPARTMENT)

Fern Hart said the first item on the agenda is a bid award, which will be postponed as no material has been submitted by the Sheriff's Office.

ADOPTED: A. REVISIONS TO SUBDIVISION REGULATIONS -- FIRE STANDARD AND TRAVEL CORRIDORS.

Fern Hart said the next item is the revisions to Subdivision regulations, Fire Standards and Travel Corridors. What I understand about that, we had a discussion of that at the last meeting, it was postponed to make a decision to this meeting, that we closed the public comment at 5:00 o'clock on Monday.

Ann Mary Dussault said I wonder if Staff has any additional comments. Could we take the fire Standards first. Divide the question and take Fire Standards first, whether Staff has additional comments.

Barbara Marten, OCD, said we have no additional comments. What we're recommending is the document with italicized portions.

Ann Mary Dussault moved and Barbara Evans seconded the motion to adopt the amendments to the County Subdivision Regulations regarding Fire Protection Standards as contained in the November 23, 1994, italicized document.

Fern Hart said it has been moved and seconded that the Board adopt the fire standards detailed in the November 23, 1994 document. Barbara, can I ask you a question. Let me just see if I understand some of the changes that were made. How did you resolve the second access for small subdivisions?

Barbara Marten responded and summarized the second access issue, and further stated that people within the subdivision may be required to participate in RSID's for the construction of the second access.

Fern Hart asked what was done about the turn-around?

Barbara Marten summarized this revision, and stated that driveways that are in excess of 150 feet in length shall provide a turn-around for fire apparatus, working with the fire protection agencies to determine what kind of turn around is feasible.

Fern Hart asked about the resolution with the fire districts concerning lower vegetation cleared out because it attracted fires.

Barbara Marten summarized the recommendation that the developer provide guidelines in the covenants that set forth guidelines on what cleaning would be appropriate in those types of areas to help protect the home from fires.

Fern Hart asked will it would be addressed in the covenants?

Barbara Martens responded that it would be.

Fern Hart asked what is the definition of wildland interface?

Barbara Marten summarized the two sections and definitions contained within the November 23 document.

Fern Hart called for the vote on the motion approving the proposed amendment to the County Subdivision Regulations regarding fire protection standards. The motion carried on a vote of 3-0.

Ann Mary Dussault moved and Barbara Evans seconded that the proposed amendments to the County Subdivision Regulations regarding primary travel corridors as contained in the November 23, 1994 draft be adopted.

Discussion was then had between Commissioners Evans and Hart of Staff concerning clarification of the travel corridor in commercial development and housing or residential subdivision. Barbara Marten clarified difference of the three different types of standards, landscaping, setbacks and design.

Fern Hart called for the vote on the motion approving the proposed amendment to the County Subdivision Regulations regarding travel corridors. Motion carried 3-0.

POSTPONED - BUILDING HEIGHT REVIEW - CLARIFYING THE DEFINITION OF BUILDING HEIGHT AND METHOD OF MEASUREMENT

Fern Hart said, Colleen, would you outline for us what the options are that we have on building height and method of measurement.

Colleen Dowdall, Deputy County Attorney, said I think Staff is prepared to do that. You have before you the three options.

Fern Hart said I would like our three options on what we can make a decision on on building heights.

Jennie Dixon, OCD, said you have OCD's original recommendation, and I left copies with you on Monday, and if you look at the front page of that, at the bottom, it has red lines in finished grade, but if you just replaced finished with existing, that was OCD's original recommendation. Our modified final recommendation is what you see at the bottom, finished grade. I think either of those are choices you can make, as part of the public hearing. Also contained in your packet for the public hearing was the architect's proposal, that can be an option you can select. That's what City Council did last night. A slightly modified version of what is your packet, but I think that is also an option.

Fern Hart asked and the Planning Board?

Jennie Dixon said the Planning Board simply took the architect's proposal and picked out the two words where it said "existing grade" and changed it to "finished grade", and that is on the last page of your packet.

Fern Hart said so they changed the architect's proposal to finished grade.

Jennie Dixon said and one thing you can keep in mind is that when you take a proposal and pick words out and stick words in you're changing it.

Colleen Dowdall said what you're saying is we had the public hearing basically three options, OCD's first proposal, architect's recommendation, and the Planning Board what they recommended. Last night the City Council adopted something different than those three.

Jennie Dixon said it was essentially the same as the architect's original proposal that is in the packet, but there was some more refinement of the concepts.

Philip Maechling, OCD, said they changed some details.

Jennie Dixon said the architect's proposal is two alternatives that you can pick. One is the absolute method and one is the alternative method. Their absolute method is the same as what we were proposing, lowest to highest point from finished grade. That's the same. Their alternative method is slightly different. It makes a building envelope height starting at existing grade, not finished grade, it goes to H instead of H minus 5. It takes a point of measurement depending on the roof, and there's also a wall element height. What that will do is break up a wall, you can only have a wall that's 18 feet tall and it has to be offset from the first wall. If you're going to have a second wall it has to be offset by a certain distance.

Fern Hart asked is it correct to say that the absolute measurement will work in about 95% of the cases, and if that's true, does that mean County too?

Jennie Dixon said I think the alternative method is going to be used more on slopes.

Fern Hart asked and only in 5% of the areas would that be applicable?

Jennie Dixon said I think it's hard to pick a number. I think what you're really looking at is if a majority of the people, most number of people are probably going to use the first method. You get the slopes, you have a trade off. In the absolute method, you don't have to have a wall set off. If they don't want to do that, they'll take the first one. If they don't mind doing the offset of the walls and they can keep their building within that envelope, I think they'll probably pick that one.

Fern Hart asked do you think that one consideration of a person building a house what might have is if they wanted to have a taller building they would go to the alternative?

Jennie Dixon said on a hillside, I think so.

Barbara Evans asked, I'd like to ask the architects a question if I may. I'm assuming, you said 18 feet, one wall. I'm assuming you're basing that on finished height of the roof at the mid point, not at the top. Is that correct?

Terre Meinershagen, Architect said it's actually lower. The 18 feet would be measured to the underside of the eave. If it's a sloped roof.

Barbara Evans said that's very confusing because unless you're keeping in mind that a wall inside a house is generally 8 feet, you have to have something between the floors, takes up six, eight inches or a foot, and another 8 feet, and then how do you have a roof. Obviously that doesn't work, so I need explanation.

Terre Meinershagen said we have an illustration.

Barbara Evans said there is an illustration here. But I just wanted to make sure there was room for a pitched roof.

Terre Meinershagen, said yes, there is. When you measure to the under side of the eave, that's where you're measuring to, so it allows for this roof.

Barbara Evans asked does it say in here to the underside of the eave, or is that expected to be known by everybody who draws a house plan?

Terre Meinershagen said it says in our recommendations to the City Council, it actually says to the underside of a soffit, and the last two days OCD staff has been working on writing a codified version of this so it can be actually viewed and Jennie Dixon called me earlier today to go over some of these. And it says to the underside of the eave. That is very clear in what the City is very slightly modifying just our language, not our concepts in terms of what the City Council passed Monday night, and it does say underside of eave. So it isn't left to chance.

Barbara Evans said then I would like to know if we make a motion that we adopt a building height definition that says from the finished grade to the top of the highest point of the roof, does that change your 18 foot wall.

Terre Meinershagen said I've got to work around to answer that question. When Jennie Dixon said there were alternates in here, I don't think she was referring to the alternates that you have in front of you. Both what the City Council passed and what the architects have always proposed, and what OCD has always proposed in the height determination, there are two methods. And that's the alternative. You have to look at those somewhat separately. In what the City Council passed, what the architects propose, and what OCD has always proposed, in the absolute method you're measuring from

finished grade to the highest point of the building and 18 feet is not ever coming to play when you use that method. The concept there was to have a real simple method to achieve a building height. If you wanted more flexibility on your design, probably I would agree totally that only in the case of a sloped site you chose to use the other method, you can actually get the building from the lowest point to the highest point that's going up with the slope. The intent of the wall element height limitation of the 18 feet is to prevent somebody from having all of that height that's allowed in one plain face. So it requires the building to step back. So you could go up 18 feet and step back, up 18 feet, step back. As long as you stay within the envelope that would meet the requirements of what we propose and what the City Council passed.

Barbara Evans said I'm looking at page 2 of the architect's proposal. Where it says that the wall element height as defined above shall not exceed 18 feet, to what. The soffit, the underside of the eave.

Terre Meinershagen said to do that, you have to use the definition with the method of determination. When you look at the definition of wall height, the measurement is from the lowest grade to the underside of the soffit.

Barbara Evans said refresh my memory again on what the City Council passed last night.

Ann Mary Dussault said we do not know because it was not written.

Philip Maechling said I think the operative diagram is this diagram. This one here establishes a building envelope that is H above the existing plain before construction. The whole building has to be contained below that line. And what the City Council adopted was an exception for up to three feet of protrusion of the top of a gable, essentially. That's how we understand what they did.

Ann Mary Dussault said I think if the Board is going to consider trying to do what the City did or did not do, that we postpone any action and get the written document before us, and Staff. So if that's what we're going to do is to make a motion to postpone any action for two weeks. I guess it's a question for counsel if we would have to re-notice a hearing on that, or whether or not the original hearing contained enough of the basic elements.

Fern Hart asked is this a substantive enough issue for you to want us to delay.

Terre Meinershagen said we would be happy, that in order to consider what the City passed, we would be happy with the delay and happy with testifying again at that public hearing if it required that. Our understanding, though, is that the differences between what the City actually passed and the earlier things we have been proposing were very minor, and possibly an amendment to the things you've heard before would be all right without violating your responsibilities of public notice. Either of those situations would be fine. There is an interest on the part of the architects, the building community, OCD, if at all possible the City and the County would have the same definitions, so whichever way is easiest and likely to achieve that would suit us.

Ann Mary Dussault said I'd like to give you my opinion on that. I would say that's a nice convenience. I would like to see us bring closure to the discussion, and if that means adopting OCD's modified recommendation, that does not prohibit at all a discussion in January of modifying that or looking that or looking at a comprehensive look at the County at hillside development standards, which I think is a real issue that the County needs to address in a comprehensive way. I'm a little bit concerned that we're going to think we're addressing hillside development standards only through this methodology. So I guess from a receptive point of view it really doesn't matter to me, but I'd like for us to know what we're doing and I don't think right now when we are talking about these amendments that we know what we're doing.

Terre Meinershagen said hillside standards need to be in addition or separate from just a height definition, but we have constructed our definition so it nests with hillside.

Ann Mary Dussault said the other thing that concerns me is delay for this other discussion really is a discussion about 5%. So by delaying we really then have nothing in place for 95% until this issue is resolved. I would argue for closure with the understanding anymore discussion is necessary or delay for a week so we can resolve this.

Fern Hart asked are you suggesting that we pass the absolute method and anything else be done later?

Ann Mary Dussault said no, I don't think we can do that. I think we could delay until a date certain on the assumption that we held a public hearing on this and we could do that anytime.

Architect said, that would be for your review and not for public hearing.

Ann Mary Dussault said so we can delay our decision for two weeks, and in the meantime and ask the question on the alternate method and be able to see what you've actually ] through the City to implement. The point of the delay is we meet with OCD every week, and at that weekly meeting we can sit down and go through it rather than try to do that in a public meeting. That way we have something in writing before us to review.

Ann Mary Dussault moved and Fern Hart seconded the motion to postpone action on the definition of building height until the public meeting at 1:30 on December 14, 1994. The motion carried 3-0.

#### HEARINGS - CERTIFICATE OF SURVEY REVIEW: APPROVED - FAMILY TRANSFER - PEASE

Kathleen Smith, Paralegal - Attorney's Office, said that this is a consideration of a request for a family transfer for Tract 2 of COS 4269 for Brent R. Pease. Brent R. Pease owns a 20.46 acre tract located in the O'Brien Creek area west of Missoula. The parcel is an aliquot parcel created by deed in Book 376 Micro, page 2094, and through a retracement in 1993 which is COS 4269. Mr. Pease wishes to gift the portion of the parcel below the road to his wife, Paula G. Pease. The Peases wish to split the parcel to increase their net worth in order to building a home on the upper portion. Mrs. Pease intends to retain the gift parcel during the foreseeable future.

The history of the parcel is as follows: The parcels shown on COS 4269 were once part of the Maclay Ranch. Prior to 1974, the SE1/4 of Section 28, T13N, R20W was the parent parcel. Tracts 1, 2, 3, 4 and Tracts A and D are aliquot parcels. The bottom portions of the land are platted as part of the Subdivision, Mountain Creek Estates Phase Two and O'Brien Valley Estates. The O'Brien Creek area is under a density transfer agreement with the County Commissioners due to the various zoning requirements in the area. The subject parcel has two density transfer units or the ability to build two homes on the parcel. Mr. Pease purchased Tract 2 from the Maclays in December, 1993. According to the records kept by the Missoula County Surveyor, the applicant has not used any exemptions to the Subdivision and Platting Act.

Nick Kaufman of WGM Group representing Brent and Paula Pease. What Kathleen has told you is correct. Brent bought the piece a year ago. They plan to build a home on the northerly portion of the parcel, which will be the remainder from this case. They plan to give the southerly portion across the road, Brent plans to give that to his wife Paula. There is no intention for any further sales of that gift in the foreseeable. What they are simply attempting to do here is to increase the net value of the underlying piece of property to increase their ability to mortgage on the home they intend to build. There are a couple of ways to look at this. One is that if two people together want to buy a piece of property as joint tenants, they would have one-half interest in a single piece of property. In this case there will be two pieces of property and each of them will have an interest in that same piece. I did bring a map to show what the land division has been up there, where the parcel is, and how the topography relates. It is over the ridge on the west side of the extension of Horseback Ridge. You will not see the homesite from any part of the Missoula Valley.

(Nick Kaufman showed large area map, designating where road was and where the home would be built.)

Ann Mary Dussault asked what is the increase in value by splitting?

Nick Kaufman said I don't know.

Ann Mary Dussault asked will there be a mortgage on the parcel?

Nick Kaufman said no, I imagine what they'll do is attach the mortgage to the northern half and this piece would be clear.

Colleen Dowdall asked what is the building density?

Nick Kaufman said only two dwelling unit rights will transfer.

Fern Hart asked when was this done, the density transfer agreement?

Nick Kaufman said the density transfer agreement--the beginning of 1989. Colleen was on staff the first time when that was done. (Mr. Kaufman pointed to the map and showed the density taken off the green area, and transferred up to the flatter portion. He indicated the ridge line.)

Ann Mary Dussault said there are two density units, there are two units on this entire parcel. So the reality is two units are there they would be granted the entire agreement.

Colleen Dowdall said they would be granted those. The issue is whether this is a subdivision or family transfer.

Fern Hart asked why did you tell us about drainfields?

Nick Kaufman said I told you about drainfields because I think the concern is how many homes we are going to have up here. What I'm saying is we will have one home there, we have one home on this whole piece. That land mass right there has two homes on it. What we were concerned about is when the transfer agreement was done, and I can't quote but I can paraphrase close, I don't want to see that ridge developed.

Colleen Dowdall said I think you made the decision how many houses would go up there. The issue is whether this is a subdivision.

Fern Hart said if they wanted the money, they could make a provision for a mortgage.

Nick Kaufman said, they could create a mortgaged parcel, but their whole intent here is to add value to the parcel so they could finance the home. By splitting the lot and getting two families would be a subdivision, like five lot subdivision. The question here is whether this is an evasion. I don't think it's an evasion. They've never subdivided anything, they've never used the exemption. Their intention here is not to resell or separate the two parcels from the homesite. Their intention is to have Paula's interest here and Brent's interest there. They now have two lots. They'll pay twice as much taxes, but the value of their ownership now goes up because of the two parcels. That means they can borrow more money for their home.

Barbara Evans said, it would seem to me in the spirit of what we agreed to (inaudible) very responsible to make the proposal that he did, we agreed to transfer density from some area to other areas, and it's inconsequential whether the two homes are built on two pieces of land that are split by COS or by subdivision. The fact is we accepted in good faith, he accepted in good faith our assurances that those transfers in density would occur. They have never used the COS before (inaudible).

Barbara Evans made the motion, and Ann Mary Dussault seconded, that the family transfer for Tract 2 of COS 4269 for Brent R. Pease be approved.



Fern Hart said, I will not vote for this. The property was purchased in 1993. The issue here is is this a subdivision and the answer is it is a subdivision. The motion is the Board of County Commissioners approve the Pease family transfer. Motion passes 2-1.

POSTPONED - B. FAMILY TRANSFER - ALLEN

Kathleen Smith said this is a request for three family transfers for Tract D-2 of COS 2136 for Gaye L. Allen. Gaye L. Allen owns a 13.77 acre tract located south of Clinton near Interstate 90. Ms. Allen wishes to create three family transfer parcels for gift to two minor children and her husband. Ms. Allen is proposing to create two five acre parcels for gift to her son Adam Norskog, age 11, and her daughter, Christina Norskog, age 9. She also wishes to create a 2 acre parcel for gift or sale to her husband, James Allen. This would leave a one acre remainder which would remain in Ms. Allen's ownership.

The history of the parcel is as follows: The parcel was originally created as a 20 acre tract in 1978. Tract D-2 was created in 1979 through an occasional sale exemption. Ms. Allen (formerly Norskog) purchased the parcel in 1987. The comprehensive plan in the area currently recommends rural medium density or one unit per five acres. However, there are parcels in the area that are less than five acres in size. According to the records kept by the Missoula County Surveyor, the applicant used the following exemptions to the Subdivision and Platting Act: a boundary relocation on an unrelated parcel in May, 1994.

Gaye L. Allen said at the time I bought the property it was my intent at the time to give it to my kids. At the time I thought I would give it to them in my will and everything would be fine. But the way all the laws have changed. I wanted to take care of it and get it done now.

Fern Hart said Colleen, maybe you could help me with my point that in the event we approve this there will have to be a deed drawn in the name of the children.

Colleen Dowdall said we have also required when they are minor children that a trust be created or a conservatorship to hold the property for the children. If you transfer property to a minor it's likely you won't be able to transfer it out of their names until they are adults. So the last time this was done we required a conservatorship.

Ann Mary Dussault asked in terms of the location, where is I-90.

Gaye L. Allen said it's located right out of Clinton on the old Mullan Road.

Colleen Dowdall asked so you right along the right of way for the railroad also?

Gaye L. Allen said, it's right off the Interstate.

Fern Hart said as I read this I notice you wish to create a parcel for gift or sale to your husband.

Gaye L. Allen said that wasn't the intent. I just wanted them each to have things in their own name. If something should happen I wanted them to have it and be able to use it.

Fern Hart said none of this land is in your husband's name. Do you have a home somewhere on this land?

Gaye L. Allen said there is a mobile on it.

Fern Hart said no one lives there. It's just bare land.

Gaye L. Allen said there is a mobile on it, but it's on the one acre I want to keep in my name. I don't get any rent for it. The friend that lives there maintains the fence and premises.

Colleen Dowdall asked are you considering rentals on the others?

Gaye L. Allen said no. I live in Alaska -- I have no intentions of living out there or anything. But I don't want to sell it. It was bought for my kids, that's what I want. I want it to be available to them whenever they need it.

Ann Mary Dussault said we have to determine whether this is an evasion. My question, based on what you've said, why the gift to the husband.

Gaye L. Allen said because we have separate--I was married before and I learned some very good lessons. We do not have a joint checking account, we do not even share our names on the vehicles. I have mine, he has his. He has put me on as a joint whatever on a house we just bought in Polson. He does not have a part of any of mine. However, if something does happen to me I do want to leave him something, I do like him.

Colleen Dowdall said but you will have to transfer it to him now if you file.

Gaye L. Allen said I don't have a problem with that.

Ann Mary Dussault asked are you aware that we require a conservancy or a trust or something, because you really have to be sure that these parcels go to the children? I would move that we postpone action for two weeks in order for you to meet the County Attorney's staff to agree on what that will be.

Gaye L. Allen said to meet with the County Attorney's office for what?

Colleen Dowdall said for how the children will hold the property.

Ann Mary Dussault said you are going to have to either create a trust, or--you can work through the different options with the County Attorney's staff.

Colleen Dowdall said you as a responsible parent could turn around and sell them on behalf of the children. That's basically the purpose of some kind of trust.

Ann Mary Dussault said the problem in the past with people that have done this, that have tried to evade the rigors, they come in, they do these divisions, and tomorrow they go and sell Christina's parcel, so it never really went for the kids' interest. We have to ensure what you are intending to do with yours.

Fern Hart said you're doing a four-lot subdivision. You're creating four parcels and that's called a subdivision.

Ann Mary Dussault said it would cost you a lot more to have to go through the summary subdivision process then by doing this.

Gaye L. Allen said I don't feel like I am subdividing. I'm not going to sell to someone tomorrow. I need to take care of the interest of my children.

Fern Hart said but still your husband gets one share of the land.

Ann Mary Dussault asked Gaye, do you have other land in Missoula County?

Gaye L. Allen said I do. I have other property right out there.

Ann Mary Dussault said you understand that by doing this you won't be able to do this on the other properties.

Gaye L. Allen said I realize that.

Ann Mary Dussault said we just wanted to be sure you understand.

Fern Hart said we have a motion that we postpone a decision until a decision has been made on the conservatorship.

It was moved by Ann Mary Dussault and seconded by Barbara Evans that decision on the Allen Family Transfer be postponed until a decision has been made on the conservatorship. Motion carried on a vote of 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.

**THURSDAY, DECEMBER 1, 1994**

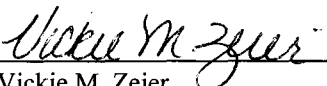
The Board of County Commissioners did not meet in regular session. Commissioners Evans and Hart attended an all-day planning session with Ginny Tribe at the Holiday Inn; and Commissioner Dussault was out of the office until noon.

Bid Award -- Barbara Evans moved and Fern Hart seconded the motion that the Board of County Commissioners award the bid to McCue Construction for the remodeling of the Clerk and Recorder/Elections Office including alternate #2 of \$1,398 which includes replacing all the ceiling tile for a total of \$50,255 as the lowest and best bid which met all bid specifications. The motion carried on a vote of 2-0. (This bid was hand-delivered to Barbara Evans and Fern Hart at the Holiday Inn during the lunch break for action to be taken--December 1 was the deadline.)

**FRIDAY, DECEMBER 2, 1994**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Evans participated in a Conference Call Meeting of the Judicial Standards Commission held in Judge Ed McLean's office.

Resolution No. 94-114 -- The Board of County Commissioners signed Resolution No. 94-114, a Resolution of Intent to create a rural County zoning district and to apply this zoning district to property known as the East Butler Creek Foothills District. The East Butler Creek Foothills District is located in Sections 25 and 26, T14N, R20W, and Section 30, T14N, R19W, and is specifically that area called the Circle H Ranch. The rezoning includes various tracts, as delineated in Exhibit A.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, DECEMBER 5, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was in Washington, DC from December 5-8, where she met with members of the Congressional delegation and Highway Officials.

Monthly Report -- Chair Fern Hart examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, David K. Clark, for month ending November 30, 1994.

**DAILY ADMINISTRATIVE MEETING**

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

Resolution No. 94-115 -- The Board of County Commissioners signed Resolution No. 94-115, a Resolution granting agricultural exemption (Leif and Marlene Moland) Tract 1, Parcel B of COS 4065 (approximately 2.05 acres).

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between Child Care Resources and Missoula City-County Health Department for the purpose of purchasing professional services related to providing a child care health program to identify and solve health problems which are unique to children and which may be compounded by grouping young children together, as per the terms set forth. The total value of this Agreement is \$6,200 and is contingent upon the availability of local tax revenue from Missoula County. The duration of the Agreement shall be twelve (12) months, commencing on the first date written above and terminating on June 30, 1995. The Agreement was returned to the Health Department for further signatures and handling.

Memorandum of Understanding -- The Board of County Commissioners signed a Memorandum of Understanding with the City of Missoula to work jointly to address the issue of growth management within Missoula City and County through the Growth Management Working Group. The County and City agreed to share half the cost to contract with Virginia Tribe for facilitation services for the Growth Management Working Group as per the agreement in the amount of \$400 per day, not to exceed \$10,000 from the period of July 1, 1994 through June 30, 1995.

Other items included:

- 1) the Commissioners re-appointed Randy White to a three-year term as a "regular" member on the Missoula Aging Services Governing Board through December 31, 1997.
- 2) the Commissioners re-appointed Shirley Simonson to a three-year term as a "regular" member on the Missoula Public Library Board of Trustees through December 31, 1997.
- 3) the Commissioners appointed Tom Nimlos to a three-year term as an "alternate" member on the Missoula Public Library Board of Trustees through December 31, 1997.

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

**TUESDAY, DECEMBER 6, 1994**

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

Audit List -- Commissioners Dussault and Hart signed the Audit List, dated December 6, 1994, pages 24-37, with a grand total of \$111,308.78. The Audit List was returned to the Accounting Department.

Monthly Report -- Chair Hart examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for month ending November 18, 1994.

**DAILY ADMINISTRATIVE MEETING**

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

Agreement -- Chair Hart signed an Agreement for Professional Services between Missoula Board of County Commissioners and HOH Associates, Inc. for Phase 2, planning consulting services for the Airport Development Park as per the terms set forth, for compensation in the amount of \$7,500 for Item #1 and Item #2.

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

**WEDNESDAY, DECEMBER 7, 1994**

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

**DAILY ADMINISTRATIVE MEETING**

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

Plat -- The Board of County Commissioners signed the Plat and Improvements Agreement for Westfield Square, a subdivision of Missoula County located in the NW¼ of Section 20, T13N, R19W, P.M.M., having a total area of 207,142 square feet, with owners of record being T & T Construction, Inc.

Contract -- The Board of County Commissioners signed a Contract between Missoula County Clerk and Recorder/Elections and McCue Construction, Inc., the lowest and best bidder for the remodeling of the Clerk and Recorder/Elections Office as per the terms set forth, for a total amount of \$50,255. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Request for Full Reconveyance -- Chair Hart signed a Substitution of Trustee and a Request for Full Reconveyance canceling the Trust Indenture by Jeffrey M. and Lori J. Langan for Lot 3, Tract 15 of Massey McCullough Acres, given as security for subdivision improvements which have now been completed. The document was returned to John DeVore, Administrative Officer, for further handling.

Plat -- The Board of County Commissioners signed the Plat for Harrington Subdivision, a minor subdivision, being Lot 40 of Dinsmore's Orchard Homes Addition No. 5, located in the SW¼ of Section 24, T13N, R20W, P.M.M., Missoula County, a total area of 4.65 acres, with the owners of record being Clarence J. and Ann Marie Larson.

Other items included:

- 1) the Commissioners appointed Jerry Stone to a three-year term as a "regular" member on the Missoula Planning Board through December 31, 1997.
- 2) the Commissioners appointed Billie Gray to a two-year term as a "regular" member on the Missoula County Zoning Board of Adjustment through December 31, 1995.
- 3) Ann Mary Dussault moved and Fern Hart seconded the motion that the consideration of a request for a family transfer for Tract D-2 of COS 2136 for Gaye L. Allen be granted, contingent upon transfer of the deed to the family member, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 2-0.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present was Commissioner Ann Mary Dussault.

**AWARDED: BID AWARD: SEVEN PATROL CARS -- POLICE PACKAGE -- SHERIFF'S DEPARTMENT**

Fern Hart said, the first bid award is for seven patrol cars for the Sheriff's Department. On November 11, 1994, bids for seven police sedans were solicited. Bids were opened November 28, 1994. Bids were received from Karl Tyler Chevrolet in the amount of \$136,423, and Bitterroot Ford in the amount of \$121,750. Karl Tyler listed one exception being a cigar lighter in the dash. Bitterroot Ford listed as exception a 4.6 liter engine when the specifications called for a 5.5 liter engine, and inability to supply 235 size tires. Subsequent conversations with Bitterroot Ford Fleet Manager Greg Anderson revealed that the bid did not include 4-wheel anti-lock brake system, ignition bypass, or lumbar support. The Administration and Safety Committee of the Sheriff's Department has considered the exceptions in the Bitterroot Ford bid

and have determined that the small engine will drastically reduce performance, and the lack of 4-wheel ABS will reduce braking distance leading to a safety problem. The lack of ignition bypass is a safety and convenience factor. The lack of lumbar support may lead to health problems. The different tire size forces the department accept a speed limited tire which is a safety problem. Karl Tyler listed the one exception that is minor. Bitterroot Ford's bid should be rejected due to inability to meet specifications.

The recommendation of the Sheriff's Department is to accept the bid from Karl Tyler Chevrolet in the amount of \$136,423. Do I have a motion or a comment.

Ann Mary Dussault asked would there be any comment from the Department?

Fern Hart asked would the Sheriff's Department like to comment? I appreciate your very thorough background.

Don Mormon, Sheriff's Department, said we have no further comment.

Ann Mary Dussault asked the Attorney to comment on the parameters of awarding the bid to not the lowest bidder in this case.

Michael Sehestedt, Deputy County Attorney, said in this case the lowest bidder deviates significantly from the specifications. If we were to accept the low bid in this case, we would have put the conforming bidder at a substantial disadvantage. The really significant cost items are the engine size and the anti-lock braking system, in my view. I do not think we could, under any circumstances, accept the Bitterroot Ford bid, and the question is really whether or not we are going to reject all bids and request a new set of bids with revised specifications, or if we're going to award to the conforming bid. I would note, because there was some laughter about the cigar lighter in the dash, that the key item there is that is the power source for the lap tops, for the radar speed gun, and the video camera, and all of the other electronic gear that is now carried on board a sheriff's car. In fact, it's minor because we end up adding additional outlets, plug-ins if you will, so that we have sufficient capacity to take on all of the items that need a power source now.

Ann Mary Dussault moved and Fern Hart seconded the motion to award the bid to Karl Tyler Chevrolet in the amount of \$136,423 for seven police vehicles. Motion carried on a vote of 2-0.

#### AWARDED SUBMITTED BIDS: BID AWARD: NINETEEN NEW AND USED VEHICLES -VARIOUS COUNTY DEPARTMENTS

Fern Hart said the next is a bid award for one vehicle with no trade-in, and Michael will explain how this happened.

Michael Sehestedt said we needed for a number of County departments various vehicles. We went out to bid as single package. For some of the vehicles we specified "new" and we got prices with and without trade-in. For some we specified either "new" or "lease return." My understanding is that at this point we were prepared to accept the bids on certain of the items and the balance of the 19 vehicles in the bid are awaiting inspection and evaluation of the used vehicles that were returned. So at this time the action before the Commission is to award a bid for 2 4x4 extended cab 1/2 ton pickups, award a bid for two 4x4 regular half-ton pickups and award a bid for 1 4x4 utility vehicle. All of these are to be without trade-in.

Fern Hart said as Mr. Sehestedt said, the first award is for 2 4x4 extra cab, half ton pickups, with no trade-in. The bids received were from Demarios Olds \$33,336.00, Karl Tyler Chevrolet \$36,400.00, and Grizzly Auto did not bid. The recommendation is that we award the bid to Demarios Olds for \$33,336.00, as the lowest and best bid.

Ann Mary Dussault moved and Fern Hart seconded that the bid for two 4x4 1/2 ton pickups be awarded to Demarios Olds/GMC for \$33,336.00 as the lowest and best bid. Motion carried 2-0.

Fern Hart said the next award is for two 4x4 half ton pickups with no trade-in. The bids were Karl Tyler Chevrolet \$32,500.00, Grizzly Auto \$33,108.00, and Demarios Olds \$36,738.00. The recommended bid is Karl Tyler for \$32,500.00 as the lowest and best bid.

Ann Mary Dussault moved and Fern Hart seconded that the bid for two 4x4 1/2 ton pickups be awarded to Karl Tyler Chevrolet for \$32,500.00 as the lowest and best bid. Motion carried 2-0.

Fern Hart said the last to be awarded is for one 4x4 utility vehicle with no trade-in. The bids were Demarios Olds \$20,757.00, Karl Tyler Chevrolet \$22,400.00, and Grizzly Auto no bid. It is recommended the bid be awarded to Demariois Olds for \$20,757.00 as the lowest and best bid.

Ann Mary Dussault moved and Fern Hart seconded that the bid for one 4x4 utility vehicle be awarded to Demariois Olds for \$20,757.00 as the lowest and best bid. Motion carried 2-0.

Ann Mary Dussault said it should also be noted for the record that each of those bids, they were for the Surveyor's Department, and all came in under the budgeted amount.

#### APPROVED: REQUEST FOR ISSUE OF IDR BONDS - BLUE MOUNTAIN CLINIC

Fern Hart said the next item is a hearing for request for issue of IDR bonds for the Blue Mountain Clinic. Let me tell you how we proceed with these hearings. We have our own staff make a staff report, that we have the requester make a complete report, and then we ask Mae Nan Ellingson, who is the attorney for the Bond Counsel to update us on the conditions of the bond. Our own attorney is here and may make a few comments. Then we will open it for comments from the public. I ask that you limit your comments to three minutes. I also have a list of folks who wish to speak and I will call your names. You need to come to the microphone and I ask you to give your name and spell it for me so we

have it for the public record. I would also say that we have asked some folks from the Sheriff's Office to be with us during this meeting. I think it's a sad commentary that public meetings can become a threatening issue, but the fact that Blue Mountain Clinic was deliberately destroyed by fire at least tells me that we may need to have had this caution. I also want to say that in many of our public hearings, I have been so pleased at the kind of response that we've had from the public who honor both sides of an issue, who respect other folks' comments, and I think that it's a mark of the County Commission that we've been able to do that. These are very difficult times and I ask you be that way with us on this. I open the public meeting.

John DeVore, Administrative Officer, said today what you have before you is consideration of issuing Industrial Development Revenue Bonds to defray in part the cost of constructing and equipping a new medical clinic to be located at 610 North California Street. The Blue Mountain clinic has requested the Board of Missoula County Commissioners to consider the issuance of \$455,000 in Industrial Development Revenue Bonds to finance a portion of the cost associated with the construction of a new clinic located at 610 North California Street. The total projected cost of the clinic is \$900,000, including site acquisition, equipment and construction. The applicant has secured all necessary permits, including a Phase I environmental assessment of the site. The applicant has secured a financing commitment from First Security Bank and has complied with all other aspects of the County policy as well as relevant statutes. Staff recommends approval of the application. Fiscal impact to the County is--there is no fiscal impact.

Fern Hart asked the requester of the Blue Mountain Clinic to make the request.

Sally Mullen, Director of Blue Mountain Clinic, said this project is to build a 6400 square foot facility to enable Blue Mountain Clinic to get back up full speed and services, and to replace the clinic that was burned by arson in 1993. In addition, we're constructing space to meet the growing medical needs of this community. Blue Mountain has been completing high quality, reasonably priced services for 17 years now, and by going through tax exempt financing we may be able to save up to \$90,000 over the life of the loan and pass those savings on to our consumers. I want to give a little background information about the evolution of services at Blue Mountain. It opened in 1977 in response to the need for abortion and birth control services in Western Montana. Women had been leaving the state for abortion services. Fast on the heels of the opening came annual exams for women, prenatal care and deliveries, routine care for men and kids, mental health counseling, PMS and menopause counseling and management, to round out the women's health care services, and we were able to pull regional people. We have people from as far away as Plentywood and Edmonton for those services. We added vasectomies, and in the late 80's came an internal medicine practice which brought along a geriatric constituency. Finally, we added confidential HIV testing and counseling. I would like to point out that when the clinic opened, 100% of our services were for clients receiving abortions. In 1992, prior to the fire 12% of the people who came to the see us came for that service. And when we reopen we anticipate that 3 to 5% of the people seeking our services will be seeking abortions.

In terms of community service, we've done some fun things over the years. We've been taking blood pressures at the Senior Citizen Center twice a month for 12 years. We have served as a training site for University students in psychology, social work, guidance and counseling and business, and also for the MSU School of Nursing. We've seen dozens of students do their rotations through the Clinic. We've always advocated for affordable and accessible health care in the community. We've sent speakers out hither and tither. In the last full year of business, we did about \$70,000 as strictly local purchasing. And finally, last but not least, and certainly not the least in terms of community, we sponsor an all women's run every year. Last year we had 1100 runners and that meant a lot of restaurant and motel trade. When we get back into business full swing, we are still in business by the way, we want to get back up to the level of services prior to the fire, including health education especially, and we want to expand in preventive and primary care, add a family practice physician, a couple of more mid-level practitioners, and again let this community dictate the direction of the clinic. We're a community-based clinic and have always followed the community where it led us.

How many people do we employ? Early on we employed a handful of people in this community. At the time of the fire there 10 full-time, 22 part-time employees, and 4 part-time physicians and 1 full-time physician. Currently we have 4 full-time employees, 4 part-time employees, and 1 part-time physician. We project that when we get up to full staff again we will have 16 full-time employees, 16 to 20 part-time employees, 2 full-time physicians, and 3 part-time physicians. Who do we serve? In 1992 we had 6,000 patient visits. This year we're going to have a little over 4,000. Our number of client visits, because we're restricted in the space we're in now, has dropped by about a third since the fire. We're projecting our first full year in business to see at least 9,000 client visits. Currently, through October of this year, for 1994, 23% of the people we served were Medicaid or Medicare clients. 24% were people with private insurance. 53% of the people we saw are uninsured. Besides primary and preventive health care, we do routine care for men and women, routine care for children, including immunizations, the internal medicine practice and the HIV counseling and testing. Since the fire we have been unable to do prenatal care and deliveries. We haven't done any vasectomies. We haven't done any abortions, and we haven't done any mental health counseling. But what I know and what the people in the office know, is that on a daily or weekly basis we get inquiries about those services, so we know that the market is still there for them.

How are we able to serve low income people? The first thing I want to say is that we have never received any tax dollars to keep us going. The biggest component in low cost services has been our low overhead. We've never had fancy furniture, we've never had fancy equipment, we've never had fancy offices. We are pretty much planning to continue that way. We've done a booming business at the second hand stores in town. We've also used mid-level practitioners, which are now the coming thing, since the beginning of the clinic in the late 70's. They've delivered the bulk of our services. And the other thing we've done is work with people and their budgets. As we've established a trust relationship so that if they could only pay \$5 a month that was fine with us. It has always been more important to us to deliver the services then to get the money, and I think that part of the reason we've been able to get the money is because of the relationship.

The financing for this project, we've secured a loan, and that's what we're dealing with here, for \$455,000. We have raised \$300,000 in 1994 alone. We're continuing like fury the fund raising through foundations and through individuals. And I'd like to do just a little on how this came about with us. We had already gotten a commitment from a local bank early on to aid us with a commercial loan. And then we became that it would certainly be to our benefit and the benefit

of our clients if we were able to bring down the cost of paying back that loan. It would really help out our overhead. So we then approached the banks to see if they were willing to work with us towards tax exempt financing, explored how to do that, and that's where we are now before the Board of County Commissioners. I'd just like to do a little wrap up of why I think this is in the public interest. I think it's in the public interest for us to serve a rapidly growing population with preventive and primary care. I think it's in the public interest to serve low income and under insured people with the respect and dignity they and all of us deserve. I think it's in Missoula's interest to carry on the high quality of care that Blue Mountain has been noted for now for 17 years. I think it is in the public interest to provide significant employment and generate significant business in Missoula. And, finally, I think that as a community it is in our public interest to say no to violence as a method for dealing with differences.

Mae Nan Ellingson, Attorney with Dorsey and Whitney in Missoula, to serve as Bond Counsel if the County determines to proceed with the issuance of tax exempt bonds for this project. I would like to direct my remarks really to two points. One is the statutory authority under which the County can issue these bonds, and then the second is the Federal tax statutes under which these bonds can be issued as tax exempt bonds. The Montana Legislature beginning in 1970 authorized cities and counties to issue so-called Industrial Development Revenue Bonds for projects that were deemed to be in the public interest, and specifically they enumerated medical care facilities. And so it is the same statute you are being asked to proceed under today that you have issued bonds for Missoula Community Hospital and that the City has issued bonds for St. Patrick's Hospital. I think the State has recognized that the public interest is served by having a governmental entity sponsor bonds for those kinds of services, health care services. Simultaneously, and often, the Federal Government, which controls the issue of whether bonds issued by the County are tax exempt has also declared it to be a public purpose and public policy to provide interest on bonds that are exempt from Federal Income Tax for certain so-called public purposes. The Federal statute, the exemption that we would come under for financing these bonds, is 501(C)(3). Again this same exemption is provided for financing for the St. Patrick Hospital expansion and the Community Medical Center. They are both 501(C)(3)'s.

In our capacity as bond counsel to the County on this, it is our responsibility to draft the documents and to render the opinions that the bonds are duly authorized by state law and that they do in fact bear interest that's exempt from both State and Federal Income Tax. The way that we do that is to do an analysis of the requirements of state law as well as the Federal Tax Code. Under the State statute under which you issue these bonds it is absolutely clear that these bonds cannot be a pecuniary liability of the County. That is to say, the County in no way can assume from any source whatsoever the repayment of the loan. Rather, what the statute allows you to do is pass on your tax exempt status. Consequently, the way the bond would be structured, the County would issue a note to the lender that interest on that would be tax exempt. A loan agreement would be entered into between the County and Blue Mountain Clinic, under which Blue Mountain Clinic would agree to pay to the County the necessary amounts to retire the note. The County would assign its interest in that loan agreement to the lender, and the County has no responsibility other than passing on the payments that it is obligated to receive from Blue Mountain Clinic to the lender. And that's done up front by an assignment and so the County is not even in the loop on a monthly or an annual basis with respect to the payments. We give an opinion, or part of our opinion is, that this is not an obligation, a pecuniary obligation of the County and it is clearly stated on the face of the note that is issued to the bank, so the bank understands that as well. They underwrite this loan in the same way they would underwrite it if the County were not involved. They look at the value of the mortgage on the facility and the stream of income that the facility produces, and they don't look at the credit of the County. I am going to have to leave so if there are any questions that you have of me, I would need to answer those now.

Ann Mary Dussault asked what would happen in the event that St. Patrick Hospital or Community Hospital or Blue Mountain would fail to make its payments?

Mae Nan Ellingson said the bond holders would be in a position of trying to do a work out with the obligor on those notes. There have been, in the 15, I guess nearly 20 years, since IDB's have been issued in Montana, there have been situations where the obligor on an IDB financing had defaulted in the payment of their loan. And the bond holders foreclose on their lien, they try to get whatever security that they have. I have never been aware of a situation where any bond holder looked to the County or the City that issued those bonds. The bond holder knows that their only remedy is in the security that they were offered, so in this case, the security of the bond holder is going to be a mortgage on the facility, a pledge of the revenues that are generated by the facility, and a guarantee of a private individual. They know they have no security that derives from the County. As in any default under any loan, you exercise whatever security you have, but they are not able to come against the City or the County, in this case the County, and I can say very unequivocally, not only in our State but in all the other states in which I am aware and in which we have offices, the failure or the default of an IDB has never affected the credit rating or the ability of the issuer to secure its own financing.

Fern Hart asked Mr. Sehestedt, would you like to add any legal comment?

Michael Sehestedt said maybe just a couple of remarks and to emphasize some of the things Mae Nan has said. They're being issued pursuant to an authorization in the State law, and the State law authorization is very broad, and the County has done a large number of these issues. We've done some for Champion, some for Hoerner Waldorf when it owned what is now the Stone Container mill, the Cancer Center now part of St. Patrick's was originally constructed using IDB financing. Long Machinery, Modern Machinery, Bank of South Missoula, we even did a small issue to facilitate financing part of the Ram Events Center over on California Street, Loyola Sacred Heart Athletic Facility. Federal law, perhaps because they were being so widely used, has restricted the number of applications in which use of this mechanism will result in a qualified bond issue, which is exempt, the interest thereon. When we say an exempt financing, what it means is that the bond holder, the person that puts up the money, when he receives repayment receives both return of their principal and interest thereon. In the ordinary course, that interest when received by the bond holder is includable in gross income for Federal Income Tax purposes. Under a qualified bond issue, that interest income is exempt from taxation to the bond holder. As a result of that, people are willing to accept a lower percentage rate of return on their money, all other things being equal. And it is possible to finance projects at a somewhat lower interest rate. I need to emphasize the nature of this funding is essentially a conduit. Private parties are putting up the money, private parties would be assuming the risk of loss, if any. The County is not pledging and cannot under State law pledge its credit, its taxing powers, or assume any pecuniary obligation in connection with these bonds. If the bond issue is



approved, the County will have the same amount of money, the same credit available that it would have if the bonds were not approved. In terms of County finance, this is an tax obligations and debt, the issuance of the bonds in that sense at least, is a non-event. Finally, the purpose of this hearing is to determine whether or not to provide information to the Commissioners to help them determine whether or not proceeding to issue the bonds is in the public interest.

Fern Hart said I will open the public hearing to receive testimony. One of the ways that we have worked this before and it seemed to be efficient, I will call five names from the list who have indicated they wish to speak, and if they would come up and sit on the bench, and as they're moving to the microphone will take less time. Then right before the last one speaks I will call five more. This doesn't mean if you didn't get your name on the list that you cannot speak. But I do know that we have these folk who want to be heard and who did sign their name to the list. As I call the names, and they are simply in the order on the page, please come up to the bench.,

Michael Sehestedt said I would say as I was putting the clipboard in front of them and urging them to sign, that signing did not compel them to speak but that it guaranteed them the opportunity to do so.

Willa Craig said I am here as a citizen and also as a former director of the Clinic. I think Sally was very articulate in discussing how Blue Mountain Clinic contributes to the community in a way that certainly the County is interested in. I think it is also well documented that the future of health care in our society and in our community is tenuous at best, and here we have a provider who is giving service and providing services that are little offered in the community to a population that is definitely under-served, is doing it at no cost to the County or to the citizens, and I would hope that the County would recognize these years of service and approve Blue Mountain's request to have these bonds issued.

Beth Judy said I'm a writer-editor here in Missoula. I'm just speaking as a citizen. I would just like to express my support for the use of bonds and support for construction of Blue Mountain Clinic. It's not a forcing of anything on taxpayers. Citizens would have the choice of investing in an improvement of quantity and quality of health care services which we badly need here in Montana.

Rob Aplin said I just had a few concerns as far as issuing the bonds. I understand that you have no commitment, but on the one hand, on the political end of it, I think there should be some consideration on your part, or maybe even more public comment on this for the fact that I do believe it will bring, maybe not terrorism, but maybe confrontations back to Missoula. It seemed to be a facility where people congregated to picket and to fight or whatever they were doing there. And also I think that what would happen if it was bombed again or burned or arsonists or whatever. I think we should have a little more public comment to see what Blue Mountain has done to prevent this. You are passing this with your name, with your approval. It's still your approval, it's a little bit political in my eyes, and I would just like to know what they are going to do to prevent this so if my kid is walking down the street past there that they do not get injured. I realize they have some stalking laws in effect now and some other laws I think that were passed not too long ago. I would like to recommend that maybe have a little more time to study or at least some comments so far as what they have done to prevent any type of violence. I mean as far as everything. Of course, I can't think of nothing. I think you know what I'm saying. I'm just a little concerned over issuing them--I never had enough time to prepare, I never heard about this until about three or four days ago, and I was just concerned on the issue of political a little bit and on the violence. If they can show they have adequate insurance to prevent this, let's say my kid gets injured and it's on their property because of somebody else walking by or whatever happens, I would just like to have them show they do have liability insurance. I would like to have them show what their plan is so far as preventing any more violence. I would just like to be sure of what they did to prevent the violence of what's happening in Missoula for the last several years. If you would ask them that question it would satisfy me even today.

Keith Simmons said I just want to go on record as opposing this and encourage our County Commissioners to consider the innocent blood that will be shed because of Blue Mountain's practice of abortion and so I stand here representing those who cannot speak for themselves and would urge you to have mercy and to treat the unborn child as you would wish to be treated. You would not want anyone to encourage or to lend funds to someone who would be paid to kill you. So I would ask you to have that same consideration for the unborn child. And speaking for the Lord Jesus Christ, I would invite you to repent of the attitude of tolerating the sin of shedding innocent blood in our community. Indeed, He commands all men everywhere to repent and believe the Gospel, the Gospel for which He died and rose again to prove that it was true. And He gives all men everywhere life and breath. But if we refuse that choice, then there won't be enough sheriffs in all of the world to protect us against the judgment of Almighty God against our eternal souls. So I would urge you as our government to do what good government's purpose is to do and that is to protect innocent lives, because we've been endowed by our Creator with certain inalienable rights and among those are life, liberty and the pursuit of happiness, and no one's right to the pursuit of happiness is more important than that person's right to be alive.

Abe Abramson said I'm a friend and supporter of Blue Mountain Clinic and I have been for some time. My medical records are included among those of thousands of others, men, women and children in this community, and like them I've been well served by the Clinic. I think it makes sense to use this financial vehicle, both to replace the lost and to allow for the generation of new jobs in our community, for all the reasons that were mentioned by the Director, and also because I think it's in the spirit of the legislation that permits these. I personally feel that to deny this application because some people don't agree with a small part of the legal and otherwise available services that this employer provides to our community, would be like having denied the Elk Foundation their ability to use Industrial Development Revenue Bonds because some taxpayers don't approve of legal hunting.

Lance Collister said I'm here before you today as a citizen of the County, as a director of Blue Mountain, and also as a patient of Blue Mountain. And I wish to urge you to issue these bonds. I feel it is certainly in the best interest of the County to have increased medical services. It is certainly under the law to have those services, and it is something I wish you would consider doing.

Susan Dana said I am here also as a citizen of the County and as a member of the Board of Directors of the Clinic. I don't think I have too much to add to what has already been said, except I would like to add my support to the request. I think this is clearly in the public interest of the citizens of this community and I, therefore, support the proposal.

Laura Fricke said I am here to oppose the issue. I don't believe it is in the best public interest. For one reason, it is a controversial business which has already been stated. Also, I believe that the medical community has been able to absorb the patients that have not been able to go to the Blue Mountain Clinic and have been able to do it very well. I feel also that we do have the Planned Parenthood that provides the same services that Blue Mountain Clinic does. So I just believe that this is an added business that should not be supported by our tax free bonds.

Margaret Churchwell said I am a taxpayer who would like to say that I also oppose this for the same reasons that have been stated.

Barbara Behrens said I come as President of the Board of Directors of the Blue Mountain Clinic and as a patient of the Clinic, and I would like to add my support of the issuance of these bonds to the record, but I've nothing further to add.

Alana Meyers said I would just like to go on public record as stating that I believe that if the County chooses to decide to issue these bonds, they are essentially becoming the middle man in the business of abortion and that the County by being the middle man, and when I say County I'm really referring to we, the people. We, the people, then are indirectly subsidizing abortion, which I think is wrong and inappropriate. If as the Director claims, the Director of Blue Mountain Womens Clinic claims that only a projection of 3 to 5% of their total patients in the future would be there for abortion services, then I would challenge them to discontinue abortion services altogether at the Blue Mountain Womens Clinic. If they were to do that, then those of us who are here today in this room speaking out against this, would no longer be opposed to it. We are simply and only opposed to the abortion services provided at Blue Mountain Womens Clinic. But because I believe they are unwilling to drop that 3 to 5% of their abortion patients, to me it shows that that is their primary purpose and reason for being is to be there to make money by the abortions that they provide. And for the County again, that is we, the people, to subsidize this is endorsing the practice of abortion in this country.

Matt Brainerd said I come here as an individual citizen and as Representative of House District 62, and I would like to say that you've got 3 to 5% of the patients are generating a hundred percent of the controversy here today, and you are faced with coming down on one side or the other of a very controversial issue. By coming down on the side of the tax free status for these bonds, you essentially sanction the taking of innocent life. I don't believe that this is a good spot for government to be.

Sarah McNamara speaking for Raquel Costalano, said I am speaking for Raquel because she had to leave. I am a case manager at Women's Opportunity and Resource Development Center. I work with low income women and families and I would have to disagree with the comment that these services have been absorbed by the medical community. My experience has been that it's been more difficult for people who were patients at Blue Mountain. It's hard to transfer your medical services from one provider to another when you've been receiving services one place for a long time, especially with the new passport system that Medicaid and Medicare recipients are obliged to continue with their current provider and it's hard to find another doctor who has passport spaces available. Blue Mountain provides a very important service in our community that isn't met by the medical community or by Planned Parenthood. They help in that but there is a need for more services for low income women and families, and they provide such a variety of health care services I don't see how we could continue without Blue Mountain or something like that, and I'm very much in support of the bonds.

Carol Hovland said I am a low income client of Blue Mountain Clinic. I've been a client about two years. It is the first place I've ever been treated with respect and dignity for my female health and for my overall health. I am treated for a number of issues. I look at the abortion issue as a non-issue. It's my body. It's my choice of what I do to my body. I live in my body. Anti-abortionists do not live in my body. Abortion is legal. It is not an illegal thing at this point. I would encourage you on the bond to really look at this as being a very positive thing for the community and for those of us that are low income. I feel safe. I finally feel safe. The care I get there is the best I've ever gotten in my whole life. I have been to other doctors, they say hello, what's your complaint, good bye. I'm given the time to discuss what's wrong. The problems are talked about. I'm given the information I need to do what I need to do for my body. So I would say that Blue Mountain is probably the best thing that's ever come to this community.

Leslie Ann Jensen said I come here as a community citizen. I would like to echo a few of the remarks of the last speaker. A lot of people are talking about the benefit that Blue Mountain has for the community and that abortion services are really a small part of what they provide to the community. And while I think that is true in a very relevant argument, I would also say that those folks here who are opposed to issuing the bonds for Blue Mountain are here because they are opposed to abortion, but it is legal and protected by the Constitution of the United States of America, and I as a citizen of this community have a right to have access to it. And I support issuance of the bonds.

Debra Frandsen said I am the Executive Director of Planned Parenthood of Missoula and a patient of the Blue Mountain Clinic. I'm speaking in support of the Blue Mountain Clinic's application for access to Industrial Development Revenue Bonds. This is not an issue about abortion. This is an issue about equal access by any reputable, nonprofit corporation to capital. Non-profits are by their definition at a disadvantage in their ability to raise development capital in order to expand services. We rarely have any type of collateral with which to secure a loan. However, this loan is secured. The County faces no risk whatsoever. If the County continues to issue tax exempt bonds in order to support a nonprofit service to the community, then the guidelines by which they offer them need to be fair and consistent and based on sound fiscal policy. A small but vocal group's aversion to one aspect of the nonprofit services must not be the criterion by which these bonds are issued.

Gloria Rourke said I have reached the point in my life where I have observed where things that are legal are not always right, and that is not just morally but just in good keeping for the community. You as leaders of the community need to not get involved in something as controversial as this. I think it's been proven there has been violence due to this group of people. I don't feel that there's been a true disclosure of what is financially involved, that is the insurance. I feel it was not publicized. Every time I come to a hearing or a gathering I say the same statement. It's not working the way you publicize things. And it needs to change. More people would be here and we're good people, we're classified as bad people because we're pro life, but you need to do what is right because it's the right thing to do. I think this vote needs to

include the third Commissioner. Whether this can be done before the end of the year or in the beginning of next year with our new Commissioner. It's not handled well, and I think until we know whether or not this community can really economically support another hospital if it's really needed. I'm glad to hear abortions are down, but whether or not another hospital is really necessary in this community is another issue. I think we need to explore all avenues because we're going to be on an economic downhill slide because Montana historically has deep valleys and high mountains economically, and we know that. So I would ask you to take all these into consideration and to publicize this a lot better in the future.

Vivian Brooke said I am a State Legislator in the State Senate, and I thank you for allowing this public hearing to happen. I think it's a testament to our democracy that we can stand before a board and express our views as widely diverse as they are. However, the Blue Mountain Clinic suffered an escalation of that expression in March of 1993. The fire destroyed the Clinic and I'm here in support of your support for issuance of these bonds. What I'd like to tell you about is that for the last year I've been working on the capital campaign to rebuild the Clinic and because the majority of the population in our region abhorred and condemned the violence that destroyed the Clinic, we have had incredible support financially and in kind to try to rebuild it. As you all well know, the financial situation, we aren't able to access local foundations or local industries as readily or as much as we could if we were a larger metropolitan area. But because we have such a strong constituency out there, there have been a lot of people who have given generously to try to help rebuild this building and to rebuild the Clinic. What we need is more help and this is what these bonds will do, is to help us decrease that indebtedness. Because Blue Mountain Clinic is a legitimate 501(C)(3) nonprofit agency and it fills an important need for the Missoula community as well as the region, I really encourage the County Commissioners to approve these bonds.

Lynn Link said I've lived in the area for almost 20 years. I am here representing myself as a citizen and a taxpayer, and I believe also many in the health community. I am in the nursing community of our area here, and I have been in school for the last year and have been in a lot of areas. And abortion is an issue very close to my heart. There are many nurses in the health profession that are concerned about abortion, and as a citizen I am opposed to the tax exempt bonds. A speaker just before me mentioned that we are a small exempt group, those of us who are pro life, but I believe that we represent a very large group of very hardworking and very busy people that are not always able to be at these meetings. And I do believe you represent us as well. I believe tax exempt bonds is showing approval for the taking of a life. I do want to mention that I too have a deep faith in our Creator as many I believe I am representing here do. A body is such a miracle and a baby has a body that works so beautifully and so perfect and even before that body has a chance for the heart to beat and that first breath to be taken that baby's life is taken. I believe that even financially as our leaders we are taking away, I have a large family of my own. And I generate a lot of spending in Missoula. We're growing, it's a wonderful and healthy community and I believe that families are an asset, large families are an asset and I do believe--others have said that abortion is legal and it is legal, but it doesn't mean it's right. And I believe that giving exempt tax bonds to an industry that kills human beings would be very wrong.

Mike Peck said as many other people have said here today, I would also like to urge that these bonds not be passed. There are many fine facilities here in Missoula that give the same medical care as Blue Mountain Clinic wants to give, with the exception of abortion. I think that is the issue here today. It was stated that that was not the issue, but I think it is the issue. Abortion is killing a life and should not be supported by any kind of tax free money. I do agree, however, if Blue Mountain Clinic would drop the abortion end of their clinic, the controversy wouldn't be here and there wouldn't be so many people here against the bonds. Abortion should not be something that is forced on taxpayers to use their tax money on against their will.

Zoe Mohesky said I'm here as a citizen and as a patient of the Blue Mountain Clinic and I would like to express my support of the Blue Mountain Clinic and their request for use of Industrial Development Revenue Bonds. I have also worked with the Clinic on several occasions and am familiar with the health care services they provide to the community, including assistance to the economically disadvantaged. The Clinic deserves the support of the community to reconstruct the Clinic and I urge the Board of County Commissioners to approve the issuance of the bonds.

Sharon Delaney said I am here as a citizen of the County and a patient of Blue Mountain Clinic. I'm also a faculty member at the MSU College of Nursing, but I'm speaking as a citizen. When the Clinic was burned we lost a really significant clinical site for our students. It provides alternative nursing services in that it is advanced practice nursing, nurse practitioners. It's hard to find those in this community and it is really important for the student to see nurses in different roles. And we lost, I think, an excellent role model in losing the Clinic. We have not been able to use it since then because of the size of the Clinic that's being used right now. I'm also speaking as a patient of Beth Thompson. The medical community has not absorbed me, I would like to say just for the record. My health needs are very complex. I've been served well by Beth Thompson and I prefer a female doctor. The female doctors in this town are well overworked. They aren't taking patients by and large, and I think if we were to not have a place for Beth to be doing her practice, we would be in a sad state. I'm not ready to change doctors just because somebody burned down my doctor's building.

Glen Moyer said I am also a citizen and taxpayer here, and I'm here to speak against the issuing for many of the reasons already stated. One other would be that I would hope that in the last election one of the messages that I know I was voting to send was that we're not encouraging government to be involved in private things in the way that it has been in the past, and I would hope this would be the consideration in this past election, that I'm not sure that having the public involved in the private sector is in the public interest. My desire is to shrink government, not increase it. I also do want to agree I feel there are enough services in this area to help pick up the needs that have been left behind. However, that isn't my primary thing. I think what has been said here several times is my reason for being here and others is simply for the 3 to 5% of the clients that are there to receive abortions. I do think that would be a logical solution to this whole issue would be to ask the Blue Mountain Clinic on condition of these bonds being issued of having this part of their business to be cut. That would eliminate my concern. I'm sure I don't agree with all the advice that's given always but that isn't an issue that would make me oppose an issuing of a bond. However, with the issue of abortion it makes it highly volatile and I think that is not going to go away even if it's just 3 to 5% of their clients. By issuing this you are participating in a situation that continues a volatile situation in our community that I think could be eliminated quite easily.

Ellen Leahy said I am speaking from my position as Health Officer in Missoula County. I am here to speak in favor of granting Blue Mountain Womens Clinic's request, and my basis for this position is that their mission and activities address some of our society's most preventable and, therefore, I believe most indefensible health problems. This includes the fact that unintended births continue to increase in this nation. That we've seen no improvement in the last decade in first trimester prenatal care, a very important preventive activity. That we've seen no improvement in low birth weight figures, and that we've seen a decrease in the preschool immunization figures. Not only does Blue Mountain address some of these very important health problems, but they do it with a door that's very open to the medically under-served who are so over represented by these figures. I encourage your support.

Margaret Vance said I'm speaking to you today as a mother, as a consultant in the community. As a mother of three, and a single mother, and from an economic perspective. This is an issue of economics, of the efficient allocation of scarce resources. The Blue Mountain Clinic application is an eligible application, it is an appropriate nonprofit applying for appropriate monies. It meets all of the criteria for granting these monies. It is an entity in the community--an economic entity that provides a service to the community in serving the under-insured, the uninsured, the Medicaid patients, the Medicare patients, the elderly who have supplemental insurance concerns, and the people who have no money and no resources. The Blue Mountain Clinic is not known for sickening credit unions after people who cannot pay, it is known for working with the community and providing support to the people in this community who need it most. Missoula is becoming rapidly a regional trade center and one of the most important aspects of that is the expanding excellent medical service that we provide. Kalispell may not ever provide the medical service that we provide here in Missoula, and we provide it regionally. For those who have an economic based view of the world, and I do not claim to completely, however, I endorse many aspects of it. With the increasing role of Missoula as a regional trade center and the decline in the hard industry such as the wood products industry, the mining industry, the railroads, and so on, and up until most recently the University, education in our community, the expanding medical services that we provide here in Missoula are becoming a much necessary part of our position in the global economy, not the least of which our position in our own quality of life in our community. And as our demographics change this will become increasingly important. In the past we have allocated these monies to businesses that have made appropriate application and we have deemed them appropriate recipients of efficient allocation of scarce resources, which is what we're talking about. We have not gone into those businesses and then asked the patrons of those businesses what they do behind closed doors in the privacy of their constitutionally protected lives. We do not go into the hotels and motels and restaurants and other businesses that we have supported in the past and asked them who's sleeping with who behind closed doors, and who is doing it safely and who is doing what else, nor did we ask them what their conversations are and what the economic outcomes are. This is simply an economic issue. I ask you to support this issue in the interest of economics and in the interest of the community service that it provides.

Kevin Allen said I represent myself as a Missoula County taxpayer, and I'm one hundred percent opposed against this issue. I've heard many justifications of why you should support the bonds to continue this abortion. So far I've heard one saying government has no right to tell what they should do with their body. I agree one hundred percent, but also don't come to the government and ask them for some money. Be an American. Be responsible for your own actions. Another one is, I can't recall. They also say it's the law. Abortion is not illegal. Well, neither was slavery 130 years ago, but now everybody outlaws it and they knew from the beginning it was not right. Please, this is not right. Show the taxpayers of Missoula County that you will not allow this.

Gerald Lavey said I've just come to register my opposition to the support of this. I do not believe it is in the best interest of our community, either socially or spiritually.

Betty Hubrich said this is a wonderful forum for us to be able to come together and discuss this, but as in times past when I heard these kinds of things going on I thought I have strong feelings about that, I should say it, and I haven't, and I've written volumes of letters to you and lots of letters to the editors, but this time I'm going to stand and put my name down and say I oppose this. I know that they do wonderful things there, I'm sure they are all good people who work there, and I support what they do in that way. But for that 5% I will stand and I will say I oppose this. Those are the ones that cannot speak for themselves. We are responsible for them as a community. We are not responsible to just a select majority, we are responsible to all. I work very, very hard with my own children and with other aspects in this community in protecting children in all different kinds of things that I get involved in. And I think we need to think of those who are not yet born. They are alive and they are children and we should be able to protect them also.

Margaret Sanner said I'm here both as a citizen of this community and as a member of the Board of the Clinic. I reiterate strongly those comments which have been made in favor of the issuance of the bonds. I am here only to note this point which I believe the Board may wish to address in making its decision, and that is it is well known that the Clinic was burned. It was the victim of violence. I think that a decision by the Commissioners to issue the bonds which would, as has been stated, not require the use of any taxpayers money, but a decision to further the issuance of the bonds which would be a very strong vote by the Commissioners in favor of nonviolent means of resolving a conflict. It would state to the community that this is not a county which allows violence to triumph. This is a community which says lawful businesses and endeavors should be allowed to continue. The debate over whether or not a given activity is agreeable to all citizens should be allowed to continue. People should be allowed to speak about it but violence should not be allowed to triumph. I believe this Board of Commissioners could strongly further the method of nonviolent resolution of disputes by saying, yes, we will encourage this Clinic to build, we will do so without engaging any taxpayers' dollars, we will do so by saying it's a lawful activity, let it continue.

Lowry Risdahl said I am a resident of this County and this City, and I'm in opposition to issuing these bonds because I do not sanction one of their activities, and I don't want to be a part of it in any way, shape or form. And a lady spoke a moment ago that violence should not triumph. And I don't know how much more violent you could be than to commit an abortion. It doesn't seem to me that there's any kind or gentle way to accomplish their mission. And if you'll take a moment to look behind you, there's a mural up there that says "Freedom, Equality and Justice," and I think that should apply to these young lives that they destroy before they have a chance to blossom.

Shannon Borchert said I simply want to go on record as being opposed to the issuance of these bonds, and I could not say it any more eloquently than the gentleman before me.

Marlene McGovern said I just want to state that I also am opposed to the bonds being issued, and it is also only for that percentage of abortions. I just feel that as many others have stated, that we really do need to stand up for the unborn and I just would hope that the financing not come through government.

Madeline Bryson said I'm 82 years old, and I'm a patient of the Blue Mountain Clinic. I think Dr. Beth Thompson saved my life, it was either two or three years ago, when I went to her with a very painful gallbladder attack. And I've been her patient ever since. And I fell last spring and had a compressed vertebra and there isn't any other doctor--I've lived here since 1943, and I've gone to some other doctors, but there has never ever been a doctor that called me to find out how I was and could I tell her how I was getting along, and all those people are so compassionate there. And when I had this gallbladder attack she didn't tell me go to the emergency room where they cost you a lot of money. She put me right in the hospital so I didn't have to pay for the emergency room. And all I want to say is that I'm certainly for that. There's a lot of people here in Missoula that are on low income and they need that Clinic and I hope that you will give them the loan or permission.

Nancy Ball said I'm Associate Director of Planned Parenthood. I really have nothing else to add except my support for the Blue Mountain Clinic, and if we're counting numbers today, I would like to be counted as supporting the bond.

David Larson said I'm a citizen of Missoula, and I would like to go on record as being opposed to this. I know abortion is a hot issue but I think that is the issue here, and prior to the Clinic closing I believe I heard that there was 12% of people coming in and that 3 to 5% is projected and even if it was only 3 to 5% those are lives that are being killed. And people mention other things, but I would say if there was a restaurant or a place of business where 3 or 5 out of every 100 that went in didn't come out, I think they would shut it down. Life is valuable, and as somebody already said, freedom, equality and justice, and I stand and speak for those who haven't a voice and cannot speak for themselves. So I would ask you to take that into consideration.

Mary Jane Tanberg said I am very much opposed to this issue. I agree with the gentleman who spoke against the violence of abortion and the purpose of this Clinic. I'm also opposed to the violence of destroying the Clinic. But I would like to see you vote against this.

Nancy Brown said I'm the pharmacist for Blue Mountain Clinic and I just want to comment that Blue Mountain Clinic provides a great service in that it provides accessible and very high quality medical care for all the community, and I strongly encourage you to support it.

Fern Hart said if there is no one else I will close the public portion of this meeting.

Ann Mary Dussault said I have one question for Michael Sehestedt. If you want to refer this question that's fine. I would assume that when questions are raised relative to appropriate insurance and those kinds of issues, that if I'm not mistaken, that bond counsel and bond holders must be satisfied relative to those issues or the bonds would not be saleable. Is that a correct assumption?

Michael Sehestedt said, basically as to property damage or whatever, other coverages might be required to protect the bond holders' interests, the people that are putting up the money. Those will be required as a part of the bond issuance transaction. Typical bond documents and transactions I've been involved in have required insurance coverage on the improvements involved and some have had interruption of business or business loss insurance as an additional requirement. I would expect that those coverages, because they really are deal points, would be the subject of negotiation between the borrower and the lender, ultimately mediated by bond counsel.

Ann Mary Dussault asked if Sally would like to address the question of insurance and security.

Sally Mullen said as the manager of an institution that's been burned to the ground, I can guarantee you that we're very interested in insurance coverage and business interruption insurance also. The other thing I should tell you is that we already have obtained course of construction insurance which is part of the business transaction with the bank. We are required in our relationship with the bank to have building insurance at the time that the building is finished and we plan to do that. We are covered for liability insurance in the meantime and we'll certainly have that coverage in the future. If anything I'm sure we'll be over-insured.

May I address one more issue that Mr. Aplin brought up? There are two things I'd like to say. One of the things is that as the victim of violence I think it's inappropriate to blame us for the perpetration of that violence in the community, and that if we would just go away and quit doing abortions that suddenly there wouldn't be violence any more. I think that's an inappropriate kind of logic to use. The other thing I want to say, though, is in the design of the building we have been working with the Alcohol, Tobacco and Firearms people, the local fire marshal, local security companies, and the FBI to do our very best to prevent any future incidence of this kind, and if those incidence happen I want to be very clear that they're being perpetrated by people against the Clinic and not us because we're reconstructing the Clinic.

Ann Mary Dussault moved and Fern Hart seconded that the Board of County Commissioners proceed to issue Industrial Development Revenue Bonds to defray in part the cost of constructing and equipping a new medical clinic to be located at 610 North California Street, known as Blue Mountain Clinic. Motion carried on a vote of 2-0.

Fern Hart said I would discuss this motion for a brief minute. First I want to thank you for being thoughtful, courteous people in a situation which is very difficult and where emotions run very deep. That is what democracy is about and I am grateful to see it here in Missoula County. I respect all of your deep sentiments. Those are the things that make us human people. I make my decision on the basis of what I think is a fair request from a business which qualifies. I will be happy to see Blue Mountain Clinic built and serving the people that it serves best in the future.

RESOLUTION NO. 94-116

The Board of County Commissioners signed Resolution No. 94-116, a resolution relating to a project on behalf of Blue Mountain Clinic, and the issuance of Economic Development Revenue Bonds to finance the costs thereof under Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended; approving the project and authorizing the issuance of bonds therefor.

There being no further business to come before the Board, the Commissioners were in recess at 3:15 p.m.


**THURSDAY, DECEMBER 8, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. In the morning, the Commissioners attended a Legislative Issues breakfast meeting held at the Holiday Inn. Following that, Commissioner Hart left for Helena to attend a meeting of the MACo Outdoor Sign Committee.

**FRIDAY, DECEMBER 9, 1994**

The Board of County Commissioners met in regular session; all three members were present. Commissioners Evans and Hart and Commissioner Elect Michael Kennedy attended an all-day planning session with facilitator Ginny Tribe held at the Holiday Inn.

Monthly Report -- Chair Hart examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending November 30, 1994.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, DECEMBER 12, 1994**

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

Indemnity Bond -- Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Clarey's Safety Equipment as principal for Warrant #1057 issued March 5, 1994 on the Missoula County Greenough-Potomac Fire Department Fund in the amount of \$108.98 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Dawn Acres, Lots 2A & 2B, a two-lot summary subdivision of Lot 2, Dawn Acres, located in the SW¼ of Section 8, T13N, R20W, P.M.M., with the owner/developer being Kimberly L. Hall.

Plat -- The Board of County Commissioners signed the Plat for Lamb Addition, a subdivision of Curtis & Majors' Addition Lot 12 located in the SW¼ of Section 20, T13N, R19W, P.M.M. having a total area of 0.63 acres with the owner/developer of record being Norland Kougher Hagen. Cash in lieu of park dedication paid to the County Treasurer in the amount of \$2,444.44.

Amendment to Agreement -- The Board of County Commissioners signed an Amendment to the Agreement with the City of Missoula Parking Commission for Parking Lot Motor Vehicle Parking Enforcement in Missoula County Parking Lots in 200 and 300 Block of West Alder to include the parking area within the block area bordered by Woody and Orange running north and south and Pine and Broadway running east and west. This additional minor area shall be incorporated into the terms set forth in the original Agreement with no increase in compensation. This document was returned to John DeVore, Administrative Officer, for further signatures and handling.

Resolution No. 94-117 -- Acting Chairman Barbara Evans signed Resolution No. 94-117, a Commitment Agreement Resolution relating to the Board of Investments' INTERCAP Revolving Program; approving and authorizing participation therein and approving execution of the commitment agreement, whereby the Board commits to make a loan to Missoula County in the amount of \$935,830 to purchase a mainframe computer, 9-1-1 equipment, 18 vehicles, and to pay origination fees. The document was returned to John DeVore, Administrative Officer, for further handling.

Amendment to Agreement -- Chair Hart signed a Supplemental Schedule Order for Agreement Number 94090039 with Unisys, consisting of three pages totaling \$3,542 for additional equipment services and equipment. The document was returned to Jim Dolezal in Data Processing for further signatures and handling.

Payroll Transmittal Sheet -- The Board of County Commissioners signed twelve (12) Transmittal Sheet for Pay Periods #'s 14, 14B, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, Pay Dates July 8, 18, 22, August 5, 19, September 2, 16, 16, October 14, 28, November 10, 25, 1994, respectively, with a total Missoula County payroll of \$475,598.87. The Transmittal Sheet was returned to the Auditor's Office.



Letter of Agreement -- Chair Hart signed a letter to the DHES Preventive Health Services Bureau stating that Missoula County agrees to continue its Revocable License Agreement until January 31, 1996 to use computers, printers, modems and software owned by DHES. The Agreement was forwarded to DHES in Helena.

Other items included:

- 1) the Commissioners discussed the funding of North Reserve Street. Barbara Evans moved and Ann Mary Dussault seconded the motion that Missoula County will commit to pay a principal amount of \$350,000 in a time frame not to exceed ten (10) years. The motion carried on a vote of 3-0.

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

#### TUESDAY, DECEMBER 13, 1994

The Board of County Commissioners met in regular session; all three members were present. Commissioners Evans and Hart and Commissioner Elect Kennedy attended an all-day planning session out of the office.

Indemnity Bond -- Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Amber Gerhart as principal for Warrant #36047 issued December 2, 1994 on the Missoula County MCPS-Elem. Payroll Fund in the amount of \$285.30 now unable to be found.

Agreement -- Chair Hart signed a Standard Agreement between the Montana Highway Traffic Safety Administrator and the Missoula County Commissioners with regard to Highway Traffic Safety Contract 95-02-02-03 for the purpose of aiding the County of Missoula with its speed enforcement efforts by assisting them with the purchase four (4) radar units at a total cost of \$2,952. The project objective is to purchase and place in service the units by April 30, 1995. The Agreement was returned to the Sheriff's Office for further handling.

Agreement -- Chair Hart signed a Standard Agreement between the Montana Highway Traffic Safety Administrator and the Missoula County Commissioners with regard to Highway Traffic Safety Contract 410-95-04-03-04 for the purpose of conducting Minor In Possession (MIP) patrols to arrest youthful violators of the drinking and driving laws and also to provide public information and education to the media, parents and youth that informs them of these patrols, their legal consequences and their results. The estimated cost for this project is \$4,000. The Agreement was returned to the Sheriff's Office for further handling.

#### WEDNESDAY, DECEMBER 14, 1994

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

#### DAILY ADMINISTRATIVE MEETING

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

Resolution No. 94-118 -- The Board of County Commissioners signed Resolution No. 94-118, Application for Tax Deed, authorizing and instructing the County Clerk and Recorder to make application to the County Treasurer for tax deeds on the properties listed on the attachment to the resolution, which remain unredeemed in the Office of the County Treasurer on September 28, 1994, for which notice has been properly made, and instructing the County Treasurer to cancel 1991 and the current year's taxes on the same.

Resolution No. 94-119 -- The Board of County Commissioners signed Resolution No. 94-119, Sale of Tax Deed Property, resolving that the Clerk and Recorder prepare and publish and post notices of the Order of Sale of Tax Deed Property (list of properties attached to the Resolution), which notices should be posted and published in accordance with the law and setting the sale date for January 11, 1995 at 1:30 p.m.

Other items included:

- 1) the Commissioners signed a memorandum authorizing the Treasurer's office to waive all penalty and interest for Personal Property Tax Bill #93010301 for Lolo Preschool and Child Care. The document was returned to Vickie Zeier, Treasurer, for further handling.
- 2) the Commissioners signed a memorandum authorizing the Treasurer's office to waive all penalty and interest for Real Estate Tax Bill #'s 92033789, 93034118 and the first half of #94034906 for Karen Stead. The document was returned to Vickie Zeier, Treasurer, for further handling.
- 3) the Commissioners signed a memorandum approving the recommended record retention period for Motor Vehicle Department files. The document was returned to Patty Morse, Motor Vehicle Supervisor, for further handling.
- 4) the Commissioners appointed Sheila Hoffman as a member of the Clinton Rural Fire District Board of Trustees, replacing Betty Tucker, effective until the School Election in April of 1995.
- 5) the Commissioners re-appointed Natalie Carlson to a three-year term as a "regular" member on the Missoula County Tax Appeal Board through December 31, 1997.
- 6) the Commissioners re-appointed Marguerite Munsche, James Olivarez, and Steven Hayes to three-year terms as "regular" members on the Missoula County Weed Control Board through December 31, 1997.



- 7) the Commissioners approved the Mental Health Center Request for Funding as submitted by Cindy Klette.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Fern Hart. Also present were Commissioner Barbara Evans and Commissioner Ann Mary Dussault.

#### AWARDED: BID AWARD: GMC 4 X 4 EXTRA CAB PICKUP - LOLO WATER AND SEWER

Fern Hart said the bids were opened Monday, December 3, 1994, at 10:00 a.m. with DeMarios Olds/GMC being the only bidder. The recommendation of the Department is to award the bid to DeMarios for \$19,250, as this is within the budgeted amount and the vehicle meets all of the required specifications.

Barbara Evans moved and Ann Mary Dussault seconded the motion that the bid for a GMC 4x4 Extra Cab Pickup for Lolo Sewer and Water be awarded to DeMarios for \$19,250.00. Motion carried 3-0.

#### AWARDED: NEW AND USED VEHICLES - VARIOUS COUNTY DEPARTMENTS

Fern Hart said the action requested is to accept one Chevrolet Tahoe 4x4 utility vehicle for the Sheriff's Office, accept four sedans for County Motor Pool and two sedans for the Sheriff's Office, accept three vehicle trade-ins, and deny all bids for the Jail Transport Van and Youth Court Van. The background on this is that solicitation was let for 19 vehicles for various departments with the County. Of these, four were for the Motor Pool sedans, two were for the undercover sedans for the Sheriff's Department, a van for Youth Court, a van for the County Jail, and one a 4x4 utility vehicle for the Sheriff's Office.

On December 5, 1994, bids were opened and read. After inspecting each car, it was decided the following were the best suitable cars for the needs of each department, meeting all specifications except as listed for the 4x4 utility. These exceptions were not available from either bidder: Two Chevrolet Corsicas from Karl Tyler Chevrolet, three Olds Cieras from DeMarois Olds/GMC, one Olds 88 from DeMarois Olds/GMC, one Chevrolet Tahoe 4x4 utility from Karl Tyler Chevrolet, and the trade-in of \$7,000 from Demarois and trade-in of \$4,600 from Karl Tyler. All the vans that were submitted were above the budgeted amounts and were rejected.

The staff recommendation was to award bids for two Chevrolet Corsicas to Karl Tyler; one Chevrolet Tahoe 4x4 to Karl Tyler, three Olds Cieras to DeMarois Olds, one Olds 88 to DeMarois Olds, and accept the trade-ins from Demarois of \$7,000 and Karl Tyler of \$4,600. The total fiscal impact is \$91,962.00.

Barbara Evans said, if you look at the number at the top of the page, they total 8. You look at the bottom at the ones they're wanting us to accept, the total is 7. I realize we're not accepting the transport vans, but are we short a vehicle?

Don Mormon, Sheriff's Department, said you need to read across: The trade-ins are three, six sedans, and one utility vehicle.

Ann Mary Dussault moved and Barbara Evans seconded the motion that the bid be awarded for two Chevrolet Corsicas to Karl Tyler, one Chevrolet Tahoe 4x4 utility to Karl Tyler, three Olds Cieras to DeMarios Olds, one Olds 88 to Demarios Olds, and as part of the package to accept trade-ins from DeMarios of \$7,000 and Karl Tyler of \$4,600. Motion carried 3-0.

#### APPROVED: DECISION ON BUILDING HEIGHT REVIEW - CLARIFYING THE DEFINITION OF BUILDING HEIGHT AND THE METHOD OF MEASUREMENT

Jennie Dixon, Office of Community Development, said actually today I don't have a Staff Report. I brought you up to date on what the architect is proposing and it is very similar to OCD's proposal. It is also what the City has adopted for building height measurement. The only difference is in the alternative method where there is a wall height measurement that restricts building walls to be 18' on one plane. It's a little confusing and we're not sure how it's going to work out in implementation, but the goal is to try to keep large facades from happening and break up a wall plane.

Ann Mary Dussault asked is that the one in the Staff Report, the definition of building height as proposed by the Missoula Society of Architects and amended by the Planning Board dated October 4?

Fern Hart said it shouldn't be the Planning Board, should it?

Jennie Dixon said it was the architects' proposal, so you do have that in front of you. And it was amended by the Planning Board. I think it may have changed slightly since then.

Ann Mary Dussault said I don't have the packet, so if you have a copy that would be helpful.

Ann Mary Dussault moved and Barbara Evans seconded that the Board of County Commissioners adopt the Resolution of Intent to Amend Chapter 1 "General Provisions" of the Missoula County Zoning Resolution 76-113 by adding a definition of building envelope, existing grade, finished grade, offset, wall element, and amending the definition of building height, specifically as referred to in the attachments attached to the resolution. Motion carried 3-0.

RESOLUTION NUMBER 94-120

A RESOLUTION OF INTENT TO AMEND CHAPTER 1 "GENERAL PROVISIONS" OF THE MISSOULA COUNTY ZONING RESOLUTION 76-113 BY ADDING A DEFINITION OF *BUILDING ENVELOPE*, *EXISTING GRADE*, *FINISHED GRADE*, *OFFSET*, *WALL ELEMENT* AND AMENDING THE DEFINITION OF *BUILDING HEIGHT*.

WHEREAS, 76-2-201 M.C.A. authorizes the Board of County Commissioners to adopt zoning regulations; and,

WHEREAS, the Board of County Commissioners did adopt zoning regulations for Missoula County through the passage of County Resolution 76-113, as amended; and,

WHEREAS, 76-2-202 M.C.A. provides for the establishment and revision of zoning districts and regulations; and,

WHEREAS, a public hearing was duly advertised and opened by the County Commissioners of Missoula County on October 26, 1994, in order to give the public an opportunity to be heard regarding such proposed zoning regulation revisions as required by 76-2-205 M.C.A.

WHEREAS, on the 14th day of December, 1994, the County Commissioners of Missoula County did pass a Resolution of Intent to Adopt an amendment to the County Zoning Resolution, regarding building height.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Missoula County will receive written protest from persons who are opposed to the zoning regulation revision for a period of thirty (30) days after December 14th, 1994.

FURTHER, copies of the regulation revisions pertaining to building height are available for inspection at the Office of the Missoula County Clerk and Recorder and at the Office of Community Development.

ADD the following definitions to Chapter 1 GENERAL PROVISIONS:

8. Building Envelope - Building envelope is an envelope measured as a given vertical distance established by a plane of the same topography parallel to existing grade.

26. Existing Grade - Existing grade is the grade of a site prior to building construction and after road and utility construction.

30. Finished Grade - Finished grade is the grade of a site after building construction, inclusive of any retaining walls, built up grade or other changes to existing grade.

51. Offset - Offset is the horizontal distance measured between vertical surfaces of adjacent building elements.

80. Wall Element - Wall element is 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 eave or top of coping of a flat roof.

Wall elements not adjacent to grade shall be measured from the lowest point at which the wall element intersects any part of the adjacent building element to the underside of the eave or top of coping of a flat roof.

A gable end above the eave shall be excluded as part of the wall element measurement.

AMEND the definition of Building Height in Chapter 1 GENERAL PROVISIONS:

9. Building Height -

A building may be measured using one of the two measurements (absolute or modified) as defined below. It shall be the responsibility of the applicant to select a method of building height measurement. Height measurement shall not include certain building components as excluded by Section 3.06 GENERAL REGULATIONS of the County Zoning Resolution.

a. Absolute Height of a Building

The vertical distance measured from the lowest finished grade adjacent to the building to the highest point of the building. This distance shall not exceed the maximum building height as established in each zoning district.

b. Modified Height of a Building

The vertical distance measured as a building envelope from the lowest existing grade adjacent to the building to the highest point of a coping of a flat roof, the highest ridge of a shed roof, the deck line of a mansard roof, or to the midpoint between the highest eaves and the highest ridge of a hip, gable or gambrel roof. For each zoning district, a permitted building envelope height shall be established by the zoning regulations as equal to "H". The Modified Building Height of any building shall not exceed the permitted building envelope height. See Table 1 and Attachment A for diagram.

Individual wall elements may not exceed eighteen feet (18').

Individual wall elements may be stacked vertically only if an offset of not less than one-third (  $\frac{1}{3}$  ) of the largest adjacent wall element under consideration is provided. (See Attachment B for diagram of offset.)

Table 1  
Defining Modified Building Height Envelope by Roof Type

ALL BUILDINGS EXCEPT HIP, GABLE OR GAMBREL ROOF BUILDINGS	HIP, GABLE, OR GAMBREL ROOF BUILDINGS
The maximum building height for all buildings except hip, gable or gambrel roof buildings shall be measured from existing grade as a building envelope, not to exceed the maximum building height allowed in each zoning district ("H").	The maximum building height for all hip, gable or gambrel roof buildings shall be measured from existing grade as a building envelope, not to exceed the maximum building height allowed in each zoning district plus three feet ("H + 3). No point of the building shall exceed the building envelope by more than three feet.

DENIED: COMPREHENSIVE PLAN COMPLIANCE APPEAL - BAUER

Bud Hettich, Office of Community Development, said I have also given you a copy of a letter I received today from McDonnell and Manley, who are neighbors to Mr. Bauer. Second to the last page, you might care to look through the covenants or what it says there on the second to the last page. This was submitted by Manley and McDonnell. This hearing is an appeal of our decision at OCD to deny a building permit. This is a proposal by Tom & Donna Bauer for zoning compliance to obtain a building permit, to construct a 72' X 100' building for industrial purposes, specifically to fabricate and retail "hot tubs". The property is a 2.89 acre tract shown on COS #637, located on Highway 93 North, between the "Y" area and Evaro Hill. The site is bordered on the east by Highway 93, Jim & Mary's RV Court, a developed single-family residential subdivision and vacant farm land; to the south is vacant farm land and the commercial uses at the "Y"; and, to the north and west is single-family on large acreage tracts.

Although the 1979 Wye/O'Keefe Creek Area Plan encourages scattered-site industrial development along highways, the more recent 1990 update of the Missoula Urban Comprehensive Plan clearly recommends that industrial activities be clustered and located in industrial parks or areas with commercial services (e.g., municipal sewer and water as well as good transportation access). Since the Wye/O'Keefe Plan is considered supplemental to the Urban Area Plan and the newer plan reflects more current community planning and development policies, the Urban Area Plan's goals and objectives override the older neighborhood plan.

The Missoula Urban Comprehensive Plan recommends residential at a density of one dwelling unit on five to ten acres, thereby OCD concluded that the intended use was not in compliance with that plan or the provisions of the two resolutions adopted to assist in its application to building permits.

When reviewing Mr. & Mrs. Bauer's zoning compliance for a building permit application, the Zoning Officer's determination was based on the following: 1) the property is within an unzoned area designated by the Urban Area Comprehensive Plan as Residential (1 dwelling unit on five to ten acres); and, 2) The situation did not match the deviations from comprehensive plan compliance allowed by County Resolution 85-082.

Mr. Bauer has stated that he is presently fabricating hot tubs on a small scale in his present shop, a shop that he claims he has been using for seventeen years to repair car and truck engines and build snowmobile and horse trailers. The OCD staff has no recorded information to Mr. Bauer's claim of a non-conforming industrial use on his property. Although it could be assumed that Mr. Bauer has a repair business operating at this location when reading the correspondence between Mr. Bauer and the Health Department. OCD has received a copy of a certified letter Mr. Bauer received from Alan English and Vickie Willis of the Health Department, in regard to spilled petroleum products at the shop entrance and reference to burning cleaning solvent in a space heater.

DISCUSSION:

Resolution 83-99 and Resolution 85-082, amending the former, set forth several criteria for determining whether a proposed use requiring a building permit is in compliance with the Urban Area Comprehensive Plan. Clearly the proposed development of the 2.89 acre tract is not in compliance with the recommended residential use designated by the Urban Area Comprehensive Plan.

Resolution 83-99 also states that if the proposed use is different from that of the land use plan but in compliance with the goals, objectives and policies of the plan, it can be found to be in compliance. The applicant's proposed use is in direct conflict with the Urban Area Comprehensive Plan.

Resolution 85-082 allows proposed uses to be considered to be in compliance with the Comprehensive Plan if 50% or more of the land uses within 300 feet of the property in question are compatible with the proposed land use. In this case, land use within 300 feet of the applicant's parcel is 100% residential.

There are vacant parcels available in existing industrial and commercial zoned areas more centrally located, without it being necessary to develop areas designated residential.

Mr. Bauer has stated to me that he is now fabricating some hot tubs in the existing large storage shed he has on the property. He had been using this for 17 some years repairing truck engines, car engines, fabricating horse trailers, snowmobile trailers, and such. Again, I say that our office has no recorded information to that effect, no permits showed up. If you have read the letters from the Health Department, it does indicate that there was some commercial industrial use of the property because of some of the material that has now been required to be moved. I'm speaking of diesel fuel and other petroleum waste products. In your packet you have letters from the Health Department, from

Alan English and Vicki Willis, and I believe Peter Neilsen will be addressing you on Mr. Bauer's property. We feel with the Wye O'Keefe Area Plan plus the 1975 Missoula Comprehensive Plan that the intent was to localize industrial commercial uses at the Wye. And, as you know, the Wye area is heavily commercialized and there are some industrial uses there.

STAFF RECOMMENDATION:

The staff recommends that the request by Tom & Donna Bauer to establish an industrial use be found not to comply with the Urban Area Comprehensive Plan and be denied pursuant to Resolutions 83-99 and 85-082.

Peter Neilsen, Supervisor of the Water Quality District, Missoula City/County Health Department said that his staff has inspected the facility operated by Tom and Donna Bauer. We have a number of concerns regarding this as is summarized in the memorandum that Vicki Willis from our Department sent to Bud Hettich on December 9, 1994, which I believe is included in your packet. We inspected the facility October 26th of this year and found several violations at the shop. These included installation of an illegal septic system, discharge of waste water from a shop floor drain into a sump, improper disposal of used oil and diesel fuel on the ground surface. At the time of the inspection, there were 13 full barrels of polyester resin and 3 barrels of acetone waste from spa manufacturing stored on the ground surface outside. Our Department has issued a notice of violation in order to take corrective action for these problems issued on November 15, 1994. We have not yet had a response from Mr. Bauer although he has been characterized by my staff as being fairly cooperative and we expect him to respond and correct these problems at some point in the future, and hope to do so regardless of whether or not this issue--no matter how it goes.

These practices, however, do pose a threat to water quality. While this threat would exist regardless of the location, these activities in an area zoned residential do pose some additional threats to private well owners in the area. Several of the chemicals used in the process are also highly flammable and highly toxic, and the use and storage of these chemicals in an area that is zoned residential is not recommended by our Department. On air quality, our Air Quality staff has reviewed the issue. The use of styrene in the formulation of fiberglass products requires compliance with hazardous air pollutant regulations and these require emissions to be controlled to the maximum degree. However, the Federal and State Governments have not promulgated emission standards for those substances yet. They would also be subject to Federal Operate and Permit Program Regulations when adopted at the local level and that may be sometime in the future. An operating permit will be required and the fee would be charged based on the amount of emissions. Our existing air quality regulations governed by the Missoula Air Quality Control Board require control of odors in the ambient air and the regulations prohibit nuisance odors beyond the property line. We have had staff who has witnessed a burn barrel at the site which is a problem that can be easily corrected and may already have been corrected. Of course, burning waste for the purposes of disposal is prohibited by our air pollution regulations. Due to the potential for air and water contamination from a fiberglass manufacturing operation, combined with the history of practices at the shop, we would question the advisability of granting the rezoning request, recognizing that there are issues there that need to be corrected whether or not this request is granted, and that some of these issues will apply no matter where the place is sited. We would anticipate working constructively with the operator no matter where it is located to gain compliance with our local regulations.

Ann Mary Dussault asked in our packet is the letter to Mr. Bauer located at 9655 North U.S. Highway 93, and there's further correspondence to a business called Big Sky Tile and Marble. Is that one and the same?

Peter Neilsen said no, that is a different company and as I understand it there is a gentleman named Steve McLaren who is engaged in some sort of a business relationship with Mr. Bauer in terms of operating this facility at this site. Mr. McLaren previously was located at the Big Sky Tile and Marble location which is on West Broadway. This is a site I spent considerable time correcting a number of problems this last summer, and my understanding from the management there, which was quite cooperative, was that the new management had taken over, from McLaren, and many of the problems that were created at that site were the result of Mr. McLaren's previous activities. That was included in our information that we sent to Bud so he would have a picture of what we had done related to Mr. McLaren, and I guess I don't know specifically all the business relationships, what exists between these two parties. We presume there is a connection there and we thought it was relevant information at least. It does not relate directly to Mr. Bauer.

Fern Hart said if there are no further staff reports, I will open the public hearing, and we would be happy to have any comment from the folks requesting this variance. If you would come to the microphone and state your name, we would be glad to have your comments.

Tom Bauer said I'm the one that owns that strip of land that I'm trying to put a building on. I'm hard of hearing.

Fern Hart said, I'm sorry our sound system is not the best in here. Do you have any comment to make to us with respect to the concerns?

Tom Bauer said I didn't really get to hear them sitting back there.

Fern Hart said most of everything he said was in the packet. Have you read the letter?

Tom Bauer said I just looked through them.

Fern Hart said you should have received these letters from the Health Department.

Tom Bauer said I did receive that.

Fern Hart said then I believe you have most of the information. So would you prefer to let Mr. McLaren present your request for a variance?

Tom Bauer said yes.

Steve McLaren said I guess first off I would like to address a few of the issues in this packet. Regarding the air quality issue, the styrene. At present time we are using the lowest styrene resin that's available to us. The fiberglass products, I called the EPA in Helena and they gave me some calculations to figure contaminant into the air. The amount of manufacturing we do opposed to do puts us so far under, as far as the EPA at the State level is concerned, there is no permit fee whatsoever. We have a filtration system in the shop which consists of Andra filters that catch all the airborne particles before they leave the shop. There's 100 feet per minute going through the fan and all that air goes through that filter bank before it goes out of the shop, so we are catching all the particles before they leave the shop. We have no hazardous waste. We work directly with BFI for all our waste disposal. The acetone that was brought up at Tom's shop was basically dropped on us from Big Sky Tile and Marble. I have an acetone distilling machine. When the Health Department was out they examined that and because of their recommendations, we have not at this time distilled that acetone. It is still in the drums. There's a flash point on the resin and the acetone of about 80 degrees. The temperatures that we are experiencing now, there's absolutely no chance of fire.

Fern Hart said let me see if I understand this. The acetone is stored there?

Steve McLaren said yes.

Fern Hart asked you're not using it?

Steve McLaren said what it is is a slurry. It's acetone, polyester resin, styrene, calcium carbonate and it's a slurry. There's 3 55-gallon drums and probably 18 inches in the drum is a slurry. When we send it through our acetone distilling machine we end up with a solid cake of non-hazardous material because of the heat process involved in distilling it.

Fern Hart asked where do the parts go?

Steve McLaren said we get two parts out of it. We get cleaned acetone that we re-use. And then we get the cake and BFI will be the disposer of the cakes. With our processing we will not have a solid cake. All we're dealing with are resins. There might be out of a 55-gallon drum there might be half to three quarters of an inch in the bottom of the drum.

Fern Hart said that's still the whole mix. So you use everything that's in the barrel.

Steve McLaren said absolutely.

Fern Hart asked why do we have BFI at all?

Steve McLaren said they are the hazardous waste management program. They take care of all the hazardous waste.

Fern Hart asked but you don't have a cake residue left?

Steve McLaren said not with our processing. Out of these three drums of acetone, we will have.

Fern Hart asked why?

Steve McLaren said it's a slurry left over from Big Sky Tile and Marble.

Fern Hart asked so why didn't it just go to BFI now?

Steve McLaren said BFI cannot dispose of liquid-like acetone. It would cost a tremendous amount of money to have them deal with it.

Fern Hart said I'm going to understand this. You have three barrels of acetone slurry, which is not what you're using.

Steve McLaren said no. Acetone we do use.

Fern Hart said, but you're not going to separate this off.

Steve McLaren said yes I am. I will turn it into a non-hazardous material.

Fern Hart asked will that make a cake?

Steve McLaren said yes, there will be some solid cakes left over from that.

Fern Hart said so you said there's no air pollution.

Steve McLaren said there are a certain amount of gases, styrene when the product is what we call jelling, there is styrene that comes out of it that is a gaseous form.

Fern Hart asked and that goes through your exhaust system and is stopped in the filter?

Steve McLaren said yes. All the particles are pulled out of that before it goes out of the building.

Fern Hart asked do you all wear masks?

Steve McLaren said yes. We use respirators, and in certain parts of our operation we use a full fresh air respirator to pump fresh air to the operator. I'm going to just past the other problems. There is an issue in here about Big Sky and some drums. There are two ways you can dispose of the drums. You can save up a semi load of them and send them down to Salt Lake to a place called Drip Dry, 1-800 Drip Dry, and they require you to drip dry the drums and send them back for reprocessing. Two is, you can cut the top and the bottom out of the drum, you scrape down the top, bottom and sides of the drum, solidify any material that is left in, and then BFI will take that as a non-hazardous waste.

Fern Hart said but what you said, and you referred to those three drums that came from the former business, what you said is you were going to use that slurry.

Steve McLaren said no, I'm going to use the acetone.

Fern Hart said you're going to take the acetone off, it will make a cake and BFI will take the cake. Then will your barrels be acceptable?

Steve McLaren said I'll have to do whatever it takes to make them acceptable.

Fern Hart asked what do you do if you're not using--after you've used those three barrels can you just buy acetone?

Steve McLaren said yes.

Fern Hart asked and will you?

Steve McLaren said I do every once in a while. I would like to reprocess the acetone and use it that way. To recycle. We lose a certain amount to the atmosphere. Acetone is very hot and it tends to evaporate very quickly.

Fern Hart said tell me again why it won't explode in this kind of weather but it will at 80 degrees.

Steve McLaren said it has a flash point. I can give you the numbers.

Fern Hart said I don't need it. I just want to understand. So it's stored outside?

Steve McLaren said yes.

Peter Neilsen said it would have to have a source of ignition.

Steve McLaren said it would have to be a pretty serious source. Gasoline fire, diesel fire.

Fern Hart said Mr. McLaren, if you're going to recycle this acetone, do you draw it off after you've used it off of something? What do you use it for.

Steve McLaren said in our processing we use it to clean our fiberglass equipment, rollers.

Fern Hart said so it's a cleaner. I'm much more comfortable with household terms. So then you use it to clean and then you siphon it back off and store it.

Steve McLaren said in the shop we work out of two buckets. We have one small bucket that's about a gallon and we have probably a quart of material in it. And that's to clean off the head of our gun, the tips, that type of stuff. There's another bucket that we keep our rollers in. That's a five gallon bucket with a lid on it, and that's probably got a gallon and a half at the most. When that material gets dirty in that bucket, we put it into a 55-gallon drum to recycle later.

Fern Hart asked what do you mean by recycle?

Steve McLaren said we run it through the distilling machine.

Fern Hart asked and you have a distilling machine?

Steve McLaren said yes. The acrylic which is the basic fabrication that's happening in Mr. Bauer's shop involves no processing whatsoever at this point. Basically we have a hard sheet of acrylic. We take and heat the oven up to 376 degrees, and then by vacuum we draw that sheet into a mold and that's the only part of my operation that is happening in Tom's shop. There's no fiberglass or any of that type of work going on.

Fern Hart asked so all the acetone is not there?

Steve McLaren said the three drums are, yes.

Fern Hart so you've described a process, different shops, same place.

Steve McLaren said maybe I should start at the beginning. We start with a sold sheet of acrylic. We heat it in the oven, we vacuum draw it in the oven, then we take denatured alcohol and we wipe down the back of it so everything is clean, and the resins will stick to it. We spray the fiberglass which consists of fiberglass, polyester resin and a peroxide. It comes in a rope form, we run it through the head of a gun and it chops it into 1" pieces.

Fern Hart asked what for?

Steve McLaren said it goes on the back of the acrylic.

Ann Mary Dussault said would you start--the issue here is whether or not this is an appropriate use in essentially an area designated as residential. If you could address that first. Why is this manufacturing appropriate in the area designated residential by the Comprehensive Plan. That's really the issue.

Steve McLaren said I understand the Comprehensive Plan for the area. But to this date there has been--everybody that buys a piece of property out there, in fact even the realtors who are selling that property out there, the front part on Highway 93 is commercial, the back part is residential. There are several properties that have been sold in the last six months, upon sale and the new owner taking possession, there's been a new cabinet shop put in which I feel is definitely manufacturing.

Fern Hart asked how far away?

Steve McLaren said it's further towards the hill. It's out of the City's jurisdiction. It's approximately a mile and a half up the road. Within the last year there has also been a truck repair place put in.

Fern Hart asked Bud, how can it be designated commercial beyond Manley's.

Bud Hettich said the building permit jurisdiction ends at Waldo Williams' Road. So whenever we get a application for a building permit and it's unzoned, we then apply Comp Plan to determine its use. What I did in this instance I looked up the adjacent properties within 300 feet. That was one issue and the other issue is the Wye/O'Keefe complex does say that when that area is developed that there are some areas going to be designated commercial. I believe the area at Waldo Williams' turnoff would be an area that would be zoned commercial. Keep in mind we're talking about two different horses here. One is industrial and one is commercial.

Steve McLaren said on your map, you come off I-90 to your left, there's an A10 section of property, it's kind of triangular in shape. This is a trucking company that rebuilds trailers, they redo sheeting, they do foam insulation, they use the exact same product that we use on our hot tubs. So I would have to consider those people would be manufacturing. Across the road, the section of land that's A5, I'm not sure if it's A5 or A12 is also a manufacturing facility. It's a welding shop and fabrication shop.

Bud Hettich said if you start at the Wye probably about half a mile to this part.

Fern Hart said is the point that you're making that the Wye area is zoned.

Bud Hettich said it is zoned CC2, general commercial. The trucking industry falls under CC2 heavy commercial.

Fern Hart asked the other point you're making is this is unzoned past that? It's designated by the Comp Plan as residential.

Barbara Evans asked Mr. Bauer, in the letter that we received from Ms. Manley and Ms. McDonnell is included a copy of your Warranty Deed dated 1977 and in it it states that their subject to the restriction of no manufacturing or commercial enterprise or enterprise of any kind for profit shall be maintained upon, in front of or in connection with the premises. Were you aware that was in your Deed?

Tom Bauer said, no I wasn't, but on the other hand I confronted Mr. Hagen about this after this come up and he said--the thing he brought up to me when I bought the place, he didn't want any trailer houses, stuff like that, and he wanted the place kept up and neat. Before I ever bought the place I asked Mr. Hagen if he had an objection to building this size of a shop in his back yard because he was going to be my neighbor. His answer to me was I don't care what you do over there except you're not going to put any trailer houses over there. That suited me fine because I didn't want any trailer houses neither. After this was brought up I read the rest of it, so I go confront Hagen. And Mr. Hagen said I just more or less waived it. You didn't have trailer houses and you kept it clean. It's not in writing or nothing he never gave me any trouble over it for 17 years. So for 17 years I've been running this shop and I keep it neat around there. Right now it's not, but we don't have the room so we're trying to put up another building to get it cleaned up. But the Manleys have written me a letter through their attorney pertaining to this and my attorney has answered it. But we haven't gotten any correspondence back from the Manleys' attorney on the litigation matter.

Barbara Evans said as they say, it's a civil matter but I wanted to ask you about it.

Tom Bauer said I was surprised because I hadn't seen that particular paper. I never signed it. My name appears on it but I never signed it.

Barbara Evans said well, Mr. Hagen signed it when they sold it to you. I would assume you must have signed something when you purchased it.

Fern Hart asked is Mr. Hagen your neighbor now?

Tom Bauer: No, the Manleys purchased that property.

Fern Hart said Bud, I found my zoning map. Look at your zoning map. Not only is the Wye area zoned CC2, but the right side of the highway has commercial. Correct? And that's commercial, not industrial.



Barbara Evans said I recognize that the subject property is in an unzoned area, and, therefore, the Comprehensive Plan rules. Is that correct, Bud and Colleen?

Colleen Dowdall said yes.

Barbara Evans said our regulations or our rules says you will check within 300 feet of the subject property to determine whether there are like uses.

Bud Hettich said yes.

Barbara Evans asked did you find like uses?

Bud Hettich said no.

Barbara Evans said but you did find commercial uses?

Bud Hettich said if you call Jim and Mary's commercial, I would call it light commercial. The Manley property, they have a sign there talking about the art gallery.

Barbara Evans said bed and breakfast?

Bud Hettich said I didn't see that sign there. I have no knowledge of it.

Barbara Evans said was there any discussion when we had Dale Mahlum's proposal before us as to whether or not it qualified under the Comprehensive Plan?

Colleen Dowdall said it was considered in the Staff Report, and I think determined that while it didn't meet the residential requirement, that it was close to Jim and Mary's, so there was probably substantial compliance with the Comp Plan.

Fern Hart asked because it's commercial?

Colleen Dowdall said it would be commercial whereas reading the commercial uses this is more industrial, although it looks like they intend to have a retail business also on the location to sell the hot tubs. They'd be building there which is industrial.

Barbara Evans said what concerns me is very often we have a Comprehensive Plan, that to be kind to say it's out of date, it certainly is not in concert with what is going on. I don't think that the Comprehensive Plan that we have out there mirrors reality. It doesn't change the fact that it is a Comprehensive Plan and that it is there, but looking at this map of the things that around it, I don't think it mirrors reality. In my mind, I think there's a fine line between commercial and industrial, so I'm really at a loss on what to do.

Bud Hettich said the Wye/O'Keefe area plan when it was put together, the concept was that areas of heavy commercial, light industrial uses would be centered in the location at the Wye, and areas adjacent to that could be developed pockets of light commercial, a neighborhood convenience store or a grocery store, I'm not sure what kind of a shop. The idea there was this would develop in little pockets as it is now. You have the Wye area with heavy commercial and you could construe some of that to be light industrial. Again, with the influx of more residents, there would be more residential areas. You have the Tyson project behind Jim and Mary's, a residential subdivision. I would argue that Jim and Mary's is more commercial than residential, and Mr. Mahlum's RV park as being more commercial than residential.

Fern Hart said I've just been reminded by Ann Mary this is a public hearing. Is there anyone else who would comment.

Jeanette Manley, Mr. Bauer's neighbor. First, I guess we should address the commercial use of our property. We do run a seasonal bed and breakfast. The bed and breakfast is two rooms and under the State of Montana and having worked with the Health Department here, we are considered residential. We're not an inn, we're a home. It is a seasonal business, it runs about three months out of the year. We are registered with the State, we are under home state, we're not an inn. We do not have a sign on the road. We don't want road traffic, it's all reservation. Most of it is ten weeks to a month in advance. Some of them are three months in advance. It's very quiet, which then leads us to why we would buy in an industrial park. Most people traveling from the east, most of our people are from the East Coast, West Coast don't come to industrial sites to take a bed and breakfast vacation. Secondly, the art gallery which is light commercial fits in with the Wye O'Keefe and the Comp Plan because it is a small community-oriented commerce. We have fine arts. We are not geared toward tourists, we don't carry the tourist stuff. The majority of our art work is in excess of \$1,000. We have very little that's for anyone that doesn't want something for their home or some investment type of art. It has no real appeal to commuting traffic. I would have to say 40% of our business is done over the phone. We have three or four people through a day, it's very quiet. I do think that a small gallery fits the neighborhood and shop-type businesses that the Comprehensive Plan called for. We researched very carefully as you have noted in the letter. I'll try not to be redundant.

When we purchased in 1993, it was important to us number one, my mother had sold her businesses in the Billings area, Donna McDonnell, who is a joint owner, after my father's death and she was looking for a retirement area to come to. So we had the idea of going into a bed and breakfast. And we did a lot of research. I worked with a lot of realtors to find a property suitable, where we could both run this and have some quality of life. And if we don't want to do the bed and breakfast in five years we can give it up and just use the home for residential. Mr. Bauer started, I don't know if it was in September or October, I think we opened in September in the art gallery, and ran a generator in

our back yard where we couldn't even visit with each other inside the art gallery. It was the size of an auto, unmuffled. He did go ahead after the first week of manufacturing and put a muffler on it, but it did raise concerns to us of what was going on because we did research the Comp Plan, our realtor, Lauren Peterson--we were backing out of the purchase of the property when we found out that there was some sort of manufacturing going in next door. Like I said it wasn't what we had planned to buy. That's when our realtor, Lauren Peterson, provided us with the Warranty Deed on Mr. Bauer's property. And I'd like to say I don't know how Mr. Bauer couldn't have known about that because it was not in existence until he purchased the property. The Hagens put it on the property to protect their own residence so nothing commercial or industrial would go in next to them. When they purchased from Waldo Williams that Warranty Deed did not exist, and until they split and sold to Mr. Bauer it did not exist. And I would have to say if he has a problem with that Warranty Deed he would have to go back against the title company anyway if he had never seen it because that would have been the title company's responsibility to get that into his title search.

Fern Hart asked is Mr. Hagen alive?

Jeanette Manley said yes he is, he is in ill health at this time. You could certainly call Dot or contact Dot. I had heard Mr. Hagen was in the hospital as recently as last week. So I do know there is some issue of ill health which is why they originally sold this property. Hagens told us there was no commercial use of that property. Of course they wanted to sell the property and we said we've heard there's manufacturing going in next door. They said no, Mr. Bauer built that shed for use in his logging business. Well, and Mr. Bauer is now saying he's had a 17 year history of use as that as commercial property. I would beg to differ on that. I think all throughout the community there's a number of subcontractors and people who provide contracting services and people who are professionals doing consulting who make business calls out of there home, who do their bids out of their home, who have a home office, but at the same time the focal point where the income is actually earned is not on that property. That building was originally built to house his RV and his logging truck, from what I understand from Mr. Hagen. The focal income earning point was not on that property, no more than your people in construction. I am a tax accountant. I do a number of people who have no office downtown. All of their contracting is done out of their homes and they live in residential areas all over this community, and the focal point, the income earning activity is not on their property, much as Mr. Bauer's logging was not on his property. He did the bids, he did the contracting, he had a building to house his logging truck in, the big shop. Also he said he's running a repair shop. There's no ads, there's no signs. I have no proof of any history of a business ever existing there. The County has never had a building permit. The building's not up to specs to run a commercial business out of, so I say that that has been a residence, that there has not been industrial or commercial use out of it. I guess a person would have to subpoena financial statements to see if that ever was commercial/industrial.

I personally don't want to live next to an industrial--when we investigated the Comp Plan when we purchased our home, when we set up our small gallery, this certainly--living next to something with toxic chemicals and noise and pollution and semis and trucks coming in all the time was certainly not what we looked for. I think the citizens should be able to rely on a Comp Plan when they come into a community and invest any kind of money, whether its \$20,000 to \$400,000 in property. They should be able to go by that Comp Plan for their investment needs, and I don't think that it is unfair to me to say that I should be able to rely on what our government has put together and for plans that we as taxpayers have paid to correlate, because there's a lot of expense into getting all the engineering and all the research, all the people to even put together a comp plan. I helped pay for that Comp Plan.

Fern Hart asked is there anyone else who is a member of the public who would like to speak? We will close the hearing to the public. We have some questions. Barbara will ask some questions that may clarify some of the answers. Jeanette is here to answer a question from Barbara.

Barbara Evans asked Jeanette, when did you purchase your property?

Jeanette Manley said July 9, 1993.

Barbara Evans asked did you see the property before you bought it?

Jeanette Manley said yes, I did.

Barbara Evans asked so you looked at everything that was around it before you purchased it?

Jeanette Manley said yes, I did.

Barbara Evans said you looked at the things that are out there and admittedly I haven't been out there and looked with a fine tooth comb at the things that are there, but in looking at the map and seeing we have Waldo Williams, Jim and Mary's RV, we have Mr. Bauer doing whatever he's doing there. Can you tell me that you were unaware that there were business-type things around?

Jeanette Manley said I knew there were business-type things and it fit my intended use, I wanted a small art gallery and to be--although bed and breakfast, like I said, is considered residential. I looked at the red shop in the back and that's when I proposed to the realtor what's going on back here.

Barbara Evans asked what kind of things does Waldo Williams have on his property?

Jeanette Manley said it's hay, it's an alfalfa pasture.

Barbara Evans asked it's not trucks or anything--I believe they own trucking companies.

Jeanette Manley said that's all pasture. That's all agriculture and grazing.

Barbara Evans said so there are no big semis, trucks or things of that sort there.

Fern Hart said my major concern is that this is industrial and that it does have the kind of activities which I think need to be regulated and meet all of the protections that we have in an industrial area. I'm saying I really do believe you're in an industrial business and that this activity, and I think I picked out the baking side of it, I think it really is in an area that is an activity that needs to be in an industrial area, and it needs to be regulated very closely. I think where it is now is not that kind of area.

Barbara Evans asked Peter, and I don't disagree with what Fern is saying here. I agree that those things need to be closely regulated and it appears that there were numerous violations that needed to be cleaned up, and I'd like to know has 98% or 100% of those been cleaned up, Peter?

Peter Neilsen said there are two separate administrative orders. One was to Big Sky Tile and Marble Works located on Highway 10 West, which at some point in the past Mr. McLaren was associated and apparently some of the waste materials were his problem. That problem has been entirely taken care to our satisfaction. In fact, there's a letter in there from the current management at Big Sky stating how each of those problems were addressed. The second administrative order was to Mr. Bauer regarding operations at his shop and not necessarily associated with Mr. McLaren because that really isn't going yet. We have not had a contact with Mr. Bauer that I'm aware of since that time. I presume that many of those things will be taken care of. My staff has indicated that Mr. Bauer has been easy to communicate with and we anticipate being able to solve those problems. The question really at hand is whether or not this type of manufacturing activity using these type of materials--it's not whether this is bad or whether this is not something we should have in the community. It's whether we should have it there, and that's really what it's all about. We have facilities using these very same types of chemicals all over the place in our community. They tend to be concentrated in certain areas that are designated for that type of use. That's the purpose of the Plan, as I understand it, and that's the issue at hand, and that's why we questioned the advisability of allowing that there. Whether or not it's allowed here or somewhere else, our regulations will apply and we will seek to enforce compliance with those regulations.

Barbara Evans asked Colleen, tell me where we stand legally on an issue where the Comprehensive Plan is very different from reality?

Colleen Dowdall said I think we can still look at what the reality is and whether even following your resolution and determining compliance, whether the uses out there although they may not follow the Comp Plan, whether they are uses which match this one. Even if you look across the street or across the highway and see the commercial zoning, although there may not be commercial uses there in the commercial zoning and apply that to this area, in looking at the zoning allowable uses, this would not be an allowable use in a commercial zone. It would be an allowable use in an industrial zone. The area at the Wye, the uses that I'm aware of or that are indicated on the maps that we have, are ones that would be permitted in commercial areas, and there may be some industrial uses there that I'm not aware of, but the ones I am aware of would fit under the commercial zone designation.

Ann Mary Dussault said in our resolution which creates the parameters on which we are to make a decision, it's fairly clear--it outlines for us five instances when a request will be considered to be in compliance. And it is clear that this request does not meet any of those tests. It is not in an approved subdivision. It is not an addition to a structure. It is not an accessory structure as defined in the County Zoning Resolution. It is not interior remodeling. And the 300 feet rule which is established in this resolution is not met. So, for the County to make a determination that it is in compliance, we really have to make a determination that this is in substantial compliance with the Comprehensive Land Use Plan in some form. In essence, we have to do findings of fact. And it's hard for me, based on the testimony, to come to the conclusion that we can make that determination because of the nature of the use, which is industrial. That's fine, but it's an industrial use in an area clearly designated for residential or agricultural use. I would move that the request be denied.

Tom Bauer asked what you're saying is that that is strictly residential?

Ann Mary Dussault said what I am saying is that based on the County's policy contained in our resolutions that the request to override the Department does not meet the tests of the resolution and given that, we would have to find you to be in substantial compliance with the Comp Plan. I'm suggesting by my motion that there has not been sufficient testimony to warrant that finding. It says in areas where 50% or more of the land uses within 300 feet of the applicant's property are compatible with the proposed land use.

Fern Hart said, Mr. Bauer, you're industrial.

Tom Bauer asked is it industrial or light commercial?

Fern Hart said it's industrial.

Barbara Evans said manufacturing is considered light or heavy industrial.

Barbara Evans asked that Mr. McLaren be allowed to speak.

Steve McLaren said I guess I've got one problem with that. The product and the processing is a real gray area in this fiberglass business. If I was to do work on cars, I could build fenders, I could build hoods, I could build anything for an automobile and it wouldn't be considered manufacturing, I'd be considered automotive, which falls in I believe CR1. And there are fiberglass operations going on in couple of three blocks of schools.

Barbara Evans said that may be so Mr. McLaren, but I have to agree with Fern and with what Ann Mary has said. This doesn't meet the tests of our own policies and the Manleys and McDonnells, if that's the proper names, I believe

had a right to rely on the rules that are there when they buy. That doesn't mean that they have a right to rely on what their realtor tells them, because I'm not sure the realtors know all the rules or present all the rules. But they did some investigation, they have a Warranty Deed that says there will be no manufacturing on that land. They have our policies that say they have to follow the policies. And I don't like telling you no, but I also feel that it is an industrial use and it ought to be in an industrial area, and it ought to be subject to all the rules that the Health Department has asked you to do and you've been working hard to do. And I commend you for that, but I can't in good conscience vote to let you do something there that I think would clearly be a violation of our rules and for that reason I have to vote no, and I'm really sorry.

Ann Mary Dussault moved and Fern Hart seconded the motion that the request for the Comprehensive Plan compliance appeal by Tom and Donna Bauer be denied based on the Comprehensive Plan and the Commissioner's resolution on establishing substantial compliance to the Comprehensive Plan. Motion carried 3-0.

#### PUBLIC COMMENT

Horace Brown said as a member of the North Reserve group that worked on North Reserve, I'd like to thank the Commissioners for allowing that project to move forward.

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

### THURSDAY, DECEMBER 15, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was in Helena attending a Governor's Task Force on Outdoor Advertising Meeting.

Audit List -- Commissioners Dussault and Evans signed the Audit List, dated December 13, 1994, pages 4-42, with a grand total of \$261,521.77. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Acting Chair Dussault examined, approved, and ordered filed an Indemnity Bond naming Daniel I. White as principal for Warrant #10953 issued June 14, 1994 on the Missoula County General Fund in the amount of \$208.18 now unable to be found.

Resolution No. 94-120 -- The Board of County Commissioners signed Resolution No. 94-120, a Resolution of Intent to amend Chapter 1 "General Provisions" of the Missoula County Zoning Resolution 76-113 by adding a definition of *building envelope, existing grade, finished grade, offset, wall element* and amending the definition of *building height*.

Resolution No. 94-125 -- The Board of County Commissioners signed Resolution No. 94-125, Lolo School District, a Resolution to accept real property from Norma Rossignol and the Estate of Richard Rossignol for public road and all other public purposes, located in a portion of the NE¼ of Section 35, T12N, R20W, P.M.M. The Commissioners also signed an Affidavit wherein Lolo School District stated that the road as depicted on the North border of Tract D of COS 1123 is a public road, not a private road.

Certification of Acceptance for County Maintenance -- Acting Chair Dussault signed a Certification of Acceptance for County Maintenance, ACM. No. 94-0006 for Zintek Place, Road No. L-0652, T13N, R19W, Section 18, to certify that Zintek Place is accepted for County maintenance. The limits of acceptance are 0.075 miles with the reason for acceptance being that the construction meets County building requirements. The document was returned to the Surveyor's Office.

### FRIDAY, DECEMBER 16, 1994

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

Monthly Report -- Chair Hart examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending November 30, 1994.

Addendum to Agreement -- The Commissioners signed Addendum No. 1 to the Agreement for Professional Engineering Services, dated June 29, 1994, regarding the utility master plan for the Missoula Airport Development Park and adjacent properties for Druyvestein Johnson & Anderson. The terms and conditions as set forth in the agreement between the Owner and Engineer are amended as follows: The development of a right-of-way grid design for the area generally bounded by Reserve Street, Mullan Road, U.S. Highway 10 (West Broadway) and Deschamps Lane in accordance with Exhibit A attached. The estimated cost is \$7,570 (Phase I). Phase II costs are estimated to be \$5,934 and will be handled under a separate agreement.

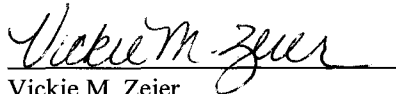
Employment Agreement -- The Board of County Commissioners signed an Employment Agreement, dated December 15, 1994, between the Missoula City-County Board of Health and Ellen Leahy for the purpose of employing her as the Health Department Administrative Director and the Missoula County Health Officer, as per the employment duties and functions set forth, and as per the terms and conditions set forth in the Agreement.

Agreement -- Chair Hart signed a Standard Agreement between the Montana Highway Traffic Safety Administrator and the Missoula County Commissioners with regard to Highway Traffic Safety Contract #95-02-04-02 to allow funding for the project through September 30, 1995 for the purpose of the Selective Traffic Enforcement Program (S.T.E.P.) which proposes to pay the overtime hours of officers focusing on locations of high traffic, accident and incidents. The estimated costs of this project is \$6,000. The Agreement was returned to the Sheriff's Office for further handling.

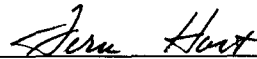
Resolution No. 94-121 -- The Board of County Commissioners signed Resolution No. 94-121, a Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto. The document was returned to John DeVore, Administrative Officer, for further handling.

Other items included:

- 1) Barbara Evans moved and Ann Mary Dussault seconded the motion that the Board of County Commissioners approve the loan documents with INTERCAP to finance the road graders.
- 2) the Commissioners appointed Beryl Stover to a four-year term as a "regular" member on the Missoula Urban Transportation District Board through December 31, 1998.
- 3) the Commissioners appointed Fran Alves to a three-year term as a "regular" member on the Missoula County Weed Control Board through December 31, 1997.



Vickie M. Zeier  
Clerk & Recorder



Fern Hart, Chair  
Board of County Commissioners

**MONDAY, DECEMBER 19, 1994**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was on vacation the week of December 19-23.

Indemnity Bond -- Acting Chair Dussault examined, approved, and ordered filed an Indemnity Bond naming Deborah Lippert as principal for Warrants #7395 and #7398 issued November 17, 1994 on the Missoula County General Fund in the amount of \$126.70 (\$76.02 and \$50.68, respectively) now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Employment Agreement -- The Board of County Commissioners signed an Employment Agreement, dated December 19, 1994, between the Board of Missoula County Commissioners and Jane M. Ellis for the purpose of employing her as the Chief Financial Officer, as per the employment duties and functions set forth, and as per the terms and conditions set forth in the Agreement.

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY'95 budget:

- 1) Control No. 95-001, a request from the Historical Museum to transfer \$1,558.37 from the Building Maintenance fund to the IMS, Temp. Salary fund and \$7,339.00 from the Salaries fund to the Temp. Salary fund; and
- 2) Control No. 95-004, a request from the Historical Museum to transfer \$2,908.00 from the Office Supplies fund to the Temp. Salaries fund (\$2,618.00) and the Fringe fund (\$290.00).

Resolution No. 94-122 -- The Board of County Commissioners signed Resolution No. 94-122, a Budget Amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Adopted</u>	<u>Change Budget</u>	<u>Amended</u>
2270-613-445702-111 Perm Salaries	\$45,859	\$3,409	\$49,268
2270-613-445702-141 Fringe Benefits	<u>12,171</u>	<u>887</u>	<u>13,058</u>
	\$58,030	\$4,296	\$62,326

<u>Description of Revenue</u>	<u>Revenue</u>
2270-613-344077 RAC	\$0
	\$4,296
	\$4,296

Resolution No. 94-123 -- The Board of County Commissioners signed Resolution No. 94-123, a Budget Amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Adopted</u>	<u>Change Budget</u>	<u>Amended</u>
2270-613-445600-111 Perm Salaries	\$225,100	\$6,852	\$231,952
2270-613-445600-141 Fringe Benefits	<u>50,863</u>	<u>2,475</u>	<u>53,338</u>
	\$275,963	\$9,327	\$285,290

<u>Description of Revenue</u>	<u>Revenue</u>
2270-613-331409 MCH Block Grant	\$95,500
	\$9,327
	\$104,827

Resolution No. 94-124 -- The Board of County Commissioners signed Resolution No. 94-124, a Budget Amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Adopted</u>	<u>Change Budget</u>	<u>Amended</u>
2271-615-445706-111 Perm Salaries	\$47,304	\$(15,349)	\$31,955
2271-615-445706-114 Workstudy Salaries	0	630	630
2271-615-445706-141 Fringe Benefits	4,773	640	5,413
2271-615-445706-192 Ann Merit Res	2,604	0	2,604
2271-615-445706-213 Clinic Supplies	0	3,000	3,000
2271-615-445706-243 Prescriptions	14,819	15,181	30,000
2271-615-445706-259 Contingency	0	17,500	17,500
2271-615-445706-328 Contracted Serv	0	4,180	4,180
2271-615-445706-374 Dental Services	<u>6,500</u>	<u>0</u>	<u>6,500</u>
	\$76,000	\$25,782	\$101,782

<u>Description of Revenue</u>	<u>Revenue</u>	
2271-615-344287 Basic Needs Assistance	\$76,000	\$25,782
		\$101,782

Resolution No. 94-126 -- The Board of County Commissioners signed Resolution No. 94-126, a Resolution to conditionally add a Planned Unit Development Overlay Zoning District within a "C-RR3" Residential Zoning District for the Wildrose Development, property described as Lot 15 of Cobban and Dinsmore Orchard Home located in the NW¼ of Section 20, T13N, R19W, P.M.M.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and the Missoula Developmental Services Corporation (MDSC) for the purpose of providing financial assistance to MDSC in purchasing a building located at 1005 Marshall Street in Missoula as per the terms set forth. The Missoula Board of County Commissioners agreed to provide a total credit line not to exceed \$82,137. The term of the agreement shall begin upon signing by all parties to the agreement and end July 1, 2005. The Agreement was returned to John DeVore, Administrative Officer, for further signatures and handling.

Other items included:

- \* the Commissioners approved \$500 for the Lolo Community Council operating support.

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

#### TUESDAY, DECEMBER 20, 1994

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

#### DAILY ADMINISTRATIVE MEETING

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

Notice of Public Hearing -- Acting Chair Dussault signed a Notice of Public Hearing with regard to Water Meter Requirements (RSID 901), setting the hearing for January 10, 1995 at 7:00 p.m. at the Lolo Community Center.

Addendum to Travel Policy -- The Board of County Commissioners signed an Addendum to Missoula County Travel Policy 88-A, effective January 1, 1995, increasing the mileage reimbursement to 29 cents per mile for the first 1,000 miles traveled per month and 26 cents per mile thereafter. The Addendum was distributed to all County Departments.

Other items included:

- 1) the Commissioners signed a letter for Missoula County Chemical Dependency Plan and Action Strategy for expenditure of alcohol-earmarked revenues in Missoula County for FY'96-99 and County Identification/Action Forms.
- 2) the Commissioners authorized the purchase of one (1) Ford Taurus station wagon from Karl Tyler Chevrolet for the sum of \$15,600 for the Sheriff's Office.

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

#### WEDNESDAY, DECEMBER 21, 1994

The Board of County Commissioners met in regular session; a quorum of the Board was present. The Weekly Public Meeting scheduled for this date was canceled due to the holidays and a lack of agenda items.

Audit List -- Commissioners Evans and Dussault signed the Audit List, dated December 20, 1994, pages 4-32, with a grand total of \$127,933.71. The Audit List was returned to the Accounting Department.

**THURSDAY, DECEMBER 22, 1994**

The Board of County Commissioners did not meet in regular session. Commissioner Hart was on vacation and Commissioner Evans was out of the office on December 22-23 but was in town and available for signatures as needed.

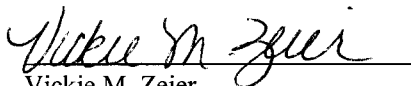
Resolution No. 94-127 -- The Board of County Commissioners signed Resolution No. 94-127, a Budget Amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
2271-615-445800-301 Postage	\$130.00
2271-615-445800-311 Printing	288.00
2271-615-445800-321 LD Phone Calls	130.00
2271-615-445800-328 Contracted Serv	5,952.00
2271-615-445800-357 Meals, Lodge, Inc.	<u>1,500.00</u>
	\$8,000.00

<u>Description of Revenue</u>	<u>Revenue</u>
2271-615-331273 Breast/Cerv Plan	\$8,000.00

**FRIDAY, DECEMBER 23, 1994**

The Board of County Commissioners did not meet in regular session. Commissioner Hart was on vacation and Commissioner Evans was out of the office on December 22-23 but was in town and available for signatures as needed.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, DECEMBER 26, 1994**

The Missoula County Courthouse was closed for the Christmas holiday.

**TUESDAY, DECEMBER 27, 1994**

The Board of County Commissioners did not meet in regular session. Commissioner Hart was on vacation December 27-30 and Commissioner Evans was out of the office all day.

**WEDNESDAY, DECEMBER 28, 1994**

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

Audit List -- Commissioners Dussault and Evans signed the Audit List, dated December 28, 1994, pages 4-34, with a grand total of \$112,100.94. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between the Missoula Board of County Commissioners and Western Montana Community Mental Health Center with regard to the purchase of mental health services for the residents of the Seeley Lake/Condon Valley communities in Missoula County, as per the terms set forth, for the period from July 1, 1994 to June 30, 1995 and having a total cash value of \$2,000. The Agreement was returned to Leslie McClintock for further signatures and handling.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between the Missoula Board of County Commissioners and the City of Missoula with regard to the need to purchase advocacy services for victims of crime and education/training services regarding crime victims' needs and services, as per the terms set forth, for the period from July 1, 1994 through June 30, 1995 and having a total cash value of \$5,394.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated December 28, 1994, between the Missoula Board of County Commissioners and Missoula Youth Homes, Inc. with regard to implementing therapeutic residential group home services in Missoula County, as per the terms set forth, for the period from December 28, 1994 to June 30, 1995 and having a total cash value of \$10,000.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated September 30, 1994, between the Missoula Board of County Commissioners and the Art Museum of Missoula with regard to providing an art museum in Missoula County, as per the terms set forth, for the period from September 30,



1994 to June 30, 1995. The Agreement was returned to Cindy Klette, Director of the Office of Planning and Program Development, for further signatures and handling.

Amended Interlocal Agreement -- The Board of County Commissioners signed an amended Interlocal Agreement between the City of Missoula and the County of Missoula to formally support the Art Museum of Missoula, utilizing a City building located at 335 Pattee Street, Block C, Lot 1 and 2, Higgins Addition, also known as the old library, and County funding for general operations. The document was forwarded to the City for approval and signatures.

Resolution No. 94-128 -- The Board of County Commissioners signed Resolution No. 94-128, a Resolution of the Missoula Board of County Commissioners committing \$350,000 of local County funds to provide a portion of the funding for the North Reserve Street Improvement Project.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Barbara Evans. Also present was Commissioner Ann Mary Dussault.

#### APPROVED: HEARING: PROPOSED REVISIONS TO COUNTY SUBDIVISION REGULATIONS (RIPARIAN STANDARDS)

Barbara Evans asked if there was a Staff Report.

Colleen Dowdall gave the initial portion of the staff report. She summarized the changes to the subdivision regulations revisions that had been adopted by the Commissioners in May of 1994. Those were considered to be interim regulations until they could come up with a functional definition of areas of riparian resource as opposed to a jurisdictional definition.

They have recently been able to come up with a functional definition by making those changes to the regulations. They also made changes that were recommended by staff, local planners, and people from the private sector in order to make the regulations more readable. The changes are as follows:

Paragraph one is the Summary of the Purpose. Some language was taken out to summarize in order to protect the impact on areas of riparian resources.

In section two, the jurisdictional definition was taken out. In addition, some language was added that accommodates the new functional definition.

Section three was added. It requires a developer who is subdividing in an area of riparian resource to submit a management plan addressing the four items that are listed. The change was made at the recommendation of some individuals from the private sector due to concern that nothing could happen in the area of riparian resource without going through a variance procedure. As a result, developers may be able to avoid utilizing a consultant in less complicated areas such as low impact uses or restoration of areas that are no longer functioning as a riparian area.

The changes in section four accommodate the use of a management plan. For example, instead of staff approving roads, it would be required to have road approval included in the management plan.

The basis for the changes in section five was to make it more readable. Previously, roads in areas of riparian resource were allowed if they crossed a stream. This did not accommodate trails to a lake, for example, whereas the definition of roads does include trails and other kinds of roadways that are utilized by non-motorized transportation. The change in that provision allows for roads that either cross or access the area.

The language in section A was modified. Previously, it stated that sidecasting of road materials was prohibited. This was a problem for the County Surveyor due to unintentional incidences that might occur. Therefore it was changed to prohibit only intentional sidecasting into streams, lakes, wetlands, etc.

The variance procedure was re-worded and several criteria which are specific to areas of riparian resource were added.

Pat O'Herren, Office of Planning and Program Development, presented a slide show that demonstrated the many different riparian areas that specifically address conservation resources. They included fisheries and wildlife, water quality in terms of quantity and flood control, wildlife habitat, biodiversity, and vegetation in terms of timber, forage, and recreation.

He explained that whereas the areas such as John Toole Park or the Kim Williams Trail have been protected, areas outside the urban area have not been impacted as successfully. The question becomes, "Can we not protect those resources by existing legislation?" The current FEMA regulations protect very little.

He next spoke of the two different definitions of riparian areas, the jurisdictional definition and the functional definition. The jurisdictional terminology is defined by drawing a line a pre-determined distance around a body of water, in this case 50 feet. The functional definition depends primarily upon water, soils, and vegetation. A reference was made to the book, "Classification and Management of riparian and wetland sites in Montana," which exists as the "Bible" of riparian area definitions from a functional standpoint.

This is the last step in a two-step process where jurisdictional definitions were adopted on an interim basis until collaboration with various related agencies to create a functional definition.

Pat O'Herren asked if there were any questions.

Barbara Evans opened the hearing up for public testimony.

Nick Kaufman, WGM Group, described two different areas of concern surrounding the proposed riparian regulations. The first deals with the proposed 50 foot perimeter outside of what would be defined as riparian regulations. The question was regarding whether 50 feet was necessary, and how 50 feet was chosen, as compared to 20 feet or 75 feet, for example. Question number two deals with the notion of habitat and community types. He said he felt a functional definition of a riparian area would have to be determined by a map similar to a flood plain map. It would be constructed by an individual who had gone out and identified all of the riparian areas. However, this would be an extremely costly project. Alternatively, it could be done by some kind of indicator such as a soil, plant, or species type. Overall, he feels the modifications are good but continued to question the proposed fifty feet perimeter.

Jerry Sorenson, Land Use Manager for Plum Creek Timber, voiced concerns that since there are no maps of riparian areas, it is difficult to assess the overall impact of this regulation on private property and holdings. He also expressed that the verification on the grounds would be subject to a lot of interpretation and variability. The second issue concerned the conception that the additional fifty feet beyond the functional definition is unjustified as well as arbitrary and unnecessarily encumbers private property. His opinion is that the functional definition should stand as the definition. He stated that he is pleased that language was included in the current draft that provided for some use and improvements within the riparian area if done under an approved management plan. In addition, he said that Plum Creek supports regulations that protect significant conservation resources as long as they are based on sound, rational science and the best available science.

Don Peters, Missoula Office of Fish, Wildlife, and Parks, explained that poor planning when riparian areas were initially defined has resulted in a great deal of consternation and financial expense. He said that the department recently completed a remote sensing of the Blackfoot River system which will be used to classify riparian areas throughout that system on the main stem as well as some of the main tributaries.

Barbara Evans asked Don Peters what remote sensing entailed.

Don Peters said that it is essentially an aerial photograph with the exception that it can be manipulated on the computer by using overlaying techniques. It is similar to satellite imagery of the earth but has 900 times the resolution of that. It almost looks like a picture but it can be used to classify vegetation or aquatic habitats.

Barbara Evans asked if there were any questions.

Ann Mary Dussault asked if the staff would like to discuss the fifty feet issue.

Pat O'Herren said that fifty feet was the lineal distance that the legislature was able to agree upon when they originally devised the streamside management system. The difference is that the fifty feet originates at the resource, whereas under the legislative definition, the mark could stop in the middle of the resource at fifty feet.

Ann Mary Dussault asked if when the legislature defined fifty feet, it was within the context of the jurisdictional definition, not the functional definition.

Pat O'Herren said that was correct.

Ann Mary Dussault asked if the legislature adopted the functional definition?

Pat O'Herren said that was correct.

Colleen Dowdall agreed with Pat's answer with the addition that they recognize that there might be some areas that do not function as a riparian area but are adjacent to the areas such as streams or other indicators that are wetlands that have lost the habitat due to agricultural resources or dirt bikes or other man altered conditions.. They wanted to be able to restore the riparian area through use of the management plan and other mechanisms. She explained, for example, that there might be an area that is back fifty feet from the high water mark but would not be protected. Therefore, these areas should be able to function as an area of riparian resource but are not due to altered conditions.

Barbara Evans asked if there were any other questions.

There being none, the hearing was closed to Public comment.

Barbara Evans said she had some questions for Nick Kaufman and Jerry Sorenson. She asked if they had alternatives that might work in lieu of the straight fifty feet?

Nick Kaufman said he wouldn't propose anything different than the fifty feet other than to have the staff clarify what their thinking was and it seems to come from a state statute. It does bring up another question that if clarified will help us in trying to determine what that width is. When you deal with habitat types, there are habitat types in riparian areas, in grassland communities, and in forest types. Habitat types also consist in terms of potential vegetation. You may have an area that has a riparian community type or habitat type and an area that is not but the area that is adjacent to it that is not may indeed be that habitat type because it has that potential. So, as far as using a jurisdictional definition of fifty feet, as Colleen just explained, to recapture some of what was lost, I think it needs to be made very clear at this hearing what our intention is. Is our intention in the habitat and community types to classify vegetation

as it exists or are we classifying potential in areas where it doesn't exist? This criteria may help in deciding whether you want to go fifty feet or less.

Barbara Evans asked Jerry Sorenson if he had any comments?

Ann Mary Dussault asked Nick to repeat his answer to Barbara's question.

Nick Kaufman said his answer to Barbara's question was that he didn't come prepared with an alternative. He said he came with the question of why fifty feet because the question had been posed to him by a number of people. If the intention here was to protect areas of riparian resource, the functional definition does that. Going fifty feet beyond that adds a jurisdictional definition to a functional definition. And his question was where did it come from? They find that indeed it is a jurisdictional definition that came from state law. His question was do we have a good justification for that fifty feet? Barbara's question was what would he suggest? Colleen in answering that question, brought up the fact that maybe fifty feet is a good idea not just from a state law standpoint but to try to recapture some areas adjacent to riparian resource that may have been disturbed and may need to be recaptured. He said that he didn't have an answer. He came with a question but it does bring up another question. In terms of the habitat and community types listed here, are they potential or are they existing vegetation?

Jerry Sorenson said he might have an alternative but he thought Nick's question of whether it's existing or potential really is essential to this discussion because in the work session we talked about this and I think we kind of came to the agreement that it would be potential but then we're into more subjectivity and more debate among scientists about what the potential of that habitat type is. As far as an alternative to the fifty feet, I go back to this management plan idea again that I think really is a good addition to the regulations because then your focus is trying to protect the resource and manage your land in a way that does that. I would offer that instead of establishing a fifty foot buffer beyond what this resource is, incorporating a notion in the management plan that a developer shall provide a management plan that demonstrates that the development and improvements on the adjacent land to the riparian resource is managed in a way that is not detrimental to that resource. This provides a better methodology of dealing with the protection rather than just a somewhat arbitrary fifty foot buffer.

Barbara Evans asked Colleen is she had anything else?

Colleen Dowdall said that she thought that what we struggle with in terms of the fifty feet and the management plan is the difference between subjectivity and objectivity. We added the management plan to give the ability to put some things in the riparian area without having to go through the objective standards of the variance procedure but what we got out of that was the ability to look at the future and what we could do to fix things. I think that it is an attempt to get the best of all possible worlds, to get the objective and the subjective.

Barbara Evans said she'd like to make a suggestion based on what both Jerry and Nick said. We do have the management plan portion of this that I think is very good. What I'd like is both attorneys to advise us as to whether or not we could put something in it like, in the management plan, siting of all structures must be shown and the staff should assess the potential impact and notify the Board of County Commissioners with any problems with potential sitings before any building or septic permits are granted. What that does in my mind is eliminate the subjective definition of subjective fifty feet. Straight fifty feet which is some cases is too much and in some cases not enough. I would prefer that we look at each of these on an individual basis in a realistic fashion rather than arbitrarily based.

Ann Mary Dussault said she had an opinion similar to that intent. She suggested amending the management plan language and adding a section E that states the management plan shall include a planned buffer area to mitigate development adjacent to the areas of riparian resources. It adds a level of subjectivity that needs to be dealt with as well as offering more flexibility. She asked Pat, O'Herren how he felt about that?

Pat O'Herren said that would be fine with the intent to make certain riparian resource were protected from adverse impacts.

Ann Mary Dussault said that if you go back to page one, section two, we would be deleting the language starting on line five, "The areas of riparian resource encompasses a strip of land at least fifty feet wide..."

Barbara Evans said would you delete that entire sentence?

Ann Mary Dussault said yes.

Barbara Evans said OK.

Ann Mary Dussault said under section three, the management plan, a new subsection E would be added as a planned buffer area to mitigate development adjacent to areas of riparian resources. That leaves the definition of riparian resources as the functional definition.

Barbara Evans asked if there were any comments from any of the three who have spoken?

Ann Mary Dussault moved and Barbara Evans seconded the motion to adopt the amendments to the riparian regulations of the subdivision regulations contained in the December 21, 1994 proposal, the December 28, 1994 proposal as amended. The motion carried on a vote of 2-0.

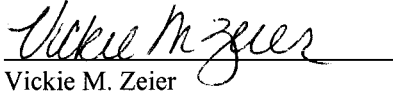
There being no further business to come before the Board, the Commissioners were in recess at 2:21 p.m.

**THURSDAY, DECEMBER 29, 1994**

The Board of County Commissioners did not meet in regular session. Commissioner Evans was out of the office on December 29-30 and Commissioner Hart was on vacation.

**FRIDAY, DECEMBER 30, 1994**

The Board of County Commissioners did not meet in regular session. Commissioner Evans was out of the office on December and Commissioner Hart was on vacation.

  
Vickie M. Zeier  
Clerk & Recorder

  
Fern Hart, Chair  
Board of County Commissioners

**MONDAY, JANUARY 2, 1995**

The Courthouse was closed for the New Year's Day holiday.

**TUESDAY, JANUARY 3, 1995**

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

**SWEARING IN CEREMONY**

In the forenoon, Chairman Evans conducted the Swearing In Ceremony for the following newly elected and re-elected County officials: County Commissioner Michael Kennedy, Justice of the Peace (Dept. #1) John Odlin, Sheriff Doug Chase, County Surveyor Horace Brown, County Superintendent of Schools Rachel Vielleux, County Auditor Susan Reed, County Clerk & Recorder/Treasurer Vickie Zeier, Justice of the Peace (Dept. #2) Michael Morris, and County Attorney Robert L. "Dusty" Deschamps.

**DAILY ADMINISTRATIVE MEETING**

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

General Project Development and Construction Agreement and CTEP Maintenance Agreement -- Chairman Evans signed an Agreement between the Montana Department of Transportation and Missoula County for the development and construction of a Community Transportation Enhancement Program (CTEP) project, titled Landscaping-Seeley Lake, which includes planting trees and shrubs, an irrigation system, a split rail fence, and building an unmanned kiosk, at an estimated cost of \$95,000.00, which in part will be with Federal Aid Funds and the balance will be financed by the County, as per the items and terms set forth. A CTEP Maintenance Agreement was also signed stating that the County will service, maintain, and pay the cost of operating this Project, and the enhancements shall be maintained as constructed during the ten years immediately following the construction, as per the items set forth. The documents were returned to Horace Brown, County Surveyor, for further signatures and handling.

Other items included:

- \* the Commissioners selected Barbara Evans as the Board Chairman for 1995.

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

**WEDNESDAY, JANUARY 4, 1995**

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 Judith Anderson as principal for warrant #263595, dated 6/22/94, on the Missoula County Weed Fund in the amount of \$112.40 now unable to be found.

**DAILY ADMINISTRATIVE MEETING**

At the daily administrative meeting held in the forenoon, the following item was signed:

Declaration of Covenant -- The Board of County Commissioners signed approval of a Declaration of Covenant, made by Leif and Marlene Moland, the owners of a parcel of land described as Tract 1-Parcel B of COS No. 4065, located in the NE 1/4 of Section 26, T. 15 N., R. 22 W., PMM, Missoula County, is less than twenty acres and will be used solely for agricultural purposes.

Other items included:

- \* the Commissioners approved a request from MACo for a voluntary contribution of \$32.00 from Missoula County to help fund the efforts in Congress to pass new payments-in-lieu of taxes legislation.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

**BID AWARD: ROTARY MOWER (LARCHMONT GOLF COURSE)**

The bid award for a rotary mower for Larchmont Golf Course was postponed.

**HEARING: PETITION FOR ANNEXATION TO MISSOULA RURAL FIRE DISTRICT (KOSTER - SHERMAN GULCH ROAD)**

Barbara Evans explained that a petition was received by the Clerk and Recorder's Office to annex a parcel of land located in Missoula County to the Missoula Rural Fire District as follows:

Tract 11 of COS 1092, located in the W1/2 of Section 12, T13N, R21W, P.M.M.  
Tract 12A of COS 2158, located in the NW1/4 of Section 12, T13N, R21W, P.M.M.  
Tract 12B of COS 2158, located in the NW1/4 of Section 12, T13N, R21W, P.M.M.  
Tract 13B of COS 2150, located in the NW 1/4 of Section 12, T13N, R21W, P.M.M.

The petition for annexation was checked and verified. The petition contains signatures of more than 50% of owners of the privately owned land and so meets requirements for annexation of the adjacent territory.

The hearing was opened to public comment; there being none, the hearing was closed to public comment.

Fern Hart moved and Michael Kennedy seconded the motion to grant the request to annex a parcel of land located in Missoula County to the Missoula Rural Fire District based on the determination that the petition contained signatures of more than 50% of the property owners and that the request meets the requirements of the Statutes. The motion carried on a vote of 3-0.

HEARING: PETITION FOR ANNEXATION TO MISSOULA RURAL FIRE DISTRICT (MATUSKA - GRANT CREEK ROAD)

Barbara Evans explained that a petition was received by the Clerk and Recorder's Office to annex a parcel of land located in Missoula County to Missoula Rural Fire District described as:

S1/2 SE1/4, NE1/4 SE1/4, Section 10, T14N, R19W, P.M.M., Missoula County, Montana, EXCEPTING THEREFROM a square three-acre tract or parcel in the Southwest corner of the S1/2 SE1/4 described in Certificate of Survey 244.

The petition for annexation was checked and verified. The petition contains signatures of more than 50% of owners of the privately owned land and so meets requirements for annexation of the adjacent territory.

The hearing was opened to public comment; there being none, the hearing was closed to public comment.

Fern Hart moved and Michael Kennedy seconded the motion to grant the request to annex a parcel of land located in Missoula County to the Missoula Rural Fire District based on the determination that the petition contained signatures of more than 50% of the property owners and that the request meets the requirements of the Statutes. The motion carried on a vote of 3-0.

HEARING: REORGANIZATION OF MUSEUM BOARD

Barbara Evans asked for a staff report.

Fern Hart said that the background on this is that the Museum Board and the Missoula Board of County Commissioners support the creation of the Art Museum of Missoula which is a private non-profit corporation. The existing County Museum Board will no longer administer the Art Museum. Michael Sehestedt has written a resolution to dissolve the present board and replace it with a smaller one specifically designed in size and structure to administer the Historical Museum.

Geoffrey Sutton, former Chairman of the Board of Trustees for County Museums, said this has been a long process of four or five years of work towards the Art Museum becoming less reliant on government support and more reliant on itself and public community support and to become a little more proactive to the needs of the community. With the County Commissioners, we've come a long way in allowing the museum to grow beyond its county budget. At the point we got to over fifty-fifty funding where the public was supplying over fifty percent of the funding, we decided it was time for the museum to stand on its own two feet with County support which we are very glad to have.

Fern Hart said the Art Museum will contract with Missoula County. The County will continue to support the museum relative to the staff, the art collection and the fixtures. The museum staff will be better able to apply for grants and get more public support.

Wendy Carpenter thanked the Commissioners for their support in this endeavor.

Robert Brown, Director of the Historical Museum at Fort Missoula, congratulated the Art Museum staff and the Board for bringing the Art Museum to this point. He said they are excited about having a separate Board of Trustees for the Art Museum and for the Historical Museum. He said the Board of Directors for the Friend of the Historical Museum is strongly in favor of this endeavor.

Fern Hart said one of the problem has been that the trustee board has managed two institutions. There will be a benefit to both museums.

Ross Best wondered if the change would affect the status of any works of art or privatization of public assets?

Geoff Sutton said at this time, the agreement is that all the art that was owned by the County will remain in County funds. The Historical Museum is still a County museum. The County is still responsible for the 32 acres, the outbuildings and the 32,000 artifacts. In the future, however, those things donated to the Art Museum will go into the Art Museum's foundation and not into public holdings because it is no longer a public organization. The City still owns the Art Museum's building. There will be negotiations entered into between the new Missoula Museum of the Arts and the City over long-term lease arrangements.

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

Fern Hart moved and Michael Kennedy seconded the motion to approve Resolution No. 95-, a resolution approving the reorganization of the Missoula County Museum Board. The motion carried on a vote of 3-0.

RESOLUTION NO. 95-001

The Board of County Commissioners signed Resolution No. 95-001 as follows:

WHEREAS, the County has, with the Consent of the County Museum Board, entered into a contract with the Art Museum of Missoula, a not for profit corporation, to provide those services which have previously been provided by the County Museum Board through the Museum of Arts; and

WHEREAS, the role of County Museum Board, in the future, will be limited to the operation of the Historical Museum at Fort Missoula; and

WHEREAS, the existing five member board was structured and intended to administer both the Art Museum and the Historical Museum; and

WHEREAS, the administration of the Historical Museum can be more effectively carried out by a smaller board.

NOW, THEREFORE, BE IT RESOLVED, that the existing Museum Board administering the Art and Historical Museums be and the same is hereby dissolved.

BE IT FURTHER RESOLVED that a Museum Board be established pursuant to MCA 7-16-2203 consisting of three members to be named by the Board of County Commissioners to exercise the statutory powers over the Historical Museum at Fort Missoula.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (MALATARE) - TRACT B OF COS 2793

Kathy Smith, Paralegal for the County Attorney's Office, explained that John Malatare requested a family transfer for Tract B of COS 2793 a 6 acre parcel located between Evaro and Arlee near the Lake County line. The parcel is located on the Flathead Indian Reservation and pursuant to a Memorandum of Understanding Missoula County has with the Salish Kootenai Tribe, they were given thirty days in which to comment on the proposed family transfer. No response was received from the Tribe within the requested time frame, however, Janet Camel contacted this office on December 30, 1994, and indicated she had no problem with the proposed split. Mr. Malatare proposed to create a one acre parcel for transfer to his daughter, Cheryl Kim Malatare.

The history of the parcel is as follows: COS 2335 was filed in May, 1980, creating a parcel greater than 20 acres in size. In September, 1980, COS 2430 was filed creating an occasional sale parcel and in August, 1982, COS 2793 was filed creating the current parcels as a remainder parcel and occasional sale parcel.

According to the records kept by the Missoula County Surveyor, the applicant has used the exemptions to the Subdivision and Platting Act as described.

The hearing was opened to public comment.

Mrs. John Malatare said her daughter, Cheryl Kim Malatare, is 30 years of age, and plans to build a residence on the property. She explained that her daughter will access her home by way of an easement through the neighbors' property.

Barbara Evans explained that the Commissioners have to determine whether or not a Certificate of Survey is done according to Statute and whether the request is an attempt to evade the Montana Subdivision and Platting based upon the history of the parcel and of the applicant.

Fern Hart asked if Mrs. Malatare had other children that could receive property through a family transfer?

Mrs. Malatare said that while she had other children, the property was not large enough to split for the other children. She and her husband did not own other property.

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

Fern Hart moved and Michael Kennedy seconded the motion to approve the family transfer request by John E. Malatare for Tract B of COS 2793, a 6 acre parcel located between Evaro and Arlee near the Lake County line, and located on the Flathead Indian Reservation, based on the finding there does not appear to be an attempt to evade the Montana Subdivision and Platting Act, and contingent upon the transfer of the deeds to the family member. The motion carried on a vote of 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (JOHNSON) -- PARCEL LOCATED IN THE E½ SE¼ NE¼ OF SECTION 20, T16N, R19W

Kathy Smith, Paralegal for the County Attorney's Office, explained that James and Nancy Johnson requested consideration of a family transfer for a parcel located in the E1/2SE1/4NE1/4 of Section 20, T16N, R19W. This is a 20 acre parcel located between Evaro and Arlee near the Lake County line and located on the Flathead Indian Reservation and pursuant to a Memorandum of Understanding Missoula County has with the Salish Kootenai Tribe,



they were given thirty days in which to comment on the proposed family transfer. No written response was received from the Tribe within the requested time frame; however, Janet Camel, representative for the Tribe, contacted the County Attorney's Office on December 30, 1994, indicating she did not have a problem with this proposed split. Mr. and Mrs. Johnson propose to create a five acre parcel for transfer to Mrs. Johnson's mother, Donna Dalton.

The history of the parcel is as follows: The parcel is in its original condition and was purchased by James and Nancy Johnson in March, 1993.

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

The hearing was opened to public comment.

Jim Johnson explained that he wanted to transfer a portion of his property to his mother-in-law.

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

Fern Hart moved and Michael Kennedy seconded the motion to approve the family transfer request by James and Nancy Johnson for a parcel located in the E1/2SE1/4NE1/4 of Section 20, T16N, R19W, a 20 acre parcel located between Evaro and Arlee near the Lake County line and on the Flathead Indian Reservation, based on the finding there does not appear to be an attempt to evade the Montana Subdivision and Platting Act, and contingent upon the transfer of the deeds to the family member. The motion carried on a vote of 3-0.

#### PUBLIC COMMENT - MCAT

Charles McGrath said he represented a number of individuals primarily in the Target Range area that would like to have MCAT available to County residents. He felt that at a cost of about \$1.18 per month MCAT would be something County residents would support. He felt the ability to broadcast School Board meetings from the Target Range School District would be especially helpful. He approached the County Commissioners at this time and asked them to research the possibility.

Commissioner Evans inquired as to whether Mr. McGrath was interested in general access or primarily access for the school district. He responded that access for the school district was his primary interest. Commissioner Evans responded that the Commissioners have been approached in the past both by the City and MCAT with the proposal of County support in the form of a franchise, but that if that were to take place it was her understanding that Missoula would be only county in the United States franchising cable TV. This would assess extra fees on each cable viewer without giving them extra cable benefits, and she felt she could only support franchise if each cable viewer would receive an extra benefit from it.

Mr. McGrath responded that all TCI Cable viewers receive MCAT, but they are not allowed access to the equipment and facilities, which would be an extra benefit. He felt that if the people were made aware of the facility and benefits of access to it, they would support the extra charge.

Commissioner Kennedy responded that the MCAT charge on the cable bill is figured on a percentage of the subscriber's total billing. Therefore, some customers would pay more than \$1.18 per month, depending on how many items are on their subscriptions. He felt he would like to have a better sense of what the support is in different areas and wouldn't want to charge for this in areas that didn't want the service.

Mr. McGrath said he felt that many outlying areas such as Seeley Lake, Hellgate Elementary and other independent school districts would appreciate having these forums telecast, and Commissioner Kennedy said he would be willing to help with the process of researching the interest.

Commissioner Evans stated that Senator Burns has a deep interest in the information highway and could be a resource. She said her guess was that it would be ancillary funding and would not disturb the present arrangement with the city and cable.

Mr. McGrath also suggested that the Commissioners change their afternoon Wednesday meeting to the evening in order to make the Board meetings more accessible to the public.

Commissioner Evans responded that they tried that in the past but had no one in the audience and still had a lot of extra staff to pay because of the evening time slot. Because of this they felt it wasn't the best time. She said they were willing to talk about it, however.

A member of the audience said that if there were specific issues coming up that were of particular interest and people were reminded of it, they likely would get more attendance.

Ross Best reiterated Mr. Grath's request for evening meetings. He also expanded on the MCAT funding arrangement with the City. The funding arrangement made between the City and TCI is made pursuant to Federal law, and it gives 5% of the cost of basic and extended service to the City. The 5% level is assumed to be reasonable. TCI's rates are regulated by the Federal government, and the City is free to use the 5% they receive from TCI either for MCAT or for the general fund. MCAT is nearing capacity and is discussing the possibility of starting a second channel as a public affairs channel. The County could enter into this and provide the doubled service. He felt that putting this to the people is a good suggestion.

Commissioner Hart asked for clarification as to whether there would be any increase in the fee for cable subscribers. Mr. Best said he believed there would not be. TCI cannot raise their basic rates higher since they are at the maximum now. They can only voluntarily lower them.

Commissioner Evans pointed out that after meetings with the County Attorney's office it is not completely clear whether the County even has the legal right to franchise MCAT. Until it is clear whether it is legal, it was her feeling that it should not be pursued, in addition to the aforementioned reasons. She stated that she would like to have an answer as to why there is no other County in the United States that does this, since this appears to be a nice source of revenue.

Mr. Best said he would look into this issue.

Commissioner Evans inquired as to whether Mr. McGrath was interested in general access or primarily access for the school district. He responded that access for the school district was his primary interest. Commissioner Evans responded that the Commissioners have been approached in the past both by the City and MCAT with the proposal of County support in the form of a franchise, but that if that were to take place it was her understanding that Missoula would be only county in the United States franchising cable TV. This would assess extra fees on each cable viewer without giving them extra cable benefits, and she felt she could only support franchise if each cable viewer would receive an extra benefit from it.

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A member of the audience said that if there were specific issues coming up that were of particular interest and people were reminded of it, they likely would get more attendance.

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

#### THURSDAY, JANUARY 5, 1995

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

Audit List -- The Board of County Commissioners signed the Audit List, dated January 3, 1995, pages 4-31, with a grand total of \$55,902.10. The Audit List was returned to the Accounting Department.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for month ending December 20, 1994.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, John E. Odlin, for month ending December 31, 1994.

#### DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was signed:

Modification of Agreement -- Chairman Evans signed a Modification of Agreement, modifying the Agreement between the Missoula City-County Health Department and the Department of Health and Environmental Sciences regarding the breast and cervical cancer detection plan, as per the items set forth. The Modification was forwarded to DHES in Helena.

Other items included:

- 1) the Commissioners authorized the Treasurer's Office to waive penalty and interest for real estate tax bill #93004676 (Elizabeth Van Gemert) as per a memo from Vickie Zeier, Clerk & Recorder/ Treasurer, dated January 4, 1995;
- 2) the Commissioners authorized Cindy Klette, Director of Planning & Program Development to negotiate a space provision, etc. for a coordinator of the Partnership for Strengthening Families;
- 3) the Commissioners agreed that two Commissioners would serve on the Planning Policy Committee for calendar year 1995, namely Commissioners Evans and Hart; and
- 4) the Commissioners reviewed the pay adjustment for Janet Stevens, Director of the Office of Community Development, as recommended by the Missoula Planning Policy Committee, and approved the pay adjustment (5%) reflecting a change in base pay to be effective beginning 12/04/94.

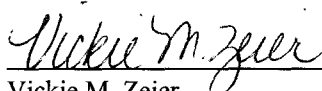
The minutes of the daily administrative meeting are on file in the Commissioners Office.

**FRIDAY, JANUARY 6, 1995**

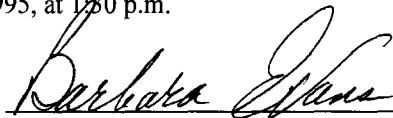
The Board of County Commissioners met in regular session; all three members were present.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending December 31, 1994.

Resolution No. 95-002 -- The Board of County Commissioners signed Resolution No. 95-002, Sale of Tax Deed Property, resolving that the Clerk and Recorder prepare and publish and post notices of the Order of Sale of Tax Deed Property, tracts of land acquired by the County by tax deed on January 5, 1995, and described on the list attached to the original Resolution, setting the sale date for January 18, 1995, at 1:30 p.m.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JANUARY 9, 1995**

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 Aaron L. Shattuck as principal for warrant #083916, dated December 20, 1994, on the MCHS Payroll Fund in the amount of \$821.98 now unable to be found.

Monthly Report -- Chairman Evans examined, approved, and ordered filed an Amended Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending December 31, 1994.

DAILY ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheets -- The Board of County Commissioners signed the following Transmittal Sheets:

- 1) Pay Period #25, pay date 12/09/94, with a total Missoula County Payroll of \$531,178.67; and
- 2) Pay Period #26, pay date 12/23/94, with a total Missoula County Payroll of \$495,494.99.

The Transmittal Sheets were returned to the Auditor's Office.

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

**TUESDAY, JANUARY 10, 1995**

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 Daniel Minton as principal for warrants #084404 and #084164, dated December 28, 1994, and December 16, 1994, in the amounts of \$46.12 and \$136.16 on the Missoula County High School Payroll fund now unable to be found.

Audit List -- The Board of County Commissioners signed the Audit List, dated January 9, 1995, pages 4-29, with a grand total of \$121,197.82. The Audit List was returned to the Accounting Department.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase, showing the items of fees and other collections on account of civil business in Missoula County for month ending December 30, 1994.

DAILY ADMINISTRATIVE MEETING

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

- 1) the Commissioners authorized the use of Missoula County's secondary road funds for epoxy pavement striping of centerline and shoulders on Secondary 210 from Bonner to Clinton, a total of 10 miles; the form was forwarded to the Montana Department of Transportation in Helena; and
- 2) the Commissioners agreed to a design change for Katoona Lodges to allow increases in lot sizes and carport structures in compliance with subdivision and zoning laws.

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

PUBLIC HEARING -- INSTALLING METERS (LOLO WATER AND SEWER)

The hearing, which was held at the Lolo Community Center, was called to order at 7:00 p.m. by Chairman Barbara Evans. Also present were Commissioner Fern Hart, Commissioner Michael Kennedy, and Administrative Officer, John DeVore.

John DeVore, Administrative Officer, gave background information and reported that during the past several years there have been several studies which recommended consideration of installing water meters in the RSID 901 service area. The primary reason for considering the installation of meters is to preserve the resource. The course the Advisory Board is recommending to the Commissioners is a gradual one. The proposed rule change calls for installation of meters on all new construction, homes sold or exchanged, and all new or resold commercial properties. This policy change will allow for the gradual installation of meters as well as providing staff with actual experience relative to installation, operation, and maintenance.

Chairman Evans inquired about the size of the average lot in that area.

Chip Johnson, Engineer of DJ & A, said they were not abnormally high. He said an average size was about 7,000 square feet and should take around 1 to 1¼ inches per week for lawn watering. Usage has been at an average of 2½ inches per week and is excessive.

Commissioner Evans commented that the current system bases the rate on the value of the property rather than usage.

Chip Johnson said the metered system would be based on the actual amount of water used at each property.

John DeVore said that the rates have not been considered yet. The meters would be installed over an extended period of time. The fee conversion would take place at that time. It would be based on a base fee plus a usage fee above that. He said those fees would be established by the Board of County Commissioners.

Chip Johnson reviewed the findings of the report his firm completed a couple of years ago and indicated their findings were that water consumption in the Lolo District is very high, which is a normal condition in areas where the charge is based on a flat fee rather than the actual usage. In this situation, people do not tend to be as conservative as they might. He stated that he believes the usage in Lolo is alarmingly high. During summer months the usage in the District has been as high as 2,000 to 2,800 gallons per day per home. This is residential use only and does not include agricultural usage. Winter time usage is pretty normal, which is an indication that the system itself is in good condition. Normal usage for winter months should be around 100 to 125 gallons per day per individual. An average household may have around three people. In Missoula, for example, the summertime usage is around 1,000 to 1,100 gallons per day. The Missoula system is metered.

Commissioner Hart stated that there needs to be firm data on whether the amount at the point of the well is actually the same amount that is pumped out to the homes in order to determine the integrity of the system itself. She felt one way to do this would be to implement this program in new construction and track their usage in comparison to existing construction in the same areas.

There was considerable discussion about the present rate structure with its pros and cons, and there was discussion on the various ways of setting up a rate structure if this plan was implemented.

Chip Johnson expressed his concern that under the present usage and system, a breakdown in either pump or other component would likely cause a dry-well situation since only one well being on line would likely go dry with this high volume of usage in the summer. Mr. Johnson expressed his opinion that the real issue at hand is not that the County is trying to raise more funds, but that there are some real problems not too far down the road that are going to manifest themselves. This can include wells and all of the equipment that goes along with them. There have been studies over the past two years checking on the potential of having another well drawing from another area, possibly on the west side of Highway 93 or up Lolo Creek on Highway 12. This would provide another source in case of a breakdown in the existing system.

The hearing was opened to public comment.

A member of the audience commented that watering rules are not being enforced. She said that people water all day every day and are wasting water. She said she thought the best place to start was with enforcement.

Kathy Means said she thought the residents should be given a chance to comply with the average usages and to cut down on usage. She said she thought politically correct water usage should be encouraged.

A question was raised from the audience about the availability of information to the public, and the opinion was expressed that the public is not told about the problems at the time they occur, which gives the impression that the problems develop suddenly and out of the blue.

Todd Brandoff pointed out that the Water Board meets almost monthly on the first Tuesday, the meetings are public, and the information is available to all those interested.

Another concern presented from the audience was that citizens are now watering the park land, and if meters were installed, they would no longer be able to afford to water the park land, and provision should be made for this.

Commissioner Evans made the clarification that this proposal would only affect those who are making changes in the status of their property's ownership. It would not affect a person until such time as they sell their business or home.

John DeVore said a possible property for the location of a new well is on the Holt property just up Lolo Creek. Another possibility that was considered was the Lolo School property. The school property did not have the 300 gpm production that is needed.

Marge Zavetta, a resident adjacent to the Holt property, objected to the Holts having the advantage of well hookup in exchange for offering the property, when she is closer to the water tower.

Diane Mannell pointed out that most of the wells up Lolo Creek are shallow, and her concern was that if this new well is drilled, the Lolo Creek residents may run short on water.

Jeff Chelk said that he has lived in a lot of different cities and towns and has gone from both metered and unmetered systems and feels that metered is the most equitable way. If a person decides to do something that requires more water such as having a garden, then he has the option of paying for that privilege. He also addressed the idea that a water conservation plan needs to be in place in advance for people to be receptive to extra funding when upgrades become necessary at a later date.

Kathleen Jenkinson asked whether the new well was for emergency use only or for new developments.

John DeVore said the main concern in having the new well is to make sure there is enough water during peak demands. The other concern was in looking at the way water is currently supplied. There is one jugular vein of water crossing Highway 93. The concern was that if anything ever happened to that crossing or if it had to be taken out for repair, there was absolutely no backup source for water. The third concern was if there was an accident or spill that would contaminate the well, it would contaminate the only supply there was. Considering all those factors became the impetus about two years ago for the Advisory Board to suggest looking for a third well site, on the other side of Highway 93 if possible, so there would be a second crossing. Highway 12 provided an opportunity to get into a different source area. A new subdivision cannot be considered unless there is a third well in place. He said additional homes would create revenue toward the third well, but whether the subdivision is approved or not, a third well is needed.

Marge Zavetta said she was not given an opportunity to bid on the possibility of having the well on her land.

Jim Brager, who lives in the Lolo area but not in the water district, expressed his concern that the land where the new well would be would be worth quite a bit more money. Another concern he had was with drawing the water table down and what effect that might have on the septic systems in the neighborhood.

John DeVore said that Ken Allen's second phase doesn't have anything to do with the third well. He said that Mr. Allen cannot file a subdivision until he can identify where the water will come from. The third well creates an opportunity to request inclusion in the district.

Chip Johnson reported that information had not been gathered so far that would indicate that a production well there would lower the water table. Extensive tests are done before a production well goes in to determine volume and impact on the residences.

Jim Brager said any time you pump water it will lower the level of the creek.

Chip Johnson said that pumping water from the aquifer does not lower the level of the creek--that isn't the way it works.

John DeVore said there is a study of sewer provision for unsewered areas in the Lolo area.

No one else came forward to speak and the hearing was closed.

Commissioner Hart suggested the Lolo residents form a citizens' committee to compile and gather information regarding this issue.

Commissioner Kennedy shared some thoughts out of his experience in the water field and expressed his opinion that water metering would be a good way to both conserve water and the equipment involved with it, and also to conserve the amount of water going into the waste treatment plant, thereby postponing the need to expand.

Commissioner Barbara Evans thanked everyone for coming.

The meeting was recessed at 8:50 p.m.

**WEDNESDAY, JANUARY 11, 1995**

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

**DAILY ADMINISTRATIVE MEETING**

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

Quitclaim Deed -- The Board of County Commissioners signed a Quitclaim Deed from Missoula County to Kathryn L. Ogren for three parcels near Wal-Mart described in that document filed in the office of the County Clerk and Recorder on October 24, 1994, in Book 427 of Micro Records, Page 654 as follows:

Parcel 5: A parcel of land located in the SE 1/4 Section 31, T 13N, R 19W, P.M.M.;

Parcel 6: A parcel of land located in Government Lot 1, Section 1, T 12N, R 20W, P.M.M.; and

Parcel 6: A parcel of land located in the SE 1/4 Section 31, T 13N, R 19W, P.M.M.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and James Ouellette, an independent contractor, for dental care and services for the Partnership Health Center, as per the items and terms set forth, commencing December 1, 1994, through June 30, 1995, for compensation to a maximum amount of \$10,000.00. The Contract was returned to the Health Department for further signatures and handling.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated January 5, 1995, between Missoula County and Daniel P. Cahalan and Kristen A. Rauch for a water line easement across their property in Lolo for RSID No. 901 in exchange for the items set forth in the Agreement, with the stipulation that if within three years Missoula County and/or RSID No. 901 has not begun construction of a water main the Agreement shall lapse. The Agreement was returned to John DeVore, Administrative Officer, for further handling.

Resolution No. 95-003 -- The Board of County Commissioners signed Resolution No. 95-003, resolving that the parcels of land described as S 1/2 SE 1/4, NE 1/4 SE 1/4, Section 10, T14N, R19W, PMM, Missoula County, EXCEPTING THEREFROM a square three-acre tract or parcel in the Southwest corner of the S 1/2 SE 1/4 described in Certificate of Survey 244 (Matuska - Grant Creek Road) be annexed to the Missoula Rural Fire District and are to be assessed for said annexation a fire district levy along with other property already a part of said Missoula Rural Fire District.

Resolution No. 95-004 -- The Board of County Commissioners signed Resolution No. 95-004, a resolution annexing the following parcels of land (Koster - Sherman Gulch Road) to the Missoula Rural Fire District and are to be assessed for said annexation a fire district levy along with other property already a part of the Missoula Rural Fire District:

- Tract 11 of COS 1092, located in the W 1/2 of Section 12, T13N, R21W, P.M.M.;
- Tract 12A of COS 2158, located in the NW 1/4 of Section 12, T13N, R21W, P.M.M.;
- Tract 12B of COS 2158, located in the NW 1/4 of Section 12, T13N, R21W, P.M.M.; and
- Tract 13B of COS 2150, located in the NW 1/4 of Section 12, T13N, R21W, P.M.M.

Resolution No. 95-005 -- The Board of County Commissioners signed Resolution No. 95-005, a Resolution to amend Chapter 1 "General Provisions" of the Missoula County Zoning Resolution 76-113 by adding a definition of "Building Envelope, Existing Grade, Finished Grade, Offset, Wall Element" and amending the definition of "Building Height".

Notice of Sale of RSID Bonds -- Chairman Evans signed a Notice of Sale of Bonds for RSID No. 8454 in a total amount not to exceed \$52,000.00 for construction of a sanitary sewer main extension to serve Block 1 of Maclay Addition, Missoula County, with the bid opening set for January 23, 1995, at 10:00 a.m.

Extension Letter -- The Board of County Commissioners signed a letter to Dick Ainsworth of Placid Lake Properties approving a 60-day filing extension for Salmon Lake Shore Sites, in accordance with the recommendation of the Community Development staff, making the new filing deadline April 3, 1995.

Extension Letter -- The Board of County Commissioners signed a letter to Dick Ainsworth of Professional Consultants, Inc. approving a 180-day filing extension for King Ranch Phase I, in accordance with the recommendation of the Community Development staff, making the new filing deadline July 11, 1995.

Notice Inviting Proposals -- Chairman Evans signed a Notice Inviting Proposals for the purpose of constructing a water well for the Lolo RSID No. 901 Water and Sewer District of Lolo, setting the bid opening for February 7, 1995, at 2:00 p.m.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

BID AWARD: FIRST FLOOR RESTROOM REMODEL

The following bids were received for the remodel of the first floor restroom in the Courthouse Annex:

D. Lower	\$23,467.00
Western Interstate	\$29,600.00
McCue Construction	\$25,245.00
O'Connell	\$27,374.00
Sawtooth	\$54,000.00

The staff recommended that the bid for the remodel of the first floor restroom be awarded to D. Lower Construction in the amount of \$23,467.00.

Fern Hart moved and Michael Kennedy seconded the motion to award the bid for the remodel of the first floor restroom in the Courthouse Annex to D. Lower Construction in the amount of \$23,467.00 as the lowest and best bid. The motion carried on a vote of 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (KEANE)

Colleen Dowdall, Deputy County Attorney, explained that Donald L. and Cheryl J. Keane requested consideration of a family transfer exemption for Tract 75 of COS 1925, a 20.55 acre parcel located in the Meadows of Baron O'Keefe north of the Wye and west of Highway 93. Mr. and Mrs. Keane wish to split the parcel in half and create an approximately 10 acre parcel for transfer to Mrs. Keane's adult son, Robert Bakerowski. The Keanes currently reside on what would become the remainder parcel and plan to continue to do so.

The history of the parcel is as follows: COS 1925 was filed by Geneva Cates in 1979 creating 62 tracts greater than 20 acres in size. Mr. and Mrs. Keane purchased Tract 75 in August, 1987.

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

The hearing was opened to public comment.

Nick Kaufman, WGM Group, explained that the property is located near the intersection of Highway 93 and the Wye. The Keane's wish to transfer a 10 acre portion of their 20 acre parcel to Mrs. Keane's adult son. Mr. Keane is disabled; the property is too much for them to care for. The Keanes have never used exemptions to the Subdivision and Platting Act.

Mrs. Keane stated that her son was 23 years old and planned to live on the property eventually. She said they have a couple of horses, but the property is not used for anything else. Her son currently assists them in caring for property and also helps to pay for some of their expenses.

Michael Kennedy asked about access to the property.

Nick Kaufman said the access is located on the southerly line of the property which is the Frenchtown Frontage Road.

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

Fern Hart moved and Michael Kennedy seconded the motion to approve the request for a family transfer by Donald L. and Cheryl J. Keane for Tract 75 of COS 1925, based on the finding that the request does not attempt to evade the Montana Subdivision and Platting Act, and contingent upon transfer of the deeds to the family member. The motion carried on a vote of 3-0.

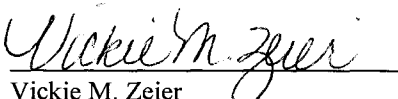
There being no further business to come before the Board, the Commissioners were in recess at 1:40 p.m.

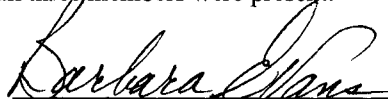
**THURSDAY, JANUARY 12, 1995**

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

**FRIDAY, JANUARY 13, 1995**

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, JANUARY 16, 1995**

The Courthouse was closed for the Martin Luther King, Jr. Day holiday. In the afternoon, Commissioner Hart participated in a Martin Luther King, Jr. celebration held on the Courthouse lawn.

**TUESDAY, JANUARY 17, 1995**

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



DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between Missoula County and the Lolo Community Council for the purpose of advancing and promoting the interests and welfare of the residents of the Lolo community by the Community Council, as per the terms set forth, through June 30, 1995, for a total amount of \$1,000.00.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #1, pay date 1-06-95, with a total Missoula County Payroll of \$485,959.89. The Transmittal Sheet was returned to the Auditor's Office.

Withdrawal of Statement of Claim -- The Board of County Commissioners signed a Withdrawal of Statement of Claim in the matter of the adjudication of the existing rights to the use of all the water, both surface and underground, except for the main stem of the Bitterroot River, but including all tributaries of the Bitterroot River in the north end sub-basin of the Bitterroot River drainage area in Ravalli and Missoula Counties, Montana, whereby Missoula County withdraws the RSID 901 (Lolo Water & Sewer) Statement of Claim Number 76H-W-001195-00 to the extent that it asserts a priority date prior to March 10, 1980, and is duplicated by water right KO 29923-00; and Certificate CO 29923 to the extent duplicated by KO 29923-00 is also withdrawn.

Other items included:

- 1) the Commissioners appointed Cristina Thomsen to a one-year term on the Missoula Urban Transportation District Board through December 31, 1995; and
- 2) the Commissioners appointed Frances D. Alves to a three-year term as a "regular" member of the Missoula County Weed Control Board through December 31, 1997.

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

**WEDNESDAY, JANUARY 18, 1995**

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

Audit Exit Interview -- In the morning, the Commissioners and several Department Heads met with representatives of Elmore & Associates for the Audit Exit Interview.

No Administrative Meeting was held; however, the following items were signed:

Plat -- The Board of County Commissioners signed the Plat for Salmon Lake Shore Sites, a recreational homesite development located in GLO Lots 2 and 3, Section 32, T. 16 N., R. 14 W., PMM, Missoula County, a total area of 83.30 acres, with the owner/developer being Placid Lake Properties.

Memorandum of Agreement -- Chairman Evans signed a Memorandum of Agreement between Missoula County and the Department of Family Services for the purpose of transferring a donation (\$20,000.00) from Missoula County to the Montana Department of Family Services to operate the At-Risk Child Care Program in Missoula County, as per the responsibilities set forth, effective from July 1, 1994, to June 30, 1995.

Budget Transfer -- The Board of County Commissioners approved and signed the following Budget Transfer for the Grants Programs and adopted it as part of the FY'95 budget:

No. 95-005, a request to transfer \$546.98 from the Contingency account to the Capital account for the purchase of a printer (\$519.99) and cartridge (\$26.99) for Planning and Program Development.

Quitclaim Deed -- The Board of County Commissioners signed a Quitclaim Deed from Missoula County to Del A. and Patricia L. Croff for SUID #1465306; Legal Description: Seeley Lake Homesites #10-A--Lot 15, Blk 3, a correction quitclaim deed pertaining to tax deed recorded in Book 432 Micro Page 1481, in order to void the aforementioned tax deed as the property was redeemed in the time allowed. The Deed was returned to the Clerk & Recorder's Office.

Quitclaim Deed -- The Board of County Commissioners signed a Quitclaim Deed from Missoula County to Colin Johnson for SUID #5901183; Legal Description: Trail Creek - Phase VI to Double Arrow Ranch--Lot 38, a correction quitclaim deed pertaining to tax deed recorded in Book 432 Micro Page 1484, in order to void the aforementioned tax deed which was recorded in error. The Deed was returned to the Clerk & Recorder's Office.

Other items considered included:

- 1) the Commissioners approved a request for a salary increase from Hal Luttschwager, Risk Manager, making the annual salary for this position \$44,680.00 effective November 17, 1994; and
- 2) the Commissioners approved a request from Glen Welch, Chief Probation Officer, to find and purchase a mini van with the allotted Youth Court funds, as the bid process has been unsuccessful and the purchase is under \$20,000.00.

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

BID AWARD: CONSTRUCTION BIDS -- RSID NO. 8454 -- SEWER MAIN EXTENSION BLOCK 1 MACLAY ADDITION

Information received from Jesse Sattley, RSID Coordinator, indicated that bids were opened on August 30, 1994 as follows:

	<u>L. S. Jensen</u>	<u>Green Diamond</u>
a. Alternate 1	\$45,815.00	NONE
b. Alternate 2	\$35,245.00	\$41,545.65

L. S. Jensen & Sons, Inc., was the only bidder for Alternate 1 (Notice to Proceed date of 10/1/94) and was the low bidder for Alternate 2. (Notice to Proceed approximately 4/95).

County Staff and the project engineer, Mr. Tom Hanson of Professional Consultants, Inc., requested the Board not award the construction bid in August, saving the need to immediately sell bonds for a project that would not proceed until the Spring of 1995. This would save several months of RSID Bond interest for the residents. L. S. Jensen & Sons, Inc. also agreed to hold their bid bond until 3/95 and was unofficially declared the best bid. On September 7, 1994 the Board, therefore, voted to postpone award until after January 1, 1995. At this time the Construction bid needs to be officially awarded.

Staff recommends award to L. S. Jensen & Sons, Inc., for Alternate 2 in the amount of \$35,245.00 contingent on the sale of bonds.

Motion was made by Commissioner Hart to award L. S. Jensen & Sons, Inc. the Alternate 2 Sewer Main Extension Block 1 bid, RSID #8454 in the MacLay Addition, in the amount of \$35,245.00, contingent on the sale of bonds. This appears to be the lowest and best bid. Commissioner Kennedy seconded the motion. There was no further discussion and the motion was carried by a 3-0 vote.

BID AWARD: 2 VANS (SHERIFF'S DEPT. AND YOUTH COURT)

The Board of County Commissioners was asked Don Mormon to Accept the Bid from Demarois Oldsmobile for one new 1995 Extended Mini-Van, seven passenger. On December 23, 1994 a request for bids was put out for: 1. A new Jail Transport Mini-Van, seven passenger and, 2. A seven passenger Mini-Van, used for Youth Court.

On January 9, 1995, bids were opened. Bids were received from Karl Tyler Chevrolet and Demarois Oldsmobile. Karl Tyler bid a Chevy Lumina van with an exception of no rear heating and air conditioning for \$18,220. Demarois Oldsmobile bid a larger Safari van with no exceptions for \$20,988.

Due to the exception and the smaller vehicle, Jail Captain O'Hara rejected Karl Tyler's bid.

It was recommended that the Board of Commissioners accept the bid from Demarois Oldsmobile in the sum of \$20,988.

Motion was made by Commissioner Hart to accept the bid from DeMarois Oldsmobile for one new 1995 Extended Mini-Van, seven passenger, in that it is the best and lowest bid, and, in fact, the only bid, for the amount of \$20,988.00. Commissioner Kennedy seconded. There was no further discussion and the motion was carried by a 3-0 vote.

Motion was made by Commissioner Hart to refuse all bids for the Youth Court van because both bids were over budget. Commissioner Kennedy seconded the motion. Motion was carried by a 3-0 vote.

Michael Kennedy also stated that since bidding was unsuccessful for a new Youth Court van, dealers who did not bid would be asked if they had a used van that meets the specifications at a price that is within budget, the purchase of a van will be made through that process.

SALE OF TAX DEED PROPERTY

Information received from Phyllis Browder, Recording Division Supervisor, indicated that this is the First Auction of Tax Deed Property for 1991.

This property was first delinquent in 1991 and this delinquency has not been redeemed. Mike Sehestedt, Deputy County Attorney, was asked what percentage of market value would be acceptable. He replied that at this auction only fair-market bids would be accepted. If the properties do not sell at this auction, then reexamining the fair market value would be required. If it is determined that changes are appropriate, the changes would be made. If not, then a second auction would be advertised either at the present fair market value or at a revised fair market value. If there are no bidders at that second auction, then the County can negotiate a private sale to bona fide purchasers for not less than 70 percent of fair market value. That is contingent on its not selling at either this auction or a second auction. Had anyone bid at fair market value at this point, they would have received tax title to the property.

Bids were solicited with three calls on each property, by Chairman Barbara Evans for the following properties.

- SUID 0881106 CARLINE #2---LOTS 7 & 8 E 2' OF 9 BLK C NO BIDDERS
- SUID 5807637 MOUNTAIN SHADOWS #1--LOT 2 BLK 2 NO BIDDERS
- SUID 5808128 MOUNTAIN SHADOWS #1--LOT 2 BLK 5 NO BIDDERS

HEARING: PROPOSED AMENDMENT TO URBAN COMPREHENSIVE PLAN -- DEVELOPMENT OF PARK MASTER PLAN

John DeVore, Administrative Officer, gave the background regarding consideration of the adoption of a Resolution of Intent to adopt the Development Park Master Plan as an amendment to the Missoula Urban Comprehensive Plan. The Hearing was opened for Public Comment. There was no discussion from the audience and the Hearing was closed. Commissioner Hart commended all those who were involved in studying and developing this plan which was a two-year project.

Commissioner Hart made a motion that the Board of County Commissioners adopt a Resolution of Intent to adopt the Development Park Master Plan as an amendment to the Missoula Urban Comprehensive Plan. Commissioner Kennedy seconded the motion. The motion was carried by a unanimous vote.

RESOLUTION NO. 95-006

The Board of County Commissioners signed Resolution No. 95-006, a Resolution of Intent to adopt the Development Park Master Plan as an amendment to the Missoula Urban Comprehensive Plan.

OTHER BUSINESS AND PUBLIC COMMENT

- SHARON DALE--Superintendent of Bonner School, expressed her concern that there would be a great loss of local tax base for District 14 if the Pre Release Center were allowed to locate in Bonner. They have already lost 17 percent due to the reevaluation of Stimson's property. If the Pre Release Center gains tax-free status, the school district will lose approximately \$70,000. Her request is that if the center is placed in Bonner that they would pay taxes.
- JOHN DE VORE gave some background regarding the status of this process. The center has non-profit status and has negotiated a buy/sell with Stimson. Last night was the first informational meeting. The next step for the non-profit will be to apply for a zoning change or a PUD. Once they decide how much of the parcel they wish to keep and what status it will be, they will submit a proposal to the Office of Community Development. Then it will be marked up on the Planning Board's agenda, and, finally, will come before the Board of County Commissioners, in approximately 6-8 weeks. He also stated that a non-profit corporation is not necessarily exempt from taxes, but that is a request that is brought before this Board.
- KATHY WHITMAN, who resides in the Milltown area and owns a business there with her husband, expressed her concern that it is not in the best interest of the community to place the Pre Release Center in the Bonner area and asked the Commissioners to carefully consider this option.
- TOM GREIL, who resides in the Bonner area, expressed his concern that his home is right on the route the inmates would need to use commuting to their jobs. He felt that since these homes are in a low-visibility area, they would be vulnerable to various kinds of crimes as the inmates pass by. He also expressed that he would no longer feel comfortable having his son ride his bike to school if the Pre Release Center were there. He feels the Center should be located in closer proximity to the jobs held by the inmates.
- TAMMY WINEGART presented an advertisement for a 20-plex not far from the University and suggested that a building of this type would adequately house the inmates and be closer to their jobs and other places where they needed to commute. Her main concerns were that the center's being in the neighborhood would decrease their property values and would introduce a negative element for fellowship with their children.
- BOB GREIL, who resides in the Bonner area, expressed his concern that since Stimson is decreasing its facility and will probably pull out altogether eventually, that what Bonner really needs is to attract good industries that provide jobs for family people. He felt that to tell someone that the main industry in Bonner is the Pre Release Center is a negative that will keep the community from being able to survive and rebuild. He said he had a conversation with the Sheriff's Office and the arrest record is very high of inmates. He also stated that it would be very easy to hide in that area with the log yard and trails to the woods so close by.
- AL BELLUSCI, who resides in the Bonner area, expressed his concern that the limits of the protest area is very small and encompasses only a handful of people--Montana Power, Montana Rail Link, Stimson, possibly Premier. He felt the rezoning would very easily pass, and he appealed to the Board that they understand the community's feelings on this issue. He pointed out that what Bonner really needs is the type of industry that will replace Stimson, and preferably be the kind of neighbor Champion was to the community, since Stimson will not be out there for more than about 10 years in all likelihood. He didn't feel the Pre Release center would be the kind of industry that would attract other industries. He felt that something like the Police Academy would be a better choice to pursue, and it was his understanding that the Police Academy is looking to make a change.

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

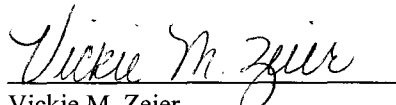
**THURSDAY, JANUARY 19, 1995**

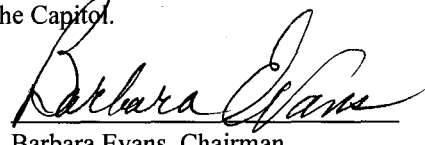
The Board of County Commissioners met in regular session; all three members were present. Commissioners Evans and Hart attended the Community Oriented Policing Seminar held at the Aerial Fire Depot Conference Room from 9 a.m. until 3 p.m.

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated January 19, 1995, pages 4-44, with a grand total of \$230,017.31. The Audit List was returned to the Accounting Department.

**FRIDAY, JANUARY 20, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy was in Helena attending Local Government Day at the Capitol.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JANUARY 23, 1995**

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 Jennifer Welling as principal for warrant #084509, dated January 13, 1995, on the Missoula County High School Payroll Fund in the amount of \$238.13 now unable to be found.

No Administrative Meeting was held; however, the following items were signed:

Contract -- The Board of County Commissioners signed a Contract between Missoula County and the Missoula Valley Water Quality District for the construction, installation and completion of drilling of monitoring wells, as per the terms set forth, for total compensation in the amount of \$45,115.00, with the work to be completed with a period of 245 consecutive days from the fifth day following the mailing of the Notice to Proceed. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Certificate of Survey -- The Board of County Commissioners signed a Certificate of Survey for a portion of land located in the NW 1/4 SW 1/4 of Section 8, T. 13 N., R. 19 W., PMM, owned by Missoula County, certifying that the purpose of this survey (Tracts 1 and 2) is to relocate common boundaries between adjoining properties, and that no additional parcels are created so this survey is exempt from review as a subdivision; and also certifying that the purpose of this survey (Tract 3) is to retrace that portion of land vacated by City of Missoula Resolution No. 4231, recorded in Book 175 of Micro on page 1632 located south of the old centerline alignment of Stockyard Road, as a retracement survey pursuant to 76-3-404 M.C.A.

**TUESDAY, JANUARY 24, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Kennedy attended a meeting of the Seeley Lake Solid Waste Management District Board held in Seeley Lake.

**WEDNESDAY, JANUARY 25, 1995**

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

Audit List -- The Board of County Commissioners signed the Audit List, dated January 24, 1995, pages 4-27, with a grand total of \$97,731.35. The Audit List was returned to the Accounting Department.

**DAILY ADMINISTRATIVE MEETING**

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

Contract -- A Contract was signed between Missoula County and Jack Brown/dba Brown's Towing, the lowest and best bidder for the collection of junk vehicles in the area of Missoula County, Montana, between Clearwater Junction and the Lake County line on Highway 83 and Highway 200 from the top of Greenough Hill to the Powell County line, as per the terms set forth, with Missoula County agreeing to pay the Contractor for each pick-up of a load of junk vehicles made, in accordance with Missoula County Hauling Policies by Contractor, at the request of Missoula City-County Health Department at the rate established by the Contractor's proposal. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Section 8 Contract -- The Board of County Commissioners signed the FFY 1995 Section 8 Contract (#95-50-0016) between the State Department of Transportation, Transportation Planning Division, and the Missoula Office of Community Development, for the purpose of providing federal assistance to the Contractor to evaluate, select and monitor technical study projects proposed by local metropolitan planning organizations or public bodies and agencies and transportation planning and technical studies projects, as per the items and terms set forth, for the period from October 1, 1994, to September 30, 1995, with the cost of the Project being the amount indicated in the attachment to the Contract, with the Contractor agreeing to provide matching funds to assure payment of Project costs and the State making quarterly grant payments to the Contractor. The Contract was returned to Mark Landkammer in the Office of Community Development for further handling.

Application for Tax Refund -- The Board of County Commissioners signed an Application for Personal Property Tax Refund for 1994, approving a request from Robie L. and Robin L. Dursma of Rigby, Idaho, for a refund on the 1994

taxes paid on their mobile home as it was removed from the state in January of 1994. The Application was returned to the Treasurer for further handling.

Subgrant Applications -- Chairman Evans signed approval of Subgrant Applications submitted to the Board of Crime Control by the Missoula County Sheriff's Department and the Missoula Police Department for the Missoula City-County D.A.R.E. Project and the County's Operation Crackdown Project, for the period from 7-01-95 through 7-01-96, as per the items set forth.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Michael Kennedy and Fern Hart.

#### BID AWARD: AWARD OF BID FOR OUT-FRONT ROTARY MOWER FOR LARCHMONT GOLF COURSE.

Commissioner Kennedy read the background information provided by Don Smith, Superintendent, as follows: Bids were opened at 10:00 a.m., January 3, 1995, with the following results:

Midland Implement Company	\$28,763.00
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Staff recommends bid be awarded to Midland Implement Co. for a total amount of \$28,763.00 as the lowest and most responsive bidder. The original quote from Midland, and the amount which was budgeted of \$27,660.00 was for a demo model which sold prior to the bid solicitation. The bid of \$28,763.00 is for a new unit, and is \$1,103.00 over the budgeted amount. This purchase has been approved by the Larchmont Advisory Board at their meeting on January 24, 1995.

There was no discussion and a motion was made by Commissioner Fern Hart that the Board of County Commissioners award the bid to Midland Implement Company for an out-front rotary mower for a total amount of \$28,763.00 in that they are the lowest and most responsive bidder. The motion was seconded by Commissioner Kennedy. There was no further discussion and the motion was carried with a 3-0 vote.

#### BID AWARD: BOND BID -- RSID #8454 -- SEWER MAIN EXTENSION BLOCK 1, MACLAY ADDITION.

Commissioner Fern Hart read the background information provided by Jesse Sattley, RSID Coordinator, as follows:

The Board of County Commissioners was asked to award the Bond Bid for RSID #8454 - Maclay Addition Sewer. Bids were opened on January 23, 1995 for the \$52,000.00 sale of RSID bonds as follows:

	<u>Net Effective Interest Rate</u>
Mr. Harry Zitto	7.87 %

Staff recommends award to Mr. Harry Zitto for the bid of 7.76 % for the sale of \$52,000 for RSID #8454 - Maclay Addition Sewer.

Commissioner Evans asked Jesse Sattley, RSID Coordinator, to clarify the difference in the two interest rates listed on the Request for Commissioner Action.

Jesse Sattley explained that these bids are done with a maturity schedule, which is from the year 1996 - 2000. Each year has a certain interest rate for the dollar amount for that year. All bids are on those maturity schedules, so the bid varies from 7.5 % to 8.0 % . He said that when the bids were run through the bond calculator, it was found that the true interest rate was 7.87 %.

There was no further discussion.

Commissioner Hart made a motion that the Bond Bid for RSID #8454, Maclay Addition Sewer, be awarded to Mr. Harry Zitto with the net effective interest rate being 7.87 %. Commissioner Kennedy seconded the motion. There was no further discussion and the motion was carried with a 3-0 vote.

#### PETITION TO ABANDON OLD WOODWORTH ROAD, LYING EAST OF SALMON LAKE IN SECTION 32, RANGE 14 WEST, PMM, MISSOULA COUNTY, MONTANA.

Commissioner Barbara Evans read the background information provided by Phyllis Browder, Recording Division Supervisor, as follows:

Petition to vacate "Old Woodworth Road", lying east of Salmon Lake in Section 32, Township 16 North, Range 14 West, PMM, Missoula County, Montana

The reasons for this request are as follows: "This is an old deeded roadway that is no longer in use (it has been replaced by a newly constructed Woodworth Road - with a new R/W conveyed by Champion in 1986 - Book 238 Micro, Page 1368). Deed calls for conveyance to be for "as long as the same shall be used as a public highway".....which is no longer the case. Description is poorly written...."starting on top of a hill, and ending in the lake."

The following landowners were notified of the hearing:

Placid Lake Properties  
P O Box 3416  
Missoula MT 59806

Missoula Rural Fire District  
ATTN: Bill Reed  
2521 S AVE W  
Missoula MT 59801

Plum Creek Timber Company  
140 N Russell  
Missoula MT 59801

Commissioner Evans asked Vickie Zeier, Clerk and Recorder, if there was any opposition to this petition. She said there was not.

Hearing was opened to the public and closed when no one came forward to speak.

Commissioner Hart made the clarification that this is an old easement and is completely separate from the newly constructed Woodworth Road, which is in service at this time.

Commissioner Hart made a motion to postpone action on this request until February 8, 1995, to allow time for one Commissioner and the Surveyor to view the vacation site under consideration. Commissioner Kennedy seconded the motion and it was carried with a 3-0 vote.

HEARING: PETITION FOR ANNEXATION TO MISSOULA RURAL FIRE DISTRICT (WILDERNESS TRAIL - 2 TRACTS).

Commissioner Kennedy read the background information provided by Phyllis Browder, Recording Division Supervisor, as follows:

A petition has been received by the Clerk and Recorder's Office to annex a parcel of land located in Missoula County to the Missoula Rural Fire District.

The petition for annexation has been checked and verified. The petition contains signatures of more than 50 % of owners of the privately owned land in the area to be annexed and a majority of the tax-paying freeholders within the area described, so they meet the requirements of 7-33-2125 M.C.A for annexation of adjacent territory.

Legal Description of property to be annexed:

Parcel C-1 of Certificate of Survey #2275, located in the NW 1/4 of Section 10, Township 12 North, Range 20 West.

Parcel C-3 of Certificate of Survey #3632, located in the NW 1/4 of Section 10, Township 12 North, Range 20 West.

Hearing was opened to the public and there being no comment, the hearing was closed.

Commissioner Hart noted for the record that this property is located up Hayes Creek.

Commissioner Hart made a motion that the Board of County Commissioners approve the petition to annex Parcel C-1 of Certificate of Survey #2275, located in the NW 1/4 of Section 10, Township 12 North, Range 20 West, and Parcel C-3 of Certificate of Survey #3632, located in the NW 1/4 of Section 10, Township 12 North, Range 20 West to the Missoula Rural Fire District, in that everyone has been notified according to law. Commissioner Kennedy seconded the motion and there being no further discussion the motion was carried by a 3-0 vote.

PRESENTATION BY SHERIFF'S DEPARTMENT

Commissioner Evans introduced Sheriff Doug Chase.

Sheriff Doug Chase introduced Captain Mike O'Hara to make the first presentation to Pastor Emil Netzer. Sheriff Chase gave a brief history of Pastor Netzer's faithfulness and longevity in the ministry the Lord had called him to do. He said that Pastor Netzer has been the Missoula County Jail Chaplain since 1943 and has worked under six sheriffs and seven including himself. Sheriff Chase said that in addition to Emil's work with the inmates themselves, many of the inmates' families have been greatly impacted by his ministry. He also said Emil still keeps in touch with many of them. Sheriff Chase said he continually has requests from people wanting to take over the jail ministry, but because of Emil's faithfulness and effectiveness, the job is his as long as he wants it. Emil was presented a plaque from the Sheriff's Department commending him for his service along with a silver belt buckle.

Commissioner Evans asked Emil if he would like to say a few words.

Pastor Netzer said that for whatever work was done through all these years and the good that came out of it, all the glory belongs to the Lord. Pastor Netzer recalled a few of the more memorable opportunities that he had to lead inmates, and sometimes later their families, to a personal relationship with Jesus. He recounted how he has derived a great deal of fulfillment from working with people who are at the very bottom and know they can't make it on their own strength and then be able to share from God's word about knowing the Lord. He said he has folks from many different churches working with him in this ministry and no particular church is mentioned--only the Word of God.

Sheriff Doug Chase said that the buckle is the last one that was struck in that minting and they have been saving it for this presentation. He introduced the next presentation, which was to Chaplain Mike McKinney, who will be going on to a new ministry in the eastern part of the state with his denomination. Sheriff Chase praised him as well for being on call 24 hours a day, ministering to the officers and their families, inmates when needed, and to the public when needed. He asked Chaplain McKinney to come forward to receive a gift presented by him and one presented by Undersheriff Larry Weatherman.

Chaplain McKinney commented that his hat is off to Emil and is awed by Pastor Netzer's ministry all these years. He said he ministers in this order: sheriff's deputies, their families, public, and then inmates. He commended the staff for how great they all have been to work with--the best he has ever been associated with. He took a moment to introduce his mentor and wife, Roger and Patty Hill.

Sheriff Chase concluded by saying that the buckle given to Chaplain McKinney is from the first five of the new stamping that just arrived this past week.

PUBLIC COMMENT:

Tony Tweedale, who identified himself as an environmental activist, came forward to make a statement about the Health Board and Health Department. He said that it was his opinion that Ellen Leahy's purchase of video tapes for the Stone Container hearings was actually being used for the purposes of lobbying. He said they have been lobbying against an appointment to the Board of Health. He said Ellen Leahy has launched an investigation against him personally as well, to which he is innocent. He also said the Health Board has for about six months refused to hold a grievance hearing, which is mandated by its bylaws.

Commissioner Evans said that when the Commissioners looked at the audit sheet she called Ellen about it. Ellen said their reason for purchasing the video tape was that they needed a record of that hearing. Commissioner Evans also said that was a legitimate purchase and so they signed off on that item.

Tony Tweedale reiterated his opinion that in addition to having a record of the hearing, the tape was used to lobby against Michael Cohan.

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

**THURSDAY, JANUARY 26, 1995**

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.

No Administrative Meeting was held; however, the following items were signed:

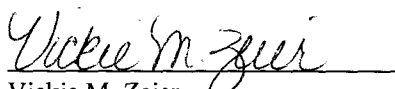
Resolution No. 95-007 -- The Board of County Commissioners signed Resolution No. 95-007, a Resolution annexing the following described parcels of land to the Missoula Rural Fire District, and are to be assessed for said annexation a fire district levy along with other property already a part of said Missoula Rural Fire District: Parcel C-1 of Certificate of Survey #2275, located in the NW 1/4 of Section 10, Township 12 North, Range 20 West; and Parcel C-3 of Certificate of Survey #3632, located in the NW 1/4 of Section 10, Township 12 North, Range 20 West.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Beth Thompson, MD, for the purpose of providing medical care, quality assurance of clinical services and participating in the development of primary care policies and standards for the Missoula City-County Health Department, as per the terms set forth, commencing January 1, 1995, through June 30, 1995, for total compensation not to exceed \$6,000.00.

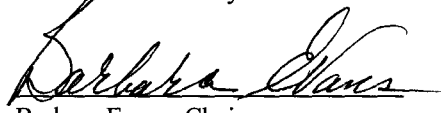
Agreement -- Chairman Evans signed an Agreement (DHES Contract No. 350220) between Missoula County and the Montana Department of Health and Environmental Sciences for the purpose of administering an immunization project within Missoula County's service area, as per the items and terms set forth, commencing January 1, 1995, through December 31, 1995, with reimbursement from DHES up to a maximum of \$30,058.00 for expenses incurred. The Agreement was forwarded to DHES in Helena.

**FRIDAY, JANUARY 27, 1995**

The Board of County Commissioners did not meet in regular session; Commissioner Evans attended the Economic Outlook Seminar at the Village Red Lion during the day; Commissioner Kennedy attended the Mental Health Board Meeting held at Fort Missoula; and Commissioner Hart was out of the office all day.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JANUARY 30, 1995**

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



Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Kay C. Cain as principal for warrant #14363, dated April 21, 1994, on the Hellgate Elementary General Fund in the amount of \$628.75 now unable to be found.

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was signed:

Resolution No. 95-008 -- The Board of County Commissioners signed Resolution No. 95-008, a Resolution of Authorization designating Cindy Wulfekuhle, Grants Administrator, as the Environmental Certifying Officer for the Garden City Community Housing Development Organization (CHDO) Project at 1421 Eaton, Missoula.

Other items included:

- \* the Commissioners reviewed and approved revising the County Travel Policy regarding employees long distance calls to their homes while traveling on County business.

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

**TUESDAY, JANUARY 31, 1995**

The Board of County Commissioners met in regular session; all three members were present in the morning. Commissioner Hart left late in the forenoon for Helena to testify at a Legislative hearing. In the evening, Commissioner Evans attended a meeting with concerned citizens regarding the proposed Pre-Release Center in Bonner.

**WEDNESDAY, FEBRUARY 1, 1995**

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 January 31, 1995, pages 4-39, with a grand total of \$442,455.46. The Audit List was returned to the Accounting Department.

**DAILY ADMINISTRATIVE MEETING**

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Christine S. McGuire, an independent contractor, for the purpose of providing nursing services as required by persons incarcerated in the Missoula County Detention Center, as per the terms set forth, for the period commencing January 16, 1995 through January 27, 1995. The total compensation to be paid in response to appropriate written request for payment for service shall not exceed \$15 per hour, with a two-hour minimum.

Agreement -- The Board of County Commissioners signed an Agreement with Summit Golf Management, a Limited Liability Company, with a mailing address of 3200 Old Fort Road in Missoula, for the purpose of working with the Larchmont Advisory Board in the operation of the Larchmont Golf Course, as per the terms set forth, for a three-year period commencing February 1, 1995, for compensation in the amount of \$24,000 per year for services rendered.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Jan Furniss MD, an independent contractor, for the purpose of providing professional consultation to Infant Mortality Review Coordinator, as per the terms set forth, for the period commencing January 11, 1995 through June 30, 1995, for compensation in the amount of \$50 per case review to total not more than \$1,000.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Michael Kennedy and Fern Hart.

**BID AWARD**

Chairman Evans read the background information provided by Don Smith, Superintendent, Larchmont Golf Course, as follows: The Board of County Commissioners was requested to award bids for the Pump Station Retrofit at Larchmont Golf Course. Bids were opened at 10:00 a.m. on January 30, 1995 with the following results:

Huppert Brothers Construction	\$46,729.12
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Staff recommends bid be awarded to Huppert Brothers for a total of \$46,729.12 as the lowest and most responsive bidder. The original estimate, and the amount budgeted was \$44,500.00. Since the cost is over budget, it was decided by the Larchmont Board of Directors to abandon the entrance improvements for this year, which were budgeted in the amount of \$3,600.00, and use those funds to complete this project.

Chairman Evans asked if there was any discussion.

Commissioner Hart asked if there were any more bidders for this project. There were no others.

Commissioner Hart moved and Commissioner Kennedy seconded the motion to accept the bid for the Pump Station Retrofit for Larchmont Golf Course in the amount of \$46,729.12 as the lowest and most responsive bidder. There was no further discussion and the motion was carried with a 3-0 vote.

Chairman Evans introduced Bill Galiher, the new General Manager of Larchmont Golf Course.

**CONSIDERATION OF BLANK FAMILY TRUST**

Philip Maechling, Senior Planner at OCD, read the background information he had provided through OCD as follows:

The Board of County Commissioners received a request from Druyvestein, Johnson, and Anderson to subdivide 80 acres into two lots; one 5.5-acre lot, and one lot of approximately 75 acres. The proposed subdivision is called the Blank Family Trust.

The Blank Family Trust Summary Plat is a two-lot subdivision on 80 acres in the north one-half of Section 24, Township 21 North, Range 17 West, PMM. The owners wish to divide the property to create one 5.5 acre lot to permit the transfer of one existing residential home and improvements to a residential trust. The property is unzoned, and the 1975 County Comprehensive Plan designates the area as open and resource lands. The remaining land (approximately 75 acres) will remain as open and resource lands. While there is riparian area on the entire parcel, there is no riparian area on this property that will be altered, and "no development on either lot will disturb or cause an adverse impact on these areas". There are requests for variances as follows:

1. ACCESS ROADS AND EASEMENTS The existing access is through Lot 1 to Lot 2, and is a small road 12-15 feet, constrained by land form and topography. The variance request is both for width of right-of-way (54 feet) and for the division of the lot by right-of-way or easement. Staff supports this request.
2. TOPOGRAPHIC MAP AND DATA FOR LOT 2 The owners request a variance from having to perform a detailed topographic survey of the remaining 75 acres. There are no current development proposals for the remaining land area, and most of it will remain as open and resource lands. Any subsequent subdivision development plans will be required to perform the necessary surveys at that time in the future when development plans are proposed. Staff supports this request with this understanding.

The Missoula Office of Community Development recommends that the Board of County Commissioners approve the summary plat of The Blank Family Trust Lots 1 and 2 subject to the following conditions:

1. Variances shall be granted as requested to allow the existing road and right-of-way to be of substandard width and to divide Lot 1, only to access Lot 2.
2. A variance shall be granted for this division of land from the mapping and data requirement for Section 5-1 (4) (H) Ground Elevations for the remainder Lot 2. Future developments will provide required topographic and surveyed data.
3. Developer agrees that all subdivision standards shall be complied with for any future development.
4. The developer shall enter into an agreement with the Missoula Rural Fire District/Condon Fire Department to address water supply. A \$50 fee per lot shall be assessed toward the purchase of a large-diameter fire hose.
5. All other standards for Preliminary Plat Approval are in effect.
6. The name of the subdivision shall be the "Blank Family Trust".

Chairman Evans noted that this was not a public hearing by statute, but allowed time if anyone had any comments.

Robert Knight, who is the counsel for the Blank Family Trust, came forward and said they have reviewed the report and recommendations from the Planning Office and concur with them.

Commissioner Hart noted there had not been any comment from the Rural Planning Department even though the Seeley/Condon area has traditionally been an area for care and sensitivity in planning.

Robert Knight said that even though they are a reviewing agency, there had been no comment from them. They should have received the complete packet including all the drawings.

Colleen Dowdall, Deputy County Attorney, said that normally when the pre-application comes in there is a list of all the people that need packets in accordance with the different concerns on each subdivision.

Glenn Howard, who represents D, J, & A, Surveyors, said that the Rural Planning Department was in fact on the list and had adequate time to respond if they were going to.

Philip Maechling noted that there would be no change in the actual use of the land and that is probably the reason there was no response from Rural Planning.

Commissioner Hart inquired as to why the landowners' association was listed as "Not Applicable" (ref. Item 10, Page 7, Prel. Plat Submittal Package).

Philip Maechling noted that in this case there is only a single-family situation rather than several different property owners.

Commissioner Kennedy moved and Commissioner Hart seconded that the proposed Blank Family Trust 2-Lot Subdivision on 80 acres Section 24, Township 21 North, Range 17 West, PMM be approved as noted with the conditions. There was no further discussion and the motion was carried with a 3-0 vote.

Commissioner Hart moved and Commissioner Kennedy seconded that the Board of County Commissioners grant the REQUEST FOR VARIANCES for the Blank Family Trust, one of which was for the Access Roads and Easements, and the other which was for Topographic Map and Data for Lot 2 with the explanations provided by the Planning staff. There was no further discussion and the motion was carried with a 3-0 vote.

#### PUBLIC COMMENT

Joe Gasvoda, who lives near 26th Street and Spurgin Road, came forward and commented that 26th Street was surveyed last summer and still nothing had been done. He wanted to know if the Commissioners knew when the work would be done on the street.

Horace Brown, County Surveyor, said the work east of Reserve Street should be done late spring or early summer, and the work west of Reserve Street, in the Target Range, goes to the State in March and the work should be done some time this summer.

There being no further business or Public Comment, the Board of County Commissioners was in recess at 1:45 p.m.

**THURSDAY, FEBRUARY 2, 1995**

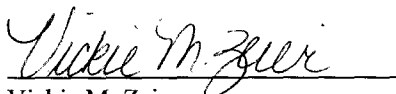
The Board of County Commissioners met in regular session; all three members were present.

Site Inspection -- In the afternoon, Commissioner Kennedy accompanied Horace Brown, County Surveyor, on a site inspection for the request to abandon Old Woodworth Road in the Salmon Lake area.

**FRIDAY, FEBRUARY 3, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was in Helena all day.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for the month of January, 1995.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, FEBRUARY 6, 1995**

The Board of County Commissioners met in regular session; all three members were present. The Commissioners attended an all-day Planning Session facilitated by Ginny Tribe held at the Holiday Inn.

**TUESDAY, FEBRUARY 7, 1995**

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 E. Odlin, for month ending January 31, 1995.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending January 31, 1995.

**DAILY ADMINISTRATIVE MEETING**

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

Acceptance of Grant -- Chairman Evans signed a Statement of Acceptance for Grant Award Number 94-16612, dated January 20, 1995, having a grant total of \$16,500 from the Board of Crime Control with regard to Missoula County's application for Prevention Early Initiation of Drug Use; Individualizing the Response. The project duration is from February 1, 1995 to June 30, 1995. The document was returned to Cindy Klette, Director of Planning and Program Development, for further handling.

Loan Agreement (INTERCAP Revolving Program) -- Chairman Evans signed the Loan Agreement between the Board of Investments of the State of Montana and Missoula County for the INTERCAP Revolving Program for the purchase of a new mainframe computer, 7 motor pool cars, 11 Sheriff vehicles, and 9-1-1 remodeling, having a total project cost of \$922,000. The document, dated February 17, 1995, was returned to John DeVore, Administrative Officer for further handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Shannon Environmental Services, an independent contractor, for the purpose of the CY95 Right-to-Know Work Program with the Missoula Local Emergency Planning Committee, as per the terms set forth, for the period commencing January 1, 1995 through October 31, 1995. Compensation for services shall not exceed 100% of fees collected. The Contract was returned to the DES Coordinator for further signatures and handling.

Addendum to Travel Policy -- The Board of County Commissioners signed an Addendum to Missoula County Travel Policy 88-A (correcting addendum dated January 31, 1995) which states that while on out-of-county business travel, employees are authorized to make long distance telephone calls to their homes and be reimbursed for the actual cost as a reasonable and necessary travel expense. Said telephone calls should be kept at reasonable lengths and be limited to one a day, except for calls made during unusual circumstances such as flight delays or road closures due to weather. The Addendum was distributed to all County Departments.

Cooperative Purchasing Agreement -- The Board of County Commissioners signed a Cooperative Purchasing Agreement by and between the City of Missoula and Missoula County for equipment and labor to connect the Parks & Recreation Department into the County PBX switching telephone system for an amount not to exceed \$19,000, as per the terms and provisions set forth. The document was returned to the City for further signatures.

Memorandum of Understanding -- The Board of County Commissioners signed a Memorandum of Understanding by and between the Board of County Commissioners and the City of Missoula wherein the County and the City agreed to undertake and fund a joint facilities assessment and requested the Missoula Redevelopment Agency (MRA) to manage the facilities assessment project contract in their behalf. This assessment will be undertaken by A & E Architects and

Associates through a contract for services and will culminate in a report to the County and the City which, in addition to the assessment findings, will include recommendations for implementation over one, five, and twenty year time frames. The County and the City agreed to fund the contract as follows: Missoula County (\$38,500); City of Missoula (\$20,000); and MRA (\$73,500).

Resolution No. 95-010 -- Chairman Evans signed Resolution No. 95-010, a Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto.

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

### WEDNESDAY, FEBRUARY 8, 1995

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

#### DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following item was discussed:

- \* Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the request to require that Property Identification Numbers be included on conveyances/parcel transactions filed in Missoula County, which process will be coordinated by the Clerk & Recorder's Office, Surveyor's Office and Assessor's Office. The motion carried on a vote of 3-0.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

#### BID AWARD -- WATER WELL FOR RSID 901 -- LOLO SEWER AND WATER

Jesse Sattley, RSID Coordinator, read the background information he had provided on the Request for Commission Action as follows: The Board of County Commissioners was asked to award the Contract for RSID #901 Lolo Sewer and Water for Construction of a Water Well. Bids were opened on February 7, 1995 as follows:

Boland Construction	\$65,664.00 with \$2,500.00 Alternate
Liberty Drilling	56,909.36 with 2,500.00 Alternate
Western Water Works	43,020.00 with 4,000.00 Alternate
Camp Well Drilling	40,522.00 with 900.00 Alternate

Two bids (Liberty Drilling and Western Water Works) had to be rejected as determined by Mike Sehestedt, County Attorney. These bids did not comply with the bidding instructions (i.e. both bids had no Montana State license number indicated on the bid envelope, and Western Water Works did not submit the complete bid package as required).

Staff recommends, along with the project Engineer and the RSID #901 Board, that Camp Well Drilling be awarded the construction contract as the lowest and best bid received.

Commissioner Kennedy expressed his concern with the vast difference between the lowest bidder and the other acceptable bid, a difference of some \$30,000.00. He asked if there was an engineering analysis and an engineering estimate.

Jesse Sattley said Chip Johnson of D, J, & A did the estimate, and Camp Well Drilling, the lowest bidder, was almost \$9,000.00 over Chip Johnson's estimate.

Commissioner Kennedy said that, to him, it appears this great difference indicates that the bidders were interpreting the contract differently from the engineer's estimate. This could very likely open the door to discrepancy and other problems after the work proceeds.

Mike Sehestedt, County Attorney, recommended that this issue be taken under advisement for a week to determine if the contract was clearly understood by the bidders.

Commissioner Kennedy made a motion that this issue be taken under advisement for a week to determine that the bidders completely understood the bid. Commissioner Hart seconded the motion. There was no further discussion, and the motion was carried with a 3-0 vote.

#### DECISIONS

The original request to Abandon the Old Woodworth Road was brought before the Board of County Commissioners for public hearing on January 25, 1995 as follows:

The Board of County Commissioners was petitioned to vacate "Old Woodworth Road" lying east of Salmon Lake in Section 32, Township 16 North, Range 14 West, PMM, Missoula County, Montana.

The reason for this request is as follows: "This is an old deeded roadway that is no longer in use (It has been replaced by a newly constructed Woodworth Road - with a new R/W conveyed by Champion in 1986 - Book 238 Micro, Page 1368). Deed calls for conveyance to be for "as long as the same shall be used as a public highway" .....which is no longer the case. Description is poorly written...starting on top of a hill, and ending in the lake."

The decision on the request was postponed so the Surveyor and one Commissioner could visit the site, as required by law. Horace Brown, County Surveyor, and Commissioner Kennedy visited the site February 2, 1995.

Horace Brown recommended that the Old Woodworth Road be vacated except for the portions of right of way that cross Highway 83 and the new Woodworth Road.

Commissioner Kennedy made a motion and Commissioner Hart seconded the motion to vacate the Old Woodworth Road lying east of Salmon Lake in Section 32, Township 16 North, Range 14 West, PMM, Missoula County, Montana, with the understanding that the rights of way where it crosses Highway 83 and also the new Woodworth Road would not be vacated. There was no further discussion and the motion was carried with a 3-0 vote.

Commissioner Hart read the body of the proposed Resolution to adopt the DEVELOPMENT PARK MASTER PLAN AS AN AMENDMENT TO THE MISSOULA URBAN COMPREHENSIVE PLAN as follows:

WHEREAS, 76-1-604 MCA authorizes the Board of County Commissioners to adopt and amend comprehensive plans; and,

WHEREAS, the Board of County Commissioners did adopt a comprehensive plan for the County in 1975; and,

WHEREAS, the Development Park Master Plan was drafted through a public planning process by the County Projects Office; and,

WHEREAS, the Development Park Master Plan represents an update of the 1990 Urban Area Comprehensive Plan Update; and,

WHEREAS, the Development Park Master Plan was reviewed at two public hearings, dated 1/3/95 and 1/18/95; and,

WHEREAS, the Missoula Consolidated Planning Board has recommended adoption of the Development Park Master Plan; and,

WHEREAS, the Board of County Commissioners adopted Resolution of Intent 95-006 for this action on January 18, 1995.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Missoula County hereby adopts the Development Park Master Plan, in its final draft form, a copy of which is filed with the Missoula County Clerk and Recorder.

BE IT FURTHER RESOLVED that:

The Development Park Master Plan is an amendment to the Missoula Urban Comprehensive Plan. It is a policy document intended to provide the County and other agencies and districts with a coordinated guide for change over a long period of time. When making decisions based on the Plan, not all of the goals and implementation proposals can be met to the same degree in every instance. Use of the Plan requires a balancing of its various components on a case-by-case basis, as well as a selection of those goals and implementation proposals most pertinent to the issue at hand.

The common theme of all the goals and implementation proposals is acceptance of them as suitable approaches toward problem solving and goal realization. Other valid approaches may exist and may at any time be used. Adoption of the Plan does not necessarily commit the County to immediately carry out each policy to the letter, but does put the County on record as having recognized the desirability of the goals and implementation proposals and the decisions or actions they imply. The County can then begin to carry out the goals and implementation proposals to the best of its ability, given sufficient time and resources.

Commissioner Hart noted that this document sounded very general.

Mike Sehestedt said that if this document was standing alone it would sound general, but considering this resolution along with all of the accompanying material that has gone into this study, it is a good document that has enough latitude in either direction.

Commissioner Evans gave some background on the project including where the area is and what some of the vision is for that area.

Commissioner Hart moved and Commissioner Kennedy seconded the motion that the Board of County Commissioners approve the resolution to adopt the Park Master Plan, which would be an amendment to the Missoula Urban Comprehensive Plan. There was no further discussion and the motion was carried with a 3-0 vote.

#### RESOLUTION NO. 95-009

The Board of County Commissioners signed Resolution No. 95-009, a Resolution to adopt the Development Park Master Plan as an amendment to the Missoula Urban Comprehensive Plan.

#### PUBLIC COMMENT:

Kathy Whitman, of the Bonner area, came forward and presented the Commissioners with a box containing around 300 letters written by Bonner/Milltown residents. She said all the letters were in opposition to the Pre Release Center coming to Bonner.

Commissioner Evans commended the area residents for the remarkable time and effort they have put into getting the information and feelings of the residents distributed. She noted the great dedication and heritage displayed by the area's residents..

Judy Matson, who is a resident of the West Riverside area, gave appreciation for the time and concern that has been shown by the Commissioners for their area. She said that she would like the Board of County Commissioners to read the history book they have written about their area and understand the great heritage they have. There is a park and a restored barn just three blocks from the proposed pre release center. She talked about all the community projects that funded the park and restoration of the barn.

Brian Sherry, brought along a Damage Assessment Report done by the State Department of Natural Resources. They have set the deadline for public comment on this report for February 21, 1995. He said he wanted to make the Commissioners aware of this report and also to invite them to attend some of these meetings.

Commissioner Evans made note that Commissioner Michael Kennedy is the liaison on this issue.

Commissioner Kennedy said he felt the real issue is that the solutions are not necessarily equal. Also he said two weeks is not nearly enough time for comment on this issue.

Robert Benson also expressed concerns about river and water issues with the EPA. He said the State's report is upstaging the EPA, and that it is not the State's role to clean up. It is their role to assess the damage. MTAC will ask for an extension on the hearing time.

There being no further business or public comment, the Board of County Commissioners was in recess at 2:25 p.m.

#### THURSDAY, FEBRUARY 9, 1995

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Commissioner Evans attended a Juvenile Detention Meeting in Kalispell; and that evening attended a TMA (Transportation Management Association) meeting held at the Florence School.

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated February 8, 1995, pages 6-35, with a grand total of \$277,619.89. The Audit List was returned to the Accounting Department.

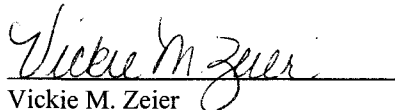
Resolution No. 95-011 -- The Board of County Commissioners signed Resolution No. 95-011, a Resolution to vacate all of Book 43 (Deeds) Page 297 except those two portions that cross the existing Woodworth Road and the existing State Highway #83 located in the S½ of Section 32, T16N, R14W, P.M.M.

Resolution No. 95-012 -- The Board of County Commissioners signed Resolution No. 95-012, a Resolution to create a Rural County Zoning District and to apply this Zoning district to property known as the East Butler Creek Foothills District. The East Butler Creek Foothills District is located in Sections 25 and 26, T14N, R20W, and Section 30, T14N, R19W, and is specifically that area called the Circle H Ranch. The rezoning includes various tracts, as delineated in Exhibit A.

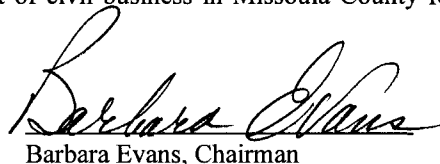
#### FRIDAY, FEBRUARY 10, 1995

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 Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending January 31, 1995.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

#### MONDAY, FEBRUARY 13, 1995

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

The following item was discussed:

- \* the Commissioners discussed the safety issues regarding Crystal Creek Road and a private road built near it. Apparently no access permit exists for this road to the County road. It was decided that for the safety of the citizens who think it is a County road, the private road will be gated on County right-of-way and a sign placed designating which road is the County road.

#### TUESDAY, FEBRUARY 14, 1995

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 13, 1995, pages 5-37, with a grand total of \$293,996.25. The Audit List was returned to the Accounting Department.



DAILY ADMINISTRATIVE MEETING

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

Resolution No. 95-013 -- The Board of County Commissioners signed Resolution No. 95-013, a designation of limited access highway for Project DPI 0195(001), Missoula I-90 Airport Interchange. Attached to this Resolution was a description of Route for same, an access control facility.

Other items included:

- \* the Commissioners signed a memorandum authorizing the Treasurer's office to waive all penalty and interest for Real Estate Tax Bill #94019910 for Carolyn Hasenoehrl. The document was returned to Vickie Zeier, Treasurer, for further handling.

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

**WEDNESDAY, FEBRUARY 15, 1995**

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

BID AWARD -- WATER WELL FOR RSID 901 -- LOLO SEWER AND WATER (POSTPONED FROM FEBRUARY 8, 1995 MEETING)

The award of bid for a water well for RSID 901, Lolo Sewer and Water, was postponed from the February 8, 1995 meeting based on some concerns Michael Kennedy expressed.

Barbara Evans asked Michael Kennedy if those concerns had been adequately addressed this past week.

Michael Kennedy replied that these concerns had been responded to by the engineer of record and had been, to some degree, properly answered. He said his concern now was more in the line of general management regarding how these types of contracts are advertised, awarded, and administrated. He said these concerns had not been erased. He said, however, that knowing the engineer involved and knowing the process that had gone on up to this point that he was in favor of awarding this contract. He said he felt, though, that a process should be outlined for the future so they would not have this kind of problem again.

The Request for Commissioner Action submitted February 8, 1995 listed the bidders as follows:

The Board of County Commissioners was asked to award the Contract for RSID #901 Lolo Sewer and Water for construction of a water well.

Bids were opened on February 7, 1995 as follows:

Boland Construction	\$65,664.00 with \$2,500.00 Alternate
Liberty Drilling	\$56,909.36 with \$2,500.00 Alternate
Western Water Works	\$43,020.00 with \$4,000.00 Alternate
Camp Well Drilling	\$40,522.00 with \$ 900.00 Alternate

Two bids (Liberty Drilling and Western Water Works) had to be rejected as determined by Mike Sehestedt, County Attorney. These bids did not comply with the bidding instructions (i.e., both bids had no Montana State license number indicated on the bid envelope, and Western Water Works did not submit the complete bid package as required).

Staff recommended, along with the project Engineer and the RSID #901 Board, that Camp Well Drilling be awarded the construction contract as the lowest and best bid received in the amount of \$40,522.00 with a \$900.00 alternate.

Michael Kennedy moved and Fern Hart seconded the motion to accept the bid from Camp Well Drilling in the amount of \$40,522.00 with a \$900.00 alternate to construct a water well in RSID 901, Lolo Water and Sewer District. The motion carried on a 3-0 vote.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER REQUEST -- RAY -- FOR TRACT B1 OF COS 2822 IN SECTION 14, T11N R20W

Background was read by Kathy Smith, Paralegal in the County Attorney's office, as follows:

The Board of County Commissioners was requested to consider a family transfer for Tract B1 of COS 2822 in Section 14, T11N R20W, a family transfer parcel created in December 1982, but never transferred into the ownership of the intended recipient.

Gloria Ray owns two 1-acre parcels located South of Lolo between Highway 93 and Old Highway 93. In approximately 1981 or 1982, Ms. Ray created three 1-acre parcels through the use of an occasional sake, family transfer and remainder. COS 2822 was filed December 2, 1982, and the family transfer was to be transferred first to Ms. Ray's then husband, David Milot, and then to her mother, Ruth Ferguson, but this was never accomplished. Ms.

Ray states her attorney was supposed to file the transfer documents, but there is no record of this. Also in December 1982, Ms. Ray indicates her mother signed a Quitclaim Deed for the family transfer parcel. This was never filed and Ms. Ray still retains the original document in her possession. The parcels remained in Ms. Ray's ownership and Ruth Ferguson passed away in February 1991. The remainder parcel, which is the southerly parcel, was sold in November 1989. Ms. Ray now wishes to sell the remaining two parcels. Her title company has indicated they will not file the deeds in this regard due to the non-transfer of the family transfer parcel without approval from the Board of County Commissioners.

As an addendum and as indicated above, Ms. Ray at the time of the approval of the family transfer and occasional sale, was married to David Milot. Apparently, she had originally intended to transfer the family transfer parcel to him as is indicated on the face of COS 2822. They obtained a divorce in February 1982 and prior to the filing of COS 2822, it must have been decided at that point to transfer the parcel to Ms. Ray's mother.

The history of the parcel is as follows: The parcel was acquired as a 7.96 acre parcel along with a 16.21 acre parcel by John Ray in November 1970. The parcels existed on either side of Old Highway 93. In December 1972, the State acquired a 4.8 acre right-of-way through the East parcel for the new Highway 93. In March 1976, a Deed of Distribution was filed and Ms. Ray retained both parcels in her sole ownership. As stated above, Ms. Ray then requested the use of the occasional sale and family transfer exemptions in approximately 1981 or 1982. In July 1986, Ms. Ray filed COS 3350 utilizing the mortgage release exemption on the West parcel and created a 7.4 acre parcel and remainder.

According to the records kept by the Missoula County Surveyor, the applicant has used exemptions to the Subdivision and Platting Act as described above.

Staff recommended a decision on whether to approve sale of a family transfer parcel for Tract B1 of COS 2822 for Gloria Ray.

Barbara Evans asked Colleen Dowdall, Deputy County Attorney, to clarify the status of these two parcels.

Colleen Dowdall said they are Tracts of Record because the survey was recorded, but because the transfer never occurred to the mother, the family transfer exemption was not completed. She said the parcel exists but cannot be transferred except to the family member, who now happens to be deceased, because that is the reason the parcel was created. She needs to either find another family member and apply for an exemption or, if she is selling both parcels to the same person, relocate the boundary and have one description so both lots could be sold together.

Barbara Evans explained that the Board of County Commissioners is required to determine on land splits of this type whether the split is an attempt to evade the Montana Subdivision and Platting Act. She said the history looked questionable.

Ms. Ray explained that at the time her mother was diagnosed with cancer and had trouble deciding where she wanted to be. They ended up going back to Billings.

Barbara Evans suggested that if the same party wanted to buy both lots, a good option would be for her to have the boundary lines redefined or go through subdivision review.

Ms. Ray said that her parcels did indeed have a description.

Colleen Dowdall said that her descriptions were for the family transfer that never took place, so effectively, they did not have a legal description. She said that the only one that could transfer the property would be Ms. Ray's mother, who is now deceased.

Barbara Evans reiterated that the options are now to either: (1) take it through subdivision review, which would be a summary plat since it is only one lot; (2) do a boundary relocation, which would make one parcel out of the two; or (3) the parcels could be left just as they are, which would make the parcels non-transferable.

Fern Hart moved and Michael Kennedy seconded the motion to table indefinitely the request to waive the requirement that the parcels named in the original COS be transferred to a family member because the transfer to a family member was never completed. The motion was carried with a 3-0 vote.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER REQUEST -- LUCIER -- FOR TRACT 1 OF COS 3901 IN NW 1/4 SECTION 20, T14N, R20W

Background was read by Kathy Smith, Paralegal in the County Attorney's office, as follows:

The Board of County Commissioners was requested to consider a family transfer for Tract 1 of COS 3901 in NW 1/4 Section 20, T14N, R20W for William J. Lucier, Jr.

William J. Lucier, Jr. owns a 16-acre parcel located West of the Wye off Highway 10. Mr. Lucier proposes to create a 1-acre parcel for transfer to his adult son, Shane Brady Lucier.

This history of this parcel is as follows: COS 1665 was filed in October 1978, by Hazel B. Popham, f/k/a Hazel B. Lucier using a mortgage release exemption and creating a 6.23 acre parcel. At the same time, she transferred the parcel to Mr. Lucier and his wife. Hazel Popham passed away in June 1989. In March 1991, the estate relocated the boundaries between COS 1665 and property located in the NW 1/4 of Section 20, T14N R20W creating the current parcel. The estate also created three additional parcels greater than 20 acres in size in the area and filed COS 3917 in March 1991. As part of the estate, Mr. Lucier received Tract 1 of COS 3901 and Tract 3 of COS 3917 along with other unrelated property.

According to the records kept by the Missoula County Surveyor, the applicant has used an exemption to the Subdivision and Platting Act as described above.

Staff recommended a decision on whether to approve a family transfer for Tract 1 of COS 3901 for William J. Lucier, Jr.

Barbara Evans asked Mr. Lucier why he wanted to create this parcel.

Mr. Lucier said that his son is still working on the family ranch and would like to build a house there for his family. The bank will not loan him the money unless he owns the land.

Fern Hart moved and Michael Kennedy seconded the motion to approve the family transfer exemption for William J. Lucier, Jr. for the property located in Tract 1 of COS 3901, NW 1/4, Sec. 20, T14N, R20W, in that it is clearly a gift to the applicant's son and not an attempt to evade the Montana Subdivision and Platting Act, and contingent upon transfer of the deeds to the family members. Motion was carried with a 3-0 vote.

PUBLIC COMMENT: MTAC (MILLTOWN TECHNICAL ASSISTANCE COMMITTEE)

Jeffrey Smith, staff scientist with the Clark Fork Coalition of Missoula and a board member of MTAC, presented the Commissioners with background information and a fact sheet taken from the State Natural Resources Damage Assessment dated January 1995. This information presented estimated volumes of contaminated water and sediments at the Milltown reservoir. The State's study found that one-fifth of the contamination is already beyond the reservoir site. In addition, Land and Water performed some sampling downstream in the Hellgate Canyon and found concentrations of arsenic above the State's recently adopted ground water standards for arsenic all the way down into the Bandmann Flats area, indicating there is already an impact downstream. He stated that the State Superfunds are in the midst of their remedial investigation feasibility study. In summary, the State has evaluated the proposed Alternatives A-D and ultimately chose Alternative 10D which is using institutional controls and taking no further action at the site. Arco and EPA seem to concur in this decision. He suggested that the only way that the other options will be thoroughly and equally addressed is if the people of Milltown and Missoula and County officials state that they want to have them addressed. He expressed a concern that with the State's current position on this issue, it may be extremely difficult to ask for a thorough analysis of all the other alternatives.

Michael Kennedy pointed out that the proposed alternatives which are supposed to be relatively equivalent with respect to response are simply not so. He expressed his disappointment in the State of Montana's position that we can walk away from this and leave the future to itself basically in the County's lap. He stated that this was unacceptable to him and assumes it also is unacceptable to Jeff Smith and his organization. He then asked Peter Neilsen to respond to the lateness in which this document was brought to the County's attention and the fact that the State has given so little time in which to give an intelligent response.

Peter Neilsen, Environmental Health Unit Supervisor, responded that an extension of time for public comment should be forcefully requested. He then explained that local government has required many businesses to invest substantial sums of money in closing off pollution sources. Everyone else has been doing their part and Arco should do the same. He stated he will be drafting a resolution pertaining to this issue. The Superfund process should be allowed to run its course; however, there is a court-imposed deadline on this litigation and those schedules must be met. Therefore, a request for extension of 3-4 weeks would probably be reasonable.

Barbara Evans asked what the estimated depth of the sediment was that needed to be removed.

Peter Neilsen stated that the estimated volume is about 6 million cubic yards. The EPA or the State may approach the Board of County Commissioners to conduct an investigation of a site for repository in Missoula County.

Michael Kennedy stated that through negotiation, Arco has successfully limited the amount of the law suit that Montana has filed against them to about \$700 million. The amount of money spent so far in the Butte area is around \$120 million. If this is not the largest Superfund site ever in the history of the United States, it certainly is among one of the largest. He agreed that an extension of time should be filed. It is not reasonable for the State to allow such a minimal amount of time in which to respond to such a monumental decision. He stated that it is also unreasonable for the State to make a decision prior to the EPA's record of decision that could be 12-18 months in the future. It seems therefore that the State is preempting some possibility with respect to examination of the site and its solution.

Michael Kennedy moved and Fern Hart seconded the motion to demand the State to extend the time for commentary from the public, particularly Missoula County, by 90 days to provide an opportunity to properly respond to the Resource Damage Assessment Program. The motion carried on a vote of 3-0.

After much further discussion, a point was addressed that Arco's main argument will be that the arsenic is being diluted by clean water and therefore there are no exceedences of drinking water standards downstream.

Michael Kennedy made the point that it was 14 years ago that Ed Zuleger, Environmental Health Specialist, took the sample on Front Street in Milltown and found the arsenic which led to the designation of that site. It all started in Missoula and Missoula has been largely responsible for the funding of this program.

Barbara Evans thanked everyone for coming.

There being no further business to come before the Board, the Commissioners were in recess at 2:45 p.m.

**THURSDAY, FEBRUARY 16, 1995**

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

DAILY ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #2, Pay Date January 20, 1995, with a total Missoula County payroll of \$499,821.24. The Transmittal Sheet was returned to the Auditor's Office.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #3, Pay Date February 3, 1995, with a total Missoula County payroll of \$505,774.70. The Transmittal Sheet was returned to the Auditor's Office.

Agreement -- Chairman Evans signed an Agreement between Missoula County and the Montana Department of Health and Environmental Sciences (DHES) for the purpose of administering a hepatitis B immunization project within the County's service area, as per the items and terms set forth, for the period from January 1, 1995 through December 31, 1995. DHES agrees to reimburse the County for the types of expenditures listed on Attachment C, to the extent that they are necessary to performance of this agreement and up to a maximum of \$23,500 for expenses incurred during the period from the inception of this agreement through December 31, 1995. The Agreement was forwarded to DHES in Helena.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Spiker Communications, an independent contractor, for the purpose of providing a media campaign to focus on reducing stigma associated with accessing services, therefore improving the use of existing food and nutrition programs, as per the terms set forth, for the period commencing December 19, 1994 through September 29, 1995, for compensation in the amount of \$7,000.

Amendment to Agreement -- Chairman Evans signed Amendment No. 1 to Grant Agreement No. RRG-94-1008 between the Montana Department of Natural Resources and Conservation and Missoula County, with an effective date of February 1, 1995, amending the payment section regarding disbursement of funds to residents of Linda Vista sewer project, as per the terms set forth. The Amendment was forwarded to Bob Fischer at DNRC in Helena for further signatures and handling.

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY'95 budget:

- 1) Control No. 95-002, a request from the Health Department to transfer \$35,578 from the Traffic Safety 94-95 fund to the Traffic Safety 95-96 fund and \$9,822 from the Traffic Safety 95-96 fund to the Traffic Safety 94-95 fund. The reason for these budget transfers is that the traffic safety grants are combined for budget purposes but should be separate for audit purposes; and
- 2) Control No. 95-003, a request from the Health Department to transfer \$4,961 from the TCM A/R fund to the Medicare fund and \$1,000 from the AC Donations fund to the AHEC fund. The reason for these budget transfers is that the codes are being used in other funds for other revenue sources.

Extension Letter -- The Board of County Commissioners signed a letter to Dick Ainsworth, Professional Consultants Inc., approving a 4-month filing extension for Kona East, Phase IV, making the new filing deadline June 22, 1995.

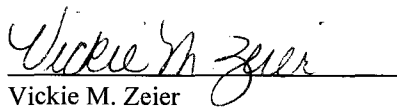
Other items included:

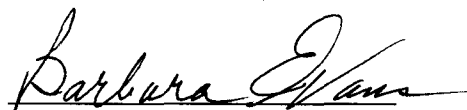
- 1) the Commissioners approved the request from Jim Carlson, Missoula City-County Health Department, that \$7,943 be transferred from the funds provided by BFI into Account No. 344167, the Water Quality District. These monies are needed to reimburse the Water Quality District for expenses incurred during the Household Hazardous Waste Collection Day.
- 2) Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners advertise for two alternates for the Museum Board. The motion carried on a vote of 3-0.
- 3) Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners authorize the Deputy County Attorney to proceed with the East Missoula Sewer District request. The motion carried on a vote of 3-0.

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

**FRIDAY, FEBRUARY 17, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board 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, FEBRUARY 20, 1995**

The Courthouse was closed for the Presidents Day holiday. Commissioner Kennedy was in Helena attending the MACo Elected Officials Workshop on February 20 and 21.

**TUESDAY, FEBRUARY 21, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present in the forenoon. Commissioner Hart left at noon for Helena.

Audit List -- Commissioners Evans and Hart signed the Audit List, dated February 21, 1995, pages 5-38, with a grand total of \$551,049.15. The Audit List was returned to the Accounting Department.

**WEDNESDAY, FEBRUARY 22, 1995**

The Board of County Commissioners did not meet in regular session; Commissioners Hart and Kennedy were in Helena attending the Governor's Conference on Disaster Preparedness and the MACo Mid-Winter Meetings through Friday, February 24. The Weekly Public Meeting scheduled for this date was canceled as two of the Commissioners were out of town.

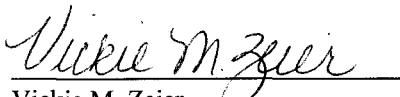
**THURSDAY, FEBRUARY 23, 1995**

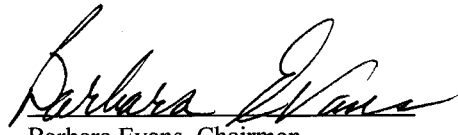
The Board of County Commissioners did not meet in regular session.

**FRIDAY, FEBRUARY 24, 1995**

The Board of County Commissioners did not meet in regular session. In the forenoon, Commissioner Evans attended a conference call meeting of the Judicial Standards Commission held in Judge Ed McLean's office.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Kohler's Sprinkler Systems as principal for Warrant #20361 issued November 8, 1994 on the Missoula County School District #40 Fund in the amount of \$90.00 now unable to be found.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, FEBRUARY 27, 1995**

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated January 1, 1995, between the Missoula Board of County Commissioners and the Missoula City-County Health Department with regard to purchasing services to benefit parents of 0-3 year olds (and their children) who are at risk of child abuse and neglect and families referred to DFS but not yet on the DFS Caseload with neighborhood nurse home visiting services, as per the terms set forth, for the period from January 1, 1995 to June 30, 1995 and having a total cash value of \$20,778.00. The Agreement was forwarded to the Health Department for further signatures and handling.

Resolution No. 95-014 -- The Board of County Commissioners signed Resolution No. 95-014, a Resolution concerning the cleanup of the Milltown Superfund site.

Agreement -- Chairman Evans signed DHES Agreement No. 250067 between Missoula City-County Health Department and the Montana Department of Health and Environmental Sciences (DHES) for the purpose of conducting public information and outreach activities regarding radon in the County, as per the items and terms set forth, for the period from December 15, 1994 through September 30, 1995, except for the final project report which is due October 10, 1995, with reimbursement from DHES being up to a maximum of \$5,000. The Agreement was forwarded to DHES in Helena.

Modification of Agreement -- Chairman Evans signed Modification No. 4 of Agreement (DHES Contract Modification No. 340075-04) between Missoula County, the Montana Department of Health and Environmental Sciences, and the Montana Department of Family Services for the purpose of modifying the terms of the agreement between them concerning administration of a local MIAMI project and a fetal infant and child death review, as per the items set forth. The Agreement was forwarded to DHES in Helena.

Plat -- The Board of County Commissioners signed the Plat for Linda Vista 7th Supplement, Phase 6, an urban residential subdivision located in the SE¼ of Section 12, T12N, R20W and the NE¼ of Section 13, T12N, R20W, P.M.M., Missoula County, having a total area of 12.79 acres, with the owners/developers of record being the Lloyd A. Twite Family Partnership.

Plat -- The Board of County Commissioners signed the Plat for Mullan Trail, Phase 3, a rural residential subdivision located in the N½ of Section 14, T13N, R20W, P.M.M., Missoula County, having a total area of 29.9 acres, with the owner/developer of record being Mullan Trail Enterprises (David Theisen).

**TUESDAY, FEBRUARY 28, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners and Department Heads attended a Planning Session facilitated by Ginny Tribe held at the Holiday Inn. At noon, the Commissioners attended the State of Missoula Luncheon sponsored by the Chamber and held at the

Village Red Lion, with Commissioner Evans giving the "State of the County" address. In the evening, Commissioner Kennedy attended a meeting of the Seeley Lake Solid Waste Management District Board held at the Seeley Lake Fire Hall.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Hazel Foley-Jones as principal for Warrant #023718 issued February 10, 1995 on the Missoula County General Fund in the amount of \$93.61 now unable to be found.

**WEDNESDAY, MARCH 1, 1995**

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

Audit List -- The Board of County Commissioners signed the Audit List, dated February 28, 1995, pages 5-41, with a grand total of \$191,766.23. The Audit List was returned to the Accounting Department.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for the month of February, 1995.

DAILY ADMINISTRATIVE MEETING

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

Contract -- The Board of County Commissioners signed a Contract, dated February 15, 1995, between Missoula County and L. S. Jensen & Sons, Inc., a Montana corporation, as the lowest and best bidder for the construction of the Maclay Addition Sewer Main Extension, Lots 1 through 10, Block 1, RSID 8454, as per the terms set forth, for a total amount of \$35,245. The Contract was returned to Jesse Sattley, RSID Coordinator, for further handling.

Contract -- The Board of County Commissioners signed a Contract, dated March 1, 1995, between Missoula County and Camp Well Drilling as the lowest and best bidder for the construction of a Water Well for the Lolo RSID 901 Water and Sewer District, as per the terms set forth, for a total amount of \$40,522. The Contract was returned to Jesse Sattley, RSID Coordinator, for further handling.

Acceptance of Proposal -- Chairman Evans signed Proposal No. 9502-005 from John Vugteveen of SatComm Support (Stevensville) for the renovation of the existing communications relay site on Mount Sentinel for a total combined package amount of \$34,348. The document was returned to John DeVore, Administrative Officer, for further signatures and handling.

Other items included:

- \* the Commissioners appointed Tom Maclay to a three-year term as a "regular" member on the Missoula Planning Board through December 31, 1995.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

The Public Meeting immediately recessed as the Board of County Commissioners and reconvened as the Planning and Zoning Commission. Present were Commissioners Barbara Evans, Fern Hart and Michael Kennedy. Also present were members Horace Brown, County Surveyor, and Vickie Zeier, Clerk and Recorder/Treasurer.

HEARING (PLANNING & ZONING COMMISSION): ZONING REVIEW OF BUILDING PROPOSAL OF SINGLE FAMILY HOME (CARY LARSON) ZONING DIST. #4 -- FOR TRACT B OF COS 4268 IN SECTION 3, T12N, R19W

Philip Maechling, Planner at the Office of Community Development, presented the request from Cary Larson to construct a single-family dwelling in Planning and Zoning District #4. The subject property consists of 3 acres of wooded hillside in the Pattee Canyon drainage. The proposed use is a single family dwelling, which is a permitted use in Zoning District #4. The legal description is Tract B, Certificate of Survey 4268, address at this time: 4955 Arnica Road, Section 3, Township 12 North, Range 19 West. The proposal is designed to disturb existing landform and vegetation only in areas necessary for the construction of the house, driveway and accessory carport building. The proposed home does not appear to conflict with the land use regulations outlined in Zoning District #4. The Missoula Consolidated Planning Board held a public hearing on February 7, 1995, and recommended that the proposed Zoning District #4 permit for Cary Larson be approved.

The hearing was opened to public comment.

Fern Hart asked if the Missoula Rural Fire District had any comments.

Philip Maechling stated that he had not received a written response to this particular project from the Rural Fire District but he would call Bill Reed to find out.

Fern Hart inquired if the builder was willing to comply with the usual precautions taken in instances such as this, being an interface zone with wildlife.

Cary Larson responded that he did not see any such conflicts with his proposal.

Fern Hart reminded Cary Larson that there will be limitations regarding fences, compost pile, pets and livestock, and feeding areas.



Horace Brown, County Surveyor, pointed out that Arnica Road is a private road and not a County road; therefore, the County does not maintain it.

Michael Kennedy commented that it is not possible to develop any site without affecting wildlife. This can be mitigated somewhat but there will be a reduction of habitat as a result of any construction. He also stated that he was uncomfortable taking any action with respect to this until some response is received from the Fire District and DES.

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

Fern Hart moved and Horace Brown seconded the motion that the Planning and Zoning Commission recommend approval of the request from Cary Larson to construct a single-family dwelling in Zoning District #4 for Tract B of COS 4268 in Section 3, T12N, R19W, contingent upon comment from the Rural Fire District that there would be no problem in serving this site. The motion carried on a vote of 5-0.

The Planning and Zoning Commission recessed; the meeting reconvened as the Board of County Commissioners.

Barbara Evans asked if there was a motion to support or deny the request of the Planning and Zoning Commission.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the recommendation from the Planning and Zoning Commission to allow Cary Larson to construct a single-family dwelling Zoning District #4 for Tract B of COS 4268 in Section 3, T12N, R19W, contingent upon comment from the Rural Fire District that there would be no problem in serving this site. The motion carried on a vote of 3-0.

HEARING (PLANNING & ZONING COMMISSION): SPECIAL USE PERMIT (CUSTOM CABINETS UNLIMITED) - RESERVE STREET SPECIAL ZONING DIST. #2

Bud Hettich, Planner at the Office of Community Development, identified the location of the subject property on the aerial map and then presented photographs to the Commissioners for their review. He then stated that this was a request from Jim Decker, representing Bill Hoff, Custom Cabinets Unlimited, Inc., for a Special Use Permit to convert an existing single-family dwelling at 1522 South Reserve Street into a sales/display/office, and construct a 2,600 square foot warehouse for storage and minor repair of pre-made cabinets. There will be no new construction of cabinets at this location.

The subject property consists of 2.37 acres with an existing single-family dwelling. The front one-half of the property is zoned County Special District #2, which is proposed to be the site for this sales/display/office and a warehouse/shop; and the remaining acreage is zoned County C-R2, which the owner plans to develop for multi-family dwellings at a later date.

He pointed out that this property has access only to Reserve Street. No secondary streets serve this property. The access from and to Reserve Street will be reviewed by City Engineering and the County Surveyor if he wishes in cooperation with the Highway Department.

The site plan shows that all of the site development standards will be met as set forth and required in the Special District #2 regulations: such as Space and Bulk Requirements; Neighborhood Compatibility, Landscaping and Buffering, Design of Development, Signage, and Commercial Standards; and, Transportation including parking, vehicular and pedestrian access.

On February 7, 1995, the Missoula Consolidated Planning Board held a hearing and recommended approval with the ten conditions recommended by the staff, as follows:

1. All of the areas not covered with buildings or pavement shall be landscaped and maintained;
2. All of the areas not covered with buildings or landscaped shall be paved;
3. The development shall prevent such nuisances, as glare, noxious odors, noise, dust, and storm drainage, emanating on-site which would have adverse impacts on adjacent residential uses;
4. If the applicant plans to provide for an outdoor storage area, that area shall be securely fenced and be screened with natural vegetation to an opacity of 75 to 100 percent;
5. If and when a sign is proposed, the applicant shall comply with Special District #2 sign standards;
6. The applicant shall provide the required number of parking spaces for the development;
7. The business shall not operate between the hours of 7:00 p.m. and 7:00 a.m.;
8. The applicant shall be limited to one vehicular access to the property from Reserve Street;
9. The applicant shall provide pedestrian access designed to meet the uses and functions of the development and accessing the sidewalk along Reserve Street, and be installed with the development; and,
10. Along with 8 & 9, the applicant shall plan for the appropriate and necessary continuation of pedestrian and vehicular access and egress to his proposed residential development area.

The complete staff report is on file in the Commissioners' Office.

The hearing was opened to public comment.

Don Stinger, 245 N. Davis Street, Missoula, Co-Chair of the Reserve Street Corridor Planning and Zoning Committee, stated that the committee has had 14 meetings where they have considered the SD#2 area. This development came in to OCD just before December. The proposal does fulfill all the requirements since the height limit was lowered. He testified at the Planning Board as a proponent.

Barbara Evans asked Don Stinger that when comparing the former SD#2 to the present one, were there were any changes in the sign standards.

Don Stinger indicated there are changes in the conditions. He then stated he wished to go on record as being a proponent.

Barbara Evans thanked Don Stinger for his testimony. She then asked if anyone else wished to speak either for or against this project.

Jim Decker, applicant's representative, stated that the staff's recommendations have been reviewed and they have no opposition to any of the recommendations. He then further addressed Barbara Evan's earlier question regarding signage. He stated that when they started the project in December, they decided to comply with the City's sign standards (which are more stringent than those of the County) so that if the site was annexed at some later date, they would be in compliance.

Barbara Evans asked if anyone else wished to speak either for or against this project; there being none, the hearing was closed to public comment.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the request from Bill Hoff, Custom Cabinets Unlimited, Inc., for a Special Use Permit to convert a single-family dwelling at 1522 South Reserve Street into a sales/display/office, and construct a 2,600 square foot warehouse for storage and minor repair of pre-made cabinets contingent upon compliance with the following conditions:

1. All of the areas not covered with buildings or pavement shall be landscaped and maintained;
2. All of the areas not covered with buildings or landscaped shall be paved;
3. The development shall prevent such nuisances, as glare, noxious odors, noise, dust, and storm drainage, emanating on-site which would have adverse impacts on adjacent residential uses;
4. If the applicant plans to provide for an outdoor storage area, that area shall be securely fenced and be screened with natural vegetation to an opacity of 75 to 100 percent;
5. If and when a sign is proposed, the applicant shall comply with Special District #2 sign standards;
6. The applicant shall provide the required number of parking spaces for the development;
7. The business shall not operate between the hours of 7:00 p.m. and 7:00 a.m.;
8. The applicant shall be limited to one vehicular access to the property from Reserve Street;
9. The applicant shall provide pedestrian access designed to meet the uses and functions of the development and accessing the sidewalk along Reserve Street, and be installed with the development; and,
10. Along with 8 & 9, the applicant shall plan for the appropriate and necessary continuation of pedestrian and vehicular access and egress to his proposed residential development area.

The motion carried on a vote of 3-0.

HEARING: APPLICATION OF MISSOULA COUNTY JUNK VEHICLE PROGRAM FOR MOTOR VEHICLE WRECKING FACILITY IN SEELEY LAKE (LOTS 15 & 16, BLOCK 1, SEELEY LAKE HOMESITES #10A)

Michael Sehestedt, Deputy County Attorney, stated that the Missoula County Junk Vehicle Program has been looking for more cost-effective ways to collect junk vehicles in the Seeley Lake area. The low bidder was awarded the project conditional upon obtaining approval for that bidder's site. Pursuant to State law, the State notified the Board of County Commissioners that they had a right to hold a hearing for the purpose of making a determination as to whether or not the development of a junk vehicle site would have an adverse affect on the quality of life in the surrounding neighborhood.

Barbara Evans asked Michael Kennedy to report on what occurred at the meeting with the Refuse District in Seeley Lake from the previous night.

Michael Kennedy reported that subsequent to the award of the contract, several things have occurred. At last night's meeting, a more suitable site was proposed as a substitute for the site in downtown Seeley Lake. The Refuse District officially accepted that recommendation and agreed to work with Alan Woodward who is the contractor. It is believed that this alternate site will be adopted. The original proposal therefore becomes inoperative since a more suitable site has been found. The contract will remain in force with Alan Woodward.

The hearing was opened to public comment.

Mel Ketland, resident of Seeley Lake, made a recommendation that the contractor lay a concrete pad, seal it, and curb it so that the fluid drainage from the junk vehicles will not leak into the aquifer. He then presented Barbara Evans with a letter citing 9 locations which he believes qualify for the Decay Ordinance.

Barbara Evans explained to Mel Ketland that, based on County Attorney advice, a Decay Ordinance Complaint form (for each site) must be completed and signed by the complainant. The Decay Officer then inspects the site in question to determine whether or not it qualifies under the stipulations based on statute. She then said it was very notable that Mel Ketland wanted to see things cleaned up. She stated that she would give him a copy of the rules and several blank Decay Ordinance forms. After further discussion, she thanked him for his comments and support. She then asked if anyone else wished to speak for or against this proposed wrecking yard.

Charles Burmeister, resident of Seeley Lake, inquired if he heard correctly that the site has been changed from the Woodward's property to the dump site. The Commissioners responded that this was correct. He then commented that his purpose for coming to this meeting was to try to clean up the mess in Seeley Lake.

Barbara Evans thanked him for taking the time to attend the meeting. She then asked if anyone else cared to speak.

Colleen Qualme, resident of Seeley Lake, commented that the proposed site would be an entry to Seeley Lake property and stated her concern about its unsightly appearance. She stated that she and her husband have continually encouraged people to clean up their properties and have witnessed a noticeable improvement. She therefore was greatly concerned when she learned of this proposed junk vehicle site.

Barbara Evans asked if anyone else wished to comment.

Robert Skiles, resident of Seeley Lake, indicated that he lives just two blocks away from the first proposed site. He stated he was happy that the Refuse District had the wisdom to take the junk to the junk pile.

Barbara Evans asked if anyone else cared to speak; there being no further testimony, the hearing was closed to public comment.

Fern Hart pointed out that today was the last day to respond to the State Department of Health and Environmental Sciences Waste Management Division and therefore the Board of County Commissioners would immediately fax a resolution to the Department.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners adopt a Resolution in opposition to the location of the proposed facility (Lots 15 and 16, Block 1, Seeley Lake Homesites #10A, in Section 3, T16N, R15W) and that a copy of this resolution be transmitted to the State Department of Health and Environmental Sciences Waste Management Division. The motion carried on a vote of 3-0.

Michael Sehestedt clarified that the issue the Commissioners were dealing with at this hearing was whether or not to veto the disposal facility site that was described in the legal ad. With the Commissioners resolution stating their opposition, the State may not issue a license for that site. The new site proposed to the Refuse Disposal Board will have to be submitted to the State for licensure and go through all the required notice procedures and the Commissioners would again have the option of holding a hearing for that site.

Fern Hart explained that if a hearing is not held on the new site, the application for the vehicle wrecking facility license would be automatically approved.

#### RESOLUTION NO. 95-015

The Board of County Commissioners signed Resolution No. 95-015, a Resolution opposing the motor vehicle graveyard proposed for Lots 15 and 16, Block 1, Seeley Lake Homesites #10A because the facility would have a significant adverse affect on the quality of life of adjoining landowners and the surrounding community.

#### STUDENT VISITATION

Colleen Dowdall, Deputy County Attorney, also a member of the Board of the Western Montana Bar Association, introduced three students from Sentinel High School -- Dillon Brown, Bill Greeley, and Kimberly Hurley. She explained that these students are considering professions in the field of law and wanted to observe the Commissioners at work. They had already visited the District Court and a private law firm and would be visiting the Justice Court later in the day. The Commissioners welcomed them.

#### SALE OF TAX DEED PROPERTY

Information as submitted by Phyllis Browder of the Clerk & Recorder's Office explained that as required by M.C.A. 7-8-2301 (3) this was the second auction for the 1991 24-month delinquencies. Listed below are the parcels to be auctioned, along with the fair market value for each parcel as determined by Jim Fairbanks, Appraisal Office:

<u>SUID #</u>	<u>Legal Description</u>	<u>Fair Market Value</u>
5807637	Mountain Shadows #1 -- Lot 2 Blk 2	\$20,000
5808128	Mountain Shadows #1 -- Lot 2 Blk 5	\$30,000

The Notice of Tax Deed Land Sale was published in the Missoulian for two consecutive Sundays and posted in three places as required by M.C.A. 7-8-2302. A copy of the tax deed and a courtesy letter were mailed to all interested parties on January 10, 1995, stating that they had the right to redeem the property prior to this auction.

Barbara Evans identified the first parcel, Mountain Shadows #1, Lot 2 in Block 2, having a fair market value of \$20,000. She then asked if anyone in the audience cared to bid on this piece of property. She made the call three times. There were no bids. She then identified the second parcel, Mountain Shadows #1, Lot 2 in Block 5, having a fair market value of \$30,000. She asked if anyone cared to bid on this piece of property. A successful bid of \$30,000 was made by Robert L. and Beatrice M. Helean.

#### QUITCLAIM DEED

The Board of County Commissioners signed a Quitclaim Deed between Missoula County and Robert L. and Beatrice M. Helean for the purchase of property taken by tax deed, Mountain Shadows #1, Lot 2 in Block 5, for a purchase price of \$30,000, as per the terms and payment schedule set forth. The document was returned to Michael Sehestedt, Deputy County Attorney, for further signatures and handling.

#### HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER -- NELSON -- FOR TRACT 12D OF COS 1860 IN SECTION 10, T14N, R20W

Kathy Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider a family transfer for Tract 12D of COS 1860 in Section 10, T14N, R20W for Sheila M. Nelson. Sheila Nelson owns a 5.05-acre parcel located in the Meadows area East of Highway 93 and North of the Wye. Ms. Nelson proposes to create a 2.5-acre parcel for transfer to her husband, James A. Nelson.

The history of the parcel is as follows: COS 1677 was filed by Geneva Cates in 1978 creating 18 parcels greater than 20 acres in size. COS 1860 was filed by Dean Holm in 1979, creating four parcels from Tract 12 of COS 1677 using two family transfer exemptions, an occasional sale and remainder. Tract 12D is the occasional sale parcel and was purchased by Ms. Nelson on February 3, 1995. According to the records kept by the Missoula County Surveyor, the applicant has not used any exemptions to the Subdivision and Platting Act.

Barbara Evans asked if anyone from the Nelson family was present in the audience.

James Nelson, applicant's husband, stated that the purpose of this family transfer would be for future financial planning and there is no intent to sell the property in the near future. This would be used as a "nest egg" for their two sons, ages 8 and 4.

Fern Hart explained that the Board of County Commissioners is required to determine on land splits of this type whether or not the applicant is trying to evade the Montana Subdivision and Platting Act. It must be determined if the applicant's request to divide property and give it to a family member has some purpose other than to sell the property. She therefore asked Mr. Nelson how he plans to use this for financial security.

James Nelson stated that he plans on holding onto the property and then in 10 years or so possibly selling it.

Fern Hart offered some alternative options: he could wait 10 years; he could request a Certificate of Survey for mortgage purposes; or, he could just divide it and give it to his sons.

James Nelson indicated that he has two sons and would not want to pick one or the other. Also, from a financial standpoint, it was more feasible for him to go through this process now.

Barbara Evans offered to explain to James Nelson why there was some hesitancy in approving the request. She went on to explain the situation in the Meadows area out at the Wye. Much of the property there was split through Certificate of Survey that did not go through any review process and numerous problems have occurred as a result thereof. She then stated that she understood his desire to have financial security for his children but explained the extreme difficulty on her part in making a determination in these instances.

Fern Hart asked Kathy Smith if Sheila Nelson could gift this one parcel to her two sons, in joint tenancy, leaving a remainder.

Kathy Smith stated that he could do this; however, a trust should be set up. She stated that Sheila Nelson could request at this time to change the transfer of the parcel to their two sons instead of to her husband.

Barbara Evans indicated that the Board could not vote on this revised request until confirmation was received from an attorney that Sheila Nelson has started the process of setting up a trust for their minor children.

Sheila Nelson confirmed that she would begin this process.

Barbara Evans stated that, based on Kathy Smith's counsel, this request from Sheila Nelson could be tabled without a date and there would be no need to go to a hearing again. The only requirement would be to receive confirmation from an attorney that the process for setting up a trust has begun. With this requirement met, the Board could approve the request at their morning meeting.

#### HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER -- ROCKWOOD -- FOR COS 1065 IN SECTION 33, T15N, R21W

Kathy Smith presented the report as follows: The Board of County Commissioners was requested to consider a family transfer for COS 1065 in Section 33, T15N, R21W for June K. Rockwood. June Rockwood owns a 2-acre parcel located near Frenchtown between Interstate 90 and Mullan Road and across from the Frenchtown Pond. Ms.

Rockwood proposes to create a 1-acre parcel for transfer to her daughter, Debra A. Pengelly. Her son currently resides on what would become the remainder.

The history of the parcel is as follows: Prior to the purchase of the parcel by Ms. Rockwood, the parent tract was originally approximately 10 acres and in 1975, COS 568 was filed using an occasional sale exemption and creating a 4.05-acre tract. In 1976, COS 1065 was filed using an agricultural exemption and creating the current 2-acre parcel. In 1977, COS 1099 was filed creating a 5.8-acre parcel which was subdivided in 1978 as the Star Trail Acres creating four tracts and COS 1543 was filed creating a 1-acre tract using the occasional sale exemption. Also, in 1978, COS 1451 was filed creating two 2-acre tracts from COS 568. This parcel was further divided into four 1-acre tracts through the filing of COS' 1617A and 2415 in 1979 and 1980 using occasional sale exemptions. Finally, in June, 1989, the agricultural exemption was revoked and the parcel was sold to Ms. Rockwood. According to the records kept by the Missoula County Surveyor, the applicant has not used any exemptions to the Subdivision and Platting Act.

The hearing was opened to public comment; there being none, the hearing was closed to public testimony.

Michael Kennedy moved and Barbara Evans seconded the motion that the consideration of a request for a family transfer for COS 1065 in Section 33, T15N, R21W for June K. Rockwood be granted, contingent upon transfer of the deeds to the family member. 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, MARCH 2, 1995

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Hart served on a panel held at the U/M Theatre for the Balanced Budget Amendment.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending February 28, 1995.

Amendment -- The Board of County Commissioners signed an amendment to the Missoula County Flexible Benefits Plan Document, effective July 1, 1995, whereby Missoula County terminates the Dependent Care Account Plan, a component of the Missoula County Flexible Benefits Plan. The document was returned to Hal Luttschwager, Risk Manager, for further handling.

Resolution No. 95-016 -- The Board of County Commissioners signed Resolution No. 95-016, a Resolution supporting House Bill No. 304, which authorizes the Department of Corrections and Human Services and Local Governmental entities to contract for the design, financing, construction, and operation of regional correctional facilities; authorizing the department to grant a local government entity an option to purchase a regional correctional facility owned solely by the State; providing for contract terms and a time limit on contracts; granting the department rulemaking authority; amending section 53-21-203 MCA; and providing an immediate effective date.

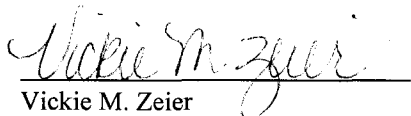
Resolution No. 95-017 -- The Board of County Commissioners signed Resolution No. 95-017, a Resolution of Intention to create Rural Special Improvement District No. 8920 for the purpose of dust abatement maintenance for a portion of Zaugg Drive and Fontaine Drive. The hearing date was set for March 22, 1995 at 1:30 p.m.

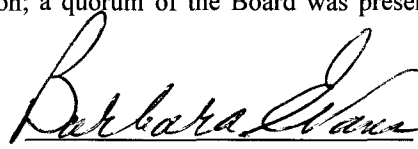
Other items included:

- \* the Commissioners received and approved the Operational Review of the Central Services Department, dated February 23, 1995, from Susan Reed, Missoula County Auditor. The document was forwarded to the Recording Office for filing.

#### FRIDAY, MARCH 3, 1995

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

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### MONDAY, MARCH 6, 1995

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was on vacation the week of March 6-10.

#### DAILY ADMINISTRATIVE MEETING

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

Contract -- The Board of County Commissioners signed a Contract for Preferential Repurchase of Tax Deed Property, SUID No. 0881106, Lots 7 and 8, E. 2 feet of 9, Block C, Carline #2, between Wilda L. Hausauer and Missoula County. The County took tax deed to the property for nonpayment of taxes, penalty, interest and costs (including subsequent assessments) totaling \$2,143.18. The taxpayer wishes to repurchase the property as per the terms set forth in the contract. The document was returned to Michael Sehestedt, Deputy County Attorney, for further handling.

Replacement Bond -- The Board of County Commissioners signed Bond #R20 in the amount of \$10,000 for the County of Missoula Medical Office Building Revenue Bond Series 1978, 7.25%, Missoula Community Hospital Project, due June 1, 1997. The document was returned to First Interstate Bank.

Professional Services Contracts -- The Board of County Commissioners signed ten (1) Professional Services Contracts between Missoula County and Renee Taaffe-Johnson, Darryl Furtkamp, Jennifer Rudio, Kathryn Kress, Leah Berner, Barbara Compton, Sheila Miles, Bev Beck Glueckert, Joe Batt, and Lulu Yee, independent contractors, for the purpose of planning, acquiring supplies, instruction and clean-up for classes offered to the public by Missoula Museum of the Arts, as per the terms set forth, for the period commencing January 1, 1995 through December 30, 1995, for compensation in the amount of \$10 per hour (or \$7.50 per hour when co-taught).

Agreement -- The Board of County Commissioners signed a Winter Road Maintenance Agreement between Lake County and Missoula County whereby they agree to cooperate in the exchange of winter maintenance on roads in Lake and Missoula Counties. The term of the agreement shall be for five (5) years beginning with the 1995-1996 winter maintenance season. The document was forwarded to the Lake County Commissioners for signatures.

Encroachment Permit -- The Board of County Commissioners signed an Encroachment Permit, agreeing to permit Macintosh Manor Homeowners Association, Inc., P.O. Box 12, Lolo, Montana to encroach upon a portion of County right-of-way being located in the SW¼ of Section 11, T11N, R20W, and shall be limited to the fence enclosure for individual garbage service, effective for a period not to exceed 10 years, renewable at the option of the County.

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

#### TUESDAY, MARCH 7, 1995

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

Audit List -- Commissioners Evans and Kennedy signed the Audit List, dated March 6, 1995, pages 5-32, with a grand total of \$167,158.64. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

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

Agreement -- Chairman Evans signed DHES Agreement No. 350256 between Missoula County and the Montana Department of Health and Environmental Sciences (DHES) for the purpose of completing a maternal and child health community assessment in Missoula County, as per the items and terms set forth, for the period from March 7, 1995 through June 30, 1995, with payment from DHES being up to a maximum of \$20,000. The Agreement was forwarded to DHES in Helena.

Lease Agreement -- The Board of County Commissioners signed a Lease Agreement between Missoula County and Missoula Horseman's Council, Inc., for the purpose of operating and maintaining an Equestrian Park complex on Spurgin Road, for a term of 10 years and may extend this Lease Agreement for two additional terms of 10 years, for the sum of One Dollar (\$1.00) and other good and valuable consideration. The Lessee may make improvements, including, but not limited to fences, restrooms, concessions, parking lot, jumps, riding tracks and other improvements essential to the operation of an Equestrian Park. The document was returned to John DeVore, Administrative Officer, for further signatures and handling.

Extension Letter -- The Board of County Commissioners signed a letter to Andy Fisher, Eli & Associate, approving a 6-month filing extension for Coombs Addition, making the new filing deadline September 4, 1995. In addition, the Commissioners approved the request to amend Condition No. 8 whereby it will be required that a 20-foot driveway easement centered on the property line be shown on the face of the plat.

Plat -- The Board of County Commissioners signed a Plat, a Common Area Management Plan and Maintenance Agreement, and a Subdivision Improvements Agreement and Guarantee for Trails End Estates, a 27-lot subdivision located in the W½ of Section 19, T12N, R19W, P.M.M., having a total area of 60.38 acres with the owners/developers of record being Drake A. Lemm (Tract U) and Brody Nelson and Matt Burnett (Tracts 5 and 6).

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

#### WEDNESDAY, MARCH 8, 1995

The Board of County Commissioners did not meet in regular session. Commissioner Evans was in Helena attending a Montana Department of Transportation meeting. The Weekly Public Meeting scheduled for this date was canceled as two of the Commissioners were out of town.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Romae M. Callahan as principal for Warrant #61478 issued December 20, 1994 on the Missoula County Trust Fund in the amount of \$46.15 now unable to be found.

#### THURSDAY, MARCH 9, 1995

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

DAILY ADMINISTRATIVE MEETING

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

Resolution -- Chairman Evans signed a Federal Surplus Resolution stipulating the terms and conditions for the Surplus Property Program in addition to personnel authorized to purchase surplus property from the State of Montana. The document was returned to the Property and Supply Bureau in Helena.

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Professional Services Contract with Mary Gallagher, an independent contractor who provides legal counsel for the Partnership Health Center, to amend the performance schedule whereby the Contractor shall commence performance of this contract on October 12, 1993 and conclude on November 30, 1994, and also to increase the maximum number of hours from 110 to 150.

Bid Award -- Michael Kennedy moved and Barbara Evans seconded the motion that the Board of County Commissioners award the bid to Bitterroot Motors for a 4 x 2 Pickup for Animal Control for \$14,596.10 as the lowest and best bid which met all bid specifications. The motion carried on a vote of 2-0.

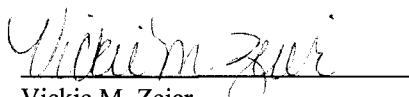
The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, MARCH 10, 1995**

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy was out of the office all day.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending February 28, 1995.

Grant Award -- Chairman Evans, as the government executive, signed the COPS FAST Community Policing Information form submitted by Sheriff Doug Chase, attesting to its accuracy, as a requirement of the COPS FAST hiring grant funds, with the total amount of federal grant funds requested for salaries and benefits for officer(s) to be hired over the next three years being \$74,942.03. The document was returned to the Sheriff's Department for further signatures and handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MARCH 13, 1995**

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 E. Odlin, for month ending February 28, 1995.

**TUESDAY, MARCH 14, 1995**

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

DAILY ADMINISTRATIVE MEETING

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

Addendum to Agreement -- The Board of County Commissioners signed an Addendum to Agreement to Sell and Purchase between Missoula County and Anthony Martinez for two lots on Fairview Ave. (Carline Addition) extending the closing date to May 15, 1995.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #4, Pay Date February 17, 1995, with a total Missoula County payroll of \$498,688.77. The Transmittal Sheet was returned to the Auditor's Office.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #5, Pay Date March 3, 1995, with a total Missoula County payroll of \$510,884.26. The Transmittal Sheet was returned to the Auditor's Office.

Change Order -- Chairman Evans signed Change Order #4 for the Linda Vista Sewer Project, RSID No. 8453, changing the contract price and the contract time. The Change Order was returned to John DeVore, Administrative Officer, for further handling.

Other items included:

- 1) the Commissioners signed a letter to Summit Outdoor Advertising canceling the lease for placement of advertising structures on County property.



- 2) the Commissioners approved the recommendation to provide two adult tickets for admission to the Western Montana Fair to every Missoula County employee and also State employees associated with Missoula County (Human Services Department, Assessor/Appraisal Office, and District Court Judges) as employee incentives and to show the Commissioners' appreciation.

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

### WEDNESDAY, MARCH 15, 1995

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

Audit List -- The Board of County Commissioners signed the Audit List, dated March 14, 1995, pages 5-45, with a grand total of \$223,790.85. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated January 1, 1995, between the Missoula Board of County Commissioners and Missoula Public Library with regard to purchasing services to benefit parents of 0-3 year olds (and their children) who have been referred to the Partnership Project and to develop a parenting collection of books, videos, and other materials designed to support parenting activities for use by agencies and participants in the Strengthening Families Project and in the community as a whole, as per the terms set forth, for the period from January 1, 1995 to June 30, 1995 and having a total cash value of \$4,000.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated January 1, 1995, between the Missoula Board of County Commissioners and W.O.R.D.--FUTURES with regard to purchasing services to benefit pregnant and parenting teens (families headed by teen parents with children, ages 0-3), as per the terms set forth, for the period from January 1, 1995 to June 30, 1995 and having a total cash value of \$13,594.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated January 1, 1995, between the Missoula Board of County Commissioners and Child & Family Service Network: Young Families Program with regard to purchasing services to benefit pregnant and parent teens (families headed by teen parents with children, ages 0-3), as per the terms set forth, for the period from January 1, 1995 to June 30, 1995 and having a total cash value of \$1,200.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated January 1, 1995, between the Missoula Board of County Commissioners and Missoula Child and Family Resource Council with regard to purchasing 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, as per the terms set forth, for the period from January 1, 1995 to June 30, 1995 and having a total cash value of \$8,517.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1994, between the Missoula Board of County Commissioners and Montana People's Action with regard to purchasing pre-development services for the Mobile Home Court Resident Ownership Project from consultant Jack Mador, who will work with local officials to figure out the technical aspects of the project, as per the terms set forth, for the period from July 1, 1994 to June 30, 1995 and having a total cash value of \$5,000.

Change Order -- Chairman Evans signed Change Order #2 for Linda Vista Sewer (RSID #8452), Project No. 2591.01, Contract Date May 18, 1994, for Contractor 4G Plumbing & Heating Inc.. The new Contract Price will be \$125,886.83. The date for completion of all work under the contract will be August 30, 1994. The Change Order was returned to John DeVore, Administrative Officer, for further handling.

Contract -- Chairman Evans signed a Contract Number 95-024-0023 between Montana State Department of Family Services and Missoula Board of County Commissioners for the Partnership to Strengthen Families Project. The purpose of this contract is to provide Partnership Services to families at high risk of abuse and neglect in Missoula County from January 1, 1995 through June 30, 1995, for a total amount of \$72,489.

Other items included:

- \* the Commissioners discussed the Sapphire Drive RSID (Tim Wolfe of Territorial Engineering) and agreed to consider the area for a contribution of County funds; however, the Commissioners want a complete proposal including access drives -- which will require some work with individual lots granting easements.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

BID AWARD: TWO SINGLE-AXLE DUMP TRUCKS (ROAD DEPT.)

Michael Kennedy explained from information received from Horace Brown, County Surveyor, that the Road Department opened bids for two single-axle dump trucks with trade-ins on March 6, 1995, at 10:00 a.m., with the following results:

	W/O Trade	With Trade	
Northwest Peterbilt	\$96,614.00	\$92,614.00	Heil Box
	\$96,500.00	\$92,500.00	Workman Box
Missoula Truck Sale	\$107,579.06	\$105,079.06	Heil Box
	\$107,415.06	\$104,915.06	Workman Box
Demarais Olds-GMC	\$105,680.00	\$101,680.00	Heil Box
	\$105,680.00	\$101,680.00	Workman Box

After reviewing the bids, it was Horace Brown's recommendation that the bid be awarded to Northwest Peterbilt for two Ford single-axle dump trucks with Heil dump box and with trade-ins for \$92,614.00.

Michael Kennedy added that there was an allocation of \$111,000 for these vehicles so all of the above bids were substantially below the allocated funds for these particular bid items.

Michael Kennedy moved and Fern Hart seconded the motion to accept the bid from Northwest Peterbilt for two (2) Ford single-axle dump trucks with Heil dump box and with trade-ins for \$92,614.00 as the lowest and best bid which met all bid specifications. The motion carried on a vote of 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER -- RAY -- FOR TRACT B1 OF COS 2822 IN SECTION 14, T11N, R20W

Barbara Evans stated that the hearing for the above-named family transfer request has been postponed until next week's Public Meeting on Wednesday, March 22, 1995.

HEARING (CERTIFICATE OF SURVEY REVIEW): BOUNDARY RELOCATION AND AGRICULTURAL EXEMPTION -- FLYNN -- FOR THE NW¼ NE¼ AND THE NE¼ NW¼ OF SECTION 18, T13N, R19W

Kathy Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider whether to approve a request for a boundary relocation and agricultural exemption for a parcel located in the NW¼ NE¼ and the NE¼ NW¼ of Section 18, T13N, R19W for Elmer and Mary Flynn. Elmer and Mary Flynn own approximately 100 acres of property located off Highway 10 southeast of the airport. In approximately 1967, the Flynn's created a .985-acre parcel which was then transferred to Edward and Mari Frances Courtney, daughter and son-in-law, who have resided on the property ever since. The Flynn's wish to enlarge this parcel by approximately 1 acre so that Mr. and Mrs. Courtney can build a garage. In addition, they wish to create an agricultural parcel of approximately 9 acres for transfer to their other daughter and son-in-law, Gary H. and Colleen McKinley. This parcel is currently in agricultural use.

The history of the parcel is as follows: Mr. and Mrs. Flynn purchased the original parcel in 1951 and, as described above, created a .985-acre parcel in 1967. They had a survey done in 1975 creating a parcel similar to the agricultural parcel along with another 1.13-acre parcel but this was never filed.

According to the records kept by the Missoula County Surveyor's office, the applicants have previously used various exemptions to the Subdivision and Platting Act on unrelated parcels of property, including an agricultural exemption parcel which was revoked.

The hearing was opened to public comment.

Mary Flynn, co-applicant, explained she and her husband previously gave the deeds to their daughters but it was just an oversight on their daughters' part that they did not file the deeds at that time.

Fern Hart asked Mary Flynn if she understood correctly that she and her husband wished to take the small acreage, which is presently slightly less than an acre, and increase it to 2 acres.

Mary Flynn indicated that this was correct.

Fern Hart then clarified that, regarding the boundary relocation, the Flynn's were not adding a parcel but merely increasing the size of an existing parcel.

Barbara Evans explained to Elmer and Mary Flynn that with the parcel being placed under an agricultural exemption, if their daughters ever wanted to split the parcels, they would be required to come before the Board of County Commissioners for approval to remove the agricultural exemption.

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

Fern Hart moved and Michael Kennedy seconded the motion to grant the boundary relocation and agricultural exemption for the parcel located in the NW¼ NE¼ and the NE¼ NW¼ of Section 18, T13N, R19W for Elmer and

Mary Flynn, as requested, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. 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 1:40 p.m.

**THURSDAY, MARCH 16, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Kennedy spoke at the Dedication Ceremonies for the new Mountain Line buses held on Broadway in front of the Courthouse. In the afternoon, Commissioners Evans and Hart attended the opening session of the Blue Ribbon Commission; and in the evening, Commissioner Evans attended a TDM (Transportation Demand Management) meeting held at the Florence School.

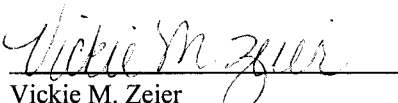
Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated January 1, 1995, between the Missoula Board of County Commissioners and Child Care Resources, Inc. with regard to purchasing services to benefit families of children ages 0-3 seeking respite care and families referred to DFS but not currently on DFS caseloads seeking respite care, as per the terms set forth, for the period from January 1, 1995 to June 30, 1995 and having a total cash value of \$9,000.

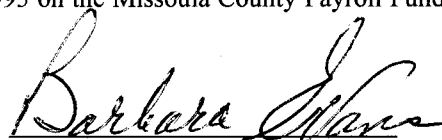
Employment Agreement -- The Board of County Commissioners signed an Employment Agreement, dated March 15, 1995, between the Missoula Planning Policy Committee and Janet Stevens for the purpose of employing her as the Director of the Office of Community Development, as per the employment duties and functions set forth, and as per the terms and conditions set forth in the Agreement. The document was forwarded to the City Clerk for signatures and handling.

**FRIDAY, MARCH 17, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was in Polson attending a Mental Health Board Meeting.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Brigitte Murray as principal for Warrant #20076 issued March 10, 1995 on the Missoula County Payroll Fund in the amount of \$1236.47 now unable to be found.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MARCH 20, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners and Department Heads attended a Planning Session held at the Holiday Inn facilitated by Ginny Tribe. At noon, Commissioner Hart spoke at the League of Women Voters Luncheon Meeting.

Uncalled County Warrants -- The Board of County Commissioners signed a memo of approval from Susan Reed, Auditor, to remove the attached listing of warrants from the Outstanding Warrant Listing in accordance with MCA 7-6-2607(2) which states that uncalled County Warrants over one year old are to be canceled.

Policy Statement -- The Board of County Commissioners signed Policy Statement No. 95-A, the purpose of which is to request that the GEO Code or SUID number (real estate tax identification number) be provided on all documents being recorded with the Missoula County Clerk & Recorder's Office that transfer ownership of real property. This will enable the Department of Revenue to process ownership transfers in a more efficient manner and it will benefit the taxpayers when Missoula County establishes a geographical information system. The document was returned to Vickie Zeier, Clerk & Recorder, for distribution.

Other items included:

- \* the Commissioners signed a letter to Mr. Chue Vang regarding the Community Garden on the corner of Spurgin and 37th Avenue. The letter stated that the Commissioners felt that the areas between the garden and the two border streets should be maintained and requested that, as a condition of use as a community garden, the Hmong community take that responsibility.

**TUESDAY, MARCH 21, 1995**

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 Jacqueline Alford as principal for Warrant #40739 issued March 17, 1995 on the Missoula County SD#1 Payroll Fund in the amount of \$1,767.85 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Resolution No. 95-018 -- The Board of County Commissioners signed Resolution No. 95-018, a Resolution granting an agricultural exemption under the Montana Subdivision and Platting Act for a portion of land located in the NW¼ of Section 18, T13N, R19W (approximately 8.5 acres) owned by Elmer and Mary Flynn.

Resolution No. 95-019 -- Acting Chair Hart signed Resolution No. 95-019, a Resolution authorizing a project under Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended, and the issuance and sale of a \$455,000 Economic Development Revenue Note (Blue Mountain Clinic, Inc. Project), Series 1995, to finance the same; approving the form of documentation in connection therewith; and authorizing the execution and delivery of the note and documentation.

Commercial Lease Agreement -- The Board of County Commissioners signed a Commercial Lease Agreement between Missoula County Employee Benefits Plan and Jensen & Larsen Partnership, for the purpose of leasing the premises located at 438 W. Spruce Street, as per the terms set forth, for a total amount of rent of \$22,500 per year for five years, commencing April 1, 1995 through March 31, 2000. The document was returned to Hal Luttschwager, Risk Manager, for further handling.

Interlocal Agreement -- The Board of County Commissioners signed an Interlocal Agreement between the Missoula City-County Health Department, Missoula County, the City of Missoula, and the Missoula City-County Air Pollution Control Board regarding the regulation of new roads, parking areas and driveways in the Missoula County Air Stagnation Zone to cooperate in permit issuance and enforcement.

Other items included:

- 1) the Commissioners signed a letter to Cindy Bartling (Executive Director, Friends to Youth) stating that Missoula County will subordinate interest to a first mortgage lender for construction of their new building and for a permanent takeout loan, should that be necessary.
- 2) the Commissioners signed a letter to Larry Handegard (State Director, APHIS Animal Damage Control) stating that the Board of County Commissioners authorizes Cenex Supply & Marketing, Inc. (formerly Cenex, Ltd.) to be the Missoula County designated dealer for supplying U.S. Fish and Wildlife Service rodent control materials.
- 3) the Commissioners signed letters to William & Helen Cunningham, Dr. Edward L. Foss, and Rosalie MacDowell-Qualley & Paul Qualley, thanking them for the conservation easements they granted.
- 4) Michael Kennedy moved and Fern Hart seconded the motion to appoint Fern Hart as Acting Chair to sign the bond closing documents for Blue Mountain Clinic, Inc. The motion carried on a vote of 2-0.
- 5) the Commissioners reappointed Lois Anderson and Tom Lind to three-year terms as a "regular" members on the Larchmont Golf Course Board of Directors through March 31, 1998.
- 6) the Commissioners appointed Bob Tutskey and Mike Fussell to three-year term as "alternate" members on the Historical Museum Board of Trustees through December 31, 1997.
- 7) the Commissioners approved the HUD Grant Application as submitted by Cindy Klette, Office of Planning and Program Development.

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

### WEDNESDAY, MARCH 22, 1995

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 March 22, 1995, pages 6-39, with a grand total of \$201,652.22. The Audit List was returned to the Accounting Department.

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

#### BID AWARD: TRAFFIC LINE PAINT (1,600 GAL. YELLOW, 2,600 GAL. WHITE); ROAD DEPT.

Barbara Evans explained from information received from Horace Brown, County Surveyor, that the Road Department opened bids for 1,600 gallons of yellow traffic paint and 2,600 gallons of white traffic paint on March 13, 1995 at 10:00 a.m., with the following results:

Montana Flasher & Barricade	\$41,890.00
Columbia Paint Company	\$26,904.00

After reviewing the bids, Horace Brown recommended that the bid be awarded to Columbia Paint Company for \$26,904.00 as the lowest and best bid.

Michael Kennedy stated that the County has purchased lead-free paint for the last couple of years and this paint also is lead-free.

Michael Kennedy moved and Fern Hart seconded the motion to accept the bid from Columbia Paint Company for 1,600 gallons of yellow traffic paint and 2,600 gallons of white traffic paint for \$26,904.00 as the lowest and best bid which met all bid specifications. The motion carried on a vote of 3-0.

The Public Meeting then recessed as the Board of County Commissioners and reconvened as the Planning and Zoning Commission. Present were Commissioners Barbara Evans, Fern Hart and Michael Kennedy. Also present were members Horace Brown, County Surveyor, and Vickie Zeier, Clerk and Recorder/ Treasurer.

HEARING (PLANNING & ZONING COMMISSION): ZONING REQUEST -- ZONING DIST. #4 -- FOR TRACT 3A OF COS 4125 IN SE¼ OF THE NE¼ OF SECTION 3, T12N, R19W (DOUG MACDONALD, 4485 SNOWSHOE LN.) -- SINGLE-FAMILY DWELLING

Jennie Dixon, Planner at the Office of Community Development, presented the request from Doug MacDonald to build a single-family home and an attached garage at 4485 Snowshoe Lane in Pattee Canyon. The building proposal is to disturb only the landform and vegetation necessary to construct the residence and driveway access.

The subject property is located at 4485 Snowshoe Lane, about 1½ miles up Pattee Canyon Drive from the intersection of Southwest Higgins and Pattee Canyon Drive. The property is about a 5% slope and they plan to excavate about 200-300 cubic yards of fill and then place it on the lower end of the slope to cut out a terrace for their home. Snowshoe Lane turns left off of Pattee Canyon Drive, and the property is approximately 500 feet from Pattee Canyon Drive on the left side of Snowshoe Lane. Tract 3A of COS 4125 contains 4.83 acres. Zoning District #4 permits single family dwellings, provided that the Planning and Zoning Commission finds that the building proposal is not in conflict with the natural physiography of the area. The Rural Fire District responded with some suggestions how to mitigate potential wall fire hazards.

The Office of Community Development does not make recommendations for building requests in Zoning District #4 because the criteria for approval regarding "natural physiography" are vague, lack standards and need clarification. The Pattee Canyon Landowners Association wrote a letter in support of this proposal. On March 7, 1995, the Missoula Consolidated Planning Board conducted a public hearing and voted 7-1 to recommend approval of the building request.

The hearing was opened to public comment.

Fern Hart stated that, after reviewing the report from the Planning Board, her primary concern was adequate fire protection. She commented that the Forest Service is moving more toward protecting the forests rather than structures; therefore, new structures in this area must be built with better fire-retardant materials than have been used in the past. She then asked applicant if he would be using asphalt shingles.

Doug MacDonald, applicant, confirmed that he would be using asphalt shingles. In addition, he stated that he also would be using a fiber-cement siding which is non-flammable.

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

Horace Brown moved and Vickie Zeier seconded the motion that the Planning and Zoning Commission recommend approval of the request from Doug MacDonald to build a single-family home and an attached garage in Zoning District #4 for Tract 3A of COS 4125 in SE¼ of the NE¼ of Section 3, T12N, R19W (4485 Snowshoe Lane in Pattee Canyon). The motion carried on a vote of 5-0.

The Planning and Zoning Commission recessed; the meeting reconvened as the Board of County Commissioners.

Barbara Evans asked if there was a motion regarding the recommendation of the Planning and Zoning Commission.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the recommendation from the Planning and Zoning Commission to allow Doug MacDonald to build a single-family home and an attached garage in Zoning District #4 for Tract 3A of COS 4125 in SE¼ of the NE¼ of Section 3, T12N, R19W (4485 Snowshoe Lane in Pattee Canyon). The motion carried on a vote of 3-0.

HEARING & CONSIDERATION OF: ADOPTION OF POLICY PROHIBITING THE CARRYING OF WEAPONS IN CERTAIN COUNTY-OWNED BUILDINGS

Michael Sehestedt, Deputy County Attorney, stated that the issue of weapons in the Courthouse has arisen from time to time over the past few months. This issue has been fueled by a concern over court safety and also by instances involving guns in courtrooms around the nation. He then proposed to the Commissioners three options: (1) a simple resolution banning weapons, (2) an ordinance which bans weapons from certain specified County buildings and provides a penalty, and (3) an "emergency" ordinance which would be immediately effective to the same end.

He then clarified that the adoption of a "formal" policy on this issue is to merely fill in the gap in existing State law prohibition. As the law stands now, the carrying of a concealed weapon (with or without a permit) in any building owned or leased by Federal, State, or local government is a misdemeanor. What is not prohibited by existing State law is the open carry of firearms or weapons in County buildings. The language in each of the three proposals specifically states the locations to which the prohibition applies. Also, all of the proposals require the signing of each of the specified areas to give notice to the public that the carrying of weapons or explosive devices is prohibited.

The hearing was opened to public comment.

Doug Chase, Sheriff, stated that back in April 1993, the District Court Judges requested a meeting with the Sheriff's Department regarding Courtroom/Courthouse security. This was in the aftermath of several incidences nationwide which ended in tragedy. Also, one of the judges had recently attended a national symposium on courtroom security where, in the course of their discussions, very graphic examples were utilized to emphasize the point of what could happen when adequate security measures are not enforced. He stated that during the six years in which he has served in the Sheriff's Department, there have occurred some highly charged divorce and child custody cases. He explained that the last time a directive was issued was back in the early 1970's by a District Court Judge. During the last six years, there have been ongoing concerns by Courthouse employees for their safety. On occasion, people have entered the Courthouse with firearms that did cause concern with the employees. This recommendation appears to be a logical and necessary action for the safeguarding of the public and personnel in the Courthouse and is one step forward in trying to maintain the safety of all concerned.

Mike O'Hara, Jail Captain in charge of security for the courts, explained that he has been conducting a thorough study of Courthouse safety and security for over two years. During this time, a number of alternatives have been considered to enhance the safety of those citizens who conduct business in the Courthouse and for the employees as well. Because incidences of violence in courthouses and schools are on the rise nationwide, and Montana is no exception, the time was appropriate to come forward with this proposal as the least restrictive method to assist law enforcement with providing a safe environment for the public and also County employees.

Michael Sehestedt distributed copies of the three proposals to individuals present who specifically requested them and he then stated that additional copies of the three proposals would be available in the Commissioners Office.

Ed Brannin, Sheriff's Department Detective, asked what consideration was being given to the County Fairgrounds.

Barbara Evans explained that the Fair Manager sent the Commissioners a fax which stated pros and cons to the prohibition of weapons on the fairground premises. The fairground, therefore, was not included in the three proposals since it was believed that more consideration was required before a determination could be made. She urged Ed Brannin to present the Commissioners with any further input he may have after reviewing a copy of the communication from the Fair Manager.

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

Michael Sehestedt stated briefly some of the history of the weapons issue. He said he remembers when signs were posted at all entrances to the Courthouse which bore the notice that weapons and firearms were prohibited by order of the District Court. After a diligent search through numerous orders of records in the Clerk of Court Office, he could not produce a copy of the order. His best judgment then was that it probably was an oral order given to the Sheriff at that time by a District Judge, now retired. He stated that relying on that ancient history was no longer appropriate. If the County was going to ban weapons, it needed to take some action and do it explicitly and in a recordable form.

He went on to explain the differences between the three proposals:

- 1) a Resolution -- states that the carrying or possession of weapons or explosives (except in the possession of law enforcement personnel) in or on the specified County-owned buildings and property is prohibited. A resolution, however, is simply a statement of policy and does not carry with it any penalty for violating it. Enforcement would be less direct in that any person who violated the ban would have to be prosecuted under some trespass theory.
- 2) a non-emergency County Ordinance -- casts the same prohibition as option #1 but in ordinance form. By this method, State law would authorize the County to prevent and suppress the carrying of concealed and unconcealed weapons to public assemblies and publicly owned buildings. The penalty provided under the ordinance is as authorized by statute for a standard misdemeanor penalty -- maximum fine of \$500 and/or a maximum period of imprisonment of six months. Procedurally, the ordinary course of adopting an ordinance requires that it be read twice. If the Commissioners choose to do so, they could have the first reading today at this meeting. The second reading must then occur at least 12 days later after the ordinance has been posted and generally available to the public. Upon passage after the second reading, the ordinance does not become effective for another 30 days; hence, would become effective 44 days from today.
- 3) an Emergency County Ordinance -- is identical to the non-emergency ordinance in all operative respects. If approved by 2/3 majority of the local governing body, it becomes effective immediately but has a limited life span of only 90 days.

He stated that within Montana State law, it is a generally accepted principal that when no particular means of exercising a granted power is specified, the local government may choose any reasonable method available to it. In this case, the adoption of an ordinance would seem to be a reasonable means to carry into effect the clearly granted power.

Barbara Evans read a letter from Judge Michael Morris which stated his apology for not being able to attend the meeting and his strong recommendation to the Board of County Commissioners to ban guns in the Courthouse. She then asked Sheriff Doug Chase if, in his opinion, this issue is of eminent enough urgency that it should be acted upon by means of an emergency ordinance.

Doug Chase responded that there has been a tremendous delay in getting this issue before the Board of County Commissioners and it should have been acted on long before. He stated that the recommendation of the entire Sheriff's Department was to first enact the emergency ordinance and then proceed with adopting the permanent ordinance (upon expiration of the emergency ordinance).

A discussion ensued regarding the possibility of causing undue alarm to the general public if the "emergency" ordinance avenue is taken. It was therefore suggested, because of this concern, that the County act by means of the resolution at this meeting and then proceed with the normal process for the non-emergency ordinance. This action would provide temporary protection without causing panic.

Barbara Evans asked Sheriff Doug Chase if he concurred with this recommendation or if he would prefer to enact the emergency ordinance.

Doug Chase, speaking on behalf of all the law enforcement officials, responded that their preference was the emergency ordinance for the purpose of providing immediate protection; however, they would abide by whatever decision was made by the Commissioners.

Fern Hart moved and Michael Kennedy seconded the motion that, based on the advice of the County's public safety officials, Missoula County enact today an emergency ordinance prohibiting the carrying of weapons, firearms and explosives in certain County-owned buildings and property. The motion carried on a vote of 3-0.

Barbara Evans read aloud the section headings of the draft Emergency County Ordinance:

- Section 1. Statement of Authority and Purpose
- Section 2. Prohibition of Weapons and Explosives
- Section 3. Areas Subject to Prohibition
- Section 4. Penalties
- Section 5. Signing
- Section 6. Severability
- Section 7. Statement of Emergency
- Section 8. Effective Date

Fern Hart moved and Michael Kennedy seconded the motion to adopt the proposed draft of the Emergency County Ordinance prohibiting the carrying of weapons, firearms and explosives in certain County-owned buildings and property. The motion carried on a vote of 3-0.

Fern Hart moved and Michael Kennedy seconded the motion to offer the first reading of the permanent County Ordinance prohibiting the carrying of weapons, firearms and explosives in certain County-owned buildings and property.

Michael Sehestedt then read into the record, as the first reading, the following:

COUNTY ORDINANCE  
PROHIBITING THE CARRYING OF WEAPONS, FIREARMS AND EXPLOSIVES  
IN CERTAIN COUNTY-OWNED BUILDINGS AND PROPERTY

Section 1. Statement of Authority and Purpose.

- (A) MCA § 45-8-351 authorizes the County to prevent and suppress the carrying of concealed and unconcealed weapons to public assemblies and publicly owned buildings; and
- (B) MCA § 45-8-328 (1) (a) prohibits the carrying of a concealed weapon with or without a permit in any building owned or leased by the federal, state or local government; and
- (C) MCA § 45-8-333 prohibits the possession of explosives where such possession intimidates, terrifies or endangers another human being; and
- (D) MCA § 7-8-2201 authorizes the Board of County Commissioners to manage County property; and
- (E) Courthouse security and workplace security are issues of increasing concern in Montana and the nation.

Section 2. Prohibition of Weapons and Explosives.

The carrying or possession of weapons as that term is defined by MCA § 45-8-316 (1993), any firearm as defined by 18 U.S.C. 921(a)(2) as of March 1, 1995; or explosives in or on the County owned buildings and property described below by any person except law enforcement personnel is prohibited.

Section 3. Areas Subject to Prohibition.

The County owned property to which the above prohibition applies is:

- (1) County Courthouse and Annex, 200 W. Broadway, Missoula, MT, including all lawns, parking areas and sidewalks leading to the building;
- (2) County Office Building, 301 W. Alder, Missoula, MT, including all lawns, parking areas and sidewalks leading into the building;
- (3) Public Defenders Office Building, 317 Woody Street, Missoula, MT, including all lawns, parking areas and sidewalks leading into the building;
- (4) Youth Court Office Building, 311 Woody, Missoula, MT, including all lawns, parking areas and sidewalks leading into the building;

- (5) Planning and Program Development Offices, 315 W. Pine, Missoula, MT, including all lawns, parking areas and sidewalks leading into the building;
- (6) County Extension Office, 126 W. Spruce, Missoula, MT;
- (7) County Print Shop, 223 W. Alder, Missoula, MT;
- (8) County Parking Lot located in the Southeast corner of the intersection of Alder and Woody;
- (9) County Shops, Pest Management, and Weed Control, 3085 Stockyard Road, including all areas inside the perimeter fence.

#### Section 4. Penalties.

A person convicted of carrying or possessing weapons, firearms or explosives in or on County property where the carrying or possession of weapons, firearms or explosives is prohibited shall be fined not to exceed Five Hundred Dollars (\$500.00) or be imprisoned in the County jail for a term not to exceed six (6) months, or both.

#### Section 5. Signing.

The Building and Grounds Department is directed to procure and place suitable signs at each entrance to the above-listed facilities stating the possession of weapons, firearms and explosives on the premises is prohibited except for law enforcement personnel.

#### Section 6. Severability.

If a part of this ordinance is invalid, all valid parts that are severable for the invalid part remains in effect. If a part of this ordinance is invalid in one or more applications, the part remains in effect in all valid applications.

The motion carried on a vote of 3-0.

Michael Sehestedt stated that copies of the above text would be available for inspection in the Board of County Commissioners office.

#### CONSIDERATION OF: SABAN LOTS (SUMMARY PLAT)

Pat Keiley, Planner at the Office of Community Development, presented the request from Jim and Helen Saban to subdivide 10.0 acres into two single family lots: Lot A, an 8.0-acre lot and Lot B, a 2.0-acre lot. The proposed subdivision is called Saban Lots.

The property is located on Mill Creek Road, north of the frontage road near the town of Frenchtown. The proposed subdivision is being developed at a density of one dwelling unit per two acres (for one lot) and the second lot will have one dwelling unit on eight acres. Mill Creek Road is an existing County road. The other road is a private road that accesses off of Mill Creek Road. Lot A will access off the private road and Lot B will access off of Mill Creek Road. Individual sewer and water systems will serve the lots at this time. The property is bordered by vacant grazing and agricultural lands, as well as existing single family residences.

The property is unzoned. The 1975 Missoula Urban Area Comp Plan calls for the area to be for residential land use and recommends a density of a maximum of one dwelling unit per ten acres. Based on the applicants' survey and a site visit, Staff determined that there are 13 adjacent parcels within the 300-foot radius of the proposed subdivision. As one of the conditions of approval, the Staff recommends that the applicants change the boundary of the proposed subdivision to create two lots, a 3.0-acre lot and a 7.0-acre lot. Applicants would then achieve 53.85% land use compatibility within the surrounding 300-foot radius of the property and, therefore, achieve substantial compliance with the comprehensive plan.

The developer is requesting a variance to the requirement that access to the lots meet County standards. The County Subdivision Regulations require that road widths be 24 feet; the private road is approximately 12-18 feet wide. Staff, in consultation with the County Surveyor, recommends approval of the variance request with the conditions that the private road be upgraded to meet the minimum fire standards and is approved by the appropriate fire district and the RSID waiver statement for upgrading the road is required as part of plat approval.

The Office of Community Development staff recommended that the summary plat of Saban Lots be approved, subject to compliance with the following conditions:

1. The applicant shall change the boundary of the proposed subdivision to create two lots, a 3.0-acre lot and a 7.0-acre lot in order to achieve 50% (53.85%) land use compatibility within the surrounding 300 foot radius of the property and, therefore, achieve substantial compliance with the comprehensive plan.
2. An approach permit shall be granted for Lot B to access off of Mill Creek Road at the easterly end of the lot. The rest of the lot shall have a 1-foot no-access strip onto Mill Creek Road.
3. The developer shall place the following statement 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 Rural Special Improvement District for the upgrading



of Mill Creek Road and/or the private road easement, based on benefit, and may be used in lieu of their signatures on an RSID petition."

4. A \$50 fee per lot shall be paid to the Missoula Rural Fire District toward the purchase of a large diameter hose.
5. The following shall appear on the face of the plat and on 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 Rural Special Improvement District for the installation of public sewer and water service and may be used in lieu of their signatures on an RSID petition."

6. The developer shall name the private road and install a road sign that complies with County road standards, prior to plat filing. The County Surveyor shall approve the name and sign location.
7. Any additional road easements, as required by the County Surveyor, shall be dedicated, on the face of the plat, as a public roadway easement.
8. The developer shall provide a document of record, verifying legal access to Lot A, prior to plat filing.
9. The developer shall upgrade the private road, from its intersection with Mill Creek Road, to the access point for Lot A, to meet minimum road standards for fire protection purposes. The plans are subject to the approval of the appropriate fire district and the County Surveyor.

Andy Fisher, Eli & Associate, representing Jim and Helen Saban, stated that they have no objections to the staff recommendations, except for a minor correction to Condition #4. He indicated that the \$50 fee per lot should be paid to the "Frenchtown" Rural Fire District.

Horace Brown, County Surveyor, recommended that language referring to the private road easement be deleted both from Condition #3 and also from the variance request.

A discussion followed relative to what reasoning was behind Condition #1 of the staff's recommendation that the applicants change the lots' boundaries to create a 3-acre lot and a 7-acre lot. The applicants' initial request was for a 2-acre lot and an 8-acre lot.

Colleen Dowdall, Deputy County Attorney, commented that certain criteria exists for determining Comp Plan compliance and pointed out the staff's diligence in applying the criteria to this parcel. Much time has been spent on this issue lately and there needs to be consistency in applying that resolution.

Fern Hart moved and Michael Kennedy seconded the motion to approve (for Saban Lots) the variance to Section 3-2(I) of the Missoula County Subdivision Regulations that access to the lots meet County standards with the conditions that the private road be upgraded to meet the minimum fire standards and be approved by the appropriate fire district. The motion carried on a vote of 3-0.

Fern Hart moved and Michael Kennedy seconded the motion to approve the summary plat of Saban Lots, based on the findings of fact in the staff report and subject to compliance with the following amended conditions:

1. The applicant shall change the boundary of the proposed subdivision to create two lots, a 3.0-acre lot and a 7.0-acre lot in order to achieve 50% (53.85%) land use compatibility within the surrounding 300 foot radius of the property and, therefore, achieve substantial compliance with the comprehensive plan.
2. An approach permit shall be granted for Lot B to access off of Mill Creek Road at the easterly end of the lot. The rest of the lot shall have a 1-foot no-access strip onto Mill Creek Road.
3. The developer shall place the following statement 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 Rural Special Improvement District for the upgrading of Mill Creek Road, based on benefit, and may be used in lieu of their signatures on an RSID petition."

4. A \$50 fee per lot shall be paid to the Frenchtown Rural Fire District toward the purchase of a large diameter hose.
5. The following shall appear on the face of the plat and on 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 Rural Special Improvement District for the installation of public sewer and water service and may be used in lieu of their signatures on an RSID petition."

6. The developer shall name the private road and install a road sign that complies with County road standards, prior to plat filing. The County Surveyor shall approve the name and sign location.
7. Any additional road easements, as required by the County Surveyor, shall be dedicated, on the face of the plat, as a public roadway easement.

8. The developer shall provide a document of record, verifying legal access to Lot A, prior to plat filing.
9. The developer shall upgrade the private road, from its intersection with Mill Creek Road, to the access point for Lot A, to meet minimum road standards for fire protection purposes. The plans are subject to the approval of the appropriate fire district and the County Surveyor.

The motion carried on a vote of 3-0.

HEARING: INTENT TO CREATE RSID NO. 8920 -- DUST ABATEMENT MAINTENANCE FOR PORTION OF ZAUGG DR. & FONTAINE DR.

Jesse Sattley, RSID Coordinator, explained that a proposal was submitted indicating an interest in creating an RSID for Dust Abatement for a portion of Zaugg Drive and Fontaine Drive in Missoula County. Horace Brown provided costs for the application of magnesium chloride to the roadways with an estimated cost per assessable lot of \$64.17 for the first year, with County participation of 30%. Thereafter, the estimated cost per lot would be \$91.67. Notices of Intention to Create RSID #8920 were mailed to all freeholders in the district. Out of 24 parcels, two protest letters were received.

Barbara Evans indicated that one of the letters in opposition to this RSID was from Joyce Montgomery. Her letter stated that she respectfully objected to the proposal because the material used in the dust abatement process is hazardous to the health and well-being of people and animals. If the material used is the same as, or closely related to, the deicer components, it would be better to cope with the dust. She further stated that, in her opinion, the material used does not even do the job. She then recommended asphalt paving as an alternative method.

Fern Hart read the second letter of protest addressed to the Clerk and Recorder from Harry E. Ray. He inquired how the cost of dust abatement was estimated. He stated that he lived several hundred feet off Zaugg Drive but his driveway exits on Zaugg Drive. He further inquired if he would be required to pay the same amount as people who have property fronting that drive.

The hearing was opened to public comment.

Lois Tillitson, a resident owning two parcels on Zaugg Drive, inquired if, at some point in the future, the annual cost per lot could be raised at the County's option.

Michael Sehestedt responded that the County has jurisdiction to assess only up to the second year of cost. If for some reason the annual cost goes beyond the maximum amount (which is a formal cap) stated in the proposal, the County would be required to re-advertise and re-create the district.

Lois Tillitson remarked that she was confused by the term "lots or parcels". She stated that she owns two parcels -- her house is on one parcel and the other parcel is divided into 25 trailer lots. She therefore inquired if her cost per assessable lot would be calculated on 2 lots or 26 lots.

Michael Sehestedt responded that it appeared that she would be assessed for two parcels; however, he stated that this was not a firm answer until he could confirm that it was correct.

Horace Brown clarified that deicer material would not be used in the dust abatement process. Deicer was used last year; however, the material which would be used in this process would be magnesium chloride.

Barbara Evans indicated that the Health Department would be requested to respond to Joyce Montgomery regarding her concern of the type of materials used in the dust abatement process.

Fern Hart asked Horace Brown if he would comment on Joyce Montgomery's recommendation to asphalt pave the portions of the two roads.

Horace Brown indicated that the minimum cost to pave with asphalt would be \$77,000 per mile; however, the cost would likely be even higher since base work would be required. Also the roads are not wide enough to meet standard width requirements for pavement. In addition, a right-of-way would be required and in certain places, there exists only about 30 feet of right-of-way. He also clarified that with two applications of the magnesium chloride, it should be effective for about three years.

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

Fern Hart moved and Michael Kennedy seconded the motion to postpone action on the proposal to create RSID No. 8920 for one week, during which time Michael Sehestedt could obtain firm answers to the questions raised by Lois Tillitson and Harry Ray. The motion carried on a vote of 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (RAY) -- TRACT B1 OF COS 2822 IN SECTION 14, T11N, R20W (TABLED FROM FEB. 15TH)

Kathy Smith, Paralegal for the County Attorney's Office, explained this was a consideration of a request of Gloria Ray to transfer to David Milot Tract B1 of COS 2822 in Section 14, T11N, R20W, a family transfer parcel created in December 1982 but never transferred into the ownership of the intended recipient.

See Request for Commission Action dated February 15, 1995. The hearing scheduled for February 15 was a request by Ms. Ray for permission to sell the subject property even though it had never been transferred to her mother, Ruth

Ferguson. This hearing was tabled without date and Ms. Ray is asking the Board of County Commissioners to allow her to transfer the parcel to her husband, David Milot.

Ms. Ray's testimony at the prior hearing was not consistent with what she stated during the application process. She stated that she had the original Quitclaim Deed from her mother but had never recorded it. She then indicated to the Board that she did not have the original document but a copy. She also indicated to the Board that she had thought both the transfer documents and Quitclaim Deed had already been recorded by her attorney but also said she has continued to receive the tax bills in her name. If she had indeed had the parcel transferred to her mother, her mother would have received the tax bills until such time as the Quitclaim Deed was filed. On February 17, 1995, Ms. Ray indicated she and her husband wished to go ahead and transfer it into his name and that they would keep the parcel in his name. She also stated, "But that's not to say we wouldn't sell it in ten years or so."

The hearing was opened to public comment.

Zane Sullivan, representing Gloria Ray, stated the reason why Ms. Ray was before the Board again on this matter is precisely because of her lack of intention to circumvent the subdivision process. He described the subject property in detail indicating that there was nothing anywhere around this particular piece of property that would be used for anything of any value other than a commercial location. He indicated the property was not an area where Ms. Ray intends to create a 25-lot subdivision by family transfer exemptions. He explained that in 1982, Ms. Ray developed this COS with the intention to potentially transfer these parcels. She followed the instructions of a surveyor who indicated that following the recordation of the COS, she could then transfer the title of the parcels "at any time". She did not realize that there was any urgent need to transfer this property in order to validate the COS. He stated his belief that Ms. Ray was entitled to the family transfer exemption under existing State law.

He stated that the purpose of his presence at this meeting was not to challenge the Board but to offer an acceptable compromise to the Board that would clearly indicate that Ms. Ray is not attempting to circumvent the subdivision process. She offers to enter into a covenant or agreement with the County stating that the property would not go from her, to her husband, back to her, and then out to a third party.

A discussion ensued regarding exactly what steps actually constitute the creation of a legally divided parcel and the attendant problems with this particular family transfer because the necessary steps were not taken.

Zane Sullivan further explained that this transfer was being requested in light of the fact that the property would have greater commercial value as two 1-acre lots versus one 2-acre lot.

Fern Hart stated that she could not support approval of this request. She then left the meeting to attend a 3:30 appointment.

Gloria Ray stated that she has four children. She indicated that though it was not mandatory that she sell the property today, she wanted to have a parcel that was legally transferable at some point in the future to transfer an estate to her children.

Vickie Zeier commented that she was pleased that Missoula County now requires the deed when the COS is filed because if this would have been a requirement back then, this particular situation would never have happened.

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

Michael Kennedy moved and Barbara Evans seconded the motion that the consideration of a request for a family transfer for Tract B1 of COS 2822 in Section 14, T11N, R20W for Gloria Ray be granted, contingent upon transfer of the deed to her husband, David Milot. 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 3:45 p.m.

#### THURSDAY, MARCH 23, 1995

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy attended an all-day Columbia Basin Eco-Management Meeting held in Missoula at the Glacier Building. At noon, the Commissioners attended an "Update Luncheon" at Extended Family Services.

#### DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Deer Park Addition (Double Arrow Ranch, Phase II), a subdivision located in the SE¼ of Section 3 and the NE¼ of Section 10, T16N, R15W, P.M.M., Missoula County, having a total area of 24.308 acres with the owner of record being David M. Stewart.

Agreement -- The Board of County Commissioners signed an Agreement to Monitor and Maintain a Ground Water Well (Water Quality District Well #5) between Paul and Kelly Hagan and the County of Missoula whereby Missoula County has inadvertently placed a ground water monitoring well on the Hagan's property located in the NW¼ of Section 9, T13N, R20W, P.M.M., Missoula County, COS 3554, as per the terms set forth. The term of this agreement shall be as long as the County of Missoula continues to monitor this well.

Modification of Agreement -- Chairman Evans signed Modification No. 1 of Agreement (DHES Contract Modification No. 350094-01) between Missoula County and the Montana Department of Health and Environmental Sciences for the

purpose of modifying the terms of the agreement between them concerning the WIC program in order to add funding for performance of the agreement, as per the items set forth. The Agreement was forwarded to DHES in Helena.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Kathleen J. Gromko, an independent contractor, for the purpose of functioning as the Coordinator for the Missoula County Breast and Cervical Cancer Planning Project, as per the terms set forth, for the period commencing March 6, 1995 through December 31, 1995, for compensation in the amount not to exceed \$6,000.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Erica Brown, an independent contractor, for the purpose of facilitating monthly dental screening clinics for the Partnership Health Center, as per the terms set forth, for the period commencing January 1, 1995 through October 31, 1995, for compensation in the amount of \$19 per hour (15 hours per month).

Plat and Subdivision Improvements Agreement -- The Board of County Commissioners signed the Plat for Country Crest No. 3B, a subdivision located in the SW $\frac{1}{4}$  of Section 11 and the NW $\frac{1}{4}$  and NE $\frac{1}{4}$  of Section 14, T13N, R20W, P.M.M., Missoula County, having a total area of 58.186 acres, with the owners of record being the Deschamps Family Corporation. Also signed was a Subdivision Improvements Agreement and Guarantee for improvements which remain to be completed in Country Crest No. 3B between Missoula County and the Deschamps Family Corporation for construction and paving of streets, installation of sewer main crossings and installation of an irrigation well to meet Missoula Rural Fire Department requirements at an estimated cost of \$119,216. The improvements shall be completed no later than two years from the date of the final plat approval and is guaranteed by a trust indenture signed February 1995, encumbering Lots 63, 64, 65, 66 and 68 in Country Crest No. 3B, in favor of Missoula County.

Notice of Hearing -- Chairman Evans signed a Notice of Hearing with regard to the proposed County Ordinance banning weapons, firearms and explosives in certain County owned buildings and property, setting the hearing for April 5, 1995 at 1:30 p.m.

Resolution No. 95-020 -- The Board of County Commissioners signed Resolution No. 95-020, an Emergency County Ordinance prohibiting the carrying of weapons, firearms and explosives in certain County owned buildings and property.

Other items included:

- \* the Commissioners approved to renew the subscriptions to *Lolo Peak News* and *The Independent*.

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

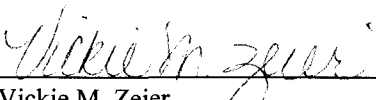
#### FRIDAY, MARCH 24, 1995

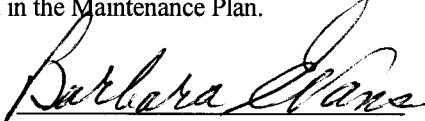
The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Evans participated in the Ribbon Cutting Ceremony at the new Postal Retail Store at the Main Post Office on Kent.

Standard Agreement -- Chairman Evans signed a Standard Agreement, dated March 1, 1995, between the Montana Highway Traffic Safety Administrator and the Missoula County Commissioners. The U.S. Department of Transportation is the contributor of funds for this Agreement. Funds provided are described in the Catalog of Federal Domestic Assistance under Number 20.600. The purpose of this project is to assist law enforcement agencies to improve their enforcement efforts by purchasing and using in-car video cameras and recording units. These units capture evidence and should enhance the safety of officers by providing visual and voice recordings of the events in a recorded incident. This project shall commence within 10 days from the date of execution of this Agreement and shall be completed no later than June 30, 1995. Payment by the State shall be on a lump sum basis not to exceed \$17,165. The document was returned to Don Mormon in the Sheriff's Department for further handling.

Encroachment Permit -- The Board of County Commissioners signed an Encroachment Permit, agreeing to permit Edmond T. Poitras and David W. Fisher of 2310 Fairview Avenue, Missoula, to encroach upon a portion of County right-of-way being located along the North boundary of Fairview Avenue adjacent to Lots 41, 42, 43, 44, 45 and 46 of Block 46, Carline Addition No. 3, and shall be limited to the existing building, effective for a period not to exceed ten years, renewable at the option of the County.

Schedule A (Road Jurisdiction Agreement) and 1995 Maintenance Plan -- The Board of County Commissioners signed Schedule A (Revision to Road Jurisdiction Agreement dated March 27, 1967), between Missoula County and the Forest Service, updating the list of roads under Missoula County's jurisdiction and the roads under Forest Service jurisdiction. The Commissioners also signed the Maintenance Plan for 1995, which states that the parties shall maintain the roads under their jurisdiction, with the exception of those roads listed in the Maintenance Plan.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### MONDAY, MARCH 27, 1995

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 Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for the month of March, 1995.

#### DAILY ADMINISTRATIVE MEETING

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

Agreement -- Chairman Evans signed ALAM Contract No. 95.100 between Missoula City-County Health Department and the American Lung Association of Montana (ALAM), Tobacco Free Montana Program, for the purpose of providing specialized services within Missoula City-County Health Department in support of a comprehensive statewide tobacco use prevention and control network, as per the terms set forth, for the period from December 1, 1994 through November 30, 1995, with reimbursement from ALAM to Missoula County up to a maximum of \$6,000. The Agreement was forwarded to ALAM in Helena.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #6, Pay Date March 17, 1995, with a total Missoula County payroll of \$501,728.00. The Transmittal Sheet was returned to the Auditor's Office.

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

#### **TUESDAY, MARCH 28, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioner Hart attended the YWCA's Wyoming Street Transitional Housing Program Dedication Ceremony; and at noon attended a Lunch Meeting with HUD Officials.

#### **WEDNESDAY, MARCH 29, 1995**

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

#### DAILY ADMINISTRATIVE MEETING

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

Letter Agreement -- Chairman Evans signed a Letter Agreement between the County of Missoula and MSE, Inc., authorizing MSE, Inc. to provide the preliminary engineering services associated with the County's proposed Sunset West Water System Improvements project, as per the terms set forth, for compensation in an amount not to exceed \$3,703.00. The Agreement was returned to Cindy Wulfekuhle in Office of Planning and Program Development for further handling.

Resolution No. 95-021 -- The Board of County Commissioners signed Resolution No. 95-021, a Budget Amendment for FY'95 for the Capital Improvement Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
2410-250-414400-923 Patrol Car Radars	\$2,952.00
<u>Description of Revenue</u>	<u>Revenue</u>
2410-250-344278 Traffic Safety - Radar	2,952.00

Resolution No. 95-022 -- The Board of County Commissioners signed Resolution No. 95-022, a Budget Amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
2270-611-442400-314 Ads, Legal Publications	\$4,040
2270-611-442400-311 Printing	100
2270-611-442400-276 Safety Supplies & Equip.	<u>860</u>
	\$5,000
<u>Description of Revenue</u>	<u>Revenue</u>
2270-611-331090 Radon Grant	\$5,000

Change Order -- Chairman Evans signed Change Order #4 for Linda Vista Sewer (RSID #8453), Project No. 2627.01, Contract Date May 18, 1994, for Contractor Sharbono Construction. The new Contract Price will be \$1,176,642.50. The date for completion of all work under the contract will be increased by 24 work days (30 working days from issuance of the Resume Work Order -- completion date estimated to be April 24, 1995). The Change Order was returned to John DeVore, Administrative Officer, for further handling.

Other items included:

- \* the Commissioners approved that the Superintendent of Schools move to 438 W. Spruce.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

HEARING: APPEAL OF COMPREHENSIVE PLAN DECISION (TED & SUSAN HALL) -- BUTLER CREEK COMP. PLAN AMENDMENT

Barbara Evans stated that at the applicants' request, the hearing will be postponed for one week.

BID AWARD -- THREE (3) 11-FT. REVERSIBLE TRUCK SNOW PLOWS

Barbara Evans explained from information received from Horace Brown, County Surveyor, that bids were opened for three (3) 11-foot reversible truck snow plows on Monday, March 20, 1995 at 10:00 a.m., with the following results:

Kois Brothers Equipment	(Wausau Plows)	\$15,981.00
	(Root Plows)	\$14,661.00
Normont Equipment	(Falls Plows)	\$16,185.00
Curriers Certified Welding	(Good Roads Plows)	\$16,261.74
HCL Equipment	(Monroe Plows)	\$14,667.00
Hall Perry Equipment	(Henke Plows)	\$17,700.00

The recommendation was to award a contract for purchase of three (3) Wausau 11-foot reversible truck snow plows to Kois Brothers Equipment on the amount of \$15,981.00 as the lowest and best bid which met all bid specifications. The FY 95 budget allocated \$19,500 for this purchase.

Michael Sehestedt, Deputy County Attorney, stated that there was an irregularity regarding the bid from HCL Equipment. He explained that on the face of the bid specifications was a list of all the required items. The solicitation additionally required that a photograph of the plow be attached for purposes of facilitating the evaluation of the bid; however, HCL did not submit a brochure or photograph with their bid. When HCL was informed that their photograph was missing, they faxed a brochure which showed a picture of the plow but also showed that the plow was constructed of 10-gauge steel rather than 3/16 steel which was required in the specifications. Based on that belated provision of information which contradicted the text of their bid, the Surveyors Office recommended award of the next higher bid. Subsequent to that, they faxed additional information to Commissioner Evans acknowledging their error in that they meant to submit information on the 3/16 steel on the follow-up material.

HCL's bid, as submitted, indicated that they had met all the specifications; however, they failed to include the required photograph with their bid submittal. On an error of this sort, the awarding authority, the Board of County Commissioners, has the power to waive that irregularity and consider an award; however, they are not obligated to do so. He stated that he, personally, had some reservations about awarding HCL the bid when it was no longer clear to him what exactly they were bidding.

Michael Kennedy asked if the Road Department would reiterate their recommendation that the Kois Brothers Equipment Wausau plow was the bid that best met all of their specifications and was willing to accept.

Bob Holm, Operations Superintendent of Road Department, confirmed that the Kois Brothers Wausau plow was their recommendation as the lowest and best bid which met all bid specifications.

Barbara Evans commented that Kois Brothers Equipment offered two types of plows with a substantial difference in cost between the two. She asked Bob Holm why he preferred the Wausau plows over the Root plows.

Bob Holm explained that one of the main bid specifications was the thickness of the metal used in the construction of the plow. The 3/16-inch thickness, which was the bid specification, provides a more durable plow in that it is approximately 50% thicker than 10-gauge steel. The Wausau plow is constructed of 3/16-inch steel and the Root plow is constructed of 10-gauge steel. Also, the Root plow has a different type of hitch than was requested. It is not a quick-coupling type of hitch and would require more effort to hook it up and disconnect it. It was merely offered as an alternative.

Barbara Evans commented that Horace Brown, County Surveyor, raised some concerns with her the previous day about the Monroe plow which HCL Equipment is offering. Apparently he had learned from the State that their experience with the Monroe plow indicated a poor record of reliability.

Bob Holm said it was suggested to him to contact the City of Bozeman to inquire how they evaluated the Monroe plow. He was informed by them that of the three different makes of plows they currently use, the Monroe plow was the least popular and the least useful. Their two better plows have a built-in shield to deflect snow forward rather than over the top of the plow and into the windshield of the truck. With the Monroe plows, they had to immediately add a conveyor belt along the front to keep the snow confined in the blade. It was then required to make adjustments to the hitch mechanism itself in order to make the conveyor belt operable. He clarified that the deflector shield was part of the bid specifications.

Fern Hart moved and Michael Kennedy seconded the motion to accept the bid from Kois Brothers Equipment for three (3) Wausau 11-foot reversible truck snow plows for \$15,981.00 as the lowest and best bid which met all bid specifications. The motion carried on a vote of 3-0.

CONTINUATION OF HEARING (FROM MARCH 22): INTENT TO CREATE RSID NO. 8920 -- DUST ABATEMENT MAINTENANCE FOR A PORTION OF ZAUGG DRIVE & FONTAINE DR.

Barbara Evans stated that this was a continuation of a hearing from March 22 regarding the intent to create RSID No. 8920, a dust abatement district for maintenance of a portion of Zaugg Drive and Fontaine Drive.

Michael Sehestedt, Deputy County Attorney, addressed the first question that was raised at the March 22 hearing by Lois Tillitson. She remarked that she was confused by the term "lots or parcels". She indicated that she owns two parcels -- her house is on one "parcel" and the other parcel is divided into 25 trailer "lots". She therefore inquired if her cost per assessable lot would be calculated on 2 lots or 26 lots. Michael Sehestedt stated that upon review of the petition, she would be assessed for two parcels.

The second issue from the March 22 hearing was raised by Harry Ray who indicated his property does not front Zaugg Drive; his driveway merely accesses it. He inquired if he should be included in this assessment. Michael Sehestedt stated that since he does access a portion of Zaugg Drive and resides within the area which will receive benefit from the diminution of dust, it would be proper to include him in the assessment.

Barbara Evans recalled that his question was not that of inclusion as much as it was the question of cost comparison-- whether he would be required to pay the same amount as people who had property fronting Zaugg Drive.

Michael Sehestedt indicated that Mr. Ray would be required to pay the same amount since the district is simply assessed on a "per parcel" basis.

The hearing was opened to public comment.

Fern Hart recalled that there was a question regarding whether or not the annual cost per lot could be raised at the County's option.

Michael Sehestedt stated that as a maintenance RSID, it would be possible for the cost to increase; however, it would require notice and a hearing to provide an opportunity for applicable residents to object.

Fern Hart also recalled there being a concern of whether or not the dust abatement process would have to be applied every single year. She wanted to confirm the information shared at last week's meeting that after two good applications of the magnesium chloride, there could be a time of maybe a couple of years when it would not have to be applied.

John DeVore, Administrative Officer, stated that maintenance RSID's are created at the request of a majority of individuals in a particular area who want a higher level of service than they are currently receiving. Some RSID's may be more difficult to operate such as when there is not an active homeowners association to work with.

Fern Hart again asked if two applications would likely suffice through the third year.

John DeVore said she was correct. He clarified that the creation of this RSID was for the purpose of mitigating dust "as needed". Therefore, any additional applications would not be considered until there was a definite need.

Barbara Evans thanked Fern Hart for the reminder of these two concerns. She then asked Michael Sehestedt to respond in writing to Lois Tillitson's question of the number of lots on which she will be assessed and also her question if the annual cost per lot could be raised at some point in the future.

John DeVore commented on the nature of maintenance RSID's. He used the RSID in Lolo as a good example since it was created in the early 1970's. If a comparison was made of what the assessments were when it was first created over 20 years ago to what the assessment is today, there would obviously be a dramatic difference. Over a lengthy period of time, actual costs are always likely to increase. But as Michael Sehestedt stated earlier, whenever a cost increase occurs, there would be proper notice and a public hearing to give an explanation for the increase and provide an opportunity to accept comments and testimony from the public.

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

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners create RSID #8920, a dust abatement maintenance district for a portion of Zaugg Drive and Fontaine Drive, as there were not a legal number of protests to this creation. 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 1:50 p.m.

**THURSDAY, MARCH 30, 1995**

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

Audit List -- Commissioners Evans and Hart signed the Audit List, dated March 28, 1995, pages 6-41, with a grand total of \$246,618.18. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Hollyanna Haskin as principal for Warrant #23589 issued December 5, 1994 on the Missoula County General Fund in the amount of \$70.96 now unable to be found.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Missoula Area Education Cooperative as principal for Warrant #11188 issued March 10, 1995 on the Missoula County Claims Fund in the amount of \$320.86 now unable to be found.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and William Cook, an independent contractor, for the purpose of assisting the Partnership Health Center in the planning and development of a mental health program for PHC clients, assisting in the recruitment of volunteer counselors, and serving as a liaison with the University of Montana School of Psychology and the Missoula mental health professional community, as per the terms set forth, for the period commencing January 1, 1995 through October 31, 1995, for compensation in an amount not to exceed \$1,950. The Contract was returned to the Health Department for further signatures and handling.

Resolution No. 95-023 -- The Board of County Commissioners signed Resolution No. 95-023, a Resolution for inclusion in RSID #8453 (in S2 S2 S. of River, Plat A 2-12-20 (69AC); SUID 1351802) which states that the total estimated principle cost for participation and connection to the sewer interceptor constructed by RSID #8453 for one (1) unit is the sum not to exceed \$10,000. Costs for the improvements are assessed against each benefited parcel of land within RSID #8453 with that part of the whole cost of the improvements which is assessable area bears to the assessable area of all benefited parcels in the District. The assessable area represents the benefit conferred upon the lots, tracts or parcels by the improvements. The cost for inclusion will be assessed against the property over a period of twenty (20) years. The document was returned to Jesse Sattley, RSID Coordinator, for further handling.

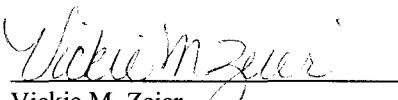
Resolution No. 95-024 -- The Board of County Commissioners signed Resolution No. 95-024, a Resolution of Intention to create RSID #8921 for the purpose of roadway improvement for dust abatement for Trails End Road in Missoula County. The document was returned to Jesse Sattley, RSID Coordinator, for further handling.

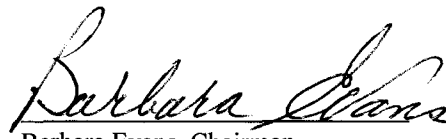
Other items included:

- 1) the Commissioners approved the policy exception, as submitted by John Pemberton, Personnel and Labor Relations, regarding the 160-hour limitation on sick leave donations for Janice Starr of the Sheriff's Office. Jan requires medical treatment for a second time in San Francisco for a serious heart condition. She will leave on April 3.
- 2) the Commissioners signed a letter to Tom Devlin with regard his request to access his lot in the Rangitsch Addition No. 4 by way of Ringo Drive through the 1-foot no-access strip. The Commissioners determined that such a change in the plat is acceptable.

**FRIDAY, MARCH 31, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy was in Walla Walla, Washington attending a meeting of the Columbia Basin Eco-Management Study Group.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners



**MONDAY, APRIL 3, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners attended the Department Head FY'96 Budget Kick-Off Meeting.

**DAILY ADMINISTRATIVE MEETING**

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Chris McGuire, an independent contractor, for the purpose of providing professional nursing services as required by persons incarcerated in the Missoula County Detention Center, as per the terms set forth, for the period commencing March 20, 1995 through June 30, 1996, for compensation in the amount of \$15 per hour.

Grant Agreement -- Chairman Evans signed a Noxious Weed Trust Fund Project Grant Agreement between the Montana Department of Agriculture and the Missoula County Weed District for the purpose of containing and reducing noxious weed infestations in the Goodan-Keil Weed Management Group Project area (Number MDA 95-62) in Missoula County, as per the items set forth, through June 30, 1996, with a total amount not to exceed \$4,912. This funding is contingent upon sufficient available revenue and verification of matching funds from private landowners, Montana State University Extension Service and Missoula County Weed District to equal \$8,939. The Agreement was returned to Alan Knudsen at the Weed Department for further signatures and handling.

- 1) the Commissioners signed a memorandum authorizing the Treasurer's office to waive all penalty and interest for Real Estate Tax Bill #94015909 for Susan B. Max. The document was returned to Vickie Zeier, Treasurer, for further handling.
- 2) the Commissioners approved the payment of Chamber dues for April 1, 1995 through April 1, 1996.

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

**TUESDAY, APRIL 4, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy accompanied representatives of the Sheriff's Department on their monthly trip to meet with Seeley Lake and Condon residents, returning to the office late in the afternoon.

Audit List -- The Board of County Commissioners signed the Audit List, dated April 4, 1995, pages 1-29, with a grand total of \$100,443.13. The Audit List was returned to the Accounting Department.

**WEDNESDAY, APRIL 5, 1995**

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. In the evening, Commissioners Hart and Kennedy attended a State Board of Health hearing held at the City Council Chambers.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, John E. Odlin, for month ending March 31, 1995.

Notice of Intent -- The Board of County Commissioners signed a Notice of Intent to Levy Tax with regard to the request by East Missoula Sewer District that the Board of County Commissioners levy a tax on property located in the East Missoula Sewer District for the purpose of operational expenses and funding of an engineering feasibility study in the amount of \$72,000 (\$36,000 a year for two years), setting the hearing for May 3, 1995 at 7:30 p.m. at the East Missoula Community Center.

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

Fern Hart introduced Elena Grunstein who was visiting from Argentina. Fern explained that Elena represents a women's group similar to our League of Women Voters. It is a non-partisan group which works on women-related issues and also issues pertaining to public involvement and good government. Fern then introduced to Elena Commissioners Barbara Evans and Michael Kennedy and all others present.

**HEARING: APPEAL OF COMPREHENSIVE PLAN DECISION (TED & SUSAN HALL) -- BUTLER CREEK COMP. PLAN AMENDMENT**

Barbara Evans stated that at the applicants' request, the hearing will be postponed for one additional week.

**HEARING & CONSIDERATION OF: ADOPTION OF POLICY PROHIBITING THE CARRYING OF WEAPONS IN CERTAIN COUNTY-OWNED BUILDINGS**

Michael Sehestedt, Deputy County Attorney, stated that this Public Meeting was the time set for the second reading of the proposed County ordinance prohibiting the carrying of weapons, firearms and explosives in certain County-owned

buildings and property. He then read aloud the section headings of the draft County Ordinance, making brief comments on each section:

- Section 1. Statement of Authority and Purpose
- Section 2. Prohibition of Weapons and Explosives
- Section 3. Areas Subject to Prohibition
- Section 4. Penalties
- Section 5. Signing
- Section 6. Severability

He indicated that the ordinance would become effective 30 days after its adoption by the Board of County Commissioners. Upon its effective date, it will replace the Emergency County Ordinance which contains the same provisions. During the last two weeks, notice of this proposed ordinance was posted both in the County Courthouse and also at City Hall. Additionally, copies of the ordinance were available upon request in the Commissioners office.

To date, he had received only two responses. One response was a comment from Sheriff Chase who requested that the County Fairgrounds be added to the areas subject to prohibition (for at least part of the year). He indicated that he had not yet taken any action to address Sheriff Chase's request. It would, however, be addressed at a later date after consultation with the Fair Commission.

The other response was a letter from Gary Marbut, President of Montana Shooting Sports Association. His letter addressed the following three points:

- (1) *The ordinance will not generate any significant benefit.* -- On this point, Michael Sehestedt commented that he recognized that prohibition is not a panacea in and of itself. However, without this ordinance or something similar in place, the "open carry" of weapons remains perfectly legal. He indicated that the ordinance would not constitute a full-proof security system but at least some level of security could legally occur in cases of known or perceived threats.
- (2) *The measure, as drawn, reaches beyond what is allowed by State law.* -- On this point, Michael Sehestedt stated that the word "building" is defined variously. Some of the definitions include not only the building but also the land adjacent thereto. He also stated his belief that entrances, walkways, and areas adjacent to a public building probably fall fairly within the definition of "place of public assembly". He used the Courthouse grounds as an example where a variety of occasions occur such as vigils gathering, politicians announcing their run for office, protests to legislative actions, band concerts, etc. He stated that he was comfortable with the ordinance as written and even if it should be determined to be too broad in this particular application, the severability clause would likely protect it as to the balance of the ordinance. His recommendation therefore was to adopt it as written.
- (3) *The proposal may negatively impact the security of some County employees.* -- Regarding this point, Michael Sehestedt commented that the County has zero liability for employees who may have some direct exposure to threat, such as unarmed deputies and 911 dispatchers who leave the building late at night. However, if the County wanted to address this problem, he recommended that the Sheriff be authorized to grant specific exemptions based on a demonstration of need. That addition to the ordinance would also address an issue that Dusty Deschamps raised -- that being of when there would be a firearms and weapons display as an exhibit at the County Fairgrounds.

Barbara Evans asked if this language should be added to the ordinance.

Michael Sehestedt responded that if agreement is reached to add language to the ordinance authorizing the Sheriff to grant exemptions on a case-by-case basis, subject to some guiding standards, then that language should be included in the ordinance before its permanent adoption.

Barbara Evans asked if it would be helpful to use the same process for that variance as is used for granting a concealed weapon permit -- however, not so broad that it would require the Police Chief's signature since it pertains to County buildings. She also inquired if it would give the Sheriff any feeling of support if it would be required that both he and a District Judge approve the exemptions.

Michael Sehestedt indicated he did not think that responsibility could be assigned to a District Judge. This requirement would likely not be accepted if it would be proposed. He also stated that requirements more stringent than those for obtaining a State concealed weapons permit would be needed. Currently, all that is required of a person to obtain such a permit is that: (1) he/she has not been committed to a mental health institution, (2) he/she provide proof of no past criminal record, and (3) he/she pay the designated fee.

Barbara Evans clarified her previous statement that she was not referring to the necessary requirements but instead the policy of having more than one person make the determination of approval or denial.

Michael Sehestedt stated it was his preference to have only the Sheriff make such determinations, subject to appeal of his decision to the Board of County Commissioners in cases of denial. He recommended that if the Board of County Commissioners wanted to pursue adding this new language to the current draft of the ordinance, action should be delayed for one week to allow him time to draft the new language and circulate it among the Commissioners. If the Board does not want to include this new language, the ordinance could be adopted, as written, at this meeting.

Fern Hart asked what type of process the Board could take at this time. Could the new language be an amendment? Could the Commissioners go ahead and adopt the ordinance at this meeting and then later incorporate the amendment pertaining to exemptions?

Michael Sehestedt indicated that the ordinance could be adopted today and then the process could begin to amend it next week. Or action could be postponed to consider these comments and possible amendments and take action on it next week.

Michael Kennedy stated that his preference would be to adopt the ordinance today and then add the new language at a later date.

The hearing was opened to public comment; there being none, the hearing was closed to public testimony.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners adopt the proposed ordinance prohibiting the carrying of weapons, firearms and explosives in certain County-owned buildings and property. The motion carried on a vote of 3-0.

Michael Sehestedt stated that he would prepare some language within the next week or so for the Board's consideration and then circulate it to the Sheriff. He would also consult with Sam Yewusiak at the Fairgrounds to ensure that the new language would address his concern of having gun displays and exhibits.

Barbara Evans asked if there was any other business to come before the Board.

Andy Sponseller, representing Save Open Space, explained that this organization was currently training about 10-12 people to work on conservation easements in the Missoula Valley. He asked the Commissioners to keep in mind when they talk with landowners and people who have potential conservation easements that Save Open Space has trained citizens who would be happy to meet with them one-on-one. He then invited the Commissioners to attend the Save Open Space Party/Open House at the Shack Restaurant on Tuesday, April 11, from 7:00-11:00 p.m.

There being no further business to come before the Board, the Commissioners were in recess at 1:53 p.m.

#### THURSDAY, APRIL 6, 1995

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

#### DAILY ADMINISTRATIVE MEETING

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

Resolution No. 95-025 -- The Board of County Commissioners signed Resolution No. 95-025, a Budget Amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
2270-612-447401-111 Perm Salaries	\$4,111
2270-612-447401-141 Fringe Benefits	1,089
2270-612-447401-206 Office Supplies	100
2270-612-447401-301 Postage	175
2270-612-447401-321 LD Phone Charge	100
2270-612-447401-311 Printing	200
2270-612-447401-307 Copy Costs	<u>225</u>
	\$6,000

<u>Description of Revenue</u>	<u>Revenue</u>
2270-612-333402 Tobacco II	\$6,000

Resolution No. 95-026 -- The Board of County Commissioners signed Resolution No. 95-026, a Budget Amendment for FY'95 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
2270-613-445607-111 Perm Salaries	\$14,100
2270-613-445607-141 Fringe Benefits	3,742
2270-613-445607-206 Office Supplies	200
2270-613-445607-301 Postage	100
2270-613-445607-311 Printing	1,458
2270-613-445607-358 Mileage - County	200
2270-613-445607-359 Mileage - Private	<u>200</u>
	\$20,000

<u>Description of Revenue</u>	<u>Revenue</u>
2270-613-331414 MCH Community Assessment	\$20,000

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Gregg Potter, an independent contractor, for the purpose of mowing, irrigation, lawn and grounds maintenance at the Historical Museum at Fort Missoula property, as per the terms set forth, for the period commencing April 15, 1995 through October 15, 1995, for compensation in the amount of \$750 per month.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract, dated February 13, 1995, between Missoula County and Jacobson, Betts & Company, an independent contractor, for the

purpose of conducting an organizational analysis and developing implementation strategies for the Office of Community Development and the City-County Planning Policy Committee, as per the terms set forth. The Contractor agrees to complete the study within 90 days of the execution of this agreement for compensation in an amount not to exceed \$11,228.

Bid Award -- Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners award the bid to Insured Titles for interest and ownership searches for tax deed land parcels for \$16,140 as the lowest and best bid which met all bid specifications. The motion carried on a vote of 3-0.

Agreement -- The Board of County Commissioners signed a Standard Form of Agreement Between Owner (Missoula County) and Architect (Paradigm Architects, P.C.) for the purpose of construction of site for the Missoula County Road Department, Surveyor's Office and Warehouse near the Missoula International Airport, as per the terms set forth, for a total proposed maximum fixed fee of \$8,828 for services rendered.

Other items included:

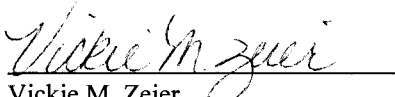
- 1) the Commissioners signed a letter to Norm Laughlin stating that they were unable to grant the request for renewed funding for City Cemetery.
- 2) the Commissioners signed grant documents for a Housing Grant.
- 3) the Commissioners concurred with the Larchmont Board's recommendation to fund the \$2,750 to cover the costs of an actuarial and legal study to determine the feasibility of Larchmont participating in the County's Workers' Compensation Fund.
- 4) the Commissioners approved an approach permit to cross a "no access" strip (Chapelle Addition Subdivision -- Preliminary Plat, July 13, 1994) to combine the driveway for Lots 10 and 11 to reduce the number of accesses on St. Thomas Drive.

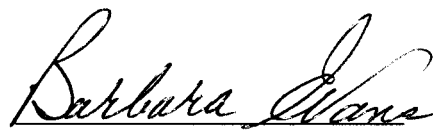
The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### FRIDAY, APRIL 7, 1995

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

Election Canvass -- In the forenoon, Surveyor Horace Brown, Sheriff Doug Chase, and County Auditor Susan Reed canvassed the School Election which was held on April 4, 1995, as the Commissioners were scheduled to attend other meetings at that time.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### MONDAY, APRIL 10, 1995

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

Audit List -- Commissioners Evans and Hart signed the Audit List, dated April 7, 1995, pages 5-24, with a grand total of \$29,543.76. The Audit List was returned to the Accounting Department.

#### JOINT HEARING WITH CITY COUNCIL -- COS 3598 AGRICULTURAL EXEMPTION (OTTO KLEIN)

The meeting of the Missoula City Council was called to order by Mayor Kemmis at 7:00 P.M. in the Council Chambers, 435 Ryman Street. Present were Alderwomen Cregg, Gingerelli, Rosenleaf, Shea and Tracy and Aldermen Bennett, Harrison, Hermes, Horton, Reidy and Sweet. Alderman Sampson was absent. Also present were Chief Administrative Officer Walsh, City Attorney Nugent, City Clerk Baker and Finance Director Mason. Also present were Commissioners Hart and Evans.

Mayor Kemmis said, without objection then, we will move next to the public hearing, which is a joint public hearing on a resolution request by Dr. Otto Klein for agricultural exemption to be removed on lands in the Lincoln Hills area. This is a joint public hearing with the Missoula Board of County Commissioners. I'd like to welcome Commissioner Hart and Commission Chairman Evans to our meeting this evening and we'll conduct this meeting jointly. Welcome. And Commissioner Kennedy is ill and is not able to be with us this evening. Could I ask, first of all, how many people are here to testify on this matter? How many are here to testify in favor of the removal of the Agricultural Exemption? And those here to testify in opposition? Are there those who are testifying neither in favor nor in opposition? Alright. I'd ask that you take account of how many people there are here to testify that you try to keep your testimony as brief as possible because the City Council, at least, does have considerable other business to attend to. Having said that, though, of course we do welcome your testimony, we just ask that you keep it as concise as you can. We will ask, first of all, for a staff report and then we will hear from the applicants for the removal of the exemption or their representatives. And then we'll just open it up, and we generally don't go strictly by proponents and opponents. So, after hearing from the staff and from the applicants, then we'll open it up in general. We'll give Council members and Commissioners an opportunity to ask questions, but we don't have an opportunity for questions back and forth among those who are testifying.

Public Hearing on a request by Dr. Otto Klein for Agricultural Exemption to be removed on lands in the Lincoln Hills area. (PAZ)

Mayor Kemmis opened the public hearing.

Pat Keiley, Office of Community Development. This is a request by Dr. Otto Klein to revoke an Agricultural Exemption that's on three parcels of land. Parcel U2, which is in the County, zoned C-RR2, and it's part of a Certificate of Survey #3598. There's Parcel B of Certificate of Survey #3596. That's in the City. It's unzoned. And Certificate of Survey #1082, which is also in the City, and it's unzoned. So their request is to revoke the Agricultural Exemption that's on each of these three parcels. The State law reads, in Subsection 763207-1C??, and I'll read that to you, "That an Agricultural Subdivision Exemption is revocable only by mutual consent of the governing body and the property owner." And so that's the reason for having the public hearing tonight, with the City Council and the County Commissioners, because two of the parcels are in the City, one parcel is in the County. You've got a packet of information that consists of information regarding each of the three parcels, information regarding the applicant's proposal to revoke the Agricultural Exemptions and information regarding State law as well as the latest information that we had when the packets went out a week ago, as well as when the updated packet information went out this afternoon regarding the adjacent property owner comments. The adjacent property owners, within a 300-foot radius of the three parcels together, 300-foot radius of that overall piece of land were notified of the request to revoke the Agricultural Exemptions. And what you've got in front of you is the responses that we got back. We did get one additional response back, and I've got copies of that that I can pass out on the table. We took some slides of the property so you can get a better idea what it looks like. So at this time, I guess what I'd like to do is show those slides. This slide, if you look to the right, you'll see a street, and that's Lower Lincoln Hills Drive, as it starts to go up the hillside. Right in front of you are houses off of a street called Apple House Lane. Above the house is, on a hillside there, is Parcel U2??, and all of U2 is on a slope and it's behind the houses, a ways behind the houses, that are right in front of you. U2 is the parcel that's in the County and it's the parcel that's zoned C-RR2. And on the right hand side, as I said, is Lower Lincoln Hills Drive. We're looking east. Okay, we're still on the flat part before we go up Lower Lincoln Hills Drive. Lower Lincoln Hills Drive is just on our right. We can't see it. These houses, on Apple House Lane, in front of us. Straight above us, is U2, Parcel U2, all along the hillside, all the way to about the top of the hill here, straight up from the houses. That's all U2. It's in the County, zoned C-RR2. I'll give you a little information on U2. The applicant has indicated that he does not want to develop this piece of land. He wants to dedicate it as a conservation easement or dedicate it to open space. And, again, there is an agricultural covenant on this parcel and it's in the County. Lower Lincoln Hills Drive..., again, we're on the flat before we go up Lower Lincoln Hills Drive, which is on the right. Here we can see, if you look at the houses that are up higher, kind of on top, below those houses, immediately below, and again there they front on Lower Lincoln Hills Drive, the part of Lower Lincoln Hills Drive that has wound it's way and it's at the top of the hillside, just below those houses, the land, that you can see some trees and some..., just some grasslands, it's all open area. The top houses now, below that, is Parcel B. Parcel B is in the City and it's unzoned. The applicant has indicated in his letter to the Council and the Commissioners that..., we'll see close up pictures of these parcels, that this parcel would be the parcel that they would like to see, I believe, approximately four homesites to be allowed to be developed. The meeting tonight is to talk about lifting the Agricultural Exemptions on the three parcels, on the one we just saw, U2, on this one, B, and on a third one. The request tonight is not to subdivide the land, it's rather to revoke the Agricultural Exemption which is on these three parcels. So, again, we're looking to the east, we're at the bottom still. In the foreground you'll see some brownish shrubby thicket area. That's Certificate of Survey 1082. Up at the top, you'll see some trees and a hillside and vacant land. That's Parcel B. So B is kind of towards the top, with the trees, open grassy land area, slope on a hillside. Below it, the thicket shrubby-type area is C.O.S. 1082. Both parcels are in the City. They're both unzoned. The applicant has stated in the letters, that you have in front of you, that Certificate of Survey 1082, which is in the foreground, brownish shrubby, he would like to dedicate that as a conservation easement or a dedication to open space. No development is proposed for that land. The development is proposed for B which is the open area where the trees are and where there's no trees. This is a real close up of Certificate of Survey 1082. And that's what it looks like when you get real close to it. Okay, again, we're looking at Certificate of Survey 1082, a little gully-type of shrubby area on the left side of the fence. And that's in the City. It's unzoned. Here we're actually at Parcel B, looking to the west. This is all Parcel B right here, lower part of Parcel B. Up to the right, you can't see it, but if we kept going up the hillside, we would eventually come to Lower Lincoln Hills Drive. This is all part of Parcel B in the City, unzoned. The very right hand side is the Certificate of Survey 1082. It's the thicket shrubby area. On the left side of the slide is Parcel B, again, in the City. Both parcels are in the City. Again, you'll see, kind of the top right hand side, the Certificate of Survey 1082 area. On the left hand, in the foreground side, you'll see Parcel B. This is, again, Parcel..., we're in Parcel B right now, looking out, seeing Parcel B. If we kept going forward, on the right hand side, and walked straight forward, along the right hand side of this screen, we'd eventually get to U2, which is way at the end of this here. On the left is 1082 again, Certificate of Survey 1082. Certificate of Survey 1082, closer up view. Those house that you see, front, on Lower Lincoln Hills Drive, it's pretty much at the top of Lower Lincoln Hills Drive. In the foreground, the thicket shrubby is Certificate of Survey 1082. Above that, between that and the houses, and off to the left, that's all Parcel B. That's in the City. It's unzoned and that's the proposed area for the homesite development. So there's an Agricultural Exemption on Certificate of Survey 1082, which is the shrubby thicket area, that you see in the front, foreground. There's also an Agricultural Exemption on Parcel B, which is above that and to the left where the grassy area and a few trees are located at. The request tonight is to revoke the Agricultural Exemption on those two parcels as well as a third parcel that we've seen. Here we're in B again looking towards Parcel U2, which is beyond the fence on the left. It's between those two fences, is U2, and it goes down to the left, all the way down, going towards Apple House Lane. Up at the top, and we'll see a better picture of this in a minute, is a Parcel A, which does not have an Agricultural Exemption on it. Dr. Otto Klein also owns Parcel A. And in the packet of information you have, Parcel A is a flat, relatively flat, parcel that's suitable for..., and I believe that the owner's request, or as an intention of building a house on A, but that does not have an Agricultural Exemption, and that's not part of the request here tonight. It's just for information. Here again you see the Certificate of Survey 1082, on the left, and on the right you see Parcel B. You can see the trees and the grassy area. Everything on the right is part of Parcel B, and we're looking west. Up at the top, you'll see some houses that front on Lower Lincoln Hills Drive. And here is Parcel B, a real good shot of Parcel B. It's one of the parcels that's in the City. It's unzoned and it has an Agricultural Exemption on it. This right here is Parcel A, a good portion of this is Parcel A, which is a

flatter area that is not part of the request tonight for..., it does not have an Agricultural Exemption on it. If we look, we're looking west, kind of west, and then towards the left is south, towards Missoula. If you look towards the left, as it goes down the hillside, you'll run into Parcel B. If you look straight to the west and go straight out, from the right hand side of the screen, you'll run into Parcel U2. And this is Parcel A which is between..., adjacent to those two parcels. There you'll see the street, which is Lower Lincoln Hills Drive, the flat portion of it. And here, in the grass area, open area, is Parcel A, flatter area, not part of the request tonight. Parcel A again. Here we're looking kind of northwest. Here's Parcel A again, the flatter parcel compared with B, U2 and 1082, Certificate of Survey 1082. This photo is shot from the base, before we go up the hillside or the bottom of Lower Lincoln Hills Drive. Lower Lincoln Hills Drive would be to the right of this slide. What you see, as you move up towards the top of the slide, as you go towards the..., you see this, a hillside area, that's U2 that goes all the way to the top of the hill there, and encompasses most of this slide, once you get beyond those fence lines. It's up a little ways from these fence lines but the top portion of the screen, from right to left, is U2. That's in the County and zoned C-RR2. It does have an Agricultural Exemption on it, and that's the third parcel that the applicant has requested that the Agricultural Exemption be removed from. In the foreground, the flat land, is not part of the request, but to the left and in front of you, the hill area, hillside area, a majority of that area, on the left and straight in front, is U2, Parcel U2. It's in the County and zoned C-RR2. This is U2 again. The portion of this slide that's on the hill, a majority of that portion..., it starts a little ways up the hill, not right at the joint between the flat land and the hillside but a little ways up, a good portion of that hill area, that you see right there, is U2. Now, we're again, these slides are taken from the base of, at the bottom of Lower Lincoln Hills Drive, where it's flat, and we're back actually on Apple House Lane, looking at this hillside. And this hillside, the one you're seeing right here, a majority of that is U2. And as you get over the hillside, you get onto Parcel B and Certificate of Survey 1082. And that's it. I just wanted to point out a couple of other pieces of information. Parcel B, which we saw on the hillside area, adjacent to Lower Lincoln Hills Drive, is 5.52 acres and, again, that's in the City and unzoned. Certificate of Survey 1082, which was the thicket shrub area, is 3.92 acres. And Parcel U2, which is in the County, is 14.68 acres. And with that, that's the end of my presentation. If anyone has any questions, I'd be happy to answer them.

(someone spoke off the mike)

Pat Keiley said, okay 76-3-207(1)??, the Montana Code Annotated, provides that an Agricultural Subdivision Exemption is revocable only by mutual consent of the governing body and the property owner. There's another subsection, 76-3-207(2B)?? It goes on to state, a change in use of the land exempted under the previous subsection that I just read, 1(C), for anything other than agricultural purposes, subjects the division of that land to provisions of this chapter. And this chapter refers to Local Review of Subdivisions.

(someone spoke off the mike)

Pat Keiley said, no, this is just..., we're just talking about the...

Mayor Kemmis said, sir, if you don't mind, maybe we could wait and give you a chance to testify and you can raise questions then and then we can ask the staff to respond. Part of the problem here is that since this is a public hearing, that we want it all on the record, and that means that we have to have people speaking into the microphone. So we'll give you a chance, at the microphone later. You can raise questions and then the staff can respond. Are there questions for Mr. Keiley from the Commissioners or Council members?

Alderman Horton said, Pat, that Parcel B appears to be made up of benches and grade that's greater than 25% or at least approaching that. How much of that is greater than 25%?

Pat Keiley said, it's hard to say. We didn't actually determine what the grade was. I have a hard time looking at it and making a statement about what I think the actual grade is, but it is fairly steep and it's fairly uniformly steep from the edge of the road downward towards Certificate of Survey 1082. So, I would just ballpark it, a real general ballpark, between 15 and 20 to 30-plus percent.

Alderman Bennett said, I was going to ask the same question but I guess to help us, the OCD did have some slope maps that were presented at the Rattlesnake Open House, and I'd ask that one of those be brought to the PAZ meeting, subsequent to this, for discussion. Thanks.

Pat Keiley said, okay.

Alderman Sweet said, Pat, I don't know if you can answer this question but can an Agricultural Exemption be lifted with conditions placed upon lifting that condition?

Pat Keiley said, it's my understanding, and I'll let Jim Nugent comment after I do, that if you put conditions on the lifting of the Agricultural Exemption, it has an effect on whoever owns the property. If they go to dedicate it as a conservation easement or to open space, it effects the benefit that they would get from dedicating it as a conservation easement or dedicating it to open space. It would effect the benefit that they would receive. As I understand, it would nullify the benefit that any type of tax benefit that they would receive.

Alderman Sweet said, if I may follow that up. I guess what I'm getting at is that in any event that the Commissioners or the Council should lift the Agricultural Exemption, can it be lifted in such a way that it is timed to coincide with the initiation of the easement that has been proposed. There is..., some concern has been voiced that once the exemption is lifted that the applicant doesn't necessarily have to follow through with placing an easement on that property. And I guess I was wondering whether we could..., if it were lifted, it could be timed to be lifted and the easement could go in at the same time.

Pat Keiley said, yeah. It's my understanding that if you condition it, then it voids that potential benefit that the applicant would get. So what you have in front of you is the applicant's letter indicating what they would like to do

with it, as far as dedicating Certificate of Survey 1082 and U2 to open space or as conservation easements. But, you may want to refer that question to Jim Nugent. He may have more to add on it.

Commissioner Hart said, what is the C-RR2 zoning for the County?

Pat Keiley said, the C-RR2..., it's a County zoning district. It's a Residential Zoning District that the main permitted use in the C-RR2 is single-family and the maximum residential density is two dwelling units per acre. The land that Certificate of Survey 1082 and Parcel B, that land is in the City and it's unzoned, and it was previously in the County, before the City annexed the land in the late '80s and '89, '90. And that land was also zoned C-RR2. So, at one point in time, all three parcels were zoned..., the whole area was zoned C-RR2, maximum density of two dwelling units per acre. I wanted to add just one thing. U2, which is in the County, the Agricultural Exemption, and I'd like to let Kathy Smith, with the County, speak here when I'm finished. She has a presentation to give on that parcel. It was dedicated as an Agricultural Exemption April 8th of 1988, that's U2. Parcel B, which is in the City, was dedicated as an Agricultural Exemption April 14th of 1988. And Certificate of Survey 1082, which is also in the City, was dedicated as an Agricultural Exemption February 11th of 1977. I looked..., there was some discussion concerning Certificate of Survey 1082 that possibly it could be a common area for one of the Lincoln Hills subdivisions, one of the Lincoln Hills additions. And I looked through the files and the surveys and could not find it..., anything saying that it was dedicated as park area or common area for any of the Lincoln Hills subdivisions, that Certificate of Survey 1082.

Alderwoman Gingerelli said, Pat, because Parcel B has been under Agricultural Exemption since 1988, does that then mean that the last time OCD took a look at zoning the Rattlesnake that that parcel was not considered for any type of zoning because it was in Agricultural Exemption? And has there ever been a time that OCD looked at what the zoning on that land might be if it hadn't been placed in exemption?

Pat Keiley said, you know, I'm not sure what the previous proposal or proposals called for, in terms of the zoning of the Rattlesnake, the last attempt. Philip might know, for that particular parcel. One other thing is we have two maps here. And the map up in front of you, you'll see, it's a little difficult to see from further back, but as you get closer to it, the property is in black with diagonal lines running through it, the three parcels. And there's some other information up on the map. It talks about the City limits. Talks about existing park or conservation easements, existing Agricultural Exemptions. It shows just a general, somewhat wide range, of the Rattlesnake area in that area. It also shows wildlife habitats and wildlife corridors for that area. And that's the type of information that we have had available and have been put on other maps in looking at a previous zoning of the Rattlesnake area and of the current proposal underway, so these were existing information that we used. There's another map here in front of me and it's an aerial photo, and it shows a wider range of the Rattlesnake area and it designates the Klein property. When I say the Klein property, I mean the part of the Klein property that's before you tonight that's asking for the revocation of the Agricultural Exemptions.

Alderwoman Gingerelli said, Mr. Maechling, do you need me to repeat that question or do you....,

Philip Maechling said, no. Parcel B was part of an Interim Zoning District when it came into the City with a prior annexation in 1989, and that zoning expired. And it wasn't part of the previous proposal that you saw, which simply included about 940 acres known as the Sunlight Lands. It's currently under study as part of the larger 1500-acre Rattlesnake zoning project.

Alderwoman Gingerelli said, so when it was Interim zoned, what was it?

Philip Maechling said, it had a two-per-acre, similar zoning to the C-RR2 zoning that was on it in the past, when it was in the County.

Alderwoman Gingerelli said, thank you.

Alderwoman Tracy said, thank you, Pat. I have a couple of quick questions for you. You've anticipated many of my questions and so have the earlier questions. Is it possible..., we've got three parcels before us for consideration, is it possible to determine that an exemption might be revoked for less than the three? So it might be one parcel might be revoked and another two not or some other combination?

Pat Keiley said, I would defer to the applicant to see what they have in mind. I'm sure it's possible to revoke any or all of the three or put conditions on the revocation?? of any or all the three. But I would defer it to the applicant to see what they have in mind or what are their alternatives or their thoughts on it.

Alderwoman Tracy said, okay, thank you. And one other question, if I may. I did read the materials that were provided to us in our packet and this evening we received, it looks like it must be 25 pages more of letters that you've just received today. Obviously, I haven't been able to read these since I just got them at 7 this evening. Can you tell me how much notice adjacent neighbors were given? Is that..., seemed to be a point that people had raised, a point of concern.

Pat Keiley said, approximately a week's notice they were given.

Alderwoman Tracy said, I know we don't do Agricultural Exemption work very often. Is that typical practice or was there some delay in the notice to adjacent neighbors?

Pat Keiley said, We're in the City, we've done this in the City. ..., (tape change)..., for this and this was little over a year ago and Ron Ewart, with the OCD, did that. There's no specific regulations or anything in the law that we were able to find that deals with the amount of time to provide the property owners for notification. What we tried to do was, as quickly as we could, gather the names of those people within the 300-foot radius and get the information out, get as clear of information as we could out to them. We would have liked to give the people more time to comment



but by the time we found the property owners and produced the maps that, even the ones that we produced are somewhat difficult to read, and even these, unless you're close up them, are difficult to read, provided us with just that amount of time to provide about a week's notice.

Alderwoman Tracy said, and one final question, if I may. Is there anything that is controlling the decision on this, in terms of the time? Do we need to be making a decision within a certain time frame? Is there some sort of a deadline that's requiring us to take action this evening or in the very near term future? Or is this more of an open ended situation?

Pat Keiley said, there's not a deadline like, for instance, a subdivision deadline where you have so much time to act on it according to State law and you have to make a decision, say within 60 days, once the person pays their fee and starts through the process. The applicants may want to comment on this too. I don't know exactly what their time frame is for what they would like to see is a decision made but I would defer to that too, but, no, as far as time limit for looking at it, there's not a specific time that's talked about in State law that says you have to act within a certain amount of time, no.

Alderwoman Rosenleaf said, Mr. Keiley, as I understand it, an Agricultural Exemption does not mean that you cannot build. And so how much can be built is dependent upon the underlying zoning. Is that correct?

Pat Keiley said, it's my understanding that when the Agricultural Exemption is on a piece of ground, the only thing you can do are agricultural types of uses and any other kind of use that State law provides that you can do anywhere. For example, we've heard discussion at PAZ meetings, and Jim Nugent can comment on this further, about mining gravel operations that the State law has indicated where those kinds of uses can go throughout the communities. But as far as developing a subdivision or building homes on these parcels that have Agricultural Exemptions, that's not allowed. Residential homes for dwelling...

Alderwoman Rosenleaf said, they can build agricultural buildings, for example, a barn or a fence or something like that but not a residence.

Pat Keiley said, correct.

Alderwoman Rosenleaf said, thank you.

Mayor Kemmis said, any other questions for Mr. Keiley? Thank you, Pat. Is there further staff report?

Alderwoman Gingerelli said, Pat, I just wanted to thank you for this slide show and your careful presentation of it. It was very helpful. It was one of the best we've had. Thanks.

Kathleen Smith, Paralegal for County Attorney's office. My presentation is going to just focus on Parcel U2, which is entirely in the County. I'm going to read into the record a presentation as I would normally give to the Board of County Commissioners and, basically, that is that Otto Klein has submitted a request to revoke an Agricultural Exemption for Parcel U2 of C.O.S. 3598. The parcel is a 14.68-acre parcel. And Mr. Klein proposes to lift the Agricultural Covenant placed on the parcel in May, 1988 along with two other parcels which now exist in the City. He then plans to sell these parcels, along with Parcel A of C.O.S. 3596, to Ronald O. Hauge for a total of approximately 25 acres. Mr. Hauge intends to build a home on Parcel A, develop not more than five lots on Parcel B and put the rest of the land into a conservation easement. The entire Parcel U2 would be placed under the proposed conservation easement. The history of the parcel is as follows. C.O.S. 3012 was filed in 1983 by the Sunlight Development Corporation, creating nine parcels greater than 20 acres in size and one utility exemption parcel. C.O.S. 3550 was filed in 1988 by Sunlight Corporation creating a parcel greater than 20 acres in size. Otto and Susan Klein purchased Parcel U of C.O.S. 3350 and in March, 1988 used an occasional sale exemption to create a 9.22-acre parcel which was then sold to Smoke Elser. The remainder parcel, which is a subject parcel, was then placed under an Agricultural Covenant in May, 1988 along with the two other parcels, which exist in the City.

Commissioner Hart, County Commissioner. Kathy, I see in the two sets of proposals given to us a disparity and I'd like to have it addressed, either by you or the people when they address it. In the County presentation, it indicates that Mr. Hauge intends to build a home on Parcel A and develop not more than five lots on Parcel B?

Kathleen Smith said, that's what I understand from his correspondence.

Commissioner Hart said, and the other one, the letter from Mr. Sokoloski, it indicates that they don't wish to develop more than three or four, so I would like somebody to address that figure for me. And then I have a legal question for Kathy, Jim or Colleen or all of the above. I'd like to know whether a conservation easement can be overlaid on top of an Agricultural easement.

Colleen Dowdall, Deputy County Attorney. Certainly a conservation easement could be laid over an Agricultural parcel. There would not be as great an advantage for the developer because the value of the property would be as undevelopable property when it's donated for the conservation easement. As far as whether it's four or five parcels, I'd have to ask Mr. Hauge to answer that question rather than going through all these letters again.

Commissioner Hart said, Colleen, just for the record, would you clarify whether or not there has to be notification to adjacent landowners for the listing of an agricultural easement and also would you clarify what the uses can be on land which has the Agricultural Exemption on it.

Colleen Dowdall said, the Agricultural Covenant is normally placed on the parcel of land through the exemptions to the Subdivision Regulations. That requires no notice or hearing to anyone. Taking the Covenant off of the parcel is also under that same exemption from subdivision review process. It is not subject to any review except for the



agreement of the governing body. It requires no public hearing and no notice in any manner. The Board of County Commissioners have adopted a resolution outlining their procedure which includes a hearing but not the notice by virtue of your agenda each week. We don't publish notice in any other way. With regard to the uses on an Agricultural Covenant, it's my understanding that when you file a Certificate of Survey and place an Agricultural Covenant on the property, you cannot get sanitary restrictions lifted. For that reason you cannot develop it in any way for residential purposes, even a farm house or a ranch house. You can only use it for buildings that do not require the lifting of sanitary restrictions.

Mayor Kemmis said, is there someone here now to testify for Mr. Klein, either Mr. Klein himself..., or Mr. Sokoloski.

Don Sokoloski, Developers' Representative. I'd first like to start out and give the human side to their side of the story on this property. They first purchased parcels C.O.S. 1082 and parcel A, at the time it was A, it was all one piece, back in 1986. At that time, it was all in the County. If we'd known today, or then what we know today, we'd probably still be in the County. At that time, the Kleins bought the property with the idea of someday building on the nob. The nob?? is not in question tonight. It does not have an Agricultural Covenant on it. Subsequently, in 1988, they started their plans to develop a house. It took a little bit more form. The property was split and they did place that parcel, what is now Parcel B, under the Agricultural Exemption. Also, at that time, as was told earlier, Sunlight started developing their properties and the opportunity arose to purchase the property right below the nob and adjacent to this parcel. And they took that opportunity for two reasons. Number one, the investment. Number two, they were able to help Smoke and Thelma Elser by purchasing the property because Sunlight would not sell in a parcel less than 20 acres. They turned around and sold almost ten acres to Smoke and Thelma and then placed the remainder under the Agricultural Exemption. Okay, so, the Agricultural Covenants that are in place, I guess on both these properties, are not unusual. As you can see in the packet, there are ten just in the Rattlesnake alone. What is unusual is the fact that they are so poorly understood by everyone, myself included. In fact, when we purchased that very first piece of property, it had an Agricultural Exemption on it. I asked, at that time, what this Agricultural Exemption meant. That was on that 3.4 acres in the gully and they just said, well, you can't do anything on it. It's for agricultural purposes, which is fine, and whenever you want to do something with the land, just come on in to us and we'll take it off. Well, that's all fine and good. The Agricultural Covenant allows the divisions outside the Platted Subdivision Act. It gives the Kleins the right to split that property. Some of the misunderstanding, and I'm really compelled to make a couple of comments about some of the letters that were received in opposition of this, regarding the taxes. Basically saying "the taxes on agricultural lands are less than they would be and the Kleins stand to gain a large windfall of profit because of that. He voluntarily and purposely put them under Agricultural Exemption to protect the land and reduce his tax burden. There's good purpose and must not..., the exemption is a good purpose and must not be removed to benefit the narrow and private interest." Saying something about private property. "These exemptions were imposed to prevent overdevelopment." "The Kleins have received considerable tax savings from the designation and now stand to gain better profit if he's able to lift the exemption for the benefit of themselves and the purchaser." And my favorite, "Our schools will have been cheated out of the tax money that had been paid on developable land." This is a misconception. The Kleins are paying on suburban tracts on all four of those pieces of property. And their taxes are fairly substantial. What we are asking, through a public hearing, is just that this Agricultural Covenant be removed. We do have the right to come back when Mr. Hauge is prepared to subdivide the property and go through the subdivision process. And that is protected under State law. Everyone's rights up there are protected by State law through the subdivision process. The fact of the matter is we cannot get full tax benefits by donating useless property or property that cannot be developed, and that is the reason we come to you and ask it to be developed. I live in the Rattlesnake. I feel that the tradeoff of four or five homes, and I'll let Mr. Hauge address that question, how many homes he plans to put up there, is a good tradeoff for the 24 acres, or the 20 acres that are going to be protected. When we look at the greenways that are going to be connected by these donations or conservation easements, the open space that's going to be donated to us for a visual impact, I think this is a good tradeoff and one worth considering. And I'm available for questions also.

Commissioner Evans said, I don't recall, Don, any conversation that might have taken place when the Commissioners agreed to put the Agricultural Covenant on the land. Can you refresh my memory please and explain to me why they wanted to put it on in the first place?

Don Sokoloski said, to be quite frank with you, I was totally surprised that they were even put on there. I didn't know..., we only knew that that 3.4 acres had a covenant on it. I was not privy to the Kleins subdividing their property. I knew that they planned on building a house. That's a question I think that has to go back to an engineering firm and why they chose to use a tax, or the Agricultural Exemption over just an occasional sale or however you do it, I really don't know.

Commissioner Evans said, will the Kleins be speaking this evening so that I can ask them that question?

Don Sokoloski said, certainly.

Commissioner Evans said, all right. Thank you.

Alderwoman Shea said, Mr. Sokoloski, I know that..., you said that Mr. Hauge is going to tell us the exact number of homes that he plans to build or doesn't plan to build. But you're talking about is it 20 acres or more or less in a conservation easement? What's the exact number of acreage?

Don Sokoloski said, well, we have the 14.68 acres at the bottom. We also have the 3.4 acres in the gully. Those will be..., those are the two parcels that are basically talked about and donated back.

Alderwoman Shea said, so that's 18 acres.

Don Sokoloski said, okay.

Alderman Bennett said, this is to follow up on the tax implication. I understand that the reason that you can't or don't want to tie the conservation easement to the lifting of the Agricultural Exemption is because the property assumes a higher value for tax donation purposes when it's completely free to be developed as opposed to having restrictions on it, and yet you were saying that there's no difference in the property taxes between something that has an Agricultural Exemption on it and something that doesn't? Or did I misunderstand that?

Don Sokoloski said, what I was trying to say is many of these letters that came in today, someone was led to believe that the Kleins were getting a great big tax benefit by having the land under Agricultural Covenant. They were getting absolutely no tax benefit. It's all being taxed as a suburban tract. And I don't know where that information came from. But those suburban tracts are certainly not taxed the same as agricultural land.

Alderman Bennett said, if I could follow up. Then you're saying that for purposes of assessment, by the County, for property taxation, it doesn't make any difference whether it has the Agricultural Covenant on it or not, as far as the taxes that are paid, but in terms of the value of the property for donation it makes a large difference. Is that correct?

Don Sokoloski said, it appears that way.

Alderman Bennett said, thanks.

Kathleen Smith said, I just wanted to clarify something that Barbara said. Barbara..., both Parcel B..., well, actually C.O.S. 3596 and C.O.S. 3598 were created through the occasional sale exemption. They weren't created through the Agricultural Exemption process. Parcels that were placed under Agricultural Exemption were remainder parcels after the occasional sale parcels were created, so they didn't use the Agricultural Exemption to create the parcels but merely placed the covenant on the parcel after it was created.

Sandy Sickels, Gold Key Real Estate. I have a letter and a map that I provided to the PAZ Committee, and some of you folks do not have them. I also have extras for people in the audience, so if you want to just pass them out to yourselves. I wanted to thank Pat Keiley for the wonderful job he did. He did a lot of work on this project. I have a copy of the existing zoning that is dated February 19, 1992, and this might clear up one question that we had. In the fine print, it says, "Study area boundary established and adopted as the Rattlesnake Valley Comp Plan Amendment 1988." These maps have been compiled and updated for the 1991 Planning and Zoning Project and all of this property shows, at that time, as C-RR2, which is back to two dwelling units per acre. I got this from the OCD today. And then, there was a question regarding the Planning and Zoning State law. I think it came from this side. Did your question get answered over here? Evidently so. Okay. I also have what uses are allowed under Agricultural. And then I also have kind of prepared this map which might be a little difficult to see but it is an overhead photo of all of the land outlined in red with the exception of this skinny piece down here that is right behind Apple House Lane. And the plan is very clearly one home on Parcel A, which is not part of this evening's agenda. And that is ready to go as far as all services and so on being in place and no more than four homes clustered on the top, just below Lower Lincoln Hills Road, actually we all call it upper, but on the maps it still shows as Lower, clustered on Lincoln Hills Road on Parcel B, period, that's it. Okay. There are a few things that I'd like to clarify because I think there might have been some misconceptions and maybe misperceptions on this. This is not a zoning change that we are seeking. It is simply an Agricultural Exemption removal. There would normally not have been letters to homeowners sent out, and if all the land were in the County, after speaking with Kathy in the County Attorney's office, I understand letters would not have been sent out at all. Pat not only sent letters to homeowners 150 feet away, but as far away as 300 feet away from these properties. I believed that this was good, on his part, to do this because I really feel that what we're trying to do, if it's fully understood, would receive approval from everyone. A conservation easement will accomplish what most people want for our hillsides, which is open space, and wildlife habitat. What we are proposing is clustered, low density and minimum impact for Parcel B. There would probably be one driveway shared access into both Parcel A and Parcel B so there'd be one driveway being used by all of the homeowners in this particular little project. It's possible, after we see what the engineers come up with, that we will have a cul-de-sac for the four homes on Parcel B. It's possible that it may have an ingress and then an egress, one on each end, and be a loop. We don't know. We haven't done the engineering yet. That'll be part of the subdivision process. Parcel B is currently unzoned. This 5.52 acres, with a maximum of four homes on it, would result in lots which are about an average of 1.38 acres each. They would be located close to the existing road, which is where the sewer is and I believe not even the rooftops would be visible from the valley floor. If it would be possible, Pat, could we see that very first slide that you showed? Could we? On that first slide that you showed, you can see a somewhat of a triangular rooftop, way at the top of the hill. That is up on Contour. I think that's about three houses up the hill, up the road. That's the only..., that was it, that last one. No, it was the one..., it was the other one. I'm sorry. The one that first flashed on. I'm sorry. There's a..., I don't know who owns the home but it's dark green. There we are. It's dark green and it's up above Contour. Where Contour goes up off of Rattlesnake Drive, it becomes very steep and that house is just about 2-1/2 stories, I think, because it's got a real pitched roof and some clerestory windows. It's a dark green, kind of a stain. Can you see that kind of a triangular shape with the flat line? Can you tell what I'm talking about or do you want me to point it out? Okay. I believe that standing on the valley floor, and standing where we are here from this view, that none of the homes that we anticipate will have any rooftops, any roof lines showing. That home is quite a bit higher in elevation and it's the only one that shows against the skyline. Thank you, Phil. The gully is 3.492 acres and U2 is 14.68 acres. That totals 18.172 acres which we wish to put into conservation easement or about 72% of the 25-plus acre parcel. 7.06 Acres would have a maximum of five homes. None of this land is or ever was a part of Lincoln Hills Subdivision and even though many people believe that the gully was common area, it never has been. We want to provide for the wildlife that we often see on these lands and we want everyone to have enjoyment and use of these lands. The slope on Parcel B will be addressed by the engineering design and the survey, and, like I said, sewers in the street. We believe the project will fit in nicely with the Rattlesnake Planning and Zoning Project that we're working on now. And this proposal is consistent with adjacent Comprehensive Plan areas. It is consistent with the goals, objectives and policies of the Comp Plan. Is also compatible with 50% or more of the developed properties within a 300-foot radius excluding rights-of-way. Those are three important questions that need to be asked.

Mayor Kemmis said, any further questions. Thanks. Now let me ask for further testimony from anyone who would like to offer it.

Otto Klein said, I am the person who is asking to lift these Agricultural Covenants. I just wanted to say that when they were put on, this was the first land that I had purchased. I really did not know the full scope of what I did. Why did I put them on? It was a long time ago. I don't exactly remember. I was told something about subdivision protection. I was advised by the people who did the survey at this land that this was the thing to do. I was also, and I remember this part quite well, told that this was a mutual thing and that agricultural easement could be lifted when I wanted it lifted. And that's the main thing I remember. Why I signed that paper, I don't know exactly. I will also be willing to answer any questions anybody might have of me while I'm up here.

Mayor Kemmis said, are there any questions for Mr. Klein?

Alderwoman Shea said, Dr. Klein, thanks for coming tonight. Sometimes we have proposals like this that are difficult to understand and the actual owner is not present. There's an advocate or a paid person, so it's very helpful to have your presence here. Are you planning on Parcel A to have a home at some point? I know that's not being addressed tonight and doesn't need to be. But are you planning to live there or are you selling?

Otto Klein said, I'll let Mr. Hauge talk on that because that will be included in the sale and I believe that's where he wants to put his main house. I'd just like to say that I'm very concerned about open space in the Rattlesnake and I think that my actions have proven that. I think to keep Smoke there, we did quite a bit of work. I'm very proud of that and I don't mind telling it. I wish he were here. He's not. He's in Helena. I think there might be a letter in here; I'm not sure. We intended that hillside never be developed, that's the U2, ever to be developed. The gully, obviously, not. We have made that available to the people in Lincoln Hills, to all the people in Missoula and the Rattlesnake, free access to that land. We have been good stewards of the land up there. We have tried some measure on weed control. We have sprayed for knapweed, at our expense, up there. We did put a fence on to keep the more boisterous after evening crowds from gathering for the annual keggers up there. So we have looked after it. I did not enter into this agreement with Mr. Hauge easily. I think that this plan is very good. You're looking at four to five houses on 25 acres, most of it going to permanent conservation easement. I think it's a win-win solution. I get out of it what I have put in there. The years that I have owned..., and the taxes and inflation we come out about even. Mr. Hauge has a wonderful place to build a home and I think that the Rattlesnake has gained a very nice open space.

Mayor Kemmis said, thank you, Mr. Klein.

Commissioner Hart said, I thought, when I looked at this, that it did relate to the land that Smoke was allowed to purchase, and I can remember that he had had no land that was his. He had leased land all that time. And it made sense to me that he had gotten part of that land and that the rest would be in a Agricultural Covenant. That was the assumption I made when I looked at this material.

Mayor Kemmis said, I am going to go ahead and take testimony from Mr. Hauge. We'll get the sellers and the buyers with all of their testimony on the table here and then we'll open it to others.

Ron Hauge, Buyer. I've sent a couple of letters to you folks and requesting what is resulted in this evening's hearing. And I thank you very much for considering this. My intention, in answering your question, is to build a home, a nice home, up on the knoll, which is Parcel A. In order to be able to afford to buy Parcel A, which would not be available by itself. It would only be available in a 25-acre piece. To make this affordable, I need to build a few houses on Parcel B and have the value of the other acreage sufficient to justify gifting of it for a conservation easement or whatever form to the City to land trust agency, whatever it might be in the most lasting form for that type of conveyance and I now live on 23-1/4 acres in the Jocko Valley with the river running through it and trout in my front yard, and my choice is to move into Missoula because my children are entering junior high school and high school. And the timing of this is important, addressing your question earlier, that I would like to be able to get this underway and be able to have a home built during, you know, before September when school starts.

Alderwoman Cregg said, how do you feel about an easement that would connect the Rattlesnake greenway to Mount Jumbo? I notice here that Five Valleys maybe..., is hoping to work out an easement with you.

Ron Hauge said, well, I've had discussions with Five Valleys and S.O.S. and I wouldn't make any judgment or decision at this time as to where the land would go. I would like to work with appropriate government officials and land trust people who are interested, people in the neighborhood who might be interested in this question to determine the best place to place the land in trust for the future.

Alderwoman Cregg said, so you think that you would like to do that if you could figure out a good way to do it.

Ron Hauge said, I guess I didn't finish my one train of thought earlier. I live in a very beautiful setting now where I have no neighbors. And so I'm choosing to move into town. A lot of people are trying to move out of the cities and into the country. I'd like to come back to Missoula. This is my home. But because I've lived in such a pristine environment, it's my desire to preserve as much land as possible while still making an economically feasible to do this. So I would like to see this land preserved for wildlife and for public use and conservation purposes. And the more that it can connect with other corridors, the better, as a lovely, you know, natural corridor that sweeps through there, that I think we would be preserving. I think there's already been some interference with that above the road, above that CS1082, I believe, is the number, which interferes above but below and then around, over above Smoke's place, then there would be good opportunity to have an open corridor up into the saddle.

Alderwoman Shea said, Mr. Hauge, thank you for your explanation. Would you have a problem with the final determination, the decision being made on this by the May 1st meeting of the Council? The Chair of the PAZ doesn't know this yet, Mr. Reidy, but Mr. Bennett and I, representatives from the Rattlesnake, will not be together again until

May 1st, and we would like to allow for enough time. I'm wondering if that would meet your parameters, as far as time goes.

Ron Hauge said, well, I entered into a buy/sell with the Kleins in January. I think my first letter was written to the County Commissioners in February and we have been working on this since then. I have land and a home to sell, which will take time, and the longer this takes the more difficult this becomes for us. The buy/sell expires on April 30th. So, while I might be willing to extend it, there are reasons why it's important that we have a decision as soon as possible.

Alderwoman Shea said, thank you, Mayor, for allowing me to follow up on this. I'm not sure what the legalities are but April 30th is on a Sunday. Mr. Nugent?

Ron Hauge said, it was the end of April, whenever the..., it's dated in April, towards the end of April which is probably the 29th or 30th.

City Attorney Nugent said, it's a private contract. They can have it expire whatever day they choose to have it expire.

Ron Hauge said, we've already extended it once.

City Attorney Nugent said, I think, in part, some clarification may be needed here in discussing the purpose of this review. The City is, I think this is only the second one I can remember, and the County has been doing these for years and years and years, but the way the County approaches these, they approach this to see if this is an evasion of the Agricultural Exemption, if it's an evasion of the subdivision laws. And that's the limit of the scope of the review that the County is doing here tonight. They don't turn it into this issue generating as much public input as seems to be being generated here. They focus in on whether this is an effort or an attempt to try and avoid the subdivision law by originally using the subdivision exemption. And because of the Occasional Sale that was created, it's my understanding and visiting with the County Attorney representative, Colleen, that that probably isn't much of an issue in this instance because in two of the instances here the lots were not created by the Agricultural Exemption to start with in the first place. And it seems that this is kind of headed towards bargaining to try and keep this as open space, and I don't know if you have that ability or authority to do that under the law, because this is under your Subdivision Exemption laws. No other subdivision exemption goes through this type of review and there are, as was indicated earlier, there's nothing in the law about notification or hearing procedures. It's important for public participation before important final decision to allow public participation but, as was indicated, the County Commissioners do it quite differently and I think the City should be looking at what its procedure should be for the future in case we have any more of these. I assume that the Office of Community Development would be following the County procedure, but I was wrong in making that assumption, obviously, because the County deals with these on a frequent basis. And I think when the last one came through, it indicated that there had been numerous removals of Agricultural Exemptions through the County. So I think that we may be carrying this far too far for what's supposed to be the limited purpose of this review.

Mayor Kemmis said, any other questions for Mr. Hauge?

Alderman Bennett said, at the risk of carrying it too far, I had a couple more questions. The one thing that struck me about this is that it's, you know, a two-part thing because of the way your tax situation is structured. We remove the exemption first and then, at some later point, it gets donated or an easement put on for conservation purposes and the lot be subdivided. I'm just wondering what your time frame was for doing that and we'd also wondered about the possibility of putting any covenants...

Ron Hauge said, well, again, I think I'm still subject to a subdivision process..., (tape change) lifting of the Agricultural Exemption. I think this makes the land a more marketable parcel, the whole..., all of the 25-acre parcel. Having Agricultural Covenants on it really deflates the value of the land. In order to be able to minimize the development on Parcel B to four houses, I need potentially greater valuation of U2 and the skinny easement, or the skinny parcel in order to balance the economic viability of the plan.

Alderman Bennett said, again, as far as the time frame for doing this, assuming this was to go through, what would you anticipate in terms of...

Ron Hauge said, I need something that can be done this year.

Alderman Bennett said, okay. Thanks.

Ron Hauge said, that'd be my intention.

Mayor Kemmis said, any other questions for Mr. Hauge? Thank you, sir.

Bill Clarke, President of the Rattlesnake Valley Alliance. I can certainly understand the fear that a lot of people have of doing this but I want to say that I'm very much in favor of this. What we have to remember is that an Agricultural Exemption is in no way any kind of a permanent open space situation. When Council faced this decision last year on the southern most portion of Lower Lincoln Hills Drive, they stated, at that time, that the only reason that they were not going to consider lifting that Agricultural Exemption was because the developer was not willing to come forward with a plan. So, here we have a developer coming forward with a plan, and if the lifting of it gets turned down tonight, developers who come forward with plans from now on..., and I think we were a lot better off to get this land into a permanent conservation easement while we can. I think the offer that we're being given here is a very attractive one. Today, Save Open Space held a press conference and formally took possession of the agricultural easement, agricultural..., I'm sorry, the conservation easement up on Waterworks Hills. And I think this type of development, the way that this is..., the way that we're getting a conservation easement this way is the wave of the future. Since we

didn't pass an open space bond, we don't have the money to buy these kind of things. If we can get a developer who's willing to come in and be as generous as this and give as much land as this to a conservation easement, I think we have to be just thankful to the bottom of our shoes that this happened. The surrounding zoning in this parcel, in Lincoln Hills, was C-RR3, which I would want to remind everybody is four dwelling units per acre. Now even though the land in the County was at C-RR2, there's no indication, as part of the zoning process that's now going on, we don't have any idea what would happen to this land. It could be going up to four units per acre in this particular area just because the sewer's up there. So, I mean, there's no guarantee that we were going..., that we'd get any kind of a better deal out of this zoning process than what's being offered by this developer. It's also..., just again, oh, the tax break thing, even if Mr. Klein had gotten a tax break for all these years, that would not be a reason to deny doing this now because if a person can get a tax break through keeping his land in an Agricultural Exemption, it would be a reason to allow him to not develop the land, which is what a lot of us want to encourage. If a person is having to pay suburban taxes on land that's undeveloped, then they almost end up having to sell that land for development because they can't afford to pay the taxes all the time. So, even if the taxes had been lower during all this period of time, it would not be a reason not to lift this now, in my mind. Council may want to make some sort of adjustments to the subdivision process as it goes through, or whatever. Like I do hope, for instance, Marilyn Cregg's comment about the access easement, I hope that maybe something can be worked out with that, but I think the basic proposal that's being given here is very hopeful. I hope that more developers, throughout Missoula, do this kind of a thing. Thank you.

Greg Tollefson, Director of Five Valleys Land Trust. I'm not here to advocate action, one way or the other, on the part of the Council or this body. But I would like to explain Five Valleys' interest in this proposal, and I'd like to do that by reading a letter that most of you may have that Chuck Tribe wrote regarding this, if that's okay. "The Five Valleys Land Trust has long held an interest in the protection of open space, wildlife habitat, and other public and natural values on and around Mount Jumbo. We've been working for some time to find a way to protect the large, key parcels that make up the Mount Jumbo complex. At the same time, some of the smaller, adjacent parcels are also of interest to us when the conservation values, and public values of those lands seem to fit into a larger picture of how the undeveloped lands in the Rattlesnake could, or should be managed and used. With that in mind, Five Valleys has engaged in discussions with Mr. Ron Hauge, a potential purchaser of the Otto Klein property on Lincoln Hills Drive. Mr. Hauge has informed us of his interest and intent, to donate approximately 18 acres of the 25 acre total." You'll note in the letter that it refers to donation but I think that the discussions have been more open-ended than that and the possibility of a conservation easement or an outright donation. It also refers to Five Valleys Land Trust as the ultimate recipient. We certainly don't have any proprietary interest in being the ones who ultimately either hold the easement or hold the property, as long as conservation got done. The criteria we employ in determining whether to accept an easement, or in this case, a donation of land, include such considerations as scenic values, important wildlife habitat, public recreational opportunities, and the potential for the property to become part of a community, state, or federal park or greenway system. The property in question here, if protected, could serve each of those purposes to some extent. Of particular interest to Five Valleys is the potential for this property to serve as a link between the Rattlesnake Greenway and the Mount Jumbo complex. Five Valleys hopes to continue discussions with Mr. Hauge, in the hope that a trail easement could eventually be negotiated across the adjacent parcel, to the north, and connecting it with the existing City easement to the north of that, hence, tying the whole parcel to the Greenway." I should add, parenthetically here, that that is a long ways down the line probably but it's certainly a potential. "Should Five Valleys take possession of the property, or an easement on the property, it would be managed to protect the wildlife habitat in the woody draw and along the old Rattlesnake ditch. We would strive to improve the range condition, and would continue to work to incorporate it into a trail system that would connect Rattlesnake Creek and Mount Jumbo. Five Valleys does not participate in discussions of development scenarios except insofar as they might affect the conservation values that we are interested in protecting or easements that we are obligated to enforce. As they have been presented to us, Mr. Hauge's development plans do not conflict with those aims. We believe the conservation component that has been presented to us would serve the general public interest of this community." But I must add, once again, that we are not..., I'm kind of an "inponent," neither a proponent nor an opponent on behalf of Five Valleys Trust, but we stand ready to work with the owners should the Agricultural Exemption be lifted.

Kim Kuethe, 28 Willow Brook. I have a property adjacent to this property which is how I was notified. And I do want to say for the record that it's been very precious little time. I haven't been a resident there for quite two years myself and there's been very little time. We had exactly 7 days to sort of do the research, look at the piece, talk to neighbors, try and make some kind of a decision, come to an opinion and then respond. So, I think there are still a lot of things that are up in the air, from my perspective, but I agree that..., I'd like to narrow the focus a little bit. There's a lot of talk about trade offs, about conservation easements, about doing something in the future with this property. The only thing that we know for sure is that if you lift the Agricultural Exemptions on these pieces of property, they will sell the land, and then there will be discussions about what pieces will go into conservation and so forth and so on, and what might be developed. You've heard a couple of people tonight say that the U2 parcel will never be developed. That's the biggest rectangle on the map there, underneath..., that includes the brow of the hill. It's sort of a concave brow. It would be difficult to access and then difficult to develop as well. The 1082 parcel, which is the long skinny piece that meanders down, is a gully. It's a gulch. It's a wild area that the photo..., the slide show..., the thickets that you really couldn't see beyond. So that's a good section there as well. Both of those pieces will, in all likelihood, never be developed. So that leaves Parcel B up for discussion and there's a parcel..., a portion of Parcel B which is yet undetermined that would be considered for conservation easement in the future. After the development on the upper end of Parcel B there were determined how much land that would take is really up for negotiation. We've heard, you know, several different possibilities. So, when you look at the gift of a conservation easement, it becomes sort of a moot point, from my perspective. Right now all of that land is protected in Agricultural Exemption. I believe that it should remain there. The Parcel A, which is the point up on top, the really very beautiful homesite area, is originally part of Lincoln Hills. It was plotted for 3 to 4 homesites. It's probably the most prime piece of property remaining in the City, or one of them. I guess one way to look at it is if someone needed to finance a home up there, they could certainly develop that piece and no one would be in opposition. It's already plotted for several homes. It's serviced by sewer and water already and electricity. Parcel B, we've discovered just in some conversations with the developers this week that if they put four homes on a loop there, they would need to put in a lift station to pump the sewer, to put up the sewage to meet the sewer line because access runs at the high end of that piece of property to the sewer line. So, I think there are a lot of questions that come up once you start talking about

developing Parcel B. I think, as we start to take a look at what is happening with agricultural lands in the Rattlesnake, as well as in other areas in the City, I know that this month was the open house and all the reviews that are going on, this is exactly the kinds of properties that are being looked at for future determination and I think it would be very unfortunate to lift these easements now ahead of that process. The Parcel B hillside, as you..., there were some questions about what the grade was there and it's true, at this point, no one can say exactly since it hasn't been engineered or examined in that way. It is really steep. I walk it. I was there. And in order to put a road and then the pads for homesites, it would come way down that hillside. So I think that's one of the issues that this review process, that's been undertaken, needs to take a look at what kind of guidelines will be allowable for development on steep slopes. Again, I don't want to stand in anybody's way from building a house on a piece of private property. And I think that this movement toward making trades between, you know, landowners and conservation easements and all that, I think it's wonderful what's being done. What Walt Peschel did was terrific with S.O.S. And I think that's very appropriate when you're dealing with private, unencumbered lands. So, you know, the Parcel A, which is totally unencumbered and ready for development, I say, that's there, go ahead. But the pieces that are held under Agricultural Exemption right now, I believe, should remain there and are already well protected as long as those are kept in place. So I would urge you to consider that, and certainly not to make a decision tonight. I think there is a lot that hasn't been examined. Also, as an adjacent property owner, I feel, and one appraiser has confirmed, that this would certainly reduce the value of my property, and there at least 17 other parcels which adjoin this piece of property. And, you know, it's a steep hillside. It overlooks this whole area directly, so to, you know, build four houses on that slope, and not knowing what kind of a development might be at this point, only knowing that there are a lot of homes in the \$150,000 and up category right now available, and so I don't see a compelling need there, but that's all speculation. So, again, I would just reiterate that the only guarantee we have at this point is that if you lifted the Agricultural Exemptions, the land would be sold, and then what would happen next is not entirely clear. Thank you.

Alderwoman Tracy said, I just have a quick question. I wanted to make sure that I understood your testimony. From what you said, you don't believe that Parcel U2 or C.O.S. 1082 which is the skinny part, as you put it, could be developed.

Kim Kuethe said, that's correct.

Alderwoman Tracy said, okay. I'm trying to understand if, from your perspective, there is a difference in maintaining those properties as an Agricultural Exemption or not, because it strikes me if your concern is a development, that it's confined to Parcel B, I just wanted to make sure that the assumption that I'm making is correct, that you would not have an objection to the lifting of the Agricultural Exemption for U2 and C.O.S. 1082. Is that correct?

Kim Kuethe said, for the purposes of conservation easement, yes, that would be true.

Alderwoman Tracy said, thank you.

Alderman Bennett said, I just wanted to address Kim's one question about deciding it tonight, and I'd already..., any Council member can send these things back and I'd already decided to ask that we do that so that we'd have time to review some of the letters and things that were on our desk tonight. I just wanted you to know that before we proceeded any...

Kim Kuethe said, okay, thank you.

Patricia MacIntosh, 27 Willow Brook Lane. Oddly enough, not next door to Kimmie. It's the opposite end of the street. I live on Willow Brook, which does not overlook this particular piece of land but I am a representative in the Lincoln Hills Homeowners Association. And, as Kimmie said, the only issue here tonight is whether or not you'll lift the covenant on the land. I looked up what a covenant was, and it says it was a binding and solemn agreement between two or more parties to do or keep from doing some specified thing. And I was under the impression that Mr. Klein knew what he was doing when he put these covenants on the land. Now he says he was duped. I, you know, that kind of changes what I was going to say because I thought it was a conscious, deliberate thing that he had done. And I think, as far as the neighborhood is concerned, that we would be better served to have the covenants in place. We, in Lincoln Hills, live under covenants, and our covenants are transferred with the property. They don't come off. If I were here, my neighbors would be all here. If I was here saying, I want to put a boarding house in Lincoln Hills, I want my covenants lifted because they don't suit my purposes today, even though I signed those covenants when I moved into there. I didn't have them put on, they were on. And so I think if you lift the covenants, we've said this, the person who's offering to buy it from the presentation that was done by the realtor, has a highly conditionalized option to buy. It's conditional on one, the agricultural easements, or covenant, being lifted. Two, that he gets permission to build on the property. That was another one of the conditions, and I don't remember exactly what any of the other ones were. And, of course, if those conditions could not be met, he would not purchase the land. And so if you lifted the covenants and he couldn't get permission to build, he would not purchase the land, and then we would have land without any covenants or any conservation easement or anyone who was willing to make a deal, even if we could make this binding at this point. But we can't because the man does not..., the man who is promising us these things does not own the land, and I think that's a very important point. Thank you.

Alderman Horton said, I would request that a clarification from the City Attorney regarding to the term covenants and Agricultural Exemption, as we have to deal with it, and law.

City Attorney Nugent said, covenants aren't necessarily something that a government entity is involved in. For example, the situation about the boarding house would never come up in a public hearing in this City because those would be private covenants between private parties, and we don't enforce private covenants between private parties. This is..., in your subdivision law, under exemptions, there's an authorization for an Agricultural Exemption. If the Agricultural Exemption is lifted, and it's to be lifted by mutual consent, the land immediately becomes subject to the Subdivision and Platting Act of the State of Montana. That's in the language of the statute. In this instance, your



focus point should be on the exemption. And the way the County Attorney's office is administered and the County Commissioner's, you examine it to see if this is an effort to evade or try to avoid the subdivision laws when they're lifting it. It doesn't become a popularity vote where you hold the land hostage for open space. That's not the purpose of this proceeding or with the lifting of the Agricultural Exemption. Further, it's not necessarily protected. Agricultural purposes can be pretty nasty stuff in some instances, depending what type of agricultural purpose someone might want to engage in. And as Bill Clarke indicated, you do not have protected land for protected open space pursuant to an Agricultural Exemption. Someone could go up there and say, okay, it's going to be agriculture purposes. This is the agricultural purpose, and I've seen some agricultural purposes that people would consider to be pretty trashy.

Mayor Kemmis said, I'm going to ask that Council members and witnesses remember that this is only the first, in quite a number of items, that we have to consider this evening. We've devoted almost two hours to it already, so we'll try to move along and wind this up.

Chris Buzan, President of Lincoln Hills Homeowners Association. Our group supports the concepts of open space and limited new development in the Lincoln Hills area. Unfortunately, we did not have a quorum at our last board meeting so we, as an association, cannot legally take a position on this issue. We really didn't have very much time to discuss this. However, many of the residents whose homes border the property under discussion, and some whose do not, have expressed concerns about lifting the Agricultural Exemption on this land. You will hear from some of them tonight, and you have. My own bias is to put as much land in the Missoula Valley as possible into conservation easement. These easements exist in perpetuity and are not subject to the changing political winds that blow. Sometimes developers can combine a project that makes economic sense with a conservation easement that can provide large tracts of open space. We saw an example of this with the recent signing of a conservation easement on Waterworks Hill. Sixty-seven (67) percent of 160 acres up there were placed into conservation easement in a cooperative venture between the developer and Save Open Space, which is Missoula's urban trust. I believe that these types of partnerships are the wave of the future in Missoula. However, all easements are not created equal. And we, as a community, must weigh the benefits that we obtain versus what we may lose. This project, while perhaps worthwhile, does impact a number of individuals who live in Lincoln Hills significantly. It will be up to you, as a governing body, to determine whether or not this is a wise project or one that should be rejected in favor of continuing the Agricultural Exemption. Thank you.

Bob Richards, #6 Starview Court. And currently building a residence at #7 Starview Court for the owner of that land. Basically, I kind of agree with everything that the attorney had said up there that, you know, we really should be focusing on what tonight is about and that's lifting the exemption. For several years I've volunteered and served on many committees, Hillside Development, Affordable Housing Task Force, Vision 2020 and it seems like all that effort, that I've been putting to work there, and especially in the Hillside Development that we've been doing and going to these meetings, it's kind of we're doing it to no avail because we're never going to get to that process if these kind of things happen. I mean, we've worked very hard. I'm president of the Homebuilders Association here in Missoula, and we worked hard to work on these committees and work with the City and the County and all their endeavors for Hillside Development, for planning and zoning and in building the last two residences that I'm building up in Lincoln Hills right now, I've been faced with the new hillside, or actually the height requirement and now serving on the Hillside Development Committee, I understand what goes into building on hillsides and what open space is about. And all I want to just make clear is that I think this is a good plan. It's in line with everything that I've been working for, for the last three years on these different committees. Saving the natural drainage areas and building below the sky lines and all of the things that we've gone into these several meetings about are being produced by this developer. And I think, once again, a win-win situation. And thanks for your time.

Lois Williams, 2200 Lincoln Hills Road. I live right next to this property and I think that the intent is a good intent if we can..., if the laws don't permit one to be contingent upon the other, the lifting of one easement to provide for the conservation easement. Can we count on the Council to not allow it to be subdivided? How does that come about? The U2. If the agricultural easement is lifted, and then they decide that they, for some reason, don't want to give it as a conservation easement, then it's under the subdivision laws and then where do we stand?

Mayor Kemmis said, then the Council would have to judge the subdivision on its own merits.

Lois Williams said, so would then it be, like Mr. Nugent said, would the fact that maybe we were all misled come into that fact?

Mayor Kemmis said, in this case, with regard to U2, at least at the current time, unless there was a petition to annex, it would come under the County's jurisdiction.

(Commissioner Evans was off the microphone)

Lois Williams said, okay, that's what I'm counting on, Barbara.

Commissioner Evans said, I have a long memory and if they're telling us that they intend to put it in a conservation easement, and then they come in and say, oops, we changed our mind, I'd have to look at it in a neutral light, but I do have a long memory.

Lois Williams said, okay, and I think that's all that the neighbors can ask for. Thank you.

Alderman Sweet said, I think, just for the record and point of clarification, the hinted at subdivision that they are talking about on Parcel B would be four units which would come under a minor subdivision, which would not allow for, or would not have to have a public hearing at all on it and would require little review by the City Council, especially if the land had been zoned in the meantime. But there is plans to zone this land. So if it is zoned, then it

could go..., would go through as a minor subdivision review. If it remains unzoned, the project would come in and it would be subject to a little bit more review.

Lois Williams said, though I'm more concerned about U2 and the other corridor, the conservation easement which can't be declared until the Agricultural is lifted.

Alderman Bennett said, also, to get on the public record, although, you know, some people think it was nice, and I guess others wouldn't, we don't have unlimited discretion once the thing is lifted. The owner has legally enforceable rights and we're required to obey those. In other words, there's some discretion in how you do it but you can't just say no, no, no, you told us this earlier. Wouldn't be able to do that.

Alderman Horton said, if it's any consolation, minor subdivisions, five units or less, are not required to have a public hearing. And in most parts of town that holds true but in the Rattlesnake everything has a public hearing.

Lois Williams said, I'd just like to make one additional little comment. We are assuming the City Council has long memories also.

Douglas Dollenberg, 17 Carriage Way. I'd like to praise Dr. Klein and Mr. Hauge. It's an intelligent proposal but intelligent people disagree sometimes, and I disagree with this. My first point is probably moot. We'd have to confer with the attorney. It seems like the biggest issue facing the Council and all local governments is managing growth. And Agricultural Exemptions seem to be one place to manage growth. We don't have to have arguments about property rights here. There's a mutual agreement between the owner of the land and the local government to put it in a Agricultural Exemption. Once it goes into subdivision, there's going to be a lot of arguments about taking and zoning and property rights. A second point, and Mr. Bennett's raised it a couple of times, and I think it would be real good to clarify, deals with the difference between the value of the land and the tax treatment. That's certainly gotten muddled here and it's something that needs to be clarified. I certainly don't understand that. In looking at the conservation easement, I like the idea of a conservation easement. As it stands now, what does the community gain? The land doesn't appear to be developable. And the little gap that comes up the gully should probably be a little wider if you're talking about realistic wildlife through put. Thank you.

Alderwoman Gingerelli said, I just wanted to ask Ms. Williams, I wasn't clear on where you stood on that. You started out by saying you thought the intention was reasonable but..., can you just describe yourself pro or con?

[Ms. Williams was off the microphone]

Alderwoman Gingerelli said, okay, thanks.

Mayor Kemmis said, do you want that on the record, Marty?

City Clerk Baker said, please.

Mayor Kemmis said, I'm sorry, but we do need to have your response on the record at the microphone, if you would. Thanks.

Lois Williams said, I do not oppose the proposal if it goes through the way it is. My concern is that something would go wrong and the conservation easement wouldn't happen.

Mayor Kemmis said, thank you.

Carl Prinzing, owner of Lots 6 & 7 on Starview Court. You get to that just by turning right on Contour Drive and then right on Starview Court. I am very much in favor of lifting these restrictions. I believe the program that they have put together has had lots of research. It's a very good proposal. There's 70% or more going to be put in conservation easement. There is going to be limited access for any proposed new homes. Cluster housing. We have City services there of water, sewer, City streets. I mean, this is a thing we need in Missoula. The height restrictions, which were spoken about earlier, will preserve the beauty of the mountains from the valley. I know because in putting the new home on Lot 6 of Starview Court, we had to abide by these, so I know this is true. And the homes on Contour and Starview will retain their views of the valleys because of these restrictions. So I'm asking that you vote in favor of lifting the exemption. Thank you.

Lee Meltzer, 106 Apple House Lane. The pictures you saw on the screen was basically my home. U2 is my backyard. I have to admit I am part of the great uninformed public about this issue. I've been gone for two weeks, arrived home last night, so I have not had a lot of time to prepare for this. My question is this. I guess, rather than my question, my concern. Less than 8 months ago, I observed a cluster housing project, which you have not seen, to be built on U2, and that sale did not go through. So I have a real concern as to whether, in fact, this is an attempted circumvention of some of the statutes on the books. I don't know that to be the case but I certainly questioned it when I saw drawings of multiple housing sitting on U2 and the other areas in question here, less than six months ago. We talk about devaluation of that property, that Mr. Hauge's talking about building on, if we don't lift the Agricultural Exemption. He needs the lifting of that in order to donate that, and I understand that. But the minute you lift that, and they build on that property, you devalue the property of every homeowner in the Rattlesnake, particularly in this area. So, I can't sit here and tell you I oppose this or I'm in favor of it, but I certainly have some serious questions that remain unanswered as of tonight. Is this a circumvention or not? I don't know. Thank you.

[Mr. Klein spoke off the microphone]



Mayor Kemmis said, Mr. Klein, let me just..., let's go ahead and gather the rest of the testimony and then I'll give you a chance to answer that. Is that all right?

Andy Sponseller, 1025 Rollins. I'd like to speak as a private citizen. I'm neither in favor or opposed to what's being discussed in regards to this development proposal. I heard about this a couple of days ago and something that really concerns me is the issue of Agricultural Exemptions being turned on and off like a light switch. I think some questions need to be answered about what, in fact, the tax benefit was and I think that if Agricultural Exemptions can be switched on and off for the landowner's needs, in regards to getting a savings on taxes and then conveniently pulled off the books, I think that Agricultural Exemptions mean little or nothing. And I think that that's really the issue here. Quite frankly, I'm highly in favor of the kind of proposal that Dr. Klein and Mr. Hauge are proposing, but that's really not the issue here. I think the issue is the integrity of Agricultural Exemptions and what, in fact, was the tax benefit and should that, in fact, be relieved now all of a sudden since there's development plans. I think that's the real issue.

Sarah Worrall, 7 Carriage Way. Adjacent to the property and I'll be brief. I appreciate the mailing from the OCD to the adjacent property owners. And, again, I am concerned with the Agricultural Exemption being placed within this decade and then again taken off, you know, now so I do appreciate the honesty of Dr. Klein as to not knowing why he signed that but the fact is, it does have that exemption on there. My other concern is about the impact on the hillside because it is a steep hill.

Dr. Otto Klein said, thank you for allowing me to come back up. One, I want to go over the cluster housing issue that was brought up. That absolutely was not on Parcel U2. It was on the acreage below that. A plan was drawn up. Sue, my wife, and I reviewed it and we rejected it. And we cut off the continuation of that project. We thought it was inappropriate for that land. That project cost us considerable money looking at it. But we went down there and looked at the land that's not appropriate, and that's not our intention. That issue is dead. Secondly, there have been no tax benefits, that I'm aware of, from this agricultural easement.

Mayor Kemmis said, thank you, Dr. Klein. And on that point, Colleen Dowdall has an observation.

Colleen Dowdall said, we are talking about two different kinds of tax structures here. And one of them is taxes on the land. In order to get reduced taxes, because the property is an agricultural use, just placing an exemption upon the land does not give you that tax break. You have to meet other requirements that are in a different code that I am not incredibly familiar with but can tell you that you have to be obtaining income from the property from the agricultural purpose. That's one of the criteria, and there's an acreage criteria, but the two have nothing to do with the other. The Agricultural Exemption is a means of dividing land without going through subdivision review. It's a means of creating an extra parcel of land. For instance, if the farmer has a 160 acres and he wants to create a parcel to do something else with for 10 acres, then he can put the exemption on the 150 acres. An abuse of that would be then if he attempted to sell that 150-acre parcel to someone else and that person came in and wanted to remove the Agricultural Exemption for purposes of developing the property. And it would make more sense, we're talking like 15 acres and 5 acres, and we have seen this occur where the exemption is used in that way to create a parcel of land and then take the exemption off after you have sold it because now you have a property description for that parcel. That is not the facts under which this parcel was created. And the other property valuation that we're talking about are tax valuation is that when you donate land, as you probably know, Mr. Sponseller, you get a deduction for the value of the land that you're losing by donating to the conservation easement. Two different structures here. And from Mr. Klein tells us, or Dr. Klein, he was being taxed as a suburban parcel not agricultural.

Alderwoman Gingerelli said, I guess this would be for Ms. Dowdall also. Why was this placed then originally under Agricultural Exemption? Was it ever farmed? What was the initial reason why this..., what is the criteria that land, such as this, that is obviously not really being used for agricultural..., who decides that?

Colleen Dowdall said, I have no idea whether it was being used for agricultural purposes but one can come to the Board of County Commissioners, or to your body, at any time and ask that the covenant be placed on the parcel. From what Dr. Klein just told us, he was given some advice that it would benefit him in some way, but..., and so he did it, and it's as easy as asking us to do that. There's no harm to the County in doing that. We will know that no sanitary restrictions will be lifted while the Agricultural Exemption is on it, so there will be no development. The statute says that it can be lifted with the mutual consent of both parties.

Alderwoman Tracy said, I'm sorry, I just wanted to verify with Dr. Klein, the gentleman who spoke earlier, who lives on Apple House Lane, had been concerned about a particular proposed development that he thought was on U2 but now, I understand, from what you're saying, that it's really on C.O.S. 3738 as opposed to C.O.S. 3598, affectionately known in this deliberation, I guess, as U2. So that was that flat space that we saw earlier in the pictures, that flat area directly behind the Apple House Lane homes prior to the bench, or I mean, sorry, prior to the hillside that arises out of that. Is that part of that?

Dr. Otto Klein said, yes, it is part of that. ..., [tape change] anything at all.

Alderwoman Tracy said, great. Thank you for clarifying that.

Commissioners Evans said, I have a question for either attorney. Colleen, is it my understanding that..., it is my understanding that an Agricultural Exemption can be removed at any time the owner and the Board of County Commissioners or the City Council, whichever it is, agrees to do that. The conservation easement, on the other hand, is in perpetuity. Is that correct?

Colleen Dowdall said, if that's the term of the conservation easement, yes.

Gary Yoshita, 27 Willow Brook. And I oppose the proponent's proposal to lift the covenants. And I hear..., this is a..., as I observe what's going on tonight, it seems to be a real hard sell. In a sense of what I heard also earlier, by lifting this Agricultural we will lose our rights essentially, when it comes down to it, or lessen our rights in any way on the property, once it's lifted. I really have to question if that's for the good of the people. Also, we heard that the comments about having long memories. I have to ask myself, what if this deal goes through and the gentleman who proposes to purchase the land sells the land? What we're hearing here is between the Chambers here and the proponent. We're going to have to deal with someone else at that time, which really doesn't sound too binding to me. Thank you.

Alderman Horton said, excuse me, sir, would you yield to a question, please? I'm unclear about what rights you're referring to that stand to be lost.

Gary Yoshita said, if I heard correctly, once the agricultural easement is lifted, then the agreement that we have with the landowner is off. It could be developed. It could be put into conservation easement. I guess that's where I'm looking in terms of a say. I guess what I heard earlier, the law becomes on the side of the proponent in this case. Is that correct?

Alderman Horton said, I'm sorry. I'm still not clear on the reference to rights that would be lost. I missed it somewhere.

Gary Yoshita said, well, I guess rights in terms of having any say.

Alderman Sweet said, yes, if I could clear that up for you. In the purest sense of rights, under an agricultural covenant, the public really doesn't have a right. The covenant's between the government, the governing body, and the landowner and it's between those two people. They were the ones who entered into the covenant. However, we have taken a policy of allowing the public to comment on those and the lifting of those agricultural covenants. If the agricultural covenants are lifted and the land is to be developed, we have also taken the stance that we will allow public comment on subdivisions, even the minor subdivisions. Though the law doesn't force us to do that, we do that. We do take public comment. And probably, in all actuality, there are more rights of those people that live in..., the adjacent property owners to comment and to have some say in what goes on with a piece of land than there is with this particular situation as it is now.

Mayor Kemmis said, I'd like to try to wind this hearing up if we can. I want to thank you all for your testimony and if there is no further testimony, we will close the public hearing. Let me ask the Council members if there's any Council member who would like to have this returned to Committee. Mr. Bennett? Then it will be returned to the Committee. Commissioner Evans, do you have any last comments to make here before we close the proceedings?

Commissioner Evans said, I don't expect that the County Commissioners will make a decision tonight but I think it's only fair that I try and explain to the public my perception of this and, in all likelihood, the way I will vote on the issue, because I don't think that everyone who's here will come to our Wednesday afternoon meeting, when the County Commissioners make that decision, so it's only fair that I tell you where I feel..., what I feel right now. As I understand it, from the County Attorney's office and the City Attorney's office, the only issue on which the County Commissioners can make a decision is whether or not lifting the exemption or asking for that is an attempt to evade the subdivision act. I can't, in any way, see that that's the case because they are asking us to lift it so they can go through the subdivision act. So, just from that point of view, I can't, in good conscience, vote no. I would like to clarify for the folks that an Agricultural Exemption, to the best of my knowledge, gave to the public the years that this was on of not having any development at all. Now, we have requirements that you cannot build in the County on a hillside greater than 25%. I do not know what the grade on this property is but if it were 25% or more, they couldn't build on it anyway. My point, Mr. Yoshita, if I have your name correctly, was that when someone comes to the County and tells us something and then the situation changes, I will look at it with an open mind and a neutral point of view, but I will remember what I was told. And my guess is that if Dr. Klein or Mr. Hauge came to us, while I'm still on this Board, and said, oh, we decided not to put a conservation easement on it, after they told us they were going to, I would not look at that very kindly. I would look at their reasons and try and determine that on an honest look at it, but I would remember what they told me, and then we would fall back on the regulations that you cannot build on a specific incline. So I will probably vote to agree to this because an Agricultural Exemption does not give you a lot of protection. It gave you no dwellings for the years that it was on but a conservation easement, which they say they are going to put on, gives the public greater protection for a very much longer period of time than you would have otherwise. So, I look at this as a win-win situation and when the Commissioners vote on it, unless something happens to change my mind, I will likely vote yes.

Mayor Kemmis said, if there's nothing further on this then, I'd like to thank the Board of County Commissioners for joining us this evening as well as the County staff who have assisted us and everyone, again, who has testified. We'll take a five-minute recess.

Mayor Kemmis closed the public hearing.

#### TUESDAY, APRIL 11, 1995

The Board of County Commissioners met in regular session; a quorum of the Board was present in the forenoon. Commissioner Kennedy was out of the office April 11 and 12 due to illness; and Commissioner Evans attended a Juvenile Detention Meeting in Polson in the afternoon.

Audit List -- Commissioners Evans and Hart signed the Audit List, dated April 11, 1995, pages 5-31, with a grand total of \$64,868.43. The Audit List was returned to the Accounting Department.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending March 31, 1995.

#### DAILY ADMINISTRATIVE MEETING

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

Lease Agreement -- The Board of County Commissioners signed a two-year renewal of a Lease Agreement between Missoula County and Once Around, Inc., for the purpose of leasing property located on the southwest corner of the Missoula County Fairgrounds extending north and east approximately 350 feet from the southwest corner and along the outside curve of the race track and ten horse stalls located in the west end of race barn #11 for use as a small auto (go cart) race track, as per the terms set forth, for a total amount of rent of \$1,800 per month, commencing on the date of signing through September 30, 1996. The document was returned to Sam Yewusiak, Fair Manager, for further signatures and handling.

Lease Agreement -- Chairman Evans signed an Annual Lease Agreement (First Amendment to Contract No. 825-5.94-0040) between Plum Creek Timber Company, L.P. and State of Montana, Missoula County Department of General Services, for providing for the lease of a portion of the NE¼ of Section 2, T14N, R15W, P.M.M. for the purpose of a radio transmission site, as per the terms set forth, for a total amount of rent of \$400 per year through March 31, 1996. The document was returned to John DeVore, Administrative Officer, for further signatures and handling.

Agreement -- The Board of County Commissioners signed an Agreement between Robert L. Sandstrom and the County of Missoula whereby Missoula County agrees to pay Robert L. Sandstrom \$1.00 per cubic yard for gravel to be removed from the Sandstrom property located in Section 8, T14N, R22W, P.M.M., up to 10,000 cubic yards, as per the terms set forth. The term of this agreement shall extend for a period of five years from the date of its execution. The amounts of gravel to be removed shall be determined solely by the County according to its needs and the land owner will allow the County of Missoula to stockpile screened and/or crushed material at the site.

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

#### **WEDNESDAY, APRIL 12, 1995**

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present was Commissioner Fern Hart. Commissioner Michael Kennedy was out of the office all day.

HEARING: APPEAL OF COMPREHENSIVE PLAN DECISION -- TED & SUSAN HALL (BUTLER CREEK COMP. PLAN AMENDMENT) POSTPONED FROM APRIL 5TH

Barbara Evans announced that the applicants requested that this hearing be postponed without date.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (OLSEN) -- TRACT D-2 OF COS 2668 LOCATED IN THE NE¼ OF SECTION 22, T12N, R17W

Kathy Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider a family transfer for Tract D-2 of COS 2668 located in the NE¼ of Section 22, T12N, R17W for Beverly H. Olsen.

Beverly Olsen owns a 19.04-acre parcel located Northwest of Clinton near Highway 90. Ms. Olsen proposes to create two parcels, one approximately 1.25 acres and the other approximately 4.25 acres, for transfer to her son and daughter, Michael D. Sheldon and Lisa D. Dear. Parcel D-2 currently has two duplexes, one house and one trailer existing on the parcel. The parcel is currently under dual comprehensive plan designation of suburban (two dwelling units per acre) and open and resource. The flat area near the frontage road is the portion designated as suburban and the upper portion is open and resource. The 1.25 acre proposed parcel will create another building site for either Michael or Lisa. The remainder of the property will remain in its current use.

The history of the parcel is as follows: Parcel D was created in February, 1980, by Carmon and Berta Maye O'Donnell when they filed COS 2287 creating seven tracts greater than 20 acres in size. Ms. Olsen purchased the parcel from the O'Donnells in March, 1980. In September, 1981, Ms. Olsen created parcel D-1 of COS 2668, a 1-acre parcel, using the occasional sale exemption.

According to the records kept by the Missoula County Surveyor, the applicant has used the exemption to the Subdivision and Platting Act as described above.

The hearing was opened to public comment.

Greg Olsen, applicant's husband, stated he was present to answer any questions the Commissioners may have.

Barbara Evans explained to Greg Olsen that the Board of County Commissioners is required by law to determine on land splits of this type whether or not the applicant is trying to evade the Montana Subdivision and Platting Act. Also, she explained that when granted a land split of this type, it is for one time only. Any future land splits would be required to

go through subdivision review. She then asked Greg Olsen if he would explain the particulars of their family transfer request.

Greg Olsen asked the Commissioners to refer to his wife's letter which explains that their son, Michael Sheldon, purchased Parcel D-2 in 1980 when he was in the Air Force. However, before the closing of the land sale occurred, he was transferred to England. Therefore, the parcel was titled in Beverly Olsen's name. When Michael returned from the military, he found it difficult to keep up the payments so Greg and Beverly took over half the payment and sold an acre of Michael's parcel to pay for his share. This sale, Parcel D-1, occurred in 1982. On the remaining acreage, they have built two duplexes and two houses since 1985. They realize now that they should have divided this parcel at that time. He stated that they wish to break out the parcels for their children now so there will be no inheritance problems later.

Fern Hart expressed a concern regarding compliance if the land would again be separated.

Colleen Dowdall, Deputy County Attorney, stated that under the current reading of the subdivision regulations, the 4.25 acre parcel is in violation because it is a subdivision for lease or rent and did not undergo subdivision review. The additional residences on the parcel that are being rented out should have undergone subdivision review but were done at a time when they were outside the building permit jurisdiction.

Barbara Evans asked if it was done according to Certificate of Survey procedure which allowed them to do it at that time.

Colleen Dowdall said no. It had not undergone any review and these divisions have not been made. She stated that under current subdivision regulations, putting a duplex on a parcel that already has just one other dwelling requires review by the subdivision regulations.

Fern Hart asked if this regulation existed when the duplexes were built.

Colleen Dowdall said the regulation probably did exist; however, if a building permit was not required, the duplexes could have been built without the County being aware of it. They would have been required to go through the Health Department's sanitation review for the septic systems but not the subdivision review.

Barbara Evans commented that it was not the applicant's fault that the County's Health Department failed to instruct them that the parcel should go through subdivision review since it was being used for lease or rent.

Colleen Dowdall stated that despite whatever past procedural deficiencies occurred, the Commissioners need to look at the situation today and determine whether the entire parcel should undergo review. The family transfers which are being requested would result in one building on one parcel and two buildings on the other parcel. Even if the transfers would be approved, each of the parcels would be in violation of the subdivision regulations.

Barbara Evans asked if the Health Department would have been responsible to inform them back when the duplexes were built that they should go through subdivision review.

Colleen Dowdall stated that the Health Department is under no legal obligation to ensure compliance with all other regulations prior to issuing a septic permit. Though a cooperative effort has now been set up between agencies, the Health Department is only required by law to review for sanitation compliance in subdivisions. She indicated again that her major concern was that multiple dwellings exist on one parcel that have not undergone subdivision review. A "subdivision" is defined as multiple dwellings on one parcel. Everyone else has to go through subdivision review to do just this.

Barbara Evans commented that she appreciated Colleen Dowdall's concern; however, these dwellings already exist and were built approximately ten years ago. She asked to what point would there be subdivision review -- to now tell them they did it right or wrong? She said she could understand it if there would be some point to undergoing review.

Fern Hart stated that Colleen Dowdall's argument was an important one; however, she personally would have a hard time subjecting the Olsen family to subdivision review since the multiple dwellings are already there. This transfer request is particularly awkward since there already exist more dwellings than the Comp. Plan allows.

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

Fern Hart moved and Barbara Evans seconded the motion that the consideration of a request for two family transfers for Tract D-2 of COS 2668 located in the NE¼ of Section 22, T12N, R17W for Beverly H. Olsen be granted, contingent upon transfer of the deeds to the family members, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 2-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (SIEMENS) -- TRACT 9 OF COS 1131 LOCATED IN THE SE¼ OF SECTION 8, T13N, R20W

Kathy Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider a family transfer for Tract 9 of COS 1131 located in the SE¼ of Section 8, T13N, R20W for Gerald H. Siemens.

Gerald Siemens owns a 20.14-acre parcel located in the Big Flat area off Windmere Drive. The parcel borders on the Clark Fork River and the river takes up approximately 1/3 of the parcel. Mr. Siemens proposes to create a 10-acre parcel for transfer to his daughter, Wendy Nicole Siemens. The parcel is currently zoned CA3 and if the parcel were split, the proposed 10-acre parcels would not meet the requirement that the width of the parcel must be 1/3 of its average depth. In the attached Exemption Affidavit, Mr. Siemens indicates he wishes to sell one of the proposed parcels and retain the other for family use.

The history of the parcel is as follows: The parcel was created in January, 1977, by George and Emelia Doherty when they filed COS 1131, creating 18 parcels greater than 20 acres in size. The parcel was then purchased by Mr. Siemens from the Dohertys in July, 1990.

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

The hearing was opened to public comment.

Gilbert Larson, of Druyvestein Johnson & Anderson, representing the applicant, commented that Mr. Siemens proposes to split the 20-acre parcel lengthwise into two 10-acre tracts. He agreed that technically the proposed lots would be more than three times as long as they were wide; however, he pointed out that one-third of this site is within the river. Therefore, the actual buildable lot area of these parcels would not exceed the width/depth ratio requirement. Also, the proposed tracts would be in compliance with the covenants of this area since they allow for tracts down to 5 acres.

Barbara Evans asked if Mr. Siemens had other children.

Gilbert Larson indicated there are other children. He further stated that he clearly explained to Mr. Siemens that this would be a one-time exemption within the County. He stated that Mr. Siemens is not a developer and does not intend to become a developer. This is the only time in which he intends to request a family transfer. He does not have plans to request family transfers for his other two children.

Fern Hart stated she had a concern since Mr. Siemens openly admits his intention to immediately sell one of the two parcels.

Gilbert Larson explained that Mr. Siemens is allowing an opportunity for his daughter to have a site for a house while he could then sell the other parcel. Otherwise, he would have to sell the entire 20-acre parcel and give the cash to his daughter. Mr. Siemens has been very honest about his intent to sell the one parcel but also the intent to keep one of the parcels for daughter. He stated his belief that this transfer request meets all the intents of the COS exclusion as it was written.

Fern Hart stated that she thought this seemed more like an occasional sale.

Gilbert Larson disagreed.

Colleen Dowdall, Deputy County Attorney, stated she was uncomfortable with the language in the affidavit which stated that Mr. Siemens would retain one parcel for personal residential and agricultural use. She asked if, in the event that the retained parcel would be sold at some later date, would the proceeds of that sale be given to the daughter.

Gilbert Larson responded that he was not sure which of the two parcels was intended to be sold and which one would be retained by the family but the benefit of any sale would go to the daughter.

Colleen Dowdall explained that there was a situation some time ago where a woman transferred a parcel to her daughter. This parcel was identified as the family transfer but she then put that parcel up for sale. She was promptly notified in writing that this was an evasion. She then decided to sell the other parcel. She never did transfer the parcel to her daughter's name. She was informed that if she intended to sell the parcel and keep the proceeds, that would be considered an evasion and the County would take action to vacate the COS.

Gilbert Larson said he understood the Commissioners' concern since so many people unfortunately have abused the family transfer exemption law. However, he said he does not see where Mr. Siemens is evading anything and he is meeting the area Comp. Plans.

Barbara Evans thanked Gilbert Larson for his honesty.

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

Fern Hart moved and Barbara Evans seconded the motion that the consideration of a request for a family transfer for Tract 9 of COS 1131 located in the SE¼ of Section 8, T13N, R20W for Gerald H. Siemens be granted, contingent upon transfer of the deed to the family member, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. 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 2:07 p.m.

#### THURSDAY, APRIL 13, 1995

The Board of County Commissioners met in regular session; a quorum of the Board was present in the forenoon. Commissioner Kennedy was out of the office until later in the afternoon.

#### DAILY ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #7, Pay Date March 31, 1995, with a total Missoula County payroll of \$496,611.41. The Transmittal Sheet was returned to the Auditor's Office.

Grant Agreement -- Chairman Evans signed a Grant Agreement (Noxious Weed Trust Fund Project, Number MDA 95-48) between Montana Department of Agriculture and Missoula County Extension Service for the purpose of providing funding to continue the Montana Weed Control Association Biological Weed Coordinating Committee's efforts, as per the items set forth, through June 30, 1996, with a total not to exceed \$13,060. This funding is contingent upon sufficient available revenue and verification of matching funds from Missoula County, Montana State University Extension Service, Montana Department of Agriculture and Montana Weed Control Association to equal \$16,570. The document was returned to the Weed Department for further signatures and handling.

Grant Agreement -- Chairman Evans signed a Grant Agreement (Noxious Weed Trust Fund Project, Number MDA 95-61) between Montana Department of Agriculture and Missoula County Weed District for the purpose of providing for the purchase of improvements on existing equipment for the Missoula County Weed District, as per the items set forth, through June 30, 1996, with a total not to exceed \$5,000. The document was returned to the Weed Department for further signatures and handling. The document was returned to the Weed Department for further signatures and handling.

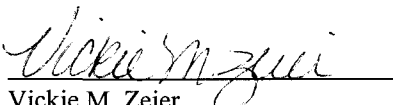
Statement of Acceptance -- Chairman Evans signed the Statement of Acceptance with regard to the Board of Crime Control Grant Award Number 95-16627, dated March 31, 1995, awarded to Missoula County Sheriff, in the amount of \$149,103 (\$111,827, Federal amount awarded; \$37,276, guaranteed local matching). The project duration is from July 1, 1995 to June 30, 1996. The document was returned to Larry Weatherman in the Sheriff's Department for further handling.

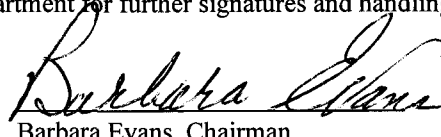
The minutes of the Administrative Meeting are on file in the Commissioners Office.

**FRIDAY, APRIL 14, 1995**

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

Operating and Financial Plan -- Chairman Evans signed the 1995 Operating and Financial Plan for reimbursable services requested by the Forest Service, for the period between April 17, 1995 and September 30, 1995 between the Forest Service and the County of Missoula, as per the terms set forth, in an amount not to exceed \$25,613.68. The document was returned to Don Mormon in the Sheriff's Department for further signatures and handling.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, APRIL 17, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners and Department Heads attended a Planning Session at the Holiday Inn facilitated by Ginny Tribe.

Plat -- The Board of County Commissioners signed the Plat for Blank Family Trust, a subdivision located in the N½ of Section 24, T21N, R17W, P.M.M., Missoula County, having a total area of 80.48 acres, with the owners/developers of record being Mark Blank, Andrew Blank and Tony Blank, the Trustees under the Trust Agreement.

Plat and Subdivision Improvements Agreement -- The Board of County Commissioners signed the Plat for King Ranch, Phase I, a subdivision of Missoula County located in the NE¼ of Section 33 and the NW¼ of Section 34, T15N, R21W, P.M.M., Missoula County, having a total area of 18.30 acres, with the owner/developer of record being Bud King. Also signed was a Subdivision Improvements Agreement and Guarantee for improvements which remain to be completed (multi-family water system as approved by the Water Quality Bureau of the Department of Health & Environmental Sciences) at an estimated cost of \$20,000. The improvements shall be completed no later than two years from the date of the filing of the final plat and is secured by a Performance Bond issued in the name of the Contractor (Northwest Construction).

Proclamation -- The Board of County Commissioners signed a Proclamation of the County of Missoula whereby the Commissioners proclaimed April 22-28 as Missoula Infant Immunization Week.

**TUESDAY, APRIL 18, 1995**

The Board of County Commissioners did not meet in regular session as they were all attending a "Collaborative Process" Seminar held at the Holiday Inn.

**WEDNESDAY, APRIL 19, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioners Evans and Hart and County Auditor Susan Reed conducted a re-count of the Bonner School Election results.

DAILY ADMINISTRATIVE MEETING

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

Consent to Transfer of Loan -- The Board of County Commissioners signed a Consent to Transfer of Loan with regard to the February 18, 1992 agreement whereby Missoula County loaned to Women's Opportunity and Resource Group (WORD) the sum of \$30,000 to be used in a "microbusiness revolving loan fund". Since WORD is now merging with the Missoula Community Business Incubator, Inc. (MCBI), it wishes to transfer its loan from the County to MCBI; MCBI is willing to accept such transfer and to assume WORD obligations under the loan agreement. The document was returned to John DeVore, Administrative Officer, for further handling.

Certifications of Acceptance -- Chairman Evans signed Certifications of Acceptance for County Maintenance for the following:

- 1) Windsor Court, Road No. L-0716, ACM. No. 95-0001, located in Section 11, T13N, R20W, with the limits of acceptance being 0.0903 miles;
- 2) Peregrine Court, Road No. L-0714, ACM. No. 93-0004A, located in Section 11, T13N, R20W, with the limits of acceptance being 0.3409 miles; and
- 3) Grassland Drive, Road No. L-0710, ACM. No. 92-0001B, located in Section 11, T13N, R20W, with the limits of acceptance being 0.068 miles.

The Certifications were returned to the Surveyor's Office.

Standard Application (INTERCAP Revolving Program) -- Chairman Evans signed the Standard Application between the State of Montana Board of Investments and Missoula County for the INTERCAP Revolving Program for the purpose of replacing the Library's lighting, heating and cooling system, having a total project cost of \$153,000. The Application was returned to John DeVore, Administrative Officer, for further handling.

Extension Letter -- The Board of County Commissioners signed a letter to Woody Germany of WGM Group, approving a 180-day filing extension for Rossignol Orchard Tracts No. 2, making the new filing deadline October 31, 1995.

Other items included:

- 1) the Commissioners approved the 9-1-1 Advisory Board's recommendation to have the School District #1 alarm system moved out of the 9-1-1 Center to a private alarm service.
- 2) the Commissioners approved Dr. Otto's Klein's request to revoke the agricultural exemption for Parcel "U-2", COS 3598, located in the SE¼ of Section 11, T13N, R19W.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

#### PROCLAMATION: "HELP FIX OUR FORT DAYS" -- FRIENDS OF HISTORICAL MUSEUM

Fern Hart read aloud the proclamation as follows:

*Whereas*, The Friends of the Historical Museum at Fort Missoula need help from the entire Missoula Valley community to repair historic buildings and clean the grounds April 28 through the 30th; and

*Whereas*, Fifteen repair and cleaning projects for buildings dating to 1863 need a springtime facelift; and

*Whereas*, Donations of construction materials and volunteer labor are needed to make this first "Help Fix Our Fort Days" a success; and

*Whereas*, The "Help Fix Our Fort Days" project is a way to set realistic goals for what can be accomplished in a weekend; and

*Whereas*, The Friends of the Historical Museum support this opportunity for community volunteers to learn how to restore and repair historical buildings and to learn from preservation professionals how to approach a "living museum"; and

*Whereas*, Professional carpenters, painters, roofers and electricians who volunteer their time will work side by side with other community volunteers to complete as many projects as possible;

*Therefore*, We, the Board of County Commissioners of Missoula County do hereby proclaim April 28 through April 30, 1995 as "Help Fix Our Fort Days" and urge all citizens to become involved and feel a part of all our heritage as they step forward to lend a hand. Dated April 19, 1995.

Barbara Evans asked if anyone wished to speak regarding this proclamation.

Robert Brown, Director of the Historical Museum at Fort Missoula, stated that this project has been planned over the past several months. It is a combined effort of the Commissioner-appointed Board of Trustees and the "Friends" Board of Directors. He commented on the overwhelming support already received in the form of donated paint, lighting fixtures, lumber, concrete, and also donated labor from Big Sky High School and Hellgate High School. He said Sentinel High School would be coming the following week. Many other groups are scheduled to help such as electricians' unions, church groups and school groups. He said everything was coming together extremely well and



he was pleased to see the community pride and spirit. He closed by stating that if the Board of County Commissioners approved this proclamation, it would help to get the ball rolling even faster.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners proclaim April 28-30, 1995 as being "Help Fix Our Fort Days". The motion carried on a vote of 3-0.

HEARING: PROPOSED CIP (CAPITAL IMPROVEMENTS PROGRAM) 1996-2000

Fern Hart stated that this was the first hearing to consider the adoption of the draft CIP program covering the years 1996-2000.

John DeVore, Administrative Officer, explained that Missoula County adopted its first Capital Improvements Program document in 1983. Since that time, the County has updated the program on an annual basis. This hearing is one of three which will be conducted to take comment on the document until final adoption in four weeks.

The value of the projects recommended for funding during FY 96 is \$4,846,124. Of this amount, \$3,481,083 is recommended for various projects within the road fund. The most significant project is the proposed relocation of the County Shop complex from its current location on Reserve Street to a location near the airport at a value of \$1,500,000. Another large item within that fund is \$370,043 which has been budgeted in County resources to match CMAQ funds for CMAQ projects. Table I of the document provides a breakdown of the various funds being proposed.

Under the current staff review that has been conducted on the draft document, some changes should be noted. Project C-18 (Community Services) is not necessary since the Shop Project will be moved. Project R-12 (Road Project) has been deleted because it was completed last year. The South Avenue Walkway project has been added with a value of \$80,000 recommended for funding in FY 97 and the Spurgin Road project recommended for funding in FY 98 for a value of \$74,000.

When consideration is given to the major road initiatives and the relocation of the Shop complex, the dollar value of projects recommended for funding in FY 96 compares well with previous years.

The hearing was opened to public comment.

Discussion ensued regarding whether or not the annual review of the CIP Program would go before the Missoula Planning Board. It was clarified that reference to this in a previous document was a misprint.

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

Barbara Evans announced that the consideration of the adoption of the draft CIP Program covering the years 1996-2000 will be heard again in two subsequent Public Meetings.

HEARING: INTENT TO CREATE RSID NO. 8921 -- ROADWAY IMPROVEMENTS FOR DUST ABATEMENT (TRAILS END ROAD)

John DeVore, Administrative Officer, explained this was a request to create RSID 8921 for roadway improvements for dust abatement on Trails End Road. During the spring of 1994, the residents along Trails End Road contacted County staff for assistance in creating a dust abatement district to serve their area. This area had been identified by the Road Department to use asphalt millings for dust abatement. Although this method of treatment is more expensive than other options, the residents supported this alternative because it lasts much longer and is almost as good as having a paved road. The purpose of the RSID is to pay for the polymer which is used as a binder for the millings.

The total cost of the treatment is estimated at \$38,600. The County will contribute 30% (\$11,580), reducing the cost to the residents to \$27,020 or \$267.52 per parcel. This maintenance district will remain in effect after the treatment to provide the resources to repair the surface as needed. Therefore, further assessments will only occur when there is a need to repair the surface of the road.

Exhibit A is a map of the proposed district boundaries. The staff attempted to include properties which derive a benefit from dust mitigation as well as including all properties which use Trails End Road to gain access to their properties.

During the protest period which ended at 5:00 pm on Monday, April 17, two protests were received. One protest (from Delmar and Agnes Drake) was based on hardship because of cost. The other protest (from John and Janet Pomann) was based on no improvements currently located on the property as well as the property being located at an elevation which is above the dust.

Staff recommends creation of RSID 8921.

The hearing was opened to public comment.

Tracy Roy, a property owner on Oral Zumwalt Way, stated that he was in favor of this proposed dust abatement district. He then offered a suggestion to the Commissioners. He explained that there is a short stretch of Oral Zumwalt Way (approximately 200-250 yards) which goes beyond the point of the County maintenance sign. He asked if it was possible to move the sign to the very end of the road rather than stopping three lots from the end. Because of the current location of the sign, this end section of the road is not maintained or plowed and the ruts are

getting very bad because everyone goes all the way to the end to turn around. He suggested this would be the perfect time to move the sign, if moving the sign is possible, since the County is creating the dust abatement district.

Bob Holm, Operations Superintendent of the County Road Department, stated that this RSID proposal is just for Trails End Road. He indicated that there probably was not enough material stockpiled to accomplish the work on Oral Zumwalt also. This proposal will take care of the major portion of the problem in that area. It takes care of three miles of road that everyone travels to get to and from their properties. He addressed Tracy Roy's request by explaining that the reason the northern end portion of Oral Zumwalt Way (which was platted approximately 20 years ago) is not maintained is that it was never built large enough to meet County standards.

Barbara Evans asked whom Tracy Roy should contact if he wanted to either correct the dust problem in that area or pursue the issue of bringing the end portion of Oral Zumwalt up to County standards.

John DeVore responded that Mr. Roy could submit a request to create a dust abatement district or he could contact either himself or Jesse Sattley, RSID Coordinator, if he wished to bring the road up to higher standards.

Bob Holm stated that there was an additional underlying proposal to possibly form a special improvement district to pave Oral Zumwalt and the roads within the subdivision.

Barbara Evans asked John DeVore if there was any reason why the Pomann's piece of property should or should not be left in this district.

John DeVore responded that from the staff's perspective, they tried to include all properties that not only suffer from the dust but also the properties that generate the dust (those residents who use Trails End Road to gain access their properties, whether or not structures currently exist on those properties).

Barbara Evans stated that the two protests which were received are well short of the legal number of protests needed to prevent the creation of the RSID.

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

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners create RSID #8921, a dust abatement maintenance district for Trails End Road, as there were not a legal number of protests to this creation. The motion carried on a vote of 3-0.

Michael Kennedy asked John DeVore to comment on the fact that the total value of this treatment, \$38,600, seemed very low.

John DeVore stated that the \$38,600 is the value of the millings only which were acquired by the Road Department from the stockpiling of some previous highway projects. Over and above the millings, there is also the cost of County crews and equipment; therefore, the \$38,600 is only a fraction of the total value. He then asked Bob Holm if he had an estimated cost of the labor.

Bob Holm first clarified that the material which will be used in the treatment is a polymer-modified asphalt rejuvenating agent. The material which will be applied is approximately half of the asphalt that came off Reserve Street during its reconstruction. It was stockpiled in the Miller Creek gravel pit and was then crushed last winter. He explained that he saw it as a valuable resource rather than just burying it in the BFI landfill. Approximately 13,000 tons of material will be applied to the three-mile stretch of Trails End Road. As a crushed product, it probably has a value of approximately \$5 per ton or \$65,000 total. In addition, the cost of labor will easily double that amount. There is also approximately \$40,000 worth of oil which will be applied. Also, it will probably take about two weeks to prepare the road surface before the treatment process can even begin. Therefore, the true total value of this project could easily be estimated at \$250,000.

Michael Kennedy commented that Bob Holm was probably being very conservative in his estimated costs since the taxpayers probably originally bought the asphalt for Reserve Street for \$15 per ton. He made the point that for \$38,600, the taxpayers are probably getting ten times that value. He commented on the remarkable cooperation of the County's staff and said they should be congratulated for their efforts.

Bob Holm added that if this three miles of road would have gone to contract for construction, it likely would have cost the County \$500,000 (double the cost of this RSID proposal).

Barbara Evans asked Geri Mauer, Secretary in the Commissioners' Office, with the help of John DeVore, to draft letters to the two residents who protested the creation of this RSID.

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

#### THURSDAY, APRIL 20, 1995

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners accompanied Carole Graham on a tour of the Domestic Violence Shelter.

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated April 19, 1995, pages 5-39, with a grand total of \$237,035.39. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Suzanne Shope as principal for Warrant #27599 issued March 15, 1995 on the Missoula County General Fund in the amount of \$54.00 now unable to be found.

#### DAILY ADMINISTRATIVE MEETING

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

Notice of Hearing -- Chairman Evans signed a Notice of Hearing with regard to the application of Industrial Design & Manufacturing, Inc. for tax incentives under Resolution No. 91-101 regarding tax incentives for new and expanding industry at 1:30 p.m. on Wednesday, May 17, 1995.

Other items included:

- 1) the Commissioners approved and signed the Statement of Work for FFY'96 as submitted by Bill Silverman, DES Coordinator.
- 2) the Commissioners approved to pay Huntley Holland \$225 for consultation services with John Pemberton.
- 3) the Commissioners approved to send notice to all Department Heads that the Monthly Department Head Meetings will take place the second Friday of each month from 10:00 - Noon and request that they submit agenda items each month in advance.

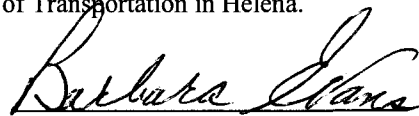
The minutes of the Administrative Meeting are on file in the Commissioners Office.

#### **FRIDAY, APRIL 21, 1995**

The Board of County Commissioners met in regular session; all three members were present. Commissioner Hart attended a Mental Health Board Meeting held at Fort Missoula until late afternoon; and in the morning, Commissioner Evans attended a conference call meeting of the Judicial Standards Committee held in Judge McLean's office.

Agreement -- The Board of County Commissioners signed an Agreement with the Montana Department of Transportation that at such time improvements are made to the proposed addition to the Forest Highway System (from the junction with I-90 at MP 82.6, 6 miles east of Alberton, the Nine Mile Interchange NW to the junction with MT 135), utilizing Forest Highway funds, the jurisdiction of the road will be assumed by the Missoula County. The Agreement was forwarded to Gary Larson of the Department of Transportation in Helena.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

#### **SUNDAY, APRIL 23, 1995**

In the afternoon, the Commissioners attended a meeting with residents of the Nine Mile Area held at the Community Hall concerning dust problems in the area.

#### **MONDAY, APRIL 24, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was out of the office all day. In the evening, Commissioner Kennedy attended the Seeley Lake Solid Waste Management District Board Meeting held at the Seeley Lake Fire Hall.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Volker Kirstein, an independent contractor, for the purpose of converting basic needs assistance data from Excel spreadsheet format to Paradox database format, with related programming, as per the terms set forth. The Contractor also agrees to observe the following protocols required by the Missoula County Data Processing Department: (1) to scan for viruses before sending the data back to the Missoula County Network; (2) to provide written assurance that he has removed the County's copies of Paradox 5.0 and Excel 5.0 from his hard drive upon completion of the contract; and (3) to provide the source codes to Missoula County upon completion of the project. The duration of this contract will be from April 18, 1995 to May 31, 1995, for compensation in an amount not to exceed \$2,500. The document was returned to Leslie Bailey in the Office of Planning and Program Development for further signatures and handling.

#### **TUESDAY, APRIL 25, 1995**

The Board of County Commissioners met in regular session; all three members were present. At noon, Commissioners Hart and Kennedy attended an awards presentation and luncheon for the "Every Child by Two" campaign for early immunization held in the Commissioners Meeting Room. In the evening, Commissioner Hart attended the RSVP Recognition Banquet held at the Village Red Lion.

#### DAILY ADMINISTRATIVE MEETING

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

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY'95 budget:

- 1) Control No. 95-007, a request from the Personnel Department to transfer \$1,400 from the Contracted Services fund to the Capitol--Office Equipment fund for the purpose of purchasing a fax machine; and
- 2) Control No. 95-008, a request from the Office of Community Development to transfer \$1,200 from the Contracted Services fund to the Temporary Salaries fund for the purpose of hiring a temporary clerical person to work 20 hours per week from approximately May 15 to June 30, 1995. This person would assist with mailings, photocopying and filing.

Resolution No. 95-027 -- The Board of County Commissioners signed Resolution No. 95-027, a Resolution of Intention to create Rural Special Improvement District No. 8919 for the purpose of dust abatement maintenance for a portion of Ninemile Road, West Ninemile Road, Remount Road, Ellis Creek Road, Ridgewood Drive, Ranch Lane and Piney Meadows Road, Missoula County, Montana, setting a hearing date for May 24, 1995 at 1:30 p.m.

Resolution No. 95-028 -- The Board of County Commissioners signed Resolution No. 95-028, a Resolution stating that on March 2, 1995, the Board of County Commissioners passed a Resolution of Intention to Create Rural Special Improvement District No. 8920 for the purpose of application of dust abatement material on a portion of Zaugg Drive and Fontaine Drive, Missoula County, Montana.

Resolution No. 95-029 -- The Board of County Commissioners signed Resolution No. 95-029, a Resolution stating that on March 30, 1995, the Board of County Commissioners passed a Resolution of Intention to Create Rural Special Improvement District No. 8921 for the purpose of roadway improvement for dust abatement for Trails End Road, Missoula County, Montana.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Missoula County Public Schools, Willard Adult Learning Center, an independent contractor, for the purpose of teaching computer classes for County personnel, as per the terms set forth, for the period commencing April 1, 1995 through June 30, 1995, for compensation in the amount of \$24 per hour for classroom instruction and \$18 per hour for curriculum development, with a total not to exceed \$6,000.

Contract -- The Board of County Commissioners signed a Contract, dated April 25, 1995, between Missoula County Clerk & Recorder and Insured Titles, Inc. for the purpose of performance of tax deed title searches for ownership and interest in real property, as per the terms set forth. The Contractor shall fully complete all the work contemplated by the Contract, less updates, by July 14, 1995. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Other items included:

- \* the Commissioners signed a memorandum authorizing the Treasurer's office to refund taxes paid by Mr. Wayne G. Haaglund on Plate 04-58674C. The document was returned to Vickie Zeier, Treasurer, for further handling.

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

#### WEDNESDAY, APRIL 26, 1995

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was on vacation from April 26-28.

#### DAILY ADMINISTRATIVE MEETING

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

Agreement -- The Board of County Commissioners re-signed an Agreement to Sell and Purchase Lots 32 and 33, Block 46, Carline Addition (Fairview Avenue) with Purchaser, Betty J. Martinez, for a total purchase price of \$13,000, as per the special conditions set forth. The original Buyer of this property was the father of Betty Martinez. It is further understood that closing may take up to six months to complete the foreclosure process, and purchaser agrees to wait until this process is completed. The Agreement was returned to Scott Hollenbeck at Properties 2000.

Declaration of Covenants -- The Board of County Commissioners signed a Declaration of Covenants, dated April 4, 1995, by Champion International Corp., declaring that Tract 2 (the old Milltown landfill, approximately 7 acres) will remain in its present state until environmental and other concerns are addressed by Champion and was granted an agricultural exemption for this tract of land.

Extension Letter -- The Board of County Commissioners signed a letter to Andy Fisher of Eli & Associate approving a three-month filing extension for Sorrell Springs Lots 35A & 35B, making the new filing deadline July 26, 1995.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Acting Chairman Fern Hart. Also present was Commissioner Michael Kennedy. Commissioner Barbara Evans was absent.

CONSIDERATION OF: ROSS HOMESITE (1-LOT SUBDIVISION -- WYE AREA)

Fern Hart announced that Nicholas Kaufman, Planner at WGM Group, requested a postponement of the consideration of Ross Homesite until May 3, 1995, since today's meeting is being held without one of the Commissioners and a Deputy County Attorney.

HEARING: ANNEXATION TO FRENCHTOWN RURAL FIRE DISTRICT (LATIMER)

Fern Hart explained that a single petition from Willard Latimer was received by the Clerk & Recorder's Office to annex six parcels of land located in Missoula County to the Frenchtown Rural Fire District. The petition contains signatures of more than 50% of owners of the privately owned land in the area to be annexed. Also a statement has been received from the Frenchtown Rural Fire District's Board of Trustees indicating their approval to annex Mr. Latimer's property.

Michael Kennedy asked if Willard Latimer, the single petitioner who owns all six parcels, was present. He stated that in the absence of Mr. Latimer and also a representative from Frenchtown Rural Fire District, he wished to explain what these annexations mean. Based on annexation petitions in the past, the petitioners apparently feel they are gaining a measure of safety from the annexation procedure. The safety issue has come in question before the Board of County Commissioners in that a definitive response has not been received from Fire Districts as to whether or not fires can be fought in that particular area successfully and whether that measure of safety is real or mythical. The Fire District should be present to address this concern and also the petitioner should be present to discuss that level of risk. He then requested that absent both the single petitioner, Mr. Willard Latimer, and also a representative from the Frenchtown Rural Fire District, the hearing be postponed for one week.

Fern Hart accepted Michael Kennedy's request to postpone the hearing for one week.

CONTINUATION OF HEARING: PROPOSED CIP (CAPITAL IMPROVEMENTS PROGRAM) 1996-2000

Fern Hart stated that this was the second hearing to consider the adoption of the draft Capital Improvements Program covering the years 1996-2000. She explained that this procedure is done each year before budget review. Its purpose is to indicate those projects that are on the County's Capital Improvements Program. John DeVore, Administrative Officer, presented the information at last week's Public Meeting. The value of the projects recommended for funding during FY 96 is \$4,846,124. Of this amount, \$3,481,083 is recommended for various road projects. The projects range from \$1,500,000 to build a new shop complex to \$370,043 which has been budgeted in County resources to match CMAQ funds for CMAQ projects.

The hearing was opened to public comment; there being none, the hearing was closed to public testimony.

Fern Hart stated that the third and final hearing for this proposed Capital Improvements Program will be presented one week from today, at which time the Board of County Commissioners will vote to approve or disapprove the adoption of the document.

The Public Meeting recessed as the Board of County Commissioners and reconvened as the Planning and Zoning Commission. Present were Commissioners Fern Hart and Michael Kennedy. Also present were members Horace Brown, County Surveyor, and Vickie Zeier, Clerk and Recorder/Treasurer/Assessor. Commissioner Barbara Evans was absent.

HEARING (PLANNING & ZONING COMMISSION): PROPOSED AMENDMENT TO ZONING DIST. #41-A DEVELOPMENT STANDARD (ALLOWING GOLF COURSES AS PERMITTED USE -- DUANE PETTERSEN) LOLO

Bud Hettich, Planner at the Office of Community Development, presented the request from Duane Pettersen, represented by John Kellogg of Professional Consultants, Inc., to amend Section I (Permitted Uses) in Zoning District #41-A, to add public and private golf courses as a permitted use. Current permitted uses are restricted to single-family residential uses, grazing, horticulture, agriculture, and timber growing activities. The applicant requests the amendment to the development standards for this zoning district since he wishes to construct a type of golf course called "Pitch & Putt", a family-oriented form of golf.

Planning and Zoning District #41 was created on January 18, 1984, and amended twice. On March 28, 1984, mobile homes were to be considered as any other single-family dwelling and be allowed as permitted uses. On May 23, 1984, Zoning District #41 was amended to Zoning District #41-A, and Zoning District #41-B.

The applicant's property (60+ acres) lies along the west side of Lakeside Drive, between Glacier Drive and the Lolo Wastewater Plant. A major portion of the property lies within the Bitterroot River floodplain. The applicant has also applied for a floodplain development permit, pending approval of the requested amendment. The Lolo Land Use Plan designates 10 to 15 acres of the applicant's property as residential at 6 dwellings per acre, with the remaining acreage designated Parks and Open Space. He indicated that he had received three phone comments from area residents, two of which were opposed to this proposal because of traffic problems, specifically at the corner of Lakeside Drive and Glacier Drive. The other caller was in favor of the proposal.

The staff recommends that the Planning and Zoning Commission amend the development standards of Zoning District #41-A to allow golf courses as a permitted use.

John Kellogg, of Professional Consultants, Inc., representing Duane Pettersen, indicated on the topographic map the proposed layout for "Pete's Pitch & Putt" over approximately 10 acres. Included in the proposal is a practice green, a

driving range, a small parking lot, and an improvement of the access road to the site. Along the east boundary, a privacy fence will be installed and along the north side of the parking lot, a lilac hedge will be planted. He pointed out on the map how the golf course site winds in and out of the floodplain area. No new permanent structures are proposed. The office will be a small, mobile R.V. and the sanitary facilities will consist of temporary port-a-pots. He indicated on the aerial photograph where a barn and log cabin currently exist. Most of the rear portion of the site is used for grazing. He explained how the applicant took great care, when laying out the proposed fairways, to consider existing trees and shrubs so as to avoid excessive removal of trees. As a result, very few will have to be removed. With regard to the traffic concern, it is estimated that there would be an additional 50 cars per day as a result of the golf course. Upon full development, possibly an additional 100 cars per day are projected. He explained that resulting from the installation of the street light at Tyler Way, it has been estimated that the traffic on Glacier Drive was reduced by as much as 1,000 cars per day. Therefore, even after full development of the golf course, the projected traffic would still be far below what it was prior to the traffic light installation at Tyler Way. Also, it is actually expected that many of the regular visitors to the golf course would be Lolo community residents who could travel on foot. The Lolo Community Council has indicated that they have received numerous responses from area residents in favor of a family-oriented type of entertainment for the community.

The hearing was opened to public comment.

Kent McDermott, a Lolo resident, spoke in favor of the golf course proposal. He stated that it was not only compatible with the residential area but would greatly enhance it. He commented that the community of Lolo is somewhat lacking in recreational opportunities and something like this golf course would be a nice addition to the community.

Peggy Chilcote, a Lolo resident and also a representative of the Lolo Community Council, presented a letter addressed to Mike Grunow, Lolo Community Council President, signed by 12 Glacier Drive residents whose properties border the proposed golf course site. The letter expressed concerns of the increased traffic on Glacier Drive and Tyler Way and the resulting increased air pollution. She explained that Duane Pettersen spoke with the Council on the traffic issue at their March meeting and overall, the comments were in favor of having a recreational facility in Lolo. The concerns of the traffic have always been a problem in this development and will continue to be so with future subdivisions coming into the area. She said she would personally like to see the golf course go in since the kids really have nothing to do in Lolo and they cannot play golf in Missoula unless they are 12 years of age or older. Lolo has been looking for recreational opportunities for the youth and she said this golf course would be a great asset to the community of Lolo. Regarding the traffic concern, she asked which of the two scenarios would be better: (1) having more homes built in that area, resulting in increased traffic 12 months of the year? or (2) having a golf course, resulting in increased traffic during the months of May through September (and that is with weather permitting)?

Ron Mosier, a Lolo resident living approximately three blocks from the proposed golf course site, stated his opinion that area residents would probably not even notice any increase in traffic. He said even though he was not a golfer, he thought the golf course would be an asset to the community.

Max Enseleit, a resident on Lakeside Drive, said he was generally in favor of the golf course. He agreed however with the concern of increased traffic. He also inquired what the intended use was of the land outside the proposed golf course which borders Lakeside Drive.

Robert Plick, a resident on Lakeside Drive, stated his concern that major construction in the area may cause water to diverge easterly toward Lakeside Drive. He disagreed with Duane Pettersen's comment that many local residents would likely travel by foot to the golf course. He said he seriously doubted this would ever happen since the average American won't go 100 yards without using a car. He inquired about the proposed low-income housing that is scheduled to be on Duane Pettersen's property.

Marilyn Foss, a resident on Glacier Drive, explained that she was one of the first residents in the area; in fact, when she first moved onto Glacier Drive, there were only four homes. She commented that over the past several years, there has been much discussion of the concern about open space in Lolo. She said she thought it was important to consider that the establishment of the golf course would indeed preserve open space. She also addressed the concern of the wildlife that inhabits Duane Pettersen's property and the property at the back of the lot on Glacier Drive. She said she believed the golf course would enhance the ability to preserve that wildlife and generally the quality of life in Lolo. Regarding the traffic concern, she said traffic was a problem even when there were only four homes on Glacier Drive. She stated her hope that many of the youth who now have nothing better to do than speed up and down the streets in Lolo would, with the establishment of this golf course, at least have an alternative with how to spend some of their time.

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

Michael Kennedy asked John Kellogg if he could comment further on the amount of clearing and earth work that would be needed. Also, he asked if he would address Mr. Plick's concern about water drainage.

John Kellogg stated that no trees would be removed and only 5-10 shrubs require removal to prepare the fairways. Regarding Mr. Plick's concern of the floodplain, there would be no blockage of any flow of the floodplain that would occur because of the design of the golf course. There will be approximately 50-100 yards of sand to add to the greens but those additions would be limited to the greens only. The raising of the greens would not divert any flow of the floodwater. He said that what exists is actually a backwater of the Bitterroot River and any flooding that might occur would not be a direct flow across the property but a general raising of the water level in the area because the flow from the east is blocked by the landforms, roads, and previous developments. Also, he said he believed that all of the road construction that is proposed is out of the floodplain.

Michael Kennedy asked if there was a proposal to have lights on the driving range at night.

John Kellogg said no.

Michael Kennedy asked John Kellogg to comment on the application of chemicals for maintenance purposes since golf courses are generally areas of high intensity use of chemical fertilization.

John Kellogg said that within the "Pitch & Putt" brochures, it is stated that it promotes the organic methods of fertilization of the greens and the fairways. As far as possible, Duane Pettersen will follow these guidelines. He said that possibly on the greens only, there may be some chemical fertilizer but the amount would be minimal. It is not a hard-and-fast rule that will be followed but is promoted by the organization.

Michael Kennedy asked John Kellogg if this was a commitment he was prepared to make.

John Kellogg said yes, Mr. Pettersen would follow these guidelines as much as possible. He said he could not state that absolutely no chemicals would be used within the area but, to the extent possible, organic methods will be used, keeping chemical fertilization to a minimum.

Michael Kennedy then inquired if John Kellogg had any knowledge about the proposed use or ownership of the property to the west of the golf course site.

John Kellogg said he did not know.

Michael Kennedy asked Mr. Kellogg if he was aware that he may have to obtain a floodplain permit before any construction could occur.

John Kellogg responded that application had been made to the Army Corps for a wetland permit.

Michael Kennedy said he wanted to comment on the issue of wildlife habitat by stating that it will always change with any new development.

A discussion ensued regarding the proposed location of the parking lot and also the various options for paving both the access road and parking lot (asphalt, hard-packed gravel, or simply grass). All of these options will be taken under consideration.

Fern Hart asked if there were currently plans for affordable housing in Zoning District #41-A.

John Kellogg said there were no specific plans for a housing development at this point.

Bud Hettich commented further on the floodplain issue. He indicated that the floodplain permit that the applicant has applied for will be heard next week. There are definite requirements of the floodplain regulations that will need to be complied with. Also, because the proposed site is within the 4.5 mile building jurisdiction area, the City's parking standards will be applied. He explained that there is no need to put the parking lot in a flood-prone area when there exists an alternate location that is not prone to flooding. He expected that this would be one of the conditions of their floodplain permit.

Michael Kennedy commented that since the proposed use of this site is for a seasonal activity, any normally imposed parking regulations may be reconsidered since people will certainly not be out golfing if it's pouring down rain. He said he thought it would be reasonable to expect that this would be taken into consideration during the examination of conditions under the floodplain permit.

Horace Brown, County Surveyor, stated that it would be taken into consideration that this permit is for a seasonal use activity.

Michael Kennedy asked if conditions could be attached to this decision on switching the zoning. Also, regarding the availability of the balance of the land for similar use, he asked if there was a way to restrict an action to that particular parcel only.

Marnie McClain, Deputy County Attorney, expressed her concern with the prospect of "spot" zoning. She said she thought it would probably be permissible to limit the rezoning just to the area that was proposed in this request.

Horace Brown commented that he thought, in fairness to everyone, the amendment to the development standards should be for the entire zoning district and not restricted to just one individual.

Horace Brown moved and Vickie Zeier seconded the motion that the Planning and Zoning Commission recommend approval to amend the development standards of Zoning District #41-A to allow golf courses as a permitted use. The motion carried on a vote of 4-0.

The Planning and Zoning Commission recessed; the meeting reconvened as the Board of County Commissioners.

Michael Kennedy moved and Fern Hart seconded the motion that the Board of County Commissioners approve the recommendation from the Planning and Zoning Commission to amend the development standards of Zoning District #41-A to allow public and private golf courses as a permitted use, subject to all applicable regulations including, but not limited to, floodplain regulations and air pollution control regulations. The motion carried on a vote of 2-0.



HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (WILSON) -- TRACT 12 OF COS 1465 LOCATED IN THE N½SW¼ OF SECTION 30, T14N, R20W

Kathleen Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider a request for a family transfer for Tract 12 of COS 1465 located in the N½SW¼ of Section 30, T14N, R20W for Jeffery P. Wilson.

Jeffery Wilson owns a 35.77-acre parcel located near Mullan Road off Moccasin Lane northwest of Missoula. He proposes to split the parcel in half and transfer one half to his wife, Shoni L. Card. Mr. Wilson and Ms. Card were married in July 1994 and, upon the advice of his CPA, Mr. Wilson would like to split the property rather than add Ms. Card's name to the deed. The Comprehensive Plan designation is currently open and resource (one dwelling per 40 acres); however, there are many parcels in the surrounding area that are much smaller than what Mr. Wilson proposes.

The history of the parcel is as follows: The parcel was created in April 1978 as a parcel greater than 20 acres in size along with eleven other parcels. Mr. Wilson purchased the property in October 1994. According to the records kept by the Missoula County Surveyor, the applicant has not used any exemptions to the Subdivision and Platting Act.

The hearing was opened to public comment.

Jeffery Wilson, the applicant, explained that his wife is a legal partner with Pruyn Veterinary Clinic. On the advice of Mr. Wilson's attorney, the family transfer exemption is being requested so as not to place the veterinary clinic business at risk. He further explained that his half of the parcel will be for cows and his wife's half of the parcel will be for horses.

Fern Hart explained the reason why the Commissioners examine family transfer exemptions so closely is to determine whether or not the applicant is attempting to evade going through subdivision review.

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

Michael Kennedy moved and Fern Hart seconded the motion that the consideration of a request for a family transfer for Tract 12 of COS 1465 located in the N½SW¼ of Section 30, T14N, R20W for Jeffery P. Wilson be granted, contingent upon transfer of the deed to the family member, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 2-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (OPSAND/ZURAFF) -- TRACTS A AND B OF COS 4338 LOCATED IN THE S½ OF SECTION 29, T15N, R21W

Kathleen Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider a boundary relocation and family transfer for Tracts A and B of COS 4338 located in the S½ of Section 29, T15N, R21W for Raymond Opsand and Jeff and Linda Zuraff.

Ray Opsand and Jeff Zuraff have submitted an exemption affidavit requesting a boundary relocation between Tracts A and B of COS 4338. The parcels exist between Highway 90 and Mullan Road West of the Frenchtown Pond. Mr. Opsand owns Tract B, a 6.21-acre parcel and Mr. and Mrs. Zuraff own Tract A, a 1.10-acre parcel. The parties propose to relocate the boundaries between the two parcels to add approximately 1 acre to Tract A. Mr. Zuraff then proposes to create an approximately 1-acre family transfer parcel for gift or sale to Linda Zuraff's parents, Larry and Diane Bergman. The current Comprehensive Plan designation for the area is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: The original parcel was acquired by Bud King and in October 1977, he filed COS 1284 creating a 7.31-acre occasional sale parcel with remainders on both sides. Mr. Opsand acquired this parcel and in March 1994, he used the occasional sale exemption and filed COS 4338 creating a 1.10-acre parcel and the 6.21-acre remainder. Mr. and Mrs. Zuraff purchased the occasional sale parcel in June 1994.

According to the records kept by the Missoula County Surveyor, Raymond Opsand has used the exemption to the Subdivision and Platting Act as described above. Jeff and Linda Zuraff have not used any exemptions to the Subdivision and Platting Act.

The hearing was opened to public comment.

Jeff Zuraff, one of the co-applicants, explained that his wife's parents are quite elderly and are currently renting in a trailer court. They have always wanted a place of their own and this would provide them that opportunity.

Fern Hart inquired if they will move the boundary and then buy the extra acre from Mr. Opsand. This extra acre would then be sold to his in-laws.

Jeff Zuraff said that was correct. He indicated on the map the boundary lines of the parcels.

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

Michael Kennedy moved and Fern Hart seconded the motion that the consideration of a request for a boundary relocation and family transfer for Tracts A and B of COS 4338 located in the S½ of Section 29, T15N, R21W for Raymond Opsand and Jeff and Linda Zuraff be granted, contingent upon transfer of the deed to the family member, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. 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 2:45 p.m.

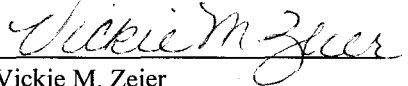
**THURSDAY, APRIL 27, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. In the morning, Commissioner Hart presented a "Volunteer Award" at a meeting of the Sentinel Kiwanis held at the Village Red Lion. In the forenoon, Commissioners Hart and Kennedy "job shadowed" employees of Child Care Resources for two hours in observance of the "Worthy Wage Day" celebration.

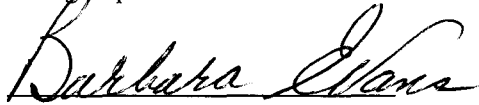
**FRIDAY, APRIL 28, 1995**

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

Audit List -- Commissioners Hart and Kennedy signed the Audit List, dated April 26, 1995, pages 5-35, with a grand total of \$119,090.05. The Audit List was returned to the Accounting Department.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

# MONDAY, MAY 1, 1995

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 Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for the month of April, 1995.

## DAILY ADMINISTRATIVE MEETING

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

Resolution No. 95-030 -- The Board of County Commissioners signed Resolution No. 95-030, a Resolution stating that at the request of the current owners, Otto Klein, Jr. and Susan Vincent Klein, the Declaration of Covenant as set forth in Book 282 Micro, Page 1822, placing an agricultural covenant on Parcel U-2 of Certificate of Survey 3598 is hereby revoked.

Resolution No. 95-031 -- The Board of County Commissioners signed Resolution No. 95-031, a Budget Amendment for FY'95 for the Capital Improvement Fund, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
2410-250-414400-923	
Computer Equipment	\$116,250
Road Graders	\$452,155
Mainframe	\$397,833
9-1-1 Remodel	\$202,000
Vehicles	\$178,000
<u>Description of Revenue</u>	<u>Revenue</u>
2410-250-383033 INTERCAP	\$1,346,238

Resolution No. 95-032 -- The Board of County Commissioners signed Resolution No. 95-032, a Resolution to amend the development standards of Planning and Zoning District #41-A, allowing public and private golf courses, subject to all applicable regulations including, but not limited to, floodplain regulations and air pollution control regulations, as permitted uses.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Sandra Zottnick, an independent contractor, for the purpose of preparing monthly financial statements, preparing bills for grants and contracts, etc., as per the terms set forth, for the period commencing April 10, 1995 through June 30, 1995, for compensation in the amount of \$25 per hour, to a maximum of \$3,000. The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract -- Commissioners Evans and Hart signed a Professional Services Contract between Missoula County and Ann Mary Dussault, an independent contractor, for the purpose of serving as a convener, facilitator and advisor and assisting Partnership Health Center in clarifying options to pursue in alleviating the existing space problem, as per the terms set forth, for the period commencing March 1, 1995 through June 30, 1995, for compensation in the amount of \$400 per day for 10 days, not to exceed \$4,000. The Contract was returned to the Health Department for further signatures and handling.

Closing Documents -- (INTERCAP Revolving Program) -- Chairman Evans signed the Closing Documents for Missoula County's participation in the INTERCAP Revolving Loan Program of the State of Montana Board of Investments for a loan (closing date of May 12, 1995) in the amount of \$380,000 for the purpose of Courthouse improvements (9 vehicles) to be amortized from May 12, 1995, through August 15, 1999, as defined in the Loan Agreement dated February 17, 1995. The documents were returned to John DeVore, Administrative Officer, for further handling.

Also included:

- \* the Commissioners approved the HRDC Federal Emergency Shelter Grant Monies.

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

# TUESDAY, MAY 2, 1995

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a Fire Debriefing at the Missoula Rural Fire Station.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Randal Hanson as principal for Warrant #087435 issued April 7, 1995 on the Missoula County MCHS Payroll Fund in the amount of \$39.23 now unable to be found.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending April 28, 1995.

## DAILY ADMINISTRATIVE MEETING

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

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY'95 budget:

- 1) Control No. 95-009, a request from Court Operations/Court Reporter 1, to transfer \$2,500 from the Court Operations Contingency fund to the Court Reporter I, Court Services fund, as per the attached explanation.
- 2) Control No. 95-011, a request from Building & Grounds to transfer \$20,000 from the Heat, Lights, Water fund to the Building Maintenance & Repair fund (\$13,500) and the Capital-Technical Equipment fund (\$6,500) for the purpose of painting and repairing the old Courthouse and for purchasing a computer capable of running Autocad.

Resolution No. 95-033 -- The Board of County Commissioners signed Resolution No. 95-033, a Resolution fixing salaries of certain elected officials, pursuant to Section 7-4-2107, 7-4-2503 and 7-4-2504 of the Montana Code Annotated, as amended, effective on the first day of July, 1995, the annual salaries of certain elected County officials are fixed as follows:

Clerk of the District Court	\$38,037.97
County Auditor	\$38,037.97
County Surveyor	\$38,037.97
County Commissioner	\$40,037.97
Clerk & Recorder/Treasurer	\$45,645.56
County Superintendent of Schools	\$40,037.97
County Attorney	\$59,714.07
County Sheriff/Coroner	\$50,395.46

Resolution No. 95-034 -- The Board of County Commissioners signed Resolution No. 95-034, a Resolution fixing salaries of County Justices of the Peace, pursuant to Section 3-10-207, Montana Code Annotated, as amended, effective on the first day of July, 1995, the annual salaries of the Missoula County Justices of the Peace are fixed at \$38,487.97.

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

### WEDNESDAY, MAY 3, 1995

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy was attending a "Faced with Reality - Historic Landscapes" Workshop at the Ninemile Ranger Station through Friday, May 5.

Audit List -- Commissioners Evans and Hart signed the Audit List, dated May 2, 1995, pages 5-42, with a grand total of \$113,472.45. The Audit List was returned to the Accounting Department.

#### DAILY ADMINISTRATIVE MEETING

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

New Bond Certificate -- Chairman Evans signed a bond certificate for the Hospital Revenue Refunding & Improvement Bonds, Series 1978 (Missoula Community Hospital Project) which will be issued on June 1, 1995 for the remaining amount not called for redemption on June 1. The certificate was returned to First Interstate Bank.

Notice of Hearing -- Chairman Evans signed a Notice of Hearing with regard to the creation of the Florence-Carlton Park District, whose boundaries will coincide with the boundaries of the Florence-Carlton School District, setting the hearing for May 17, 1995 at 1:30 p.m.

Other items included:

- 1) the Commissioners signed a memorandum authorizing the Treasurer's office to waive all penalty and interest for Real Estate Tax Bill #94011121 for David M. and Karen J. Bardwick. The document was returned to Vickie Zeier, Treasurer, for further handling.
- 2) the Commissioners signed a letter to Dodd Development Co., Inc. stating that Missoula County agrees in concept to trade its land, generally located in the southwest quadrant of I-90 and Crossroad, for 9.2 acres of Dodd property located adjacent to the Development Park. The trade would be based on a value-for-value exchange of real property.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present was Commissioner Fern Hart. Commissioner Michael Kennedy was out of the office all day.

CONSIDERATION OF: ROSS HOMESITE (1-LOT SUBDIVISION -- SUMMARY PLAT) WYE AREA (POSTPONED FROM APRIL 26)

Lisa Moisey, Planner at the Office of Community Development, explained that this was a request by Waldo W. and Doris L. Williams, represented by Nick Kaufman, WGM Group, to subdivide a 240.53-acre parcel into one 5.53-acre single family lot, Lot 1, and a 235-acre remainder. The proposed subdivision, Lot 1, is called Ross Homesite.

The Ross Homesite is a one-lot summary plat, and is located on Tucker Lane, north of the Spring Meadows Addition. Spring Meadows was platted out of the Waldo Williams ownership. It left the 5.53-acre Ross Homesite to the north of Spring Meadows and a 235-acre remainder to the south. The County Attorney's Office has determined that the 5.53-acre Ross Homesite and the 235-acre remainder are a single tract even though the two parcels are separated by the Spring Meadows subdivision.

The Rosses have a single-family home located on the east of the property. The property is zoned C-RR3 which calls for moderate density, single-family housing with a maximum residential density of four dwellings per one acre. An individual water well and an individual septic system are presently in place on the property. Tucker Lane which is the off-site access to the property is an existing gravel roadway located within a platted public right-of-way. The road does not meet County standards and is not maintained by the County. The County Surveyor has requested that the fee for Tucker Lane be dedicated with this subdivision. Missoula County presently owns the easement for Tucker Lane but does not own the land under Tucker Lane. The easement was previously deeded to Missoula County in another subdivision. With this action, Missoula County will own the road in its entirety. The property is bordered by existing single-family homes to the east and south, the common area of the Spring Meadows to the west and the section line and Montana Rail Link track right-of-way to the north.

The developer has requested three variances:

- 1) *Section 3-2(1)(G) which states that all new subdivisions shall have paved streets and roads.* The developer states that the road is a County gravel road which serves the Ross Homesite and another home to the east. The County Surveyor has indicated that more than two (2) parcels use this roadway for access and possibly as many as six (6) with the Certificates of Survey to the north of the section line in Section 16. The developer states that paving would be prohibitively expensive. As a mitigating effort, the developer agrees to waive the right to protest an RSID to pave the road. Staff, in consultation with the County Surveyor and the Missoula City-County Health Department, recommends approval of the variance request with the condition that the RSID waiver statement for upgrading the road is required as part of plat approval.
- 2) *Section 3-2(5) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions.* The developer states that sidewalks would be quite expensive across the frontage of this homesite, and that sidewalks are generally not installed on rural roads. The developer also states that Tucker Lane has a low volume of traffic. Staff recommends approval of the variance request with the condition that the RSID waiver statement for future installation of sidewalks is required as part of plat approval.
- 3) *Section 3-2(2)(6)(E) which states that dead-end driveways in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus and shall have a minimum unobstructed width of not less than 20 feet.* The Ross driveway is over 150 feet in length and is less than 20 feet in width. Staff, in consultation with the Frenchtown Rural Fire Department, recommends approval of the variance request. Scott Waldron, Frenchtown Fire Chief, stated that he is comfortable providing services to the Ross Homesite. He stated there was adequate turn-around room at the end of the driveway and that the property was relatively flat and he could easily maneuver fire apparatus around the property.

Based on the findings of fact, the Missoula Office of Community Development recommends approval of the summary plat of Ross Homesite and all three variance requests, subject to the following six conditions:

1. The developer shall place the following statement 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 for the upgrading of Tucker Lane, including sidewalks, based on benefit, and may be used in lieu of their signatures on an RSID petition."
2. The following shall appear on the face of the plat and on each instrument of conveyance:

"Acceptance of a deed to a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a Rural Special Improvement District for the installation of public sewer and water service and may be used in lieu of their signatures on an RSID petition."
3. The developer shall provide future lot purchasers with the Living with Wildlife Brochure at the time the said property is sold.
4. The developer shall dedicate to Missoula County, on the face of the plat, the thirty (30) feet of fee located under Tucker Lane from US Highway 93 east to the eastern boundary of the existing private access easement located on the Ross Homesite property.
5. 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.

6. Grading, drainage, erosion control and road plans shall be approved by the County Surveyor prior to plat filing.

Nick Kaufman, of WGM Group, representing the developer, Roxanne Ross, stated that there were two intriguing legal interpretations that apply to this subdivision. The first one deals with what constitutes a remainder and the second one deals with a County road, for which the County does not own the fee. Therefore, the fee is being dedicated as part of the plat. He indicated that he has reviewed the staff's recommended conditions of approval with Mrs. Ross and she has no objections to them.

Horace Brown, County Surveyor, stated that dedicating the fee as part of the plat would primarily take care of a technicality in that if it was not part of the subdivision, it would be a strip of land which would be retained by the original owner. In case this would one day be vacated, it would go to the heirs of that owner and not to this landowner.

Fern Hart asked if this was a private easement.

Horace Brown responded that it is a County easement, 30 feet wide. The County does not get the fee ownership of the land underneath it. Once it is dedicated to the public forever, then the fee goes with the subdivision.

Fern Hart asked why 1-lot subdivisions occur.

Michael Sehestedt, Deputy County Attorney, indicated this situation is a result of the Waldo Williams ownership. Approximately 10-12 years ago, what became Spring Meadows was sold by a Certificate of Survey method to the developers of what was then known as Bay Meadows. He recalled having some discussion at the time about the situation. The way they sold the Bay Meadows portion left a remainder track which consisted of two separate parcels. For whatever reason, they did not want to survey or individually describe those parcels. The County allowed them to take the shortcut with a remainder which has a single legal description but is two physically separated pieces of property with the Spring Meadows Subdivision in between them. When they wanted to convey the portion that is going to be Ross Homesite, there was no separate recordable legal description for that parcel -- it was a part of the total 240-acre remainder. They are doing the subdivision for the purpose of describing this portion and because they do not want to incur the surveying cost to have a 2-lot subdivision. He expected that the County will be seeing more 1-lot subdivisions in cases, for example, where an individual having a 320-acre parcel wants to sell a 5-acre or 10-acre portion. The only way they can do this is through the subdivision process. They may want to create one lot and have a big remainder rather than having a 320-acre subdivision with one 5-acre lot and one 315-acre lot. This would get into some cash in lieu of park land dedication requirements and also surveying costs. The 20-acre parcel rule is gone and the other exemptions are very severely restricted. In this particular case of the Ross Homesite, even though it is physically isolated, its legal description is still part of the larger track.

Fern Hart asked if there would be a complete legal description of the remainder.

Michael Sehestedt said the legal description would be whatever the remainder description was less that portion platted as Ross Homesite. He said this is how he would do it to avoid the cost of a survey.

Fern Hart asked if a person could gift or sell the remainder to their family.

Michael Sehestedt said yes, since it would be a legal parcel.

Barbara Evans commented on the new legislation in House Bill 473. In situations where there is a 1-lot subdivision and a large remainder, the County and all engineers will need to know whether or not park land dedication will apply and if so, how it will apply.

Barb Martens, Planner at the Office of Community Development, clarified that three or more lots are required to trigger the cash in lieu of park land dedication requirement.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the three following variances to the Missoula County Subdivision Regulations for the proposed subdivision, Lot 1, Ross Homesite:

- 1) Section 3-2(1)(G) which states that all new subdivisions shall have paved streets and roads -- contingent upon the condition that the RSID waiver statement for upgrading the road is required as part of plat approval.
- 2) Section 3-2(5) which states that sidewalks and pedestrian walkways shall be provided in all subdivisions -- contingent upon the condition that the RSID waiver statement for future installation of sidewalks is required as part of plat approval.
- 3) Section 3-2(2)(6)(E) which states that dead-end driveways in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus and shall have a minimum unobstructed width of not less than 20 feet.

The motion carried on a vote of 2-0.

Fern Hart further moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the summary plat of Ross Homesite, based on the finding of fact in the staff report and subject to compliance with the following conditions:

1. The developer shall place the following statement 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 for the upgrading of Tucker Lane, including sidewalks, based on benefit, and may be used in lieu of their signatures on an RSID petition."

2. The following shall appear on the face of the plat and on each instrument of conveyance:

"Acceptance of a deed to a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a Rural Special Improvement District for the installation of public sewer and water service and may be used in lieu of their signatures on an RSID petition."

3. The developer shall provide future lot purchasers with the Living with Wildlife Brochure at the time the said property is sold.
4. The developer shall dedicate to Missoula County, on the face of the plat, the thirty (30) feet of fee located under Tucker Lane from US Highway 93 east to the eastern boundary of the existing private access easement located on the Ross Homesite property.
5. 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.
6. Grading, drainage, erosion control and road plans shall be approved by the County Surveyor prior to plat filing.

The motion carried on a vote of 2-0.

HEARING: ANNEXATION TO FRENCHTOWN RURAL FIRE DISTRICT (LATIMER) -- (POSTPONED FROM APRIL 26)

Michael Sehestedt, Deputy County Attorney, explained from information received from Phyllis Browder, Recording Supervisor in the Clerk & Recorder's Office, that a single petition from Willard Latimer was received by the Clerk & Recorder's Office to annex a parcel of land located in Missoula County to the Frenchtown Rural Fire District. The petition for annexation has been checked and verified. The petition contained signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of the tax-paying freeholders within the area described, so they meet the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows:

- Parcel 1: Tract 25 of COS #1914, located in and being a portion of the NE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.
- Parcel 2: The N½ of the NE¼ of the SE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.
- Parcel 3: The S½ of the SE¼ of the NE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.
- Parcel 4: The S½ of the SW¼ of the NE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.
- Parcel 5: All that portion of the N½ of the NE¼ and the N½ of the S½ of the NE¼ of Section 2, T13N, R23W, lying Southerly of Tracts 24 and 25 of COS #1914.
- Parcel 6: The S½ of the NE¼ of the SE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.

He stated that a letter has been received from the Frenchtown Rural Fire District's Board of Trustees indicating their approval to annex Mr. Latimer's property. He explained that under this procedure, the petition has been received, it has been checked and verified by the Clerk and Recorder's Office. Notice of Hearing was published to provide an opportunity for interested parties to file written protest. No written protests have been received to date. In the absence of such protests and given the acceptance of the Fire Trustees to the annexation, the Board of County Commissioners simply need to proceed to annex the parcels.

The hearing was opened to public comment.

Scott Waldron, Fire Chief for Frenchtown Rural Fire District, explained that considerable building is taking place outside the district. He indicated that it is currently the policy of Frenchtown Rural Fire to respond on an emergency basis to these people whether or not they are in the district. However, whenever it comes to the Fire District's attention that a particular area is out of the district, they are requesting that they formally annex into the district. He said he anticipates that there will be many more of these instances in the future.



Fern Hart stated her concern, as in all annexations such as this, that there be a record of what kind of area is being annexed and also what kind of response the Fire District can predict for them.

Scott Waldron explained that these particular parcels are located right in the middle of the Petty Creek area. He said that people have built there not knowing if they have any fire protection at all. He indicated that 9-1-1 will dispatch Frenchtown Rural Fire to that area whether or not they are in the Fire District. He clarified that even if the individuals involved chose not to annex into the Fire District, they would still respond to them on an emergency basis. Regarding response time, he indicated that there is a station approximately five miles away. He also explained that last year, a Forest Service Prevention Specialist was hired to conduct a hazard risk analysis of the entire fire district. Even though the specialist was laid off during the winter, the fire district will continue doing the work over the next two years of developing maps of all of these properties.

Barbara Evans inquired why these parcels were not in the fire district since he stated previously that they were right in the middle of the Petty Creek area.

Scott Waldron explained that when much of the Petty Creek and Ninemile areas annexed into the fire district, they annexed the road only. The large ranches did not want to put all of their timbered property or acreage into the fire district. They of course wanted their houses in the fire district but they did not want to pay the fire taxes on all the range ground.

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

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners grant the request to annex the following property into the Frenchtown Rural Fire District in that the requirements for the petition have been fulfilled, the Frenchtown Rural Fire District's Board of Trustees have recommended approval to annex said property, and based on the finding that a legal number of protests were not received:

- Parcel 1: Tract 25 of COS #1914, located in and being a portion of the NE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.
- Parcel 2: The N½ of the NE¼ of the SE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.
- Parcel 3: The S½ of the SE¼ of the NE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.
- Parcel 4: The S½ of the SW¼ of the NE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.
- Parcel 5: All that portion of the N½ of the NE¼ and the N½ of the S½ of the NE¼ of Section 2, T13N, R23W, lying Southerly of Tracts 24 and 25 of COS #1914.
- Parcel 6: The S½ of the NE¼ of the SE¼ of Section 2, T13N, R23W, P.M., Missoula County, Montana.

The motion carried on a vote of 2-0.

#### CONTINUATION OF HEARING & ADOPTION OF: PROPOSED CIP (CAPITAL IMPROVEMENTS PROGRAM) 1996-2000

Fern Hart stated that this was the third and last hearing to consider the adoption of the draft Capital Improvements Program covering the years 1996-2000. She explained John DeVore, Administrative Officer, had been at the two former public hearings on this matter. The value of the projects recommended for funding during FY'96 is \$4,846,124. Of this amount, \$3,481,083 is recommended for various road projects. The projects range from \$1,500,000 to build a new shop complex to \$370,043 which has been budgeted in County resources to match CMAQ funds for CMAQ projects. She announced that the CIP is available to anyone who would like to review it.

The hearing was opened to public comment; there being none, the hearing was closed to public testimony.

Michael Sehestedt, Deputy County Attorney, explained that with this process, the Board of County Commissioners vote whether or not to approve the plan and funding mechanism. Though this merely provides the basic framework, the actual authority to spend on the projects comes during the formal budget process.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners adopt the draft Capital Improvements Program covering the years 1996-2000. The motion carried on a vote of 2-0.

#### HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (ARNO) -- TRACT 1 OF COS 4318 IN THE SW¼ NE¼ OF SECTION 22, T15N, R20W

Kathleen Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider a family transfer for Tract 1 of COS 4318 in the SW¼ NE¼ of Section 22, T15N, R20W for Stephen & Bonnie Arno.

Stephen and Bonnie Arno have submitted a family transfer request for a 40.21-acre parcel located northwest of Evaro. Mr. Arno proposes to split the parcel in half for transfer to his adult sons, Nathan Arno and Matthew Arno. Matthew Arno plans to sell his half and use the proceeds for the purchase of property located elsewhere. The comprehensive plan designation is currently open and resource (one dwelling per 40 acres), however, there are several parcels in the area ranging from 20 acres to 5.05 acres in size.

The history of the parcel is as follows: COS 4318 was filed in January 1994, creating 3 parcels of approximately 40 acres in size pursuant to Court order in the estate of Vernon W. Groom. Mr. and Mrs. Arno entered a contract to purchase the property in December 1993. According to the records kept by the Missoula County Surveyor, the applicants have not used any exemptions to the Subdivision and Platting Act.

The hearing was opened to public comment.

Stephen Arno, the applicant, stated that his wife and two sons were present at the meeting. He indicated that his family has lived on forest ground and managed it as a tree farm for the last 24 years. He stated that both of his sons are in forestry and they both want to have forest land to manage. He and his wife purchased this 40-acre parcel just over a year ago and now wish to give each son half of the property.

Barbara Evans explained the reason why the Commissioners examine family transfer exemptions so closely is to determine whether or not the applicant is attempting to evade going through subdivision review.

Fern Hart further explained to Mr. Arno that this would be the only time that he could use this exemption to either sell or gift property in Missoula County. She then asked Mr. Arno if his two sons, Nathan and Matthew, plan to live on this property.

Stephen Arno indicated that Nathan and his family plan to live on his 20 acres; however, Matthew intends to sell his 20-acre parcel.

Matt Arno stated that he does plan to sell his 20-acre parcel. He indicated that he initially planned to live there but, because of a personal conflict with an adjoining neighbor, he has since decided not to live there. He said the proceeds from the sale of this property would be used to purchase land elsewhere.

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

Fern Hart moved and Barbara Evans seconded the motion that the consideration of a request for two family transfers for Tract 1 of COS 4318 in the SW¼ NE¼ of Section 22, T15N, R20W for Stephen and Bonnie Arno be granted, contingent upon transfer of the deeds to the family members, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 2-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (REYNOLDS) -- TRACT 4 OF COS 4033 LOCATED IN THE S½ OF SECTION 1, T12N, R20W

Kathleen Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider a family transfer for Tract 4 of COS 4033 located in the S½ of Section 1, T12N, R20W for George and Frances Reynolds.

George Reynolds has submitted a family transfer request for a 10.26-acre parcel located off Lower Miller Creek Road. The parcel is currently located in the 100-year floodplain. Mr. Reynolds proposes to create a 0.55-acre parcel for transfer to his daughter, Nancy Tredik. Both parties intend to build on the proposed parcels.

The history of the parcel is as follows: COS 2069 was filed by Fred A. and Kathryn D. Plummer in August 1979 creating a 1.05-acre family transfer parcel. COS 4033 was filed by George and Frances Reynolds, Norman and Doris Balko, Elly Blize and the Lloyd Twite Family Partnership in January 1992 creating two agricultural exemption parcels and relocating common boundaries. In May 1994, Mr. Reynolds requested to rezone the area from C-A3 (one dwelling per 5 acres) to C-RR2 (two dwellings per 1 acre). Part of the reason for the rezoning request was so that Mr. Reynolds could provide a 0.5-acre parcel for his daughter to live on. This request was denied and the Commissioners advised Mr. Reynolds to request a family transfer exemption. According to the records kept by the Missoula County Surveyor, the applicant has used the exemptions to the Subdivision and Platting Act as described above.

The hearing was opened to public comment.

Terry Forest, of Druyvestein Johnson & Anderson Inc., representing the Reynolds, indicated that they have gone through the floodplain process. A floodplain development permit was issued for this single lot which has been filled but not compacted. The parcel would be broken into a parcel slightly over 1/2 acre with a remainder of 9.7 acres. They will connect to the City sewer. The stub has been included so Lower Miller Creek Road will not have to be torn up. He indicated that the Reynolds are aware of why this hearing is taking place and also that this would be the only family transfer exemption they would be allowed to transact in Missoula County.

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

Fern Hart moved and Barbara Evans seconded the motion that the consideration of a request for a family transfer for Tract 4 of COS 4033 located in the S½ of Section 1, T12N, R20W for George and Frances Reynolds be granted, contingent upon transfer of the deed to the family member, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. 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 2:17 p.m.

PUBLIC HEARING -- INTENT TO LEVY TAX (EAST MISSOULA SEWER DISTRICT)

The Public Hearing at the East Missoula Community Center was called to order at 7:30 p.m. by Acting Chair Fern Hart. Also present were: Commissioner Barbara Evans and East Missoula Sewer District Board members, Jack

Ballas, Rick Stephens, Charlie Martin, and Cecelia Christensen. Also, approximately 88 East Missoula community members were present. Michael Sehestedt, Deputy County Attorney, joined the meeting at approximately 8:00 p.m.

Fern Hart opened the meeting by stating that a brief overview of the issue would first be presented, followed by a time for comments and questions. She indicated that the residents of the East Missoula Sewer District should have received by mail the notice of tonight's hearing. She welcomed everyone and commented on the splendid turnout of the community. She explained that the East Missoula Sewer District had requested the imposition of a levy on real property only at a rate sufficient to raise \$72,000 over a two-year period for the purpose of paying operational expenses and funding an engineering feasibility study. She then introduced the Missoula Sewer District Board members and asked Chairman Jack Ballas if he would make a brief presentation.

Jack Ballas, Chairman of the East Missoula Sewer District Board, explained that the Board's fifth member, Lee Bridges, was out of town as she lost a long-time friend a week and a half ago. He then presented a brief history for benefit of those present who had not been to any of the previous meetings. He explained that the Sewer District was first organized in 1992 and from then until the present, the five Board members have been meeting once a month. He said they have talked over different ideas concerning what must be done but he said that the members on this Board are just ordinary people who do not have all of the expertise that is required to make a decision on what type of sewer system would best serve this community. He explained that the issue at tonight's meeting is not a sewer system itself, but rather the need for an engineer to conduct a feasibility study and then recommend of a few different options of a sewer system. People's first reaction, of course, was how much it was going to cost them. He said he then wondered if the people of East Missoula would be willing to spend \$5 per month for two years to fund this feasibility study to determine what type of sewer system was needed. He explained that this figure was based on an estimated 600 households in East Missoula. He said most people agree that at some point in the near future, some type of sewer system will be needed anyway. He said he had some sheets that would be available later in the evening which shows the breakdown of costs for this proposed tax levy on differently priced homes.

Fern Hart thanked Jack Ballas for his presentation and then opened the hearing to public comment.

Janet Flexman, 623 Minnesota Ave., said everyone knows that eventually money will have to be spent on a sewer system but asked was it really necessary to spend money on an engineering feasibility study and will it eventually save the community \$72,000.

Rick Stephens explained it was the Board's recommendation to hire a competent engineer to conduct a feasibility study and then propose four or five options. He explained that right now, East Missoula is sitting 125 feet above the water supply -- there's nothing but sand and gravel before the water supply. He said there are some wells at 50 feet that are already showing high phosphates and nitrates. He explained that there are two options of disposing of the water -- after proper treatment, it can be put back into the Clark Fork River or it can be put someplace else. He said that determination would be made as a result of this feasibility study. He reminded those present that the tax levy for this study is for two years only and will not go on forever. He said that depending upon the quality of the engineer conducting the feasibility study, what would also be gained is the benefit of a grant writer. He explained that if it is shown that a community is capable of raising money, there is a greater likelihood of being awarded grants, applying for coal tax money, and also receiving assistance from the Farmers' Home Loan. He said because of these benefits, it may well be cheaper in the long run.

Joyce Olson, 708 Montana Ave., asked if East Missoula would be committed to a District or would people still able to hook up to City sewer. She said she would be more interested in hooking up to City sewer and said she felt the feasibility study would be a waste of her money.

Jack Ballas said that one of the things that the Board had talked about among themselves and also with Peter Neilsen, Missoula County Environmental Health Unit Supervisor, is that if East Missoula hooks up to City sewer, it will have to go by their rules. One of their rules is possibly a minimum of a \$10,000 hookup fee to the sewer. He said he's heard from several people that they want to find a better way.

Betty Springer, 33 Canyon View Dr., commented that the \$72,000 was based on approximately 600 households in East Missoula. She asked if this number included all of the new housing on the bottom of the hill on Highway 200 and also how far down on Highway 200 does the District extend.

Jack Ballas indicated the District's boundaries on an aerial map with one boundary being Marshall Canyon Road. He indicated that the new homes that Ms. Springer referred to would eventually be in the system.

Betty Springer asked what the purpose was for doing the feasibility study now. She also asked why the new development in Bonner wasn't included in the District with the big business that's going on where the old Champion office was. She asked why East Missoula should bear the brunt of the financial burden when Bonner will benefit from it.

At this time, Michael Sehestedt, Deputy County Attorney, joined the meeting.

Jack Ballas explained that when the sewer district was first formed, it was asked how far the boundaries would extend. He said it was known that East Missoula was targeted, over by Brickyard Hill would probably be next, and sometime in the future, probably 20-30 years from now, Bonner and Milltown would probably have to be added to a sewer system. He said the Board felt that the majority of the people in Bonner and Milltown would vote against the sewer district. He also explained that it is easier to add to a sewer district than it is to take away from it. He said the engineer who would be hired would be asked to look at a future development going east toward Milltown and Bonner because nobody wants to see a lot of little plants springing up. If it can be held to just one or two plants within this valley, the whole valley would benefit from this service.

Betty Springer said the more sewer systems that go in, the greater the chances are of polluting the aquifer. She stated that she could never be convinced that East Missoula would pollute the aquifer more than Bonner, especially in light of the new truck center that is being proposed. She said if she will have to pay for this feasibility study, Bonner should be included as well. She said she didn't understand why the new houses being built to the east along the Clark Fork River were also being excluded. She explained that she wasn't worried about the \$5 per month for the cost of the feasibility study, but rather the \$100 per month that she won't be able to pay when the study is completed and then people are told they have to have a sewer district.

Jack Ballas clarified that nobody is telling East Missoula that it has to have a sewer system. But with comments being made about the arsenic that is stored up behind the Milltown Dam, that effect is running all the way to Lake Pend Oreille, Idaho. Those people there are concerned with what happens here in Missoula and Missoula is concerned with what happens east of here. So eventually it would be advisable to get them on this sewer system.

Charles Wutsch, 38 Canyon View Dr., said he had two questions. He stated that according to the letter that everyone in East Missoula received, the County Commissioners would be accepting comments and protests at tonight's meeting. He asked if this was correct.

Fern Hart said that the Commissioners were holding this meeting to hear comments and protests and to try to resolve them. She explained that the purpose of the public hearing tonight was not for the Commissioner to make any ruling.

Michael Sehestedt, Deputy County Attorney, further explained that the Commissioners would hear protests and comments this evening. The public hearing would then be adjourned and there would then be a period of time for at least one week when additional written comments would be accepted by the Commissioners. Then probably at one of the Commissioner's regular Wednesday Public Meetings, they would make their decision. He explained that the statute was unusual in that it sets up a hearing, it says the Commissioners shall hear and decide all protests but does not set out any criteria for resolving the protests or any standards against which the Commissioners have to act in determining whether or not the protest is valid. He said at this point, the purpose of the Commissioners is to hear what people have to say, to hear any objections to the proposed levy of the tax that has been requested by the Sewer District Board, and then ultimately act to resolve those protests. He said he had not heard enough of the comments to know which way the meeting seemed to be going. He then apologized for being late. He said it was not a matter that he took this meeting lightly -- he said he just had a conflict.

Charles Wutsch asked if the County Commissioners would stop the levy if there were enough protests.

Michael Sehestedt responded that if it appears that there is sufficient protest, the Commissioners will probably go back to the Sewer Board and recommend that the tax levy not be done. He again said it was an interesting statute in that on one hand, it says the Commissioners shall, when requested, levy. On the other hand, it says they shall hear and resolve protests. Hopefully, it won't come to a Commissioners versus the Sewer Board situation, but it might.

Charles Wutsch asked if once a sewer system is in place, maybe 4 or 5 years from now, can the County Commissioners just walk in and take it over, even though the people of East Missoula paid for it. He said that at one of the East Missoula meetings, Rick Stephens made the statement that even though East Missoula would go through all the trouble and get everything in place and maybe spend \$12,000 to have a hookup into a system, when it's all done with, the County can still come in and take the system over.

Rick Stephens explained that El Mar Estates had their own sewer district and Alan Sharbono told the East Missoula Sewer Board that at any time, the County Commissioners could make a ruling whether or not the system was theirs.

Michael Sehestedt said that there are a variety of ways to construct sewer systems: one way is through the Rural Special Improvement District mechanism; another way is through an independent Sewer Board. He stated that the El Mar Estates sewer system was created through an RSID and the County had that responsibility. The County Commissioners actually created that district, they governed it, they entered into the contracts, built the system, and then through a contractual arrangement, turned the system over to the El Mar homeowners. Eventually, the homeowners were having problems operating the system, collecting their fees, etc. and in essence, the Board of the Homeowners' Association gave the El Mar system back to the County. He said the sewer system in East Missoula, if it is created, will be by an independent sewer district. There is no way that the County could take the system. He said he supposed that hypothetically if the County decided it absolutely had to have the system, it could bring an action to condemn it through eminent domain and buy it from the district but he said he couldn't imagine a situation where that would arise. He said Barbara Evans mentioned a couple of other RSID systems -- one up in the Grant Creek area where the County ended up having to take it back and also the Lewis & Clark RSID system out at Clinton was given back to the County. It is a community drainfield-type sewer system and a water system as well. He said to be perfectly honest, there are a number of these RSID systems still floating around. The County doesn't really like them because it doesn't like being in the utility business. El Mar is big enough that it justifies a full-time employee who can actually run the system and keep it going. RSID 901 in Lolo is another RSID system that works. But the County's experience with the systems has generally been negative. The County has tried to get the Homeowners' Associations to take them over.

Charles Wutsch asked if the Sewer Board felt that East Missoula can put a system in that is neither gold-lined nor of the bottom of the line quality, but somewhere in between that would be cheaper than \$10,000.

Jack Ballas said that the engineering firm out of Great Falls that the Sewer Board has been consulting with has probably designed about 90% of the sewer systems in the State of Montana. One concept that the Board was most impressed with is that if a particular area is small enough and meets certain criteria such as annual income per capita, a sewer system can be put in and it will not cost anything to hook it up. The only cost would be the monthly service fee. The initial cost to the homeowners and businesses of the sewer system that went in at St. Regis was nothing because they were able to get enough grants to put their system in. He said he didn't know for sure whether or not

East Missoula could put a system in for nothing. If that could be done, that would be great. He said he, like everyone else at this meeting tonight, was not about to pay \$10,000 to hook up to a sewer. He said he would look at something else. And because East Missoula has been here for many years, there are a lot of retired people living here living on limited incomes and this is one of the major concerns that the Sewer Board has talked about. He said he wants to be able to meet these people on the street and be able to talk to them. He said these people's concerns are first and foremost.

Charles Wutsch asked Fern Hart what would happen if the County Health Board decided that East Missoula was the cause of polluting the aquifer and how fast any action would take place.

Fern Hart said she did not know of a rule that would determine what amount of pollution can be put in the aquifer. She said she thought it was tested by wells such as was done in Linda Vista where the State mandated that sewers be put in there. If wells test at a dangerous level, the County would have to respond as protectors of the public health. She said she did not know how East Missoula's wells test now. As far as a time frame when action would have to be taken, she said she thought it was something like two years once the level of nitrate was established.

Albert Bellusci, 4150 Edgewood Dr., said he lived in the area where Betty Springer previously commented about. He expressed his appreciation to the Sewer Board for taking this step because everyone knows it's eventually going to happen. He said he thought they were forthright in looking ahead but he said he thought they weren't looking ahead far enough. He said he wanted to explain what's happening in an area that's encompassed by the Bonner School area. That area actually extends into part of Brickyard Hill and also into the Sunny Meadows Subdivision. He said that the Bonner Development Group, a non-profit corporation, has recently been formed. He explained that one of the purposes of this organization is to try to stay ahead of some of the things that were happening and to be a part of the development that takes place in that area. He said Missoula Valley is extremely scenic and highly developable. There's possibly about 135 acres of undeveloped land in the Bonner area. He said he thought that the sewer district should probably take into effect the entire area and address the sewage issue. He said it's something that the Bonner area knows it will be facing very shortly. Bonner is very supportive of Town Pump and their proposed development. They're going to do some good things out there and the entire area will benefit from it. It's also going to do something else. It's going to be a beacon to additional development. If the County watches what happens around Town Pump and the type of operation they run, they'll see an actual growth in that area. He said he didn't know what type of timetable the Commissioners were under to get this feasibility study going but he thought they needed to look at the entire valley. He said the County needs to look at the Jacobs' property which he believed would be for sale in the near future. That's also in an area that the Development Corporation will attempt to contact Randy and see what his timetable is. He said he thought they could end up with a sewage district that would be workable and would probably be spread over a large enough area that it would be affordable. He said he hoped the East Missoula Sewer Board could back off on their timetable a little bit to provide an opportunity for the Bonner Development Group to meet with them and look at the possibility of taking in the entire area.

Jack Ballas explained that the Sewer Board is hoping to receive a considerable amount of the funding from the State legislature. In order for this to happen, a plan must be in effect one year before the legislature meets again in 1997. Therefore, the Sewer Board would like to have something ready by next year some time.

Marshall Pitts, 610 Sommers St., said he hadn't heard anything about the existing commercial businesses out here -- the cost of the people on the highway.

Jack Ballas said the Sewer Board had talked about the effect of the people on the highway. Any development in the area right now is stymied because there are no sewer systems. He said he had heard comments in the past that East Missoula was a tight-knit community before and doesn't need any improvements. But in driving up and down some of the streets in East Missoula, it can be seen that there are quite a few areas where improvements are needed. Any new building that is going on within a 7-mile radius of Missoula County must meet certain criteria through the Planning Board. Much of that criteria is with regard to landscaping. If some improvements can be encouraged in the area on the highway and maybe on some of the side streets where they would have to meet the criteria of landscaping, maybe more pride can be developed in the neighbors of the community by cleaning up their yards.

Michael Sehestedt added that if a schedule of sewer rates will be determined in the future, and because it's based on the taxable value of the real property (the lot/ground) only, the commercial property would get appraised at a higher rate which means it has a higher taxable rate. He said he expected that the business sites will get hit a little harder because commercial ground is worth more in the marketplace than a like area of residential ground.

Fern Hart clarified the point that the proposed tax levy is for the purpose of funding a feasibility study. It is therefore based on "lots". It's based somewhat on the value of the lot but once again, the bare lot. She said that many people have noticed that lots with houses on them have changed in their value.

Chance Hiday, 4180 Lochsa Ln., said what he was trying to stop is a precedence that is being set here -- being based on market value. He said sewage isn't based on market value -- it's based on share. He stated that each residential home should be one share. Each four-plex should be four shares.

Fern Hart commented that the tax levy is not for sewage -- it's for the study.

Chance Hiday argued that it is for sewage -- for a sewer system. It should not be based on a taxable value. Everybody in this community should pay an equal share. There shouldn't be any basis for anything different. A trailer court should pay for each trailer that's in that court. It should be an equal share per single family dwelling. He said he also believed that businesses should be based on a share basis also but set up by the Board as to how much sewage they put into the system -- even though it is a study. It should be based accordingly now, rather than later down the road. Someone who owns a \$125,000 home shouldn't have to pay more than someone who owns a \$14,000 trailer. Sewage is sewage. It's the same thing and should be the same share. Everyone should pay equally.

Rick Stephens said this very issue was addressed this year at the State legislature but the Sewer Board's motion in that direction was tabled by the Chairman. He indicated that a different line of thinking is that sewage is directly related to how much water is consumed. An industry such as a home brewer is going to use a whole lot of water. But he has only one toilet and one shower and one kitchen sink. So there's the question whether he should be charged by that share or charged by the amount of water consumption. These are things that the Sewer Board is interested in bringing before the State legislature. He said their first shot at it was unsuccessful but they will try again.

Chance Hiday asked Rick Stephens if he agreed with him that it should be on a shared basis.

Rick Stephens said yes but unfortunately the Sewer Board is restricted by how State law works which offers only two choices -- one is by lot and the other is by taxable value. Those are the only two ways it can currently be done. There's no third choice which is by share, the method Mr. Hiday recommended, which the Sewer Board tried and failed.

Bob Brunson, 711 Speedway St., said he realized this process is a necessary item but stated that one of his concerns about this entire ordeal was the proposed site for this sewer system. He said geologically, East Missoula is a very narrow, very tiny area and he wanted to know where the sewer system would be built. He also asked what would happen if, after much time, effort, and money, the system was already built, the City decided to annex East Missoula. If the City determined that they didn't like East Missoula's sewer system, could they make East Missoula hook up to their system.

Jack Ballas said he would respond to Mr. Brunson's first question. He explained that the engineer who previously visited with the Sewer Board outlined three types of systems after his brief observation of East Missoula. One system would be to sell it to the City of Missoula. The second system would be for East Missoula to build its own plant and use ground application. The third system would be like a little black box where the sewage goes into the box and what comes out the other end is pure drinking water. He said that for the feasibility study, this is what is needed because an engineer has the expertise of looking at the size of an area, the number of homes, etc., and then making a recommendation of the size of the system that is needed. A qualified engineer may very well determine that there isn't enough land here to put in our system and East Missoula would then have to contract with the City. He then asked Michael Sehestedt if he would address Mr. Brunson's second question.

Michael Sehestedt commented that he didn't think the City could take over the sewer system, assuming they even find some way to annex East Missoula. He said realistically, given the geography, he said he could not imagine a situation in which the City would annex East Missoula unless it specifically asked to be annexed or else in the case where it was required by some sort of State Health Department to connect to the City's system. He said probably if East Missoula had its own sewer system in place, it would never be annexed. He explained that what's happening everywhere around the edges of Missoula is that individual property owners decide that they need municipal sewer service so that they can develop their property either at all or at a higher density. The City, as a condition of providing sewer services, requires a consent to annexation and a waiver of protest. The City collects those and then takes those waivers and consents and completes wholly surrounds on other areas. A first annexation can't be protested successfully because 51% of it is the consent and waiver. He then commented on the property up at the top end of the Rattlesnake which came in on petition by Sunlight. The top end of the Rattlesnake was then blocked. The people in Lincoln Hills had a sewage disposal system that came down on the flat and it was failing miserably -- icky brown stuff was coming up and puddling on the surface. So they had to get sewer service. There were a couple of other developments on the way up that could develop at a fairly high density. There's a little meadows up across West Greenough Drive. The City took those waivers and consents and created an encirclement of a couple of large blocks. Item A on the agenda was to annex the areas that they had combined consents with the other people to complete the encirclement and then Item B on the agenda was to welcome to the City those that had been wholly surrounded by the City of Missoula. The City limits line runs up through Lincolnwood down and around and across the valley and back down through Dr. Peschel's development, the waterworks hill that was just developed at incredible densities. He stated that Sunlight did not get the zoning for their 1800 residential units at the top end.

Fern Hart said she was compelled to make some statements about the importance of protecting the aquifer. She said people have to think in terms of good drinking water. She said that is one of the gifts that people have had in this valley and individual septic systems cannot be added on forever without people ultimately having to drink what they flush. She said no sewer is free -- everyone will pay a fee for having a good sewer. There's just nothing that's given away. Everyone has a duty to be responsible for the aquifer. She said she thought creating this district has shown a concern for the district. The City's creation of a sewer system shows a concern for the aquifer which is down below. She said she didn't support creating a district to stay out of the City. She said she would support creating a district to protect the drinking water.

Leonard Brown, 517 Minnesota Ave., asked what would be done if, after East Missoula puts a sewer system in, that stuff from the Milltown Dam gets in the aquifer.

Fern Hart responded that she didn't know what any of us will do if the stuff in the Milltown Dam gets in the aquifer. She said she wished she did know.

Helen Kulju, 333 Montana Ave., said she wondered what group sent out the notice of intent to levy taxes because she didn't receive one. She asked how broadly was it distributed and was it all by mail. She said that because she didn't receive the notice, she had no chance to think about what this tax levy is about. She commented that some of the other people who spoke brought up very good suggestions, questions and arguments and unfortunately she wasn't ready to do it without any prior knowledge. She said that Jack Ballas talked about the tax being \$5 per month but on the handout being distributed at tonight's meeting, it indicates that people having higher valued property may be charged more.



Fern Hart stated that the mailing distribution compiled from the Assessors file which consists of those homeowners who are listed for the tax bills. The notice was also posted in five places. She said she would check into the reason why Ms. Kulju did not receive this notice since it was mailed out to every listed homeowner in the Fire District. In response to Ms. Kulju's other question, Fern Hart reminded everyone that the tax is based on the value of the lot only. She also explained that the tax would not be a monthly payment in this case. It would appear on the first half of the tax bill as an RSID. She also explained that because this is a levy, failure to pay this tax would result in a lien against a person's property.

Theresa Goforth, 441 Minnesota Ave., commented that many of the questions raised at tonight's meeting had already been addressed at the monthly meetings held by the Sewer Board. She said the Board members announce their meeting every month and if the people here would have taken the time then to attend these meetings, they would have already heard all of this. She voiced her frustration that people don't bother to show up at a meeting until they hear the word "tax". She said she had attended several of the monthly Sewer Board meetings and was very supportive of their recommendation for the feasibility study.

Larry Kahle said he was confused by the conflicting information as to how much people would be assessed for the tax.

Jack Ballas explained that Senate Bill 41 was drafted so that each sewage disposal site would be charged \$5 per month. Since this was not passed in the State legislature, only one alternative remained. He further explained that the information sheet that was distributed at tonight's meeting merely shows estimates. He said that by taking the figure and the formula, a person can figure out what the tax would be. The market value he went by was with the lot and the improvements, which he said was his error -- it should have been for the lot only. He said the market value of the land could be found on the tax assessment which shows the breakdown of the bare land and the improvements on the land. He then asked Michael Sehestedt if he could explain further.

Michael Sehestedt said that some numbers had been received from the Assessor's Office. He explained that the Tax Bills that people receive show only the combined taxable value of the land plus improvements. However, on the Assessment Notices that are mailed out in June, the value of the bare land and the value of the improvements are broken out separately. He said that people can also get that information for their particular piece of property from the Assessor's Office. He explained that once the market value of the land has been determined, multiply that figure by 0.0386 and that will result in the taxable value (the percentage of market value that is subject to tax for residential, commercial real property in Montana). Then multiplying that by 0.10988 will give an amount of tax for this particular district. At the Commissioners' request, the County Assessor did a computation on a hypothetical \$15,000 lot which would result in an annual tax of \$63.62, which is real close to the previously mentioned estimate of \$5 per month.

Fern Hart also clarified that for persons who have more than one lot, they will be taxed on each lot.

Nina Cramer, 341 Speedway St., stated that she, too, did not receive the notice of tonight's meeting. She indicated that she does receive her tax bill each year so she didn't understand why should would not have received the meeting notice.

Fern Hart said she would obtain the legal names and addresses of both Nina Cramer and Helen Kulju and investigate the matter as to why they did not receive notice of this meeting. She then asked for a show of hands of anyone else present who did not receive the notice of tonight's meeting (two other hands were raised).

A discussion ensued regarding the possibility that the reason some people did not receive notice of this meeting could be that the property on which they live is not in their names.

Nina Cramer stated that she had been pretty well informed about the development of the Sewer District and had been involved in some of their monthly Board meetings. She explained that because of her schedule, she cannot come to every one of their meetings which had been a frustration to her. She said she is a single parent on a limited income and shares some of the same issues that some of the seniors in the community have with regard to the financial impact of this project. She said she was not opposed to East Missoula exploring the possibilities of having its own sewer system. She indicated that five years ago, she had to replace her septic system and it was not a very pleasant undertaking. She said she would like for the Sewer Board members to be a little more visionary -- she was excited to hear that the people in the Bonner area are actually trying to think of planned development and growth. In the past three years, she has been involved with the Missoula Affordable Housing Task Force. And in the last two days, this Task Force had discussed what type of community does East Missoula want to have 5, 10, 15 years from now and what needs to be done in order to accomplish those goals. She then urged the Sewer Board to hold off on a study at this time and encouraged them to participate with some of the other organizations that are looking at what this growth might be and how it can be developed. Perhaps they could then install a system that would in fact be more cost effective and efficient if they encompassed a larger area.

Allen Waldbillig, 445 Colorado Ave., indicated that he is unable to attend any of the Sewer Board meetings because he basically works 24 hours a day, 7 days a week. He asked the Sewer Board members if they realize that East Missoula resides on an EPA disposal site right now that has a huge sum of money sitting in a basket for somebody to grab. He said he didn't know if anybody had thought of that or not -- that there's a multi-million dollar fund for that dam and as far as he had heard, they're going to leave it sitting at the bottom of that dam. They don't want to stir it up. They'd have to destroy the dam and tear it up. It would cost them more money to try to fix it. He said it will probably never happen. He said he, like everyone else, was tired of paying taxes and paying for professionals that are professionals by the fact that they can make more money because common people aren't professionals and they work too hard to become professionals. He said he thought if there were any other options available, they should be investigated since the majority of people in East Missoula are on limited incomes.



Jack Ballas commented that the topic had come up at a couple of the Sewer Board meetings that the EPA is in the process of studying the dam. He clarified that the funds for the dam are to be used only for the purpose of cleaning up of the sediment behind the dam. Therefore, none of that money would be available for improved sewer systems or water systems or any other purpose.

Charles Wutsch (who spoke previously) asked the County Commissioners if the percentage was determined on the amount of money that was anticipated to be raised per year and on how many lots that have been encompassed in this District.

Fern Hart explained that the percentage is based on the total taxable value of the land in the Fire District.

Cindy Wulfekuhle, Grants Administrator for Missoula County, said she thought she could clear up a few things or maybe answer some questions. She indicated she wasn't sure if she heard correctly that when the Sewer Board would hire an engineer, would they anticipate that the engineer would also work as a grant writer and if that would be part of the contract.

Rick Stephens responded that because some of these engineers have done 200-300 of these feasibility studies, they know exactly who to write the grants to and they know exactly what their grants are supposed to say. He said this was one of the goals of the Sewer Board -- to go for a slightly better engineer than just one that just does the studies, hands it to the Sewer Board, then the Sewer Board would have to then spend another 2-3 months writing a grant.

Cindy Wulfekuhle commented how important it was, when looking for a funding source for this project, to have these feasibility studies in hand. She explained that the funding agencies need to know that there is a documented need out there before they will grant or loan money. Quite often when a project is being compiled, different sources of funding are being combined. There may be loans at a lower interest rate or there may be grants for some households. There's also a program called the State Revolving Fund where applicants can now get 4% interest money for that. There are other programs such as Community Development Block Grants where low-to-moderate income households could possibly see 100% of the cost paid for. None of those programs, however, are a "given" -- there is stiff competition for these funds and a very strong application is needed. She said that a feasibility study would help show the need in East Missoula rather than just going in and saying you'd like to do it because you want to plan for future growth. She explained that East Missoula will be going up against communities that have documented water contamination so the stronger the application, the better the chances are of being awarded a grant.

Rick Stephens stated that the town of Hot Springs, Montana, was only going to get a mere \$60,000 at one point. They packed a committee hearing meeting this Spring at the State legislature and walked off with \$375,000 to help with their water/sewer system. He said the Sewer Board was asking the community for their help. He indicated that because East Missoula is a low-income neighborhood, it can get certain things but the community must do it as a group.

The question was raised whether or not there would be greater success of being awarded a grant if it encompassed a larger area.

Cindy Wulfekuhle responded that when the funding agencies rank the various projects, they look at what the problems are and, in the case of East Missoula, they would also look at the sole-source aquifer. They would realize that whatever is to the east is floating down to East Missoula. She said, in that sense, it could make it a stronger application -- that East Missoula is trying to encompass more of the potential problem area. She stated that small applications can be successful if problems are identified in a smaller area and that's where the engineering study would come in handy.

Jack Ballas said the Sewer Board tried to look for an organization in the west Riverside area to talk with. He said it's pretty hard to go out and talk to individuals when dealing with something on this magnitude. He indicated that a month and a half ago, he went to the Lion's Club of Hellgate and talked with them about the sewer project. He asked them if they would be willing to be included in the Sewer Board talks. He said the enthusiasm he received from them wasn't overwhelming but they said Jack could keep them in mind when the work begins. He commented that the Sewer Board believes that time is of the essence because more and more communities around the State are asking for these block grants and loans. The longer East Missoula delays, the harder it may be to get these grants and it may be more expensive. He said this is why the Sewer Board is under a timetable right now that they would like to get something going within the next couple of years.

Terri Shotgun, 401 Speedway St., asked if there was a schedule somewhere of the Sewer District meetings.

Jack Ballas responded that the Sewer Board meets the second Thursday of each month at 7:30 p.m. in the Fire Hall.

Fern Hart asked first for a show of hands of those present who would support this levy for an engineering feasibility study (28 hands were raised). She then asked for a show of hands of those present who would be opposed (15 hands were raised). She stated that more were in support of the levy than who were opposed to it. She indicated that this was not a formal vote but simply an indication to everyone present. She stated that the Board of County Commissioners would accept further written testimony or phone calls until 5:00 p.m. one week from today, May 10.

Michael Sehestedt clarified that this deadline would not be published in The Missoulian and urged the community members present to let people know of the deadline. He explained that testimony could have been closed tonight, but the reason for extending the deadline one week is that conversations between people after tonight will likely bring up further questions and comments. The decision with regard to this issue will then be placed on the agenda for the Commissioners' weekly Public Meeting on Wednesday, May 17, at 1:30 p.m. in the Commissioners' Conference Room on the second floor of the Courthouse Annex.

Barbara Evans explained how she will make her decision on this issue. She said she would first look at how many people voted for and against the creation of this District when it was on the ballot. Secondly, she said she would keep in mind the number of people who were at the meeting tonight and what the comments were. She will also consider all of the written comments and phone calls that the Commissioners will receive in the next week. She said she thought it was important to announce that sometime soon, both the Planning Board and the County Commissioners will be hearing the request for the Town Pump to do their project. She said they will want to know what people think about that issue so she urged the people to let the Commissioners know before that decision must be made.

Fern Hart closed the public hearing. She said she would take the names and addresses of those people who did not receive the notice of tonight's public hearing. She indicated that she would check with the Clerk & Recorder's Office as to why this happened. She then thanked everyone for coming.

The meeting adjourned at 9:30 p.m.

**THURSDAY, MAY 4, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. In the morning, Commissioners Evans and Hart attended the Community Prayer Breakfast held at the Christian Life Center.

Extension Letter -- The Board of County Commissioners signed a letter to Andy Fisher approving a 6-month filing extension for Hillside Estates, making the new filing deadline December 29, 1995.


**FRIDAY, MAY 5, 1995**

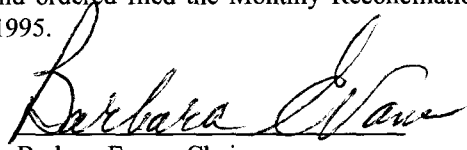
The Board of County Commissioners did not meet in regular session. Commissioner Hart was out of the office all day.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Donald H. Phillips as principal for Warrant #42690 issued April 20, 1995 on the Missoula County MCPS Elem. Payroll Fund in the amount of \$1,610.25 now unable to be found.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Peter G. Wall as principal for Warrant #277804 issued April 26, 1995 on the Missoula County Environmental Health Fund in the amount of \$820.00 now unable to be found.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, John E. Odlin, for month ending April, 1995.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MAY 8, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a dinner meeting at the Depot with John Rogers, Regional Director of the EDA.

**TUESDAY, MAY 9, 1995**

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

Audit List -- The Board of County Commissioners signed the Audit List, dated May 9, 1995, pages 5-33, with a grand total of \$123,608.61. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #8, Pay Date April 14, 1995, with a total Missoula County payroll of \$511,361.44. The Transmittal Sheet was returned to the Auditor's Office.

Resolution No. 95-035 -- The Board of County Commissioners signed Resolution No. 95-035, dated April 5, 1995, a Resolution prohibiting the carrying of weapons, firearms and explosives in certain County owned buildings and property.

Resolution No. 95-036 -- The Board of County Commissioners signed Resolution No. 95-036, a Resolution approving the annexation of the following parcels of land into the Frenchtown Rural Fire District:

- Parcel 1: Tract 25 of COS #1914, located in and being a portion of the NE 1/4 of Section 2, T13N, R23W, P.M.M., Missoula County Montana.
- Parcel 2: The N 1/2 of the NE 1/4 of the SE 1/4 of Section 2, T13N, R23W, P.M.M., Missoula County Montana.

- Parcel 3: The S 1/2 of the SE 1/4 of the NE 1/4 of Section 2, T13N, R23W, P.M.M., Missoula County, Montana.
- Parcel 4: The S 1/2 of the SW 1/4 of the NE 1/4 of Section 2, T13N, R23W, P.M.M., Missoula County, Montana.
- Parcel 5: All that portion of the N 1/2 of the NE 1/4 and the N 1/2 of the S 1/2 of the NE 1/4 of Section 2, T13N, R23W, lying Southerly of Tracts 24 and 25 of COS #1914.
- Parcel 6: The S 1/2 of the NE 1/4 of the SE 1/4 of Section 2, T13N, R23W, P.M.M., Missoula County, Montana.

Agreement -- The Board of County Commissioners signed a Public Road Agreement between Missoula County and the State of Montana Department of Fish, Wildlife and Parks for the purpose of providing funding for road project activities to provide access to the Blackfoot River Recreation Corridor (Johnsrud Road), as per the terms set forth, for the period commencing March 1, 1995 through June 1, 1996, for compensation to Missoula County in an amount not to exceed \$65,000 for constructing improvements of the road. The Agreement was returned to Horace Brown, County Surveyor, for further signatures and handling.

License Agreement -- The Board of County Commissioners signed a License Agreement between Resurrection Cemetery Association (RCA), Box 1729, Helena, Montana and Missoula County General Services Department (MCGSD), whereby Resurrection Cemetery Association grants Missoula County the use of a 100' x 100' tract of land for the Down Home Project/Community Gardens which is a program intended to promote and facilitate vegetable gardening by people who have no other opportunity to do so. The term of the agreement is from May 1, 1995 through October 30, 1995.

Consent to Transfer of Loan -- The Board of County Commissioners signed a Consent to Transfer of Loan whereby Missoula County entered into an agreement with Women's Opportunity and Resource Group, hereinafter WORD, on February 18, 1992, whereby Missoula County loaned to WORD the sum of \$30,000 to be used in a "microbusiness revolving loan fund". Said agreement is recorded at Book 359, Page 1230, Microrecords of Missoula County. WORD is now merging with the Missoula Community Business Incubator, Inc., and forming a support corporation, the Montana Western Region Economic Development Group, hereinafter WEDGo. WORD wishes to transfer its loan from the County to WEDGo and WEDGo is willing to accept such transfer and to assume WORD obligations under the loan agreement. The transfer will occur on June 30, 1995. The document was returned to John DeVore, Administrative Officer, for further signatures and handling.

Other items included:

- 1) the Commissioners approved the request from Janet Stevens, Office of Community Development, to move \$7,500 from Contracted Services to Temporary Salaries for the purpose of increasing Barb Martens' time from .75 FTE to 1.0 FTE for the duration of FY'95. Beginning July 1, 1995, Barb Martens will return to .75 FTE status. The reason for the additional time is to provide extra help with Building Permits plan checking.
- 2) the Commissioners also approved the request from Janet Stevens, Office of Community Development, to purchase an additional ArcInfo and Auto Cad license to prevent the possibility of being out of compliance with the current license authorization as both graphic artists would be using the same license (software) at any given time.

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

#### WEDNESDAY, MAY 10, 1995

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 Judy Pfaff as principal for Warrant #064932 issued April 11, 1995 on the Missoula County Trust Fund in the amount of \$270.00 now unable to be found.

#### DAILY ADMINISTRATIVE MEETING

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

Memorandum of Understanding -- Chairman Evans signed a Memorandum of Understanding in Support of Non-Motorized Transportation Project Manager by and between Missoula County and Missoula Redevelopment Agency whereby Missoula County has contributed funds and staff resources toward the development and implementation of the Plan and continues to participate in related activities for the benefit of the residents and visitors to Missoula County. Missoula County understands and agrees to pay the sum of \$8,440 as Missoula County's share of support for the Project Manager position.. The document was returned to Missoula Redevelopment Agency for further signatures, to be returned for filing with the Clerk & Recorder.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Richard B. Offner, Ph.D., an independent contractor, for the purpose of providing preparation and delivery of a grant application to HUD for the "Supportive Housing Program" -- includes research and program design in collaboration with a consortium of private non-profit community-based organizations and the Missoula County Office of Planning and Program Development, as per the terms set forth, for the period commencing

March 31, 1995 through April 5, 1995, for compensation in an amount of \$50 per hour with a total not to exceed \$3,500.

Agreement -- Chairman Evans signed DHES Agreement No. 350266 between Missoula County, on behalf of the Partnership Health Center (PHC), a division of the Missoula City-County Health Department and the Montana Department of Health and Environmental Sciences (DHES) for the purpose of administering an immunization project for children in Missoula County, as per the items and terms set forth, for the period from May 1, 1995 through December 31, 1995, with reimbursement from DHES being up to a maximum of \$5,500. The Agreement was forwarded to DHES in Helena.

Also included was the following:

- \* Chairman Evans signed the 1995 Designation Process Form for Montana's Area Agencies on Aging, indicating that Missoula County supports the designation of Susan Kohler-Hurd, Director, the Area Agency on Aging as the Planning and Service Area (PSA) for Missoula County programs for the elderly for the next two years (October 1, 1995 through September 30, 1997). The document was returned to the Office on Aging in Helena.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

#### BID AWARD: CONTRACT WEED SPRAYING (WEED DEPT.)

Barbara Evans explained from information received from Bill Otten, Weed District Supervisor, that the Weed Department received bids for contract weed spraying of 455 acres of State highway roadside for noxious weeds, with the following results:

B & B Vegetation Management	Item 1 (Tordon) =	\$27.38
	Item 2 (2,4-D) =	\$20.98
	Maximum Expenditure	\$12,457.90
Pioneer Weed Control	Item 1 (Tordon) =	\$35.80
	Item 2 (2,4-D) =	\$28.55
	Maximum Expenditure	\$16,289.00
Helena Weed Control	Item 1 (Tordon) =	\$28.75
	Item 2 (2,4-D) =	\$18.00
	Maximum Expenditure	\$13,081.25

After reviewing the bids, the Missoula County Weed Control Office recommended that the bid be awarded to B & B Vegetation Management Corp., at a maximum expenditure of \$12,457.90. The Montana Department of Transportation will reimburse Missoula County Weed Control the cost of treating 455 acres (\$12,457.90) plus 10% for administration (\$1,245.79).

Bill Otten, Weed District Supervisor, explained that the Montana Noxious Weed Control Act places the responsibility for controlling noxious weeds on the State highway right-of-way with the County Weed Control Departments. He said Missoula County has an agreement with the Highway Department that they will be provided with the records of what was sprayed, where it was sprayed, when it was sprayed, weather conditions, and the cost incurred. The Department of Transportation will reimburse Missoula County for the total cost of the treatment plus an additional 10% for administration of the contract. The targeted weeds are those listed as noxious under the Montana Noxious Weed Control Act. He explained that the herbicides which will be used are a combination of two herbicides -- Tordon 22K and 2,4-D. The Tordon will be applied at a rate of ¼-pound active ingredient per acre. The 2,4-D will be applied at 1-pound active ingredient per acre. In cases where Tordon cannot be used, 2,4-D will be used at a rate of 2 pounds active ingredient per acre. The 455 acres which will be treated are located within the boundaries of what is called the noxious weed management groups, which are groups of landowners who have agreed to control the noxious weeds on their property.

Michael Kennedy asked Bill Otten, regarding the required audit of when, where, how, etc., what type of surveillance is performed by him to fulfill this requirement.

Bill Otten explained that, first of all, he physically calibrates the equipment. He indicated that the Weed Department uses the same standard record form that the Highway Department uses. He said he also checks to make sure the applicators are in the correct area and spot-checks occasionally during the day as he goes about his other duties as Weed District Supervisor. He said he also checks previously sprayed areas to make sure that the jobs were completed satisfactorily. He also inspects that spot spraying has been done rather than full coverage spraying. If any complaints such as overspraying are received (and he added that none have been received in the past 7 years), he contacts the Montana Department of Agriculture and they send out an inspector who evaluates if there has been any violation of the pesticide law.

Michael Kennedy asked Bill Otten if he has had previous experience with B & B Vegetation Management.

Bill Otten said yes -- B & B did the work last year, though they were NitroGreen out of Helena at that time. He said that even though they are relatively new as B & B, they actually have about 30-40 years experience. He confirmed that all of their operators are certified by the State and EPA.

Michael Kennedy explained that in the past couple of weeks, he had received some complaints, not about Bill Otten, but rather complaints involving the railroad spraying. He said there may be incidences of overspray that are not reported. He said that the business of target spraying was of concern to him because even in the literature that is provided by the pesticide manufacturer, it is acknowledged that the target is usually represented in 1-2% of the overall area sprayed. Unless there are really high concentrations, there would be a lot of non-targeted area such as bare ground and other flora that would be sprayed.

Bill Otten responded that they do try to minimize the spraying of non-targeted areas by spot spraying. He indicated that the Weed Department is trying to promote a vegetative cover of perennial grasses along the roadsides. By taking the weeds out along the right-of-ways, the potential for movement of weed seeds and weed infestations is eliminated. He stated that it is impossible to economically spray each individual weed. There is some deposition of the herbicides on the soil and grasses. The grasses metabolize the herbicides. It does not have a significant impact on the grasses. He explained that if people are haying the right-of-ways, he works with the State Highway Department in warning them that they do have to manage the residue from livestock that are fed hay from sprayed areas. There is a potential for the herbicide to be in the feces of the animals in which case, this residue should not be used to fertilize gardens. It will eventually be broken down by the microflora that composts the manure.

Barbara Evans asked what the breakdown time limit was.

Bill Otten responded that 2,4-D has a half-life of about 10 days. After about 30 days, the analytical lab in Bozeman has not been able to find any residue of 2,4-D. Regarding Tordon, at the rate in which it is currently being used, there is a half-life of 90-120 days. Residues of the picloram have been detected up to 18 frost-free months after an application. Areas are not re-sprayed on an annual basis because of the picloram's residual effect and long-term control of spotted knapweed.

Michael Kennedy said he did not believe Bill Otten's statement was correct that half-life is related to application rate.

Bill Otten responded that his previous statement was correct. He said several studies in this area have documented the decay of Tordon over time. At the higher rates that Tordon would be used, such as on leafy spurge, there can be a half-life of up to 450 days. He explained that this information is taken from industry material which he has read and is familiar with.

Michael Kennedy asked when the 455 acres for this particular contract was last sprayed.

Bill Otten responded it was last sprayed in 1984.

Michael Kennedy asked if this was the usual frequency -- once every 11 years.

Bill Otten said it would probably be more frequent than that now that there is a weed control group in the area -- probably once every 4-5 years. The frequency of application will depend on what type of disturbance there is in the right-of-way and what types of weeds come back.

Barbara Evans announced that Will Snodgrass called earlier in the day and asked to speak on this matter. She asked Mr. Snodgrass to try to keep his comments to no more than five minutes.

Will Snodgrass explained that he just distributed some literature to the Commissioners. First, was a yellow flyer produced by Missoulians for Clean Environment and also a copy of the EPA bulletin called "Suspended, Cancelled, and Restricted Pesticides". He indicated that on the reverse side of the EPA bulletin, he had extracted a page from the publication regarding 2,4-D. The area of concern is cancer which is listed at the top of the page. On the reverse side of the yellow flyer under "Exposure", the fourth paragraph clearly states that 2,4-D has been positively linked to cancer in dogs. It is also stated that it is contaminated with dioxins. There is no safe exposure level for dioxins. Regarding the rate of application, Bill Otten indicated 1-2 pounds of active ingredient per acre with respect to 2,4-D. Mr. Snodgrass said that is not the entire product. The front side of the yellow flyer, in the fourth paragraph, states, "While testing for active ingredients is poor, the testing requirements for so-called 'inert ingredients' are even worse!" Often times, these inerts can be far more toxic than the actual killing agent. He said that in this situation, an undisclosed chemical is being applied to living environment. 2,4-D has not been successfully re-registered. If one looks at the EPA Rainbow Book, it will be found that many uses of 2,4-D have been cancelled for various reasons. This product has not gone through the testing protocol which was mandated in 1988. He said he disagreed with Bill Otten's statement that the half-life is approximately 10 days or 2 weeks with respect to 2,4-D. Mr. Snodgrass indicated that the studies he has seen show that, in general, chlorophenoxy compounds have been found to persist in their applied environments for over 1 year. This was brought to the attention of Dr. Dennison at the University in 1991. He stated that Missoula County is about to fund a \$12,000 project which is going to spray known carcinogens and dioxins into the living environment of the Missoula Valley. These products are going to off-gas and drift. Mr. Stewart of the Department of Agriculture says that's just an odor problem. Mr. Snodgrass stated that if a person is smelling something, whether it is the active killing agent or the more toxic inert, that compound has interacted with that person's brain. He went on to further explain various biological side-effects. He stated that the EPA will confirm that these products are not safe and the Federal Trade Commission will state, along with the EPA and the General Accounting Office, that if anyone tells a person that these products are safe, they are breaking the law. He urged the Commissioners to cancel all pesticide spraying in the valley for a number of reasons, beyond the obvious issue of toxicity. He said that when these compounds are sprayed in the living environment, they kill the beneficial species, both plant and animal, which ensure a healthy soil and a safe environment for us to live in. Once the ground is poisoned, resistant strains of weeds are created which need more pesticides. This has been referred to as the

"pesticide treadmill" in which areas must be sprayed again and more frequently. Once the plants and pests become desensitized to this compound and they begin to mutate in response, then stronger pesticides are required and more of them. The industry is now in the process of developing crops which are pesticide-resistant. He said that if the Commissioners weigh the \$12,000 cost of spraying weeds against mowing, which costs more, there is a net savings. But if one factors in the health care costs down the line for the next 30 years -- emergency room visits for the numerous symptoms listed on the reverse side of the yellow sheet -- including the known damage to DNA, there is actually a huge net loss with the billions of dollars of health care costs. He concluded by stating that children come first. These products kill children. They damage them in the womb. They are a tremendous financial burden to the County and they should not be applied. They are not safe.

Barbara Evans asked if Horace Brown, County Surveyor, wished to comment since the County routinely sprays along the County's roads.

Horace Brown, County Surveyor, stated the County has not sprayed along County roads for a number of years because of liability. The County has, however, allowed landowners to spray along the roadsides wherever they have sprayed their own properties since it wouldn't make sense to not spray the roadsides and allow the seeds to reenter their properties.

Bill Otten said he wished to correct Horace Brown's statement. He indicated that Missoula County does spray County roads at the request of the landowners.

Michael Kennedy stated that his preference would be to delay action on this decision for one week to allow time for further examination of the literature.

Fern Hart asked Bill Otten what the deadline was for this project.

Bill Otten said he would like to have it completed by June 15. He said there really is not time to delay the award. If delayed, the applicators will not be available. He said this would be a problem but he would likely be able to work around it. He also stated that he had information in his office to refute Mr. Snodgrass' allegations.

Michael Kennedy said he was bothered by the urgency of this project since this bid award could have been brought to the Commissioners weeks, or perhaps months, ago. He stated his belief that a delay of one week would not hurt. He indicated that the main issue was whether or not this contract should be awarded. He said that he thought a thorough examination of the literature was important based on the conflicting testimony.

Barbara Evans recalled that there were at least two studies performed in the past. One was on a piece of land that the County allowed the University to conduct on County land on Spurgin Road. She said she thought Greg Kennett, soil conservation expert at Shannon Environmental Services, was involved in some studies out on the Big Flat. She asked Bill Otten if it would be out of line to ask Greg Kennett to come in and visit with the Commissioners before next Wednesday's Public Meeting or else speak at that meeting. She said it would be very helpful to obtain the information gleaned from these local studies.

Bill Otten said he could provide the Commissioners with four local studies. He said they do not address the issue of toxicology but the issue of movement and ground water protection in addition to species diversity after controlling knapweed with Tordon.

Fern Hart inquired how long the landowners' district had been formed.

Bill Otten responded that the Greenough District is just in the process of forming and they have just been awarded a grant from the Noxious Weed Trust Fund for \$48,000.00 to cost share in that weed control district. He noted that in those districts, Missoula County does have a contractual obligation to control the weeds on the County ground and the State ground.

Barbara Evans requested of Mr. Snodgrass, in light of his apparent in-depth knowledge and interest in this issue, that he contact the Missoula County Weed Board and present them with constructive suggestions as to what the County can do to deal with the weed problem. She then took the prerogative of the Chair and stated that this issue was postponed for one week.

HEARING: REQUEST TO ABANDON 10' STRIP OF SCHILLING & SOUTH 12TH WEST (CARLINE ADDITION) -- BLOCK 84, LOTS 15 & 16 IN SECTION 29, T13N, R19W

Bill Richardson presented the petition to vacate Schilling Street and South 12th West located in Carline Addition, Block 84, lots 15 & 16 in Section 29, Township 13 North, Range 19 West, Missoula County, Montana.

The reasons for this request are as follows:

- 1) To facilitate setbacks required for construction of a new single family dwelling to replace the existing dwelling on lots 15 & 16, Block 84, Carline Addition.
- 2) To conform with the revised street layout resulting from previous abandonments under planning resolutions #94-044 (lot 17 Blk. 84) and #85-089 (Blk 82 & 83).
- 3) To preclude encroachments on County road rights-of-way. At present the 12th Street and Schilling Street rights-of-way are eighty (80) feet wide. The existing roadways are approximately thirty-five (35) feet curb to curb. Because the existing roadway only uses thirty-five (35) feet of the eighty (80) foot right-of-way, the abandonment of ten (10) feet will not impact or impede the roadway.

The following landowners were notified of the hearing:

Russell Kerr	2166 S. 12th W.	Missoula, MT 59801
Raymond Tipp	2200 Brooks	Missoula, MT 59801
Nancy Young	Box 895	Plains, MT 59859
First Interstate Bank	1001 E. Front St.	Missoula, MT 59802
Missoula Rural Fire (Attn: Bill Reed)	2521 South Ave. W.	Missoula, MT 59801

Bill Richardson further explained that to date he had received letters of consent from three of his neighbors.

The hearing was opened to public comment; there being none, the hearing was closed to public testimony.

Barbara Evans stated that no action could be taken on this request at this hearing since, by State statute, the County Surveyor and one Commissioner must first make a site inspection. This inspection will occur within the next week and final decision on this request will be made one week from today.

HEARING: REQUEST TO REZONE PROPERTY IN MILLTOWN/BONNER AREA (TRAVEL PLAZA) TOWN PUMP, INC.

Jennie Dixon, Planner at the Office of Community Development, explained that a request was received by Town Pump, Incorporated, represented by John Kellogg of Professional Consultants, Incorporated, to rezone property located in Milltown on Highway 200, formerly the Champion International Headquarters Offices, described as the southeast portion of Tract A, Certificate of Survey #3441. Town Pump would like to rezone from "C-I1" (Light Industrial) to "C-C2" (General Commercial) since the current zoning does not allow their intended use, a Travel Plaza, including a family restaurant, a fast food restaurant, a lounge which may include alcoholic beverage service and gaming machines, a convenience store, and a car and truck service center dispensing gasoline.

The entire 25-acre parcel is bounded by Highway 200, the Blackfoot River, railroad right-of-way and Interstate 90, and Town Pump is requesting a rezoning of the southeast half of this tract. West Riverside is the nearest residential neighborhood, with the nearest home being approximately 1000 feet from the site. Traffic on Highway 200 and I-90 can access the site without traveling through any residential neighborhoods. There is an existing structure and parking facilities on the property. Town Pump has indicated plans to use this building for most of their planned uses except for the family restaurant which would require constructing another building. The requested "C-C2" zone allows for eating and drinking establishments as a permitted use, automobile service stations as a conditional use, and retail trade and service with building floor area less than 100,000 square feet as a special exception. Based on the proposed mixture of uses and a number of site-specific issues such as treatment of the riverfront and travel corridors, OCD encouraged a rezoning to Planned Unit Development, rather than the "C-C2" zoning. The County Zone Resolution has called for placement of this type of activity in an area like this, that is, at the edge of the business area and convenient to freeway access and intersections of major arterials.

The Office of Community Development recommends that the rezoning request be approved. On April 4, 1995, the Missoula Consolidated Planning Board conducted a public hearing and voted 5 to 3 to recommend approval of the rezoning request. Planning Board members who voted in opposition to the rezoning request did so because they preferred to see a Planned Unit Development rezoning request to deal with all the site specific features of this property.

She stated that Peter Neilsen, of the Water Quality District, commented that the ground water beneath the site exceeds federal drinking water standards for arsenic and also indicated that while there may be a possible location for drilling a well on-site, the arsenic plume could be unstable and result in contamination of a well, at which point, the well would need to be closed down or treated. The Water Quality District recommends that Town Pump obtain water from an off-site source and Town Pump has indicated that they are seeking an easement from Stimson to obtain drinking water from further up the Blackfoot Valley, which is outside the arsenic plume. Finally, the fueling facility must comply with the requirements of the Aquifer Protection Ordinance including underground storage tanks and storm water management requirements.

John Kellogg, of Professional Consultants, Incorporated, presented some aerial photos to the Commissioners. He explained that about six months ago, some residents of the Bonner-Milltown area contacted Dan Kenneally, General Manager of Town Pump, and made the suggestion that he take a look at this site. There is a good value in this property as a travel plaza and, based on that, Dan Kenneally began pursuing the proposal. With the assistance of the Milltown Economic Development Group, two public meetings were conducted to gauge the responses of the surrounding neighbors. At the second meeting, Dan Kenneally asked the folks how they felt about this proposal. He said if they were all in opposition to it, he would drop the whole idea and go somewhere else. But the response was positive. There were concerns that the residents expressed which generally fell into four groups which were:

- (1) *the need for a traffic light with the additional traffic* -- He said he anticipated that at some point in the future, there will be traffic control but that depends on the Highway Department analyzing it for future traffic concerns.
- (2) *concern that the lighting from the travel plaza may shine into the yards and homes in the surrounding area* -- He explained that the design of lighting that Town Pump has for the site is intended to shine downward and inward toward the plaza. There will be a general increase in lighting in the area for safety reasons but the lighting will not be directed to the residential areas.
- (3) *added noise due to idling cars and trucks* -- He stated that there currently exists an acceleration lane onto I-90 from Highway 200, there is 65 m.p.h. traffic going over an overpass south of the site, and also the Burlington



Northern train tracks run close by. He indicated that all of these noises will overshadow the noise coming from the travel plaza.

- (4) *additional air pollution* -- He indicated that according to discussion he had with Ken Anderson of the Health Department, this area does experience occasional inversions but not to the extent of the Missoula Valley and each evening, the cold air drains down the Blackfoot and Clark Fork Valleys to disperse the pollution.

He indicated on the map the preliminary landscape plan for the site. The main access will be the existing access that Champion has used in the past. Town Pump has applied for and received preliminary approval for a second access which will just be an exit onto Highway 200 toward the east end of the property. Traffic through the plaza will flow past the automobile gas pumps which are in front of the existing building. There is tentatively space for truck and RV parking on the south end of the site. The landscaping proposed for the front is intended to go all the way up to the highway edge, mainly grass because of the sight distance problems. In addition to that, a row of deciduous trees will be planted along that boundary, pending approval from the Highway Department. Planters will be placed by the entryways. Within the traveled areas of the parking lot, drainage is a concern. He indicated that there will be at least twice the number of swales as shown on the final design. There is existing landscaping around the building that Champion did a few years ago which will be preserved. A sidewalk will go around the travel plaza and parking adjacent to it. There exist some large trees and to the extent possible, he said these trees will be saved. On the lower end of the site where drainage will be coming down toward the railroad tracks and toward the river, a bermed area is proposed that will be heavily landscaped with pine and spruce. This will serve a couple of purposes. In the event that there is runoff which may or may not have gas in it, this will serve as a safety valve to protect that runoff from getting further beyond the ownership of Town Pump.

Barbara Evans recalled that the Health Department passed something concerning gas stations in town that runoff must be provided. She asked if this wasn't effective in this situation as well.

John Kellogg said yes, that drains will be under the pumps that will go through a filtering system. Once those filter, he said he believed the design will be to put them out into one of the drainage swales adjacent to them. These will have to meet the requirements of the Health Department. He said there is a plan for the Milltown Pond area for recreation and wildlife watching. A tentative proposal was made by Montana Power, with some assistance from the Economic Development Group in Milltown, for a walkway that will front along the Blackfoot River and go down to the dam and around the other side of the Milltown Pond. He said that currently, it is informally directed to go up and over the highway; however, it is hoped that it can be redesigned to go under the bridge so that pedestrians won't have to cross the highway. The berm will help to protect and soften the noise for folks who will be walking along the river.

He stated that as Jennie Dixon mentioned, the existing Champion building will house the majority of the uses. Town Pump will be able to sub-lease a portion of the site for the restaurant but they have not yet agreed on a specific restaurant. He mentioned that the Highway Department stockpiles gravel on the southwest portion of the site. These stockpiles will be moved west and along the same entry access that the Highway Department currently uses in the area identified for future development. He quoted the following from the zoning ordinance: "The C-C2 district provides for the conduct of retail trades and services that are inherently automotive and highway oriented and for commercial uses of low intensity which may require large areas of land." He said this is precisely what Town Pump is proposing in this situation. He stated his belief that the proposal fits the requirements of the zoning since the site is appropriate for it.

To the staff's question as to why a PUD was not done, he indicated that about 5 or 6 months ago, when Town Pump became aware of this site and at that point, they wanted to gauge the public input. They didn't want to just go forward with the project and then at some point in the future, suddenly find that the people in Milltown/Bonner don't want the travel plaza. It made more sense to first establish some idea of the degree of neighborhood support, proceed with the rezoning, close on the property, and then begin the layout and design. To pre-plan the site before there was sufficient evidence of community support would have been "putting the cart before the horse".

He explained that Zoe Mohesky of the Rural Planning Department mentioned the primary travel corridor standards as a good guideline. Although these guidelines do not specifically apply in this case since this is not a subdivision, he indicated that they are generally trying to match these guidelines with their proposal for this site. Of the guidelines, all the landscape standards will be met including building design alternatives in addition to the setback standards. He indicated there were two exceptions, one of which is the sign limitation which allows one 50 square foot sign. He expected that this standard would not be adequate for this site. The second exception to the design standards is that it calls for a 25-foot frontage of landscaping all along the front property boundary. In some cases, they have gone back 50 feet or more and in other cases, they are between 5 and 25 feet. So it's not a uniform 25-feet all the way across the front but on average, it will probably meet this standard.

In summary, he stated his belief that the requested zoning was appropriate for the site. Staff had determined that it conforms with the Comprehensive Plan and recommends approval. The proposal had received good community support. The Planning Board recommended approval and he then encouraged the Board also to approve this proposal.

Michael Kennedy commented on the observation that the rezoning request is remarkably smaller than the landscape plan. He asked about the intent of why the landscape plan extends beyond the zone request.

John Kellogg responded that the future development that Town Pump has mentioned is potentially a motel. The area on the map that is included to the west is strictly landscaping -- no building is currently proposed beyond the area requested to be rezoned.

Michael Kennedy asked why they limited the zone unless they have some future proposed use for that part within the development but outside the zone. He said he was curious why the zone stops where it does if the development extends beyond that request.

John Kellogg stated that the only reason this portion of the site would be used would be for travel through and for landscaping as a buffer. He said there are no proposed changes in the use of the site other than what would conform with what's applicable in both "C-I1" or "C-C2". So the zone change is not necessary for the west end of the site. The paved area and the landscaping as proposed will overlap into the "C-I1" area but it's nothing in the way of a use that's proposed to change other than what would be allowed in both the "C-I1" or the "C-C2".

Michael Kennedy commented on the statement that the lighting would be directed downward and towards the travel plaza and away from households. He disagreed and said the lighting will be aimed toward residential areas south of the river. He said he didn't know how it could be avoided. He recalled that when the Champion building was originally constructed, the lighting was an issue then. If the lighting is observed there now, that is the reason why the lighting is so low -- because it was an issue. Now, Town Pump is proposing lighting that he presumed would be 70- or 80-ft. towers that will be directed toward the south, but downward. He said he wasn't sure that it would be accurate to state that there would only be a glow out there.

John Kellogg said he didn't know if there will be 70- or 80-ft. towers but the lighting from the far end of the sight will be directed downward and inward toward the site. There will be light reflected in the direction of Milltown across the river; however, it will be from the far end of the site which is a considerable distance away. It would not be close enough that it would be that noticeable by folks across the river.

Michael Kennedy said this proposal seemed to be a natural situation for a PUD. He said he believed that at the time of the two preliminary public meetings, the people were in support of this proposal with the exception of any other thing that is a possibility within that zone. He said he thought they were looking at this very specific proposal and there are other things that are possible within that zone. That is the reason he believed a PUD would be appropriate. In addition, unlike a zone change, a PUD has a set of conditions where everyone knows what the use of that property is from the outset. He said it just seemed to him that a PUD under this circumstance in that location would be a much more appropriate zoning application than changing the zone.

John Kellogg stated that the main problem with applying for a PUD would have been the time delay since it would have essentially put the time frame back about four months. At the time of the two public meetings, they were not prepared to do a PUD since there was insufficient information specifically about how things would be laid out on the site, where the accesses would go, and other particulars on how the site would be designed.

A discussion ensued regarding how much delay, if any, would actually occur if a PUD would be approved today. Jennie Dixon indicated that if they had all of the necessary materials available and ready at this point, the delay would be an additional 60-90 days.

Michael Kennedy asked Colleen Dowdall, Deputy County Attorney, if special conditions could be attached to an approval of a zone change.

Colleen Dowdall responded that Section 808 of the Zoning Resolution states that, "The governing body may impose special conditions on the approval of any application or permit required by this resolution. Such conditions shall be imposed to protect the public health, safety, and general welfare and may include the following: a bond to insure the removal of a structure or the construction or installation of improvements within a specified period of time, a time period within which the proposed structure shall be erected, regulation of the points of vehicular ingress and egress requiring landscaping and maintenance thereof, requiring the surfacing of off-street parking and loading areas subject to governing body's specifications, and any other condition as will make possible the development of the area in an orderly and efficient manner and in conformity with the intent and purposes of this section."

Michael Kennedy commented that John Kellogg could more or less get a PUD out of this zone change if he wished to pursue those kinds of conditions.

Colleen Dowdall stated that a PUD is intended to allow a variety of uses. She said she thought the PUD requirements are designed for residential developments since they talk about subdivisions, open space and active recreation.

Michael Sehestedt, Deputy County Attorney, commented that even though this was not a PUD, he thought the issue was whether or not conditions could be imposed on the zoning classification that was being requested. He said the answer to that is "yes". He indicated that there does not have to be just a straight unconditional approval of a zoning classification. He added that subject to the list that Colleen Dowdall just read, some conditions can be imposed on this zoning application as a condition of approval.

Barbara Evans asked Jan Sampsell, District Manager for Town Pump, that if this zoning request is approved, and if any problems arise such as, for example, the lighting bothering the area residents, will there be a local representative who will be responsive to the County Commissioners and these residents in correcting whatever problems might occur based on the Town Pump development.

Jan Sampsell responded that he, as well as the on-site managers, would be responsible for concerns such as the ones Barbara Evans indicated.

Barbara Evans stated that a concern was raised by a member of the public in that she feared there would be no assurance that Town Pump would actually provide public access to the Blackfoot River. The woman who addressed this concern mentioned that she is a canoeist and is on the Milltown Pond at least four times a week. Barbara Evans

recalled that Montana Power owns some portion of the land close to the water. She asked if it was possible for Mr. Sampsell to say whether or not Town Pump has the power to allow or deny river access to the public.

Jan Sampsell apologized that he did not know the specifics on that particular issue.

John Kellogg indicated that the edge of Town Pump's property follows the high water mark. Montana Power has, in some places, an easement and in some places an outright ownership of the land to the normal annual high water mark. From there on, the State owns the riverbed. In the area where the river path would run, he said he believed that Montana Power is in agreement that they will allow public access because they were party to the plan that showed river access running around the dam and up the river. Town Pump will also allow access from their property down to the river. There are liability concerns in that they do not want to bear the responsibility of a designated park or picnic area but they will allow access to the river.

Barbara Evans said to Mr. Sampsell that she did not know how far his representation of the company can extend. She said that as John Kellogg mentioned earlier, the corridor regulations that were passed last year limit the size of signs to 5' x 10' or 50 square feet and also limit the height of signs. She asked Mr. Sampsell if Town Pump is willing to live with that requirement.

Jan Sampsell said he thought he would once again be out of turn in trying to speak for the owners of the company on that particular question.

Barbara Evans explained what the County had in mind with regard to the formulation of the corridor regulations. She said that by doing so, Jan Sampsell and/or John Kellogg could explain it to the owners of Town Pump. When the County was attempting to do a Corridor Plan, it was to make the entrances in and out of the City as aesthetically pleasing as possible. She said she was willing to extend the allowance to a 50' sign per entrance but she asked that Town Pump abide by the rules since the County wants to help protect the beauty of this area.

Michael Kennedy said he recalled from the oral presentation that the recommendation from Peter Neilsen, Environmental Health Unit Supervisor, was that Town Pump go off-site for water. However, Mr. Neilsen's written report states an alternative option in that if Town Pump decides to go on-site, they would be subject to several conditions. Michael Kennedy asked for some clarification on this point.

Alan English, Senior Water Quality Specialist, responded that the public water supply program states that if there are more than 25 employees at the facility on a daily basis, then it would become the type of public water supply that the Aquifer Protection Ordinance would regulate. The ordinance would not allow a well within 1000 feet of the Superfund site. It is not clear whether, under the law, that means the edge of the Milltown Dam or the edge of the plume. This pertains to potable water only. Town Pump would have the option under this regulation, even if there were more than 25 employees daily, to have an on-site well for irrigation purposes and other non-potable purposes.

The hearing was opened to public comment.

Anne Renaud, a Missoula resident, indicated that she previously mailed a letter to the Commissioners. She said she had some serious questions about the process that is being undertaken to approve this zoning change. At the preliminary meeting, she said it was her understanding that a zoning change would merely allow the zone to be changed and that there was no obligation on the part of the applicant to fulfill any of the landscape requirements. She stated that just because the zone is changed doesn't mean that Town Pump has to build there. She also said she thought Town Pump would be foolish to allow the public access to the Blackfoot River. Both the Department of Fish, Wildlife and Parks and Montana Power have refrained from doing this because it is a Superfund site and they are liable. To do so would be like telling Arco that there's no problem here. Her third question was with regard to the water source in that Arco is looking for any opportunity to get out of the liability. Arco is waiting for the EPA to say no action would be required of them to clean up the site at Milltown. By bringing the water in from off-site, it seemed to her that it's reinforcing Arco's requirement that Milltown be a non-water source for any future development. She said she felt this would put the problem on the shoulders of the communities to take care of the water problem. She concluded by stating that this application warrants much more serious consideration than simply a zoning change.

Gary Matson, a resident on West Riverside, said he represented a group of about five people who became concerned about the development in the Bonner/Milltown area during the time when the pre-release center was proposed at the former Champion Timberlands office site. He said this group of people was recently chartered as a non-profit corporation called the Bonner Development Group, whose purpose is to encourage developments in their area that are desired by local residents. He stated that they respect the opinion of some Planning Board members that a PUD process would provide for more local resident input to the facility's design than does a simple zoning change sought by Town Pump. It was their understanding that detailed designs had not been presented but they nonetheless had chosen to accept in good faith the intended overall plan without knowing the details. They were told that expectations for the site were as follows: (1) this would not be a major truck stop with 80% of the traffic in the facility coming from passenger traffic; (2) there would be fuel sales, a truckers' lounge, a casino, a convenience store, and a family restaurant; (3) that Town Pump would consider proposals from community residents about use of the small brick building, a former office building of W. A. Clark's Western Lumber Company, and a potential national historic building; (4) Town Pump representatives have shown interest in their group's goals for recreational and commercial development in adjacent areas; (5) the completed development would contribute substantially to the local tax base, now heavily impacted by major losses of revenue from the Stimson Mill. He said he believed these are five things that the community welcomes and supports the Town Pump proposal for the former Champion office site. He explained that they received a comment that Arco was liable in perpetuity for anything arising from the arsenic pollution. It was his understanding, and he said he would like to see something in writing from the EPA to this effect, that nothing that anyone would do would remove that liability from Arco. The only exception would be if someone else created a disturbance that caused pollution that is not presently there.

Bruce Hall, a 20-year resident of the Piltzville area, stated that Town Pump recognizes the unique setting of the proposed facility. He said he has been assured that as a community, the residents will be pleased with the construction and landscape engineering such that the Town Pump will complement the existing business community in the environmental setting. Town Pump has indicated a sensitivity to existing businesses in the area by assuring them of fair competition in gasoline pricing. Town Pump has recognized the potential for a future riverfront park along the Blackfoot Corridor and appears willing to participate in such a development. Town Pump is bringing a much needed tax base to the Bonner community, offering approximately 80 job opportunities. They have shown an interest in working with the community Scout Troop and as a good neighbor, he said he felt that Town Pump has attempted to listen to the needs and concerns of the community. He said he had no reason to doubt their sincerity and therefore supported the rezoning request.

Al Bellusci, a resident on Edgewood Drive and a member of the Bonner Development Group, said he supported the proposed zoning change for some of the reasons which were previously stated but also if one looks at the entire area, one will see that there is a significant amount of undeveloped properties. The Bonner Development Group, in cooperation with the existing industries and community members in this area, is very interested in being a part of any development that occurs there. He said the Bonner Development Group believed that Town Pump is a responsible developer who will enhance the area. They do realize that this development will mean a significant increase in traffic which will increase a great amount of interest in the remaining undeveloped properties. He concluded by saying that they hope the Commissioners will support this development.

Kathy Whitman, a business owner in the Bonner area, stated that she simply wished to go on record as being a proponent of the Town Pump rezoning.

Ed Coffman, the realtor who initiated this transaction, wanted to clarify to the Commissioners that the easement is in place, if necessary, on the Stimson land to go up Blackfoot River for water. He said his understanding was that the on-site tests of the water have never shown arsenic to be anything above drinkable limits.

Will Snodgrass, President of the Chemical Injury Information Network, stated that the arsenic testing out there was sent to three different labs. He said it should be noted that the test results which came back from the Missoula County Health Department showed that arsenic levels in that particular area were all right; however, the women out there who sent the samples in were suffering extreme hair loss. The samples that came back from independent labs showed that the levels of arsenic were too high. He therefore suggested that the Health Department may want to run two sets of samples whenever testing must be done.

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

Fern Hart said she appreciated all of the work of the Planning Board and all of the letters received from area residents. She challenged everyone involved in the development of this travel plaza to make this a prime gateway development and the finest Town Pump in Montana. She explained that this site is coming into Missoula and is an area that we cherish. She said she wanted to address issues such as access and signage in the conditions of approval. She stressed the importance of having a quality product at this site as a pilot demonstration for future developments in the area. She suggested that Town Pump may consider trading with the State for their sand storage in exchange for a traffic light. She said she envisions this development as a quality travel plaza which looks inviting to the passersby. It could have picnic tables with umbrellas on the grass for people to sit outside. It should be a family-oriented place that folks are happy to walk through and feel comfortable in. She stated that she hoped Town Pump would think about preserving the old buildings and keeping the architecture similar. She said she believes that Town Pump would be a complement to the businesses in the area who will be glad for Town Pump to be there since they will bring more business to them. She indicated that it was very hard to sort through all the information from Peter Neilsen. She voiced a concern that if the drinking water is brought in from off-site, it will not be monitored by the Water Quality District.

Alan Bellusci stated that the water monitoring requirements would depend not only on the daily number of employees but also on the type of use -- whether the water is being used by a transient population or a continuous population. If the water comes from Stimson, it would be monitored. Once again, Town Pump would not even have the option of putting a well on-site if they exceed 25 employees working at any one time. Also there exists a restriction in that the Missoula Valley Aquifer Protection ordinance does not allow that type of public water supply well within 1000 feet of a known contamination site.

Fern Hart asked Colleen Dowdall if subsequent review would take place if this zone change was approved today.

Colleen Dowdall explained that the Office of Community Development staff would have a review and could impose conditions for the conditional use permit to allow a service station.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners postpone action for one week on the request to rezone property in the Milltown/Bonner area for a travel plaza for Town Pump, Inc. The motion carried on a vote of 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (LINDNER) -- TRACT 2 OF COS 4397, W½ OF SECTION 19 AND NW¼ OF SECTION 30, T20N, R16W

Kathleen Smith, Paralegal for the County Attorney's Office, presented the report as follows: The Board of County Commissioners was requested to consider a family transfer for Tract 2 of COS 4397, W½ of Section 19 and NW¼ of Section 30, T20N, R16W for Reinhold Lindner.

Reinhold Lindner has submitted a family transfer request for a 145.561-acre parcel located southwest of Condon. Mr. Lindner proposes to create a parcel of 52.189 acres for transfer to his wife, Hannelore Lindner. Mr. and Mrs. Lindner state this is for estate planning purposes and they do not plan on selling either proposed parcel.

The history of the parcel is as follows: The parcels were originally government lots and Mr. Lindner purchased the property in May, 1993. In July and August 1993, Mr. Lindner retraced the parcels and in October 1993, COS 4283 was filed relocating the boundaries between the parcels creating two parcels of approximately the same size as the government lots, aggregating another portion of the property to create a 165.562-acre tract and also providing a 60-foot private road along the east portion of the land. In September 1994, Mr. Lindner filed COS 4397 relocating the boundary along the north portion of Tract 2 of COS 4283 adding approximately 20 acres to Tract 1 to provide a privacy buffer.

According to the records kept by the Missoula County Surveyor, the applicant has used the exemptions to the Subdivision and Platting Act as described above along with an occasional sale exemption and creation of a parcel greater than 20 acres in size on unrelated property.

Greg Martinsen, of Martinsen Surveys, stated that he informed Mr. Lindner of the reason why the Commissioners examine family transfer exemptions so closely, that being to determine whether or not the applicant is attempting to evade going through subdivision review.

The hearing was opened to public comment.

Reinhold Lindner explained the various circumstances under which he had previously requested boundary changes for the subject property.

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

Fern Hart moved and Michael Kennedy seconded the motion that the consideration of a request for a family transfer for Tract 2 of COS 4397, W½ of Section 19 and NW¼ of Section 30, T20N, R16W for Reinhold Lindner be granted, contingent upon transfer of the deed to the family member, based on the finding that the request does not appear to evade the Montana Subdivision and Platting Act. The motion carried on a vote of 3-0.

#### PUBLIC COMMENT

Ross Best commented on the Commissioners' Resolution No. 89-092 which was adopted on December 13, 1989. That resolution had to do with property tax incentives for Stone Container Corporation. He said he was concerned that Commissioner Evans, in participating in the Commission action on that resolution, had a conflict of interest and violated the public trust of office and should not have been participating. Stone Container was at that time preparing a corrugated cardboard recycling facility. The tax incentive request was made at a time when Commissioner Evans' husband, Allan Evans, worked at Stone Container. He said it was his understanding that Allan Evans works at Stone Container now. The tax incentive was spread over a 9-year period. For the first five years, there was one rate. For the next four years, there were successively reduced rates. The most recent year was the fifth year of that incentive according to Jim Fairbanks, Regional Manager for the County Assessors Office, and the State Department of Revenue. The value to Stone Container of the incentive last year was about \$103,000. He said he did not yet have the amounts for the earlier years but Mr. Fairbanks suggested to him that the amounts might be substantially higher in the earlier years because Stone Container uses a fairly rapid depreciation schedule and the facility there would have had a substantially higher value in the first several years. Four years remain on this tax incentive. He stated that he believed that the Commission needs to look into this matter and that Stone Container should not be receiving any further incentive under this resolution from 1989. He said he also believed that Stone Container should be held responsible for back taxes. He indicated that, as he reads the law, there can be no question that Commissioner Evans should not have participated in the decision. Whether or not the decision will be adjudged invalid because of her participation is, under Montana law, somewhat open. In 1977, the Montana Supreme Court, in a decision that did not take into account the Montana Code of Ethics that was just going in, said that no Montana Court had ever settled the question of whether the mere participation of a local government official with a conflict of interest was sufficient to invalidate a decision. They said specifically that they were not going to decide in that case because they didn't have to and they couldn't decide whether it was necessary that the vote that was subject to a conflict of interest would be the deciding vote. The vote in this case was 3-0. Janet Stevens and Ann Mary Dussault voted along with Commissioner Evans. He said he wanted to let the Commissioners know that there are legal questions here. He stated that he felt strongly that the decision should be found to be invalid and that the back taxes should be assessed. He indicated that he would participate in any way he reasonably could in attempting to assist the County government in evaluating this situation. He pointed out that, in dealing with this question, Commissioner Evans will, of course, have a conflict of interest and it will be important that she be very careful about the ways in which she participates.

Barbara Evans stated that she appreciated Ross' being up front with her and bringing her the materials on which he based his conclusion. She then asked Michael Sehestedt, Deputy County Attorney, if he would give his response as to whether or not he agreed with Mr. Best.

Michael Sehestedt, Deputy County Attorney, stated that the Code of Ethics and the prohibition is on a "substantial financial interest". The definition in the statute is that an employment interest is a financial interest. Because they do not use the simple term "financial interest" which they have defined but use instead the term "substantial financial interest", one presumes they intended something more than a mere employment relationship which is what Commissioner Evans' spouse had. His recollection of the recycling tax incentive was that the proposal was to add to the mill. It had no impact on other mill operations except to provide additional capacity and additional jobs. Per se, it did not appear to have any impact on the current employees. He clarified that Commissioner Evans' husband was not and is not part of the Stone management but rather an hourly employee working under a collective bargaining agreement. It is very difficult to see how the decision for or against the tax incentive could have had any substantial

financial impact on Commissioner Evans' spouse. He said one would think that this is a case of stretching, particularly since it comes 5½ years after the event which was done publicly and was widely publicized. He stated that he wouldn't speculate as to motivation, but under the law, once the tax incentive has been granted, it is not subject to revocation in the ordinary course and there certainly is nothing that Stone, or Champion at that time, has done that would justify revocation of the resolution granting them the tax incentive. He indicated that this is a matter that can be looked at but his belief was that there is no violation based on substantial financial interest. He said he didn't think there was any possibility, even if it's determined there was a violation by Commissioner Evans, of revoking the tax incentive (and that gets us to probably what's the motivation), at this late date since the improvements are in place and the project is up and running. He stated that his reaction was that there was not a violation because there was not a substantial financial interest in this particular decision one way or the other. One might distinguish it from the air rules situation in which one of Stone Container's suggestions (and he indicated he didn't know how seriously it was made) that if they didn't get the result they wanted on the air rules, they might close the local mill. That clearly would have had an impact and it would certainly justify not voting on the basis of the apparent conflict. But this was a radically different situation that had no direct impact on Commissioner Evans' husband.

Barbara Evans said she wished to read into the record the following statement:

"In 1989, Stone Container requested Tax Incentives for their recycling expansion. They met the State's legal requirements and the County's policy requirements. The potential expansion *in no way* affected my husband's job! Therefore, there was no possible benefit or detriment to either my husband or myself. My vote was not the determining factor in this issue as the other two Commissioners moved and seconded the action to approve the incentives. The recent issue of the boiler's permits could have affected the mill's overall operation, and potentially affect my husband's employment, and therefore could have been *perceived* as a possible conflict of interest. I therefore publicly announced a potential conflict and said that I would not make a public comment on that issue."

Tony Tweedale said he wished to comment on a slightly related issue. He stated that in reading the minutes of the December 13, 1989 Commissioners' meeting when the tax incentive was discussed, Commissioner Evans asked a good question -- that being whether or not the cardboard recycling facility would result in increased air emissions. He indicated that, in his files, he had a copies of a series of correspondence between Stone and the State Air Quality Bureau. The letters show that, under State law, if a facility has a project that is contemplated to increase air emissions, even if a permit currently exists, it is required to apply for an alteration of the existing permit. The Department then analyzes the increased emissions. More than a year before Commissioner Evans asked that question, Stone had been communicating with the Department in writing, contemplating increased emissions from the burning of waste plastic. He stated, for the public record that according to the transcripts of the Commissioners' meeting, the manager of the mill said that it would not result in increased emissions.

Michael Kennedy said he wanted to clarify what he just heard. He said Commissioner Evans asked the question whether or not there would be added discharge as a result of that waste burning. And the answer from Stone was "no". He asked Tony Tweedale if that was what he said.

Tony Tweedale confirmed that that was what he said and that was what he read in the transcript.

Will Snodgrass stated that he would like to kill two or three birds with one stone. He indicated that he got his license plates while he was downstairs so he said he would like to comment also on the recent Women's Voice of the Environment Conference which was held at Unity Church the previous weekend. He said they were very fortunate in having Lois Gibbs, a very courageous woman from Love Canal, who made a presentation. She spoke on the dioxin problem at Stone Container from the burning of the waste plastic. He indicated that he had sent the paperwork around the country to various scientific experts in the field of dioxins and the answer he has been getting back from everyone, including Carol VonStrom in Oregon, is that Stone Container is a nightmare of dioxin emissions. The information that was brought forth from the second Citizens' Dioxin Conference in St. Louis this past July, which he videotaped and put on MCAT, described a plethora of health effects at incredibly low levels of exposure. Emissions coming from the burning of plastic at Stone, although they seem very small, at a 1/4-gram per day, are sufficiently large to contaminate all biological specimens in this valley including the food supply. He went on to explain in depth the various biological side-effects of dioxin exposure.

At this point, Mr. Snodgrass became irate at a comment made by Fern Hart who was trying to relate parts of his presentation. An exchange ensued between Mr. Snodgrass, Michael Sehestedt, and Barbara Evans. Mr. Snodgrass was ruled out of order.

There being no further business to come before the Board, the Commissioners were in recess at 3:40 p.m.

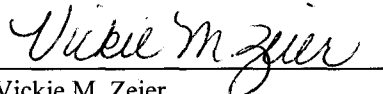
#### THURSDAY, MAY 11, 1995

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioner Hart served on a panel at the AARP State Meeting held in Missoula at the Holiday Inn. In the evening, Commissioner Kennedy met with Ninemile residents at their Community Center regarding dust abatement; and Commissioners Evans and Hart attended the Proposed Detention Facility Advisory Committee Meeting held at the 4B's Conference Center.

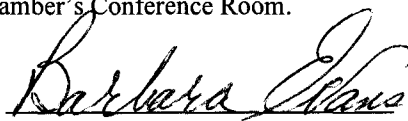


## FRIDAY, MAY 12, 1995

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners held a Department Head Meeting; and in the afternoon, attended an Update on the Implementation of Missoula's Non-Motorized Transportation Plan held at the Chamber's Conference Room.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

## MONDAY, MAY 15, 1995

The Board of County Commissioners met in regular session; all three members were present. At noon, Commissioner Hart spoke at the League of Women Voters Luncheon Meeting; and in the evening, Commissioner Evans attended a meeting held at the Jokers Wild regarding a proposed weigh station.

DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between Human Resource Council and Missoula County with regard to the Job Training Partnership Act, as per the terms set forth, for the period from May 1, 1995 to September 30, 1995. The Agreement was returned to Personnel for further signatures and handling (one original filed with the Clerk & Recorder's Office).

Also included was the following:

- \* the Commissioners signed a memorandum authorizing the Treasurer's office to waive all penalty and interest for Real Estate Tax Bill #94015450 for Shane Kesterke, co-owner of Wolf Ridge Apartments. The document was returned to Vickie Zeier, Treasurer, for further handling.

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

Site Inspection -- In the afternoon, Commissioner Hart accompanied Horace Brown, County Surveyor, on a site inspection for the request to abandon a 10-ft. strip of Schilling & South 12th.

## TUESDAY, MAY 16, 1995

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a County Park Board Hearing regarding the Missoula Horsemen's Council proposal for the Spurgin Road property held at the Target Range School.

DAILY ADMINISTRATIVE MEETING

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

Addendum to Agreement -- The Board of County Commissioners signed Addendum No. 2 to the Agreement for Professional Engineering Services, dated September 13, 1993, between the Board of County Commissioners and Druyvestein Johnson & Anderson, with respect to the Linda Vista Sewer Project (RSID#8453), amending the Agreement as follows: "Provide additional engineering coordination and inspection services to complete the Linda Vista sewer project, RSID #8453. The estimated cost is \$20,000."

Grant Agreement -- Chairman Evans signed a Grant Agreement with regard to the Noxious Weed Trust Fund Project (Greenough Weed Management Group Project, Number MDA 95-68), between the Montana Department of Agriculture and the Missoula County Weed District for the purpose of containing and reducing noxious weed infestations in the Greenough Weed Management Group Project area (5,486.4 acres) in Missoula County, Montana, as per the items set forth, through June 30, 1996, with a total not to exceed \$48,783. This funding is contingent upon sufficient available revenue and verification of matching funds from private landowners, Missoula County Extension Office and Weed District and Montana Department of Fish, Wildlife and Parks to equal \$93,879. The Agreement was returned to Alan Knudsen in the Weed Department for further signatures and handling.

Listing Agreement -- The Board of County Commissioners signed a Standard Listing Contract with Properties 2000 and Coldwell Banker--Steinbrenner Agency for Lots 1-42 in the Gleneagle Subdivision. The document was returned to John DeVore, Administrative Officer, for further handling.

Other items included:

- 1) the Commissioners approved the request from District Court to apply for a Drug Court Grant.
- 2) the Commissioners signed a Data Transfer Questionnaire from the Department of Revenue Property Assessment Division stating that, with regard to data transfers which take place between the Department of Revenue and the County computer system, they would like to receive both valuation data and name/address data. The Commissioners' response to this questionnaire was faxed to Helena.



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

### WEDNESDAY, MAY 17, 1995

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 May 17, 1995, pages 5-46, with a grand total of \$288,707.75. The Audit List was returned to the Accounting Department.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Art and Kitty Lusse, D.B.A. Montana Mediators, independent contractors, for the purpose of providing process design, facilitation, technical assistance supporting materials, and final report for the Blue Ribbon Commission on Human Services, as per the terms set forth, for the period commencing February 1, 1995 through June 15, 1995, for compensation in an amount not to exceed \$10,000.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and James Butcher, an independent contractor, for the purpose of providing scenarios planning process designed to help plan for growth in Missoula County, as per the terms set forth, for the period commencing February 27, 1995 through October 1, 1995, for compensation in an amount not to exceed \$60,000. Using primarily existing research, the process will include the efforts of "stakeholders" within the Missoula Valley planning region and will encompass a broader citizen involvement in understanding and support. The process will be divided into three phases over a six-month time period, as described in the project proposal. The Contract was forwarded to the City for further signatures and handling.

Memorandum of Understanding -- The Board of County Commissioners signed a Memorandum of Understanding between Missoula County, the City of Missoula and the Montana Department of Transportation for the Reconstruction of North Reserve Street in Missoula, Montana. In recognition of the important role North Reserve Street plays in the area's economy and transportation system, the parties agree that this MOU establishes the various funding, design, construction and maintenance responsibilities necessary to accelerate the construction of the North Reserve Street Project. The document was forwarded to the City for signatures and returned for forwarding back to the Department of Transportation in Helena.

Other items included:

- 1) the Commissioners reviewed the pledged holding statements as submitted by Vickie Zeier and Michelle Denman. The information regarding pledged securities is as follows: First Interstate Bank: \$1,700,000 entry total; First Banks: \$1,103,232.21 book entry total.
- 2) Following a presentation by Vickie Zeier and Mike Sehestedt regarding the Thibodeau and Schroeder belated tax bills, the Board discussed the matter and decided not to change existing policy which provides for a 5-year limit on back-taxes for omitted property and to continue existing policy of allowing taxpayers to pay belated bills over time without penalty and interest over the same period of time that the omission occurred. Fern Hart moved and Michael Kennedy seconded that Jack Thibodeau and the Schroeder brother be allowed to pay their belated tax bills over a period of five years without penalty or interest with one year's belated taxes due each year by May 31 with the oldest year due first. The motion carried on a vote of 3-0.

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

#### DECISION ON: BID AWARD FOR CONTRACT WEED SPRAYING (WEED DEPT.)

Barbara Evans explained that the Board of County Commissioners would be making their decision at today's meeting on the bid award for contract weed spraying. This bid award was presented at the May 10 Public Meeting. To reiterate, from information received from Bill Otten, Weed District Supervisor, the Weed Department received bids for contract weed spraying of 455 acres of State highway roadside for noxious weeds, with the following results:

B & B Vegetation Management	Item 1 (Tordon) =	\$27.38
	Item 2 (2,4-D) =	\$20.98
	Maximum Expenditure	\$12,457.90
Pioneer Weed Control	Item 1 (Tordon) =	\$35.80
	Item 2 (2,4-D) =	\$28.55
	Maximum Expenditure	\$16,289.00
Helena Weed Control	Item 1 (Tordon) =	\$28.75
	Item 2 (2,4-D) =	\$18.00
	Maximum Expenditure	\$13,081.25

After reviewing the bids, the Missoula County Weed Control Office recommended that the bid be awarded to B & B Vegetation Management Corp., at a maximum expenditure of \$12,457.90. The Montana Department of Transportation will reimburse Missoula County Weed Control the cost of treating 455 acres (\$12,457.90) plus 10% for administration (\$1,245.79).

Barbara Evans explained that at last week's Public Meeting, she requested Bill Otten to invite Greg Kennett, soil conservation expert at Shannon Environmental Services, and Peter Rice, Research Associate at the University of Montana, to speak at today's meeting with regard to information gleaned from some previous local studies in Missoula County. She stated that Bill Otten submitted to her a document entitled "An EPA Report: Assessment of Potential 2,4-D Carcinogenicity" of which she indicated copies would be made available from the Commissioners' office. She read aloud the main headings over each paragraph, as follows:

- \* Human epidemiology studies have generally shown no increased risk of cancer from exposure to 2,4-D.
- \* DNA studies do not generally indicate adverse effects from 2,4-D exposure.
- \* Animal data do not support the hypothesis that 2,4-D may be a carcinogen.
- \* Studies indicate that 2,4-D treated turf poses no risk to bystanders.
- \* No significant 2,4-D exposure is generally detected among applicators following proper application procedures.

She then announced that everyone speaking today on this issue would be limited to 5 minutes.

Greg Kennett, soil conservation expert at Shannon Environmental Services, explained as his background that he has worked at Montana State University and the University of Montana in weed control, he wrote the integrated weed management plan for the University of Montana in 1991, he has a patent for biological weed control for genetically altered fungi, and he has worked with biological control for many years. He said he has also worked with a ground water study here in Missoula County with the EPA and Dow Chemical to determine the fate and transport of Tordon in a range of conditions where they actually irrigated the Tordon in to observe how it moved. He said he wanted to present some brief overviews on the different methods of weed management which are cultural control, biological control, and chemical control. He indicated that each method has its drawbacks. He said he believed chemical control is very useful when the management areas and objectives are determined. Chemical control obviously is toxic to certain plants and the chemical companies have spent a tremendous amount of money, effort, and time to make those chemicals much more host-specific such that they impact fewer non-target species. There are many types of toxicity tests. There are acute tests which are usually over a short period of time. He explained that the terms LD-50 and LC-50 refer to lethal dose and lethal concentration, respectively, for 50% of the population. Over-the-counter herbicides such as Roundup and 2,4-D which anyone can buy and put on their lawn are far more toxic than Tordon which requires that a person be registered in order to utilize it. He explained from a chart from the Forest Service the general summary of influences which increase cancer deaths by 1 in 1,000,000 as follows: the source of risk for 2,4-D workers is 137 days; 11,236 days for picloram; 41,667 days for Roundup. The source of risk for cosmic rays is one transcontinental round-trip for living 1.5 months in Colorado camping at 15,000 feet for 6 days. The source of risk for eating and drinking for the same death is: 40 diet sodas due to saccharin; 6 pounds of peanut butter due to aflatoxin; and 180 pints of milk due to aflatoxin. The source of risk for smoking is 2 cigarettes. The source of risk for living in a masonry rather than a wood building is 2.5 months and 1/7 of a chest X-ray using modern equipment. He concluded by stating that he is pro-pesticide in cases where the management objectives have been determined and the community is for it.

Peter Rice, a research associate at the University of Montana, stated that his area of expertise is environmental fate of chemicals and pollutants. Over the last nine years, he has been specifically focusing on the fate and movement of Tordon and 2,4-D and another herbicide commonly used for spotted knapweed control in the West. He said he has been looking at the leaching depth in the soil of these chemicals under local climatic conditions. He explained that of the two chemicals being discussed, Tordon is the most persistent and the most leachable in the environment. Tordon would represent a worse case for ground water contamination. What has been observed by measurement in all these cases, it is very unusual to have leaching depth in excess of one foot during the first year following the application. If a worst case scenario is created to maximize the leaching depth, it can be forced down into about 30-40 inches of depth. The normal application rate for Tordon for spotted knapweed control is one pint per acre or 1/4 pound active ingredient. Last year on the Equestrian Park, 2-pounds per acre was applied which is the maximum rate allowed under the current federal label for Tordon. Looking at the leaching depth of that 2-pound application, it's 8 times the normal rate. During that first growing season, all of the chemical is held in the top 12 inches of the soil. Also, extensive computer modeling has been performed in terms of scenarios for leaching of Tordon throughout Montana. The results of the models are not inconsistent with the field data. If a theoretical worst-case scenario is constructed, it might be able to get down to the 4-foot range. He concluded by stating that if ground water is a concern, as long as the application is made following the label restrictions with the Extension Service recommended rate for Montana, we are no where near causing the ground water contamination problem with the application of Tordon to typical dry land sites.

Barbara Evans stated that the issue here was whether or not to spray 2,4-D along the roadsides to control weeds. She asked Peter Rice if, in his experience, this would be hazardous to the health of the people in Missoula County.

Peter Rice said no.

Ed Monnig, Integrated Pest Management Specialist for the Regional Forester, stated that he has dealt fairly extensively with the question of human health and environmental risk in the use of chemicals. Regarding the EPA documents which Barbara Evans read from previously, he said he wished to modify the one statement which read "Studies indicate that 2,4-D treated turf poses no risk to bystanders." He said he wished to modify that statement by saying that it poses very little risk. It is very difficult in our understanding of toxicology to deny all risk. He said he also wished to comment on some of the statements appearing on the yellow sheet entitled "Pesticides are Poison!" (which Will Snodgrass handed out at the May 10 Public Meeting). He said he thought there were a couple of points on this sheet which require some clarification. With regard to the term "safe", he said he did not believe this was an adjective that can be applied to objects. If a person asks if salt is safe, or if aspirin is safe, or if a gun is safe, that can't really be answered. It can only be answered in the context of the object's use. He said that's the important question to ask with reference to pesticides. Under the conditions that they will be used, we can ask if they are safe to human health and the environment. It's the job of EPA to weigh the risk of the use of each particular compound. He

concluded by stating that since the evidence in the EPA report are clear that under the conditions of use, it can be demonstrated to be a fairly minimal risk to human health and the environment.

Barbara Evans asked if anyone else wished to speak on this issue. She again reminded everyone that comments would be limited to 5 minutes.

Gail Gutsche, on behalf of Women's Voices for the Earth, a Missoula grassroots environmental group, read a letter that was addressed to the Commissioners, as follows: "Dear County Commissioners Barbara Evans, Fern Hart and Mike Kennedy: I'm writing on behalf of Women's Voices for the Earth (WVE), a Missoula-based, grass-roots environmental group, to urge you to reject all bids for the spraying of 2,4-D and Tordon 22-K (picloram) anywhere in the County for any reason. Bill Otten, of Missoula County Weed Control, has informed me that the County plans to spray these deadly pesticides in order to control noxious weeds in the following locations: Along I-90 from Turah to Beavertail Hill; MT 200 from Bear Creek to Round-up Bridge; MT 200 from Clearwater Junction to the County line; and MT 83 from Clearwater Junction north to Seeley Lake. Spraying these pesticides on these roadways is particularly dangerous because they run next to three rivers: the Clark Fork, the Blackfoot and the Clearwater. According to the Northwest Coalition for Alternatives to Pesticides, Tordon has repeatedly been found as a contaminant in ground water and wells. Threats to public health from these toxic pesticides are well-documented. 2,4-D is a compound known to be contaminated with dioxins, next to plutonium the most deadly human-produced poison. Dioxins are known endocrine disrupters. According to the EPA, they mimic the female hormone estrogen with devastating results including a host of reproductive problems such as infertility, birth defects, breast cancer and endometriosis. In men, dioxin causes sperm count reduction of up to 50% and rising rates of testicular cancer. The link between dioxins and non-Hodgkin's lymphoma is particularly strong and alarming. What's more, whether the pesticide industry acknowledges dioxin contamination or not, 2,4-D has been linked to various cancers in industry publications. How much 2,4-D or Tordon 22-K causes these effects? The truth is, no one knows. Some tests by the EPA show strong links, others are inconclusive. I offer as compelling evidence of the toxicity of pesticides the following case as documented in the *Journal of Pesticide Reform/Fall 1991*: "The first legal judgment in the United States that linked 2,4-D to cancer was made in 1987. A Texas jury concluded that a U.S. Forest Service employee's fatal malignant lymphoma was linked to his exposure to Tordon 101 (a mixture of 2,4-D and picloram) while working in Oregon." On behalf of WVE, I make the following suggestions and recommendations and raise these questions regarding the spraying of 2,4-D and Tordon 22K: (1) Since the amount of pesticides necessary to create a toxic response in humans or animals is unknown, it is unacceptable to spray any amount. These pesticides should be considered unsafe at any level until proven safe, and they have not been proven safe. The burden of proof is not on us to show that they cause a particular effect. The burden of proof rests with those who manufacture and sell such chemicals. They have not done so with the active ingredient; however, according to Dr. Mary O'Brien, staff scientist for the Environmental Research Foundation, over 50% and up to 99% of the ingredients in these pesticides are listed as 'inactive'. What effect these secret, untested, unidentified ingredients may have on humans and animals and aquifers is absolutely unknown. It is not possible for you to tell the public what is being sprayed along our highways because you don't know. No one knows."

At this time, the 5-minute timer sounded. Gail Gutsche stated that she read only about half of the letter and that she would present the original letter to the Commissioners along with several different programs she had collected of people who were using non-chemical alternatives.

Melanie Judge, a resident, teacher, and concerned citizen, stated that she was no expert. She said about a year and a half ago, she read an article in *Time* magazine regarding the escalating rates of testicular and ovarian cancer in our society. She indicated that she personally knows some people who suffer from these diseases. This magazine article indicated that substances called "organochlorides" which are found in many household and industrial chemicals throughout the country are highly suspect. Then about four months ago, she read another article on organochlorides that explained more of the chlorides and how they mimic estrogens and attach themselves to our bodies' proteins. Our bodies think they are normal hormones so they attach them and begin to build them into our bodies and create all kinds of short-range problems including headaches, aching joints, irritability, insomnia, long-term miscarriages, cancer, birth defects, reproductive failure, and immune system disorders. She stated that she was not an alarmist by any means but she was concerned that the County will find out as much as possible before it continues its routine weed spraying. She said if there is any question whatsoever as to the safety of these pesticides, we should hold off until we're sure and not just go along with "business as usual". She concluded by volunteering to be part of a citizens' committee or any other committee that would like to further research this issue.

Carla Abrams, a grad student at the University and a concerned citizen, commented that Greg Kennett brought up some important points about the amount of risks that people face every day in our lives, whether it's saccharin, caffeine, etc. She said this is an important point that we need to think of as we go along with what Melanie Judge said about "business as usual". She stated that there are many hazards today in our lives whether it's chemicals, pesticides, carbon monoxide, etc. that can affect us. We should look at all the alternatives that are available so that there would be no risk versus negligible risk.

Bethanie Walder, of Women's Voices for the Earth, said that she, too, believed we should look at the alternatives to pesticides and she wanted to give a couple of examples of why we should be thinking about these alternatives. If we get into a cycle of spraying pesticides every year, not only do the plants that we're trying to eradicate build up their tolerance to that pesticide but so do a host of other things. So the effectiveness of the pesticides is decreased such that we need to use stronger pesticides in the future and thus increasing the risks that of exposure to people and the environment. One example she gave was according to the leafy spurge identification and control publication out of North Dakota State University: "Tordon 22K will give 90% or more leafy spurge control the first year after treatment. Control will decline gradually to approximately 70% three years after treatment and much more rapidly thereafter." She said the problem is that we're not going to create a situation where we're eradicating weeds but we're going to kill everything along these roadsides and along these rivers so that we're just creating a situation where the next stronger weed comes in and we need the next stronger pesticide to spray on it. She said we really need to

consider what kinds of alternatives are available and what kind of harm the weeds are causing to the environment as opposed to the harm that the pesticides are causing.

Steve Carroll, on behalf of the Missoula Urban Demonstration Project, a local grassroots organization concerned with sustainable resource use, community gardening, and organic agriculture. He wanted to state his strong opposition to the spraying of 2,4-D along local highways and urged to Commissioners to pursue alternative methods for controlling weeds. He urged the Commissioners to consider other communities as well as Missoula County where these toxins are produced and manufactured. There's an area outside Baton Rouge, Louisiana called "Cancer Alley" and there's a good reason for that. He said he thought that the White Pine Sash incident in our own community demonstrates very well the kind of risks that local citizens are put at in the manufacture and production of these chemicals. He said we also need to consider the risk of the transportation of these chemicals through our community and others. With that in mind, he said he wanted to again urge the Commissioners to reject the proposal for weed spraying and to pursue alternatives. He said Missoula and other communities and our water sheds deserve better.

Tony Tweedale stated that he missed the opening comments by the Commissioners but said he understood that some of the Commissioners cited some studies saying that there is no problem with cancer in 2,4-D. He said while he hadn't yet reviewed 2,4-D specifically, he had read several articles talking about the data on 2,4-D. One document he read was from 1980 when detection limits for dioxins were 1 part per million. He said we can now detect dioxins at levels a million times lower than that and even a billion times lower than that with reliability. The Montana Department of Agriculture did a current literature review on 2,4-D. They talk about contamination of 2,4-D with dioxins. At that point, none of the 2,3,7,8 dioxins, the most toxic potent dioxins had been detected but they did detect hexachlorodioxin which is the most potent cancer potentiator known to man that's ever been tested. As to whether it causes cancer or not, when internationally agencies decide on whether or not chemicals are carcinogenic, they look at three classes of data: the animal data, the lab data, the human data, and the mode of action. In the case of 2,4-D, he said he could say unequivocally that in all three of those areas, there is very strong evidence suggesting that 2,4-D is a carcinogen. For example, there have studies in dogs exposed to 2,4-D and lawns that show an incredible dose response relationship. The more 2,4-D, the more soft-tissue cancers the dogs show. He concluded by stating that the statements made by Ed Monnig were pathetically vague in talking about risk in society. He indicated that that was a question he has studied and he can address that in the same vague general way which is to say that, in cost benefit analysis, it's very seldom that the benefits are well quantified of the benefits of not doing something. It's very hard to quantify benefits -- it's very easy to put a cost on something. He said if the Commissioners are going to vote to allow the spraying of this herbicide, he suggested that they get good scientific data and get the gentlemen present to give them some of that scientific data because the evidence on 2,4-D, whether it's contaminated with dioxins or not, is pretty massive. He said he believed it's classified as a potential human carcinogen although he said he was not sure.

Barbara Evans asked if anyone else wished to speak on this issue. She again reminded everyone that comments would be limited to 5 minutes.

Will Snodgrass, President of the Chemical Injury Information Network, stated that he had observed very bad, omissive, erroneous presentations today on the part of numerous individuals with respect to 2,4-D. He said he found it very curious that the Commissioner read EPA studies which purport no cancer effects when in fact the Commissioners have approximately 100 pages of information which was given to them yesterday containing numerous peer-reviewed studies which clearly indicate cancer risks of up to 700% increased on the basis of 2,4-D exposure. He then stated that Ed Monnig, who referred to the "safe" use of pesticides when used as directed, just violated federal law. A person may not make that statement. The Government Accounting Office, the Federal Trade Commission, and the EPA state that a person will not do it. He indicated that he spoke with the EPA today. He said he spoke to Tom Adamsik, Judy Coombs, and Eugene Wilson, with the Re-Registration Division. He then played an audiotape of that phone conversation, as follows:

Tom Adamsik, of the EPA (on audiotape): He said that if anybody ever says that because a particular pesticide is EPA-registered, that means it's no hazard, it means everything that's to be known is known about it, it's non-toxic, that it's as good as mother's milk ... they're either being untruthful or they're woefully ignorant. He said he hears this all the time. All of these materials are toxic since they're designed to kill something. None of them are what EPA would every classify as "safe".

Eugene Wilson, of the EPA (on audiotape): He said that if a person is looking for a pesticide that is not poisonous or not a problem or does not get into groundwater, they won't find one because pesticides are like knives -- they're all dangerous.

Judy Coombs, of the EPA, currently in charge of 2,4-D (on audiotape): She stated that she works in the Re-Registration Branch of the Special Review and Re-Registration Division of the Office of Pesticide Program in Arlington, Virginia. She confirmed that she is in charge of the 2,4-D chemistry re-registration. She stated that for 2,4-D, the EPA is looking at a loss study due date of the end of December 1995. There are a couple more studies that will be submitted beyond that time. Most of the data that is still outstanding is of residue studies, crop field trials, and processing studies.

At this time, the 5-minute timer sounded.

Will Snodgrass said to Judy Coombs (on audiotape) that she mentioned to him earlier that these studies are perhaps the most important.

Judy Coombs said yes. There are also some carcinogenicity studies that were submitted in response to special review and are now in toxicology review. They are also key studies.

Will Snodgrass asked Judy Coombs for confirmation that this chemical, 2,4-D, is currently being utilized in the field but some of the studies have not yet been completed and 2,4-D has not yet completed the re-registration process.

Judy Coombs said that was correct. She stated that the EPA has a projected re-registration eligibility decision date of early 1997.

This was the end of the audiotape.

Will Snodgrass stated that this product is carcinogenic, it is contaminated with dioxins, and much of the information that was presented here today was false.

Barbara Evans asked if Ed Monnig had any further comments.

Ed Monnig said that the point of his presentation was that materials can be used safely or unsafely. The way in which they are used is the important thing. And that is why EPA issues labels that contain detailed instructions of how to use these particular compounds. The label is the legally required document and instructs the user as to how to proceed with that particular material. The EPA, in counsel with the toxicologists, spends a lot of time designing that label so that the user can use it safely. It demonstrates the conditions under which that use is permitted.

Barbara Evans asked Bill Otten if he would confirm that he is the supervisor of the Missoula County Weed Department and that he is trained to use these pesticides.

Bill Otten said this was correct.

Barbara Evans then asked if he would explain why Missoula County needs to spray along the roadsides.

Bill Otten explained that the weeds cause an economic loss in agricultural production. They are spread primarily along our transportation rights-of-way by motor vehicles, by carrying contaminated agricultural produce, and things of that nature. When the landowners in an area get together and control the weeds on their side of the fence and then weeds from the roadsides move onto their property, it creates an unnecessary economic expense to those landowners. If everyone gets together in an area and works together and controls the weeds, this actually reduces the need for frequently applying the pesticides. He said this is the reason why the Missoula County Weed Department is cooperating with the landowners.

Barbara Evans asked him to also address the efforts the County has made in the past in the way of using biological weed control versus pesticides and herbicides.

Bill Otten said that Missoula County has vigorously supported the efforts of MSU to develop biocontrols for spotted knapweed, leafy spurge, Canada thistle, etc. He stated that Missoula County currently has all of the available biocontrol agents for each of the weed species in the County. It is however an extremely slow process. There has been observed a reduction in some infestations of leafy spurge and the County has the insects in all the major spurge infestations. He explained that the insects working in the roots are reducing the infestations of spurge on open, south-facing, hot, dry slopes. He said he would much rather work with bugs than with chemicals. He indicated that the County plans to do about 200 releases of those insects. This will be the first year that Missoula County will be producing its own insects within the County.

Barbara Evans asked if he would explain why this type of weed control will not work along the roadsides.

Bill Otten explained that leafy spurge is not a problem along the roadsides. The types of weeds most commonly found along roadsides are knapweed, Canada thistle, musk thistle, oxide daisy, etc. For these types of weeds, there is no effective biocontrol program at this time. There are a number of agents in the pipeline in different stages of testing. The County does provide some money for this research and in return for that funding, the County expects to be one of the first to get some of those insects.

Barbara Evans asked how many people in the County feel that it's important that the County do this roadside spraying of weeds.

Bill Otten responded that approximately 400-500 people are currently participating in organized group programs. They have come up with management plans on their own. The County works with those people and the biocontrol agencies and tries to coordinate everyone making a common effort to promote better land management and reduce the need for pesticides.

Fern Hart said she remembers from last year when the County honored the requests of any residents who did not want the County spraying weeds near their properties. Upon request, the County posted the signs on residents' personal properties to alert the weed spraying crews.

Bill Otten said that this option is still available. The County will post an area as being herbicide-free for residents who do not wish the County to spray along the roadside adjacent their property if they agree to control those weeds on their own.

Fern Hart asked what the State's relationship was to this.

Bill Otten indicated that under the County Noxious Weed Control Act, the County Weed Districts are named as the agents for controlling weeds on the State rights-of-way and the State is directed to reimburse the Weed Districts for all costs incurred.

Michael Kennedy asked if Bill Otten could articulate the reason why so many states are reducing the use of chemical sprays.

Bill Otten responded that there is a degree of risk associated with the use of pesticides. The County would like to minimize that risk and eventually totally eliminate it. That is why the County is spending the money on the biological programs. However, the biological programs have been much slower in coming than desired. He said he started working in 1973 with the biological program on leafy spurge and it's taken this long to actually reduce some infestations. It went from about 2/100 of an acre reduction in 1993 to about 3/10 of an acre reduction in 1994. He said he would like to see that reduction increase at the rate it's been increasing -- approximately 15 times. That would mean it would be a 4½-acre reduction this year and a 65-acre reduction next year. He said that's pretty impressive for one plant. He said he thought if the County keeps working with the bio control programs, in most cases, those kinds of results will be seen but it will take time -- unfortunately, time is what the County doesn't have in many cases.

Michael Kennedy commented that since World War II, which really began the intensive use of chemical warfare against plants and pests, there has been increasing concern about that use. It has culminated in elimination of many toxic chemicals. The one people are most familiar with is DDT. Back in the 60's, the bald eagle was on the verge of extinction as a result of the misuse of DDT. Since then, DDT has been banned in the United States, not only in its manufacture but also its distribution. There has been observed a resurgence in those animals that were negatively affected. Since studies first started in the 60's as a result of Rachael Carson's book "The Silent Spring", every time one of the chlorinated hydrocarbon products has been examined, it has been found to have some risk. Sometimes that risk is very high and sometimes it's really undetermined but a risk nonetheless continues. One of the states that is at the advent of this examination is California. The reason why California is making this examination is, first of all, because it has 30 million people which is a significant reason in itself. It's also agriculturally intensive, perhaps 6 or 7 times the agricultural intensity of Montana. He said he had some information that was produced in 1988 which gives an indication of the trend in California with respect to the use of 2,4-D. For comparison purposes, in 1988, Montana, having an aerial extent of about 140,000 square miles, used in excess of 4 million pounds of 2,4-D for a variety of uses. During that same time, California, which has an aerial extent of about 150,000 square miles and which is about 5 or 6 times as agriculturally intense, used less than 1 million pounds of 2,4-D. The State of California uses even less 2,4-D now. Montana is using aurally perhaps 4 times what California uses and from an agricultural protection standpoint, perhaps 25 times what California uses. He indicated that he called Department of Transportation in the State of California and also Cal-Trans to discuss their use of chemicals. Cal-Trans has eliminated the use of chemicals along the trackage for the same reasons that are being discussed today -- that being the question of safety relative to the agricultural gain or elimination of pests. He said they use a variety of methods which have been economically successful but have been at least as successful as the application of chemicals. The point that they made was that there is no win on this problem with respect to elimination of a perceived pest. All that a chemical application does is temporarily reduce the bio mass of a particular noxious weed. It simply does not kill it or eliminate it. What they found was that the pesticide use increased with time to eliminate the same bio mass from their trackage. He stated that he called Dr. Marian Moses in San Francisco with respect to this issue. She is an epidemiologist who studies these issues and has made it more than just a hobby -- this is her profession. She is unable to find any instance where, regardless of the use, there can be attached the word "safety" with the use of this product. She said that they are clearly poisons, which even Bill Otten said that we're reducing that use because there is remarkable risk. Based on all of this, he said it seemed to him that Missoula County needs to acknowledge that risk. To a large extent, Missoula County has done that, as the County, in years past, has been a proponent of biological control. Because of this, the County has been severely chastised and criticized by the agricultural community and the surrounding Counties for the weed problem which some people suggest is the result of the posture that Missoula County has taken. The County's Road Department does not use that product and has not for some time. The reasons are because of that policy. He said he thought it was important to acknowledge that and it's important to acknowledge what the position has been.

Michael Kennedy moved that the Board of County Commissioners reject the bid for contract weed spraying based on: (1) there is an acknowledgment and awareness that chemical sprays, from their manufacture through their final use, present an unnatural hazard to the environment; (2) continued investigations and analyses result in increased numbers of pest control chemicals being added to the restricted list or prohibited altogether in the United States. There are approximately 100,000 chemicals that are either carbonaceous in form or chlorinated hydrocarbons, 99% of which have never had a successful test. In all of those that have had a successful test, there has been found relative degrees of unsafety. There has not been one yet that has been tested and determined to be absolutely safe; (3) the inconsistent applications and procedures are less than the claimed results. That constitutes a serious problem. Whether the applicator ingests the atomized spray, which is a serious hazard, or whether they are inattentive or just underpaid, it doesn't matter. Sometimes the targeted material is simply not targeted; (4) the national trends are getting away from chemical use. Every other state that is agriculturally intensive is getting away from the use of pesticides. There is a remarkable national consciousness in reduction of that use; (5) there are alternatives available and they are increasing. He said he thought the County needs to support funding of those alternatives. He said for these and other reasons, he hoped his motion would be supported.

The motion failed for lack of a second.

Fern Hart commented that Missoula County has been considered almost renegades for the kind of weed control program that has been supported which is certainly more forward looking and with less and less use of chemicals. She said she was pleased to say that Missoula County is getting the kind of support from the University and area residents for this kind of work. Fern Hart further stated that since the data presented to the Commissioners from various members of the public conflicts with the data received from Missoula County staff members, whom she indicated she honors as being experts in the field, Jerry Marks, Missoula County Extension Agent, has offered to conduct further research in this area. He said he felt that in a forum, where everyone participated, with some kind of rules of participation, a conclusion could be reached that would not be based on emotional or unusual claims. She said she respected the offers from members of the public to participate in such research. She stated that she was in full support of a project such as this.



Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners accept the bid from B & B Vegetation Management for the contract weed spraying for treatment of 455 acres of State highway roadside for \$12,457.90 as the lowest and best bid which met all bid specifications, contingent upon the requirement that the certificate of insurance be filed with the Missoula County Risk Manager. She further moved that under the direction of Jerry Marks, Missoula County Extension Agent, Missoula County convene a Weed Control Task Force comprised of people who have an interest as well as expertise in this area to help advise Missoula County on weed control and all of its ramifications. This committee would meet and submit a report to the Board of County Commissioners in November of 1995.

Michael Kennedy said he thought the issue comes down to weighing the risk. When should extraordinary measures be used? When should a doctor perform life-threatening surgery on someone to in fact save their life? There is a legitimate reason why that is done. And perhaps it's true that there is a legitimate reason for the application of chemicals in certain instances. This particular bid is for treating 455 acres of Missoula County that has about 2 million acres. He said it seems that the risk of infestation of weeds is far less than the risk of spreading this chemical. He said he thought this bid was drawn out of proportion and it is given injustice to by this particular motion. He stated for the record that he objected to the motion.

The motion carried on a vote of 2-1 with Michael Kennedy opposed.

Barbara Evans stated that there would be a press release with regard to the Weed Control Task Force. In the meantime, interested persons may contact either Jerry Marks of the County Extension Office or Bill Otten of the County Weed Department to offer further comments or suggestions. She indicated that Fern Hart would circulate a sign-up sheet for those individuals present at today's meeting who would like to be contacted about serving on this Task Force.

DECISION ON: REQUEST TO ABANDON 10' STRIP OF SCHILLING STREET & SOUTH 12TH WEST (CARLINE ADDITION, BLOCK 84, LOTS 15 AND 16 IN SECTION 29, T13N, R19W)

Barbara Evans stated that Fern Hart and Horace Brown, County Surveyor, performed a site inspection of the subject property, as required by law. She asked Horace Brown and Fern Hart if they would read their recommendation into the record.

Horace Brown recommended approval to vacate a portion of Schilling Street and South 12th West located in Carline Addition, Block 84, Lots 15 and 16 in Section 29, T13N, R19W. He indicated that the fence on the north end of this property will still encroach within the County right-of-way. Because of this, he requested that the property owners obtain an encroachment permit which would be valid for 10 years.

Fern Hart inquired if the applicants will receive notice whether or not their vacation request has been approved.

Vickie Zeier, Clerk and Record/Treasurer, responded that the applicants will receive a copy of the resolution.

Fern Hart further inquired if the language regarding the encroachment permit would be stated in the resolution.

Horace Brown said yes, this language would be in the resolution and also he would personally contact the applicants about the encroachment permit.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the petition to vacate a 10-foot strip of Schilling Street and South 12th West, Carline Addition, Block 84, Lots 15 and 16 in Section 29, T13N, R19W, subject to the County Surveyor's consideration of an encroachment permit. The motion carried on a vote of 3-0.

PROPOSED TAX LEVY FOR EAST MISSOULA SEWER DISTRICT

Michael Sehestedt, Deputy County Attorney, explained that the East Missoula Sewer District has requested the imposition of a levy on real property at a rate sufficient to raise \$72,000 over a two-year period (\$36,000 per year) for the purpose of paying operational expenses and funding an engineering feasibility study. As with all County water and sewer districts, the East Missoula Sewer District is governed by an independently elected Board. However, as a check or limitation on these independently elected Boards, whenever they wish to levy a tax to cover costs they cannot otherwise cover with their operating revenues, the law states that they are required to request in writing to the Board of County Commissioners that this assessment be levied. The law then requires that the Board of County Commissioners give notice by posting in five places, publishing twice in The Missoulian, and mailing notices to each owner and purchaser of real property in the District. The law then requires the Commissioners to hear, consider and rule on all protests which are received. The Commissioners may adjourn the hearing from time to time. At the hearing, any property owner has the right to be heard. He said he believed that for the statute to have meaning, the Commissioners could, if they determined the objections are well founded, decline to impose the levy and return the matter to the East Missoula Sewer Board; however, the law is not entirely clear in this area. He stated that the Commissioners' purpose was to consider and determine whether or not, in light of the protests and the other testimony received, to proceed with the requested levy in the East Missoula Sewer District.

Barbara Evans stated that the hearing was held at the East Missoula Community Center on May 3, 1995, at which hearing, she and Commissioner Fern Hart accepted testimony. She recalled that, from a show of hands at the conclusion of that hearing, more people were in favor of passing this levy than those who were opposed. She indicated that there were comments by some of the residents which she said she thought had some merit which was to enlarge the district so that it took in Bonner and Milltown. She said it seemed to her that that makes some sense especially if the Town Pump is successful in their application to rezone. She indicated that on the other hand, when she checked the vote for the district from two years ago, 578 were in favor and 267 were opposed. The number of



phone calls and messages and visitors that the Commissioners have had in favor or in opposition seems to balance each other. It does not come out heavily one way or the other. She commented that she did not like this situation where the Commissioners are supposed to make a decision when a Board has been chosen and a district has been formed by the people. She said she did not think it was appropriate for the Commissioners to make that decision but rather it should be decided by their duly elected Board. But unfortunately, the statutes do not give the Commissioners that luxury.

Fern Hart stated that she would support the imposition of this tax levy since it does seem that more residents in the district support it than do not. She recalled that many of the objections voiced at the hearing on May 3 pertained to the manner of imposing the levy. This cannot be changed by the County Commissioners since it is dictated by State statute. She said she also supported this levy because it will give an opportunity to that area to know what kind of a sewer system might work and the cost can be evaluated. She indicated that three different types of sewer systems have been proposed and that is why the engineer is suggested. She indicated that she was aware that East Missoula has an income level which will be impacted by extra costs for infrastructure. The area is well designated in a district that can be used for voting. If the district is enlarged, the conciseness will be lost as well as a chance for some State grants for which East Missoula qualifies fairly nicely right now; however, if that base is spread out further and other income groups are involved, its chances of being awarded a grant would be greatly reduced.

Michael Kennedy commented that two years ago, when the public district was formed, it was the result of a remarkable initiative on the part of the people to recognize the problem and develop a mechanism to deal with it. He said that as Barbara Evans mentioned, the voting results two years ago were 578 in favor and 267 opposed. He also commented that by approving this levy, it was not automatic that a sewer will ever be constructed in East Missoula. Approval of this levy will provide an opportunity to evaluate the various options and make a determination as to what the costs are and the implications of it. He indicated this is also timely because the City of Missoula, as the owner of the waste water facility in the urban area, has engaged a consultant to do a waste water facilities plan for the entire area. He said he thought there would be some benefit that could flow to East Missoula because of that. He said that for those reasons, he was in support of this levy.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the request of the East Missoula Sewer District to impose a levy on real property only at a rate sufficient to raise \$72,000 over a two-year period (\$36,000 per year) for the purpose of paying operational expenses and funding an engineering feasibility study. The motion carried on a vote of 3-0.

HEARING: APPLICATION FOR TAX INCENTIVES (INDUSTRIAL DESIGN & MANUFACTURING, INC.) -- EXPANSION OF EXISTING FACILITY

John DeVore, Administrative Officer, explained that this was a request by Industrial Design & Manufacturing, Inc. (hereafter "IDM") for consideration of the tax incentive program. IDM has requested consideration for this benefit relative to improvements in equipment made and purchased for their facility located at 9600 Inspiration Drive. These improvements consist of plant expansion, purchase of additional equipment, and remodeling to both expand the capacity of the plant as well as move toward compliance with ADA. The total value of the improvements involved is approximately \$165,010. The final determination of eligibility and value will be made by the Department of Revenue. Under this program, the business derives benefits for a period of ten years. The property and equipment is taxes at 50% for the first five years, then gradually accrues to 100% over the next five years. This application meets both the statutory and policy requirements of the program. Staff recommends approval of the application.

Keith Krumbeck, President of Spectrum Pool Products by IDM, clarified that IDM has already undergone this expansion program. This project was undertaken in 1994. IDM currently manufactures swimming pool deck equipment on a national level and, in particular, they concentrate on devices for the physically challenged for getting into and out of swimming pools. They also manufacture energy conservation systems for swimming pools. He indicated that last year, they reinvested a fair amount of their own resources. They went through an additional loan to make their building ADA accessible so that they could hire individuals with disabilities from the community. They expanded their building and replaced their wood-heating system with a gas-fired system. They purchased a tremendous amount of equipment and basically expanded their operations. The total bill was \$165,010. The net gain over one year was seven employees. They anticipate at least another seven employees in 1996 as a result of that expansion.

The hearing was opened to public comment.

Ron Klaphake, President/CEO of the Missoula Area Economic Development Corporation (hereafter MAEDC), pointed out that the concept of the Tax Incentive Program was created to help existing businesses expand and he stated for the record that MAEDC heartily endorsed the tax incentive request for IDM. He said he thought that one of the most important things that a community can do is to work with its existing companies as much as possible. Missoula County has done this in the past. He said the Commissioners were very involved with helping IDM locate here in Missoula in the first place and MAEDC hopes that Missoula County will continue to work IDM's expansion. He commented that IDM first began with three or four employees is now at 24 employees. He said that is the kind of expansion that MAEDC likes to see and will continue working with them. He said it is not a 50% tax reduction because there are exceptions to that. The State levies are not reduced. The net impact of something of this nature is for the first five years to drop it somewhere between 60-65% of where it would normally be.

Ross Best stated that he had nothing to say against IDM or its proprietor. He commented that he had become newly aware of this Tax Incentive Program. He mentioned that it was curious to him that Missoula County seems to be calling something an "incentive" that is perhaps more of a reward since it is being granted after the expenditure has been made. He said it seemed to him that it might make more sense to use it as an actual incentive. He concluded by clarifying once again that he did not oppose this specific request by IDM.

Michael Sehestedt commented that he didn't know whether it's a reward or an incentive. The legislature has authorized that these tax incentives be granted in either the tax year in which the improvements were made or the following tax year. It is clearly contemplated that some after-the-fact grants under this tax reduction incentive will occur. Mechanically, there would be some problems with getting the request upfront. As far as it being an incentive, it may not be an incentive for the particular project being requested if it is granted after-the-fact but what it does is to create a climate in which further expansion is to be encouraged.

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

Michael Kennedy said he noticed that the Request for Commission Action form indicated a fiscal impact of \$0. He said it seemed to him that it is not \$0. One of the notions here is that an economy is generated and the net result of the economy is a better commercial tax base and a higher return ultimately on the investment a business is making by forgiveness of this tax. He asked John DeVore if he could comment on this.

John DeVore said he thought there were two ways of looking at this. He said that what Michael Kennedy said was true that by a business expanding in a community, that community will have increased revenue flowing through the economy. It has been determined in the past as being a negative fiscal impact when an incentive was granted. The Commissioners have taken the posture in the past that since the County had not realized any revenue from this expansion in terms of property tax revenue, it was really looking at what was being done with future revenue. It was looked at then that there was not really any negative or zero impact to the County budget in terms of a loss of revenue to support governmental services but really looked at it as an investment into future revenues.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the application by Industrial Design & Manufacturing, Inc. for Tax Incentives for new and expanding industry in that the application meets both the legal and policy requirements.

Barbara Evans asked Michael Sehestedt to make a ruling on whether or not she should participate in this hearing since her son worked for IDM some time ago for approximately one month.

Michael Sehestedt asked if her son was working for IDM now.

Barbara Evans said no.

Michael Sehestedt asked if her son had any prospect of future employment with IDM.

Barbara Evans said no.

The motion carried on a vote of 3-0.

#### HEARING: PROPOSED CREATION OF FLORENCE-CARLTON PARK DISTRICT

Michael Sehestedt explained that Missoula County received a petition signed by 10% of the Missoula County electors residing in the area requesting the creation of a park district whose boundaries will coincide with the boundaries of Ravalli County's Florence-Carlton School District. The purpose of today's hearing is to determine whether or not to create the Missoula County portion of the park district. If the Board of County Commissioners decides to proceed with the requested park district following the hearing, the question of creating the District must be submitted to the electorate at an election to be scheduled at least 75 days after the resolution is adopted. The park district will not actually be created unless a majority of the people voting at that election vote in favor of it. He indicated that about three months ago, Betty Lund, Ravalli County Clerk and Recorder, contacted him on this matter. He indicated to her at that time that a joint hearing would probably be conducted, possibly at the Florence School. When she talked with her Commissioner in Ravalli County, he indicated that he would contact the Missoula County Commissioners to schedule the joint hearing. However, nothing further was heard from Ravalli County until Betty Lund again contacted her Commissioner who informed her that the public hearing had already taken place. He then wanted to schedule the election at the same time as Missoula. Michael Sehestedt indicated that, based on the second-hand reports he has received to date, there was no significant opposition from the Ravalli County side to the creation of the park district.

The hearing was opened to public comment.

Pete Penner stated his objection to the creation of this park district. He indicated that he just became aware of this last Saturday when he received the Public Meeting agenda. With reference to Michael Sehestedt's statement that there was no significant opposition from Ravalli County, he said nobody in Ravalli County seems to know anything about this.

Michael Sehestedt said this certainly could account for the lack of opposition. He stated that he honestly doesn't know what happened down there.

Pete Penner explained that the report that he got out the Ravalli County public hearing was that nobody showed up on either side. He stated that he just wanted to know what the procedure would be for this matter from this point on. He said that the taxes in that area especially are about as high as any in the State of Montana.

Michael Sehestedt said that he could not say what would happen on the Ravalli County side but here in Missoula County, there will be notice of the election.

Glynn Hengel said he was familiar with the Florence-Carlton Park District in that he knows the person who donated the land. He said he felt that the creation of this park district was not in the spirit of the person who donated this land.

He said the volunteer work that has been done has been very good. He remarked that based on the comments from fellow taxpayers, whom he talks with on the street everyday, they are not going to be in favor of more taxes.

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

Barbara Evans stated that since there were 74 signatures and only 48 were needed, she was inclined to place this proposal on the ballot and let the people have their say.

Fern Hart commented that the Board of County Commissioners' decision was not that of being for or against the park district but rather whether or not to allow a vote for this issue.

Barbara Evans asked when the next regularly scheduled election would be held.

Vickie Zeier, Clerk and Recorder/Treasurer, responded that would be the school election in April '96 which usually coincides with the school election in Ravalli County.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners accept the creation of the Florence-Carlton Park District for the purpose of placing this issue on the ballot at the next election at least 75 days after the resolution is adopted. The motion carried on a vote of 3-0.

#### PUBLIC COMMENT

Ross Best stated that he spoke last week on a question of conflict of interest. He said he had just delivered to the Commission, and would be formally delivering to the County Attorney's Office after this meeting, a petition requesting that the Commission and the County Attorney take whatever actions are necessary to invalidate the Commission's Resolution No. 89-092 adopted on December 13, 1989 which provided for property tax incentives for Stone Container Corporation. He said he also wanted to respond to several of the comments made last week by Michael Sehestedt of the Missoula County Attorney's Office.

(1) Mr. Sehestedt talked about whether the financial interest of Commissioner Evans and her husband in Stone Container was a substantial financial interest. Ross Best stated that there is no definition of the term "substantial" in the Code of Ethics. He said he takes the word "substantial" to mean "not insubstantial" or "not trivial". He based his impression upon fairly extensive research. There has been no Montana Supreme Court decision on this. There has been no Attorney General's opinion on it. He said he thought the common sense interpretation is not that substantial means something really enormous -- it's just that it means something that is not insubstantial -- not insignificant -- not negligible. He said he thought the issue was whether the financial relationship in question could reasonably be thought to have the effect or to potentially have the effect of influencing the decision of Commissioner Evans. He stated that he thought that long-term employment by a spouse by a corporation, as a matter of common sense, does represent such a substantial financial interest.

(2) Mr. Sehestedt stated that the action, in relation to Stone, had no "per se impact" on employees such as Allan Evans. Ross Best said that the concept of "per se impact" does not appear in the law. He said he didn't think it has any applicability here and said he really doesn't know what it means. The law does not require that he be able to show that money went directly into the pockets of Allan or Barbara Evans. He said he was not implying that. Similarly, he said he didn't think it matters that Allan Evans was a union employee working under a collective bargaining agreement on a hourly basis. He said he thought that clearly union employees of companies are encouraged to feel loyalty to their employers and he further stated that that detail of Mr. Evans' employment is not relevant.

(3) Mr. Sehestedt said that it was stretching things to go back 5½ years and look at something that had been dealt with publicly. Ross Best said he learned about the existence of this problem about one month ago. He learned about the details about a week and a half ago. As far as whether this was all public, there's no indication in the record that there was any disclosure by Commissioner Evans on December 13, 1989 of her interest. So, in that sense, he said he thought it was not public. Also, he said he didn't think that any acquiescence by the other two Commissioners at the time, or by anyone else, can approve a violation of the fiduciary duty of a public officer.

(4) Mr. Sehestedt said that in the ordinary course of business, a tax incentive would not be subject to revocation retroactively. Ross Best said that this is not the ordinary course of business. Mr. Sehestedt also said last week that Stone had acted in reliance upon it. Ross Best stated that the minutes of the Commission meeting from 1989 show that the work was almost all done by the time the incentive was granted. So it's hard to see how much reliance there was on it.

(5) Mr. Sehestedt said a couple of times that he wouldn't speculate on Ross Best's motivations. Ross Best commented that he had studied a little bit of Latin and Greek and had learned that the ancient orators had a rhetorical device that was called *predoritia* in Latin. This was the way you talk about something by saying you're not going to talk about it. Ross Best said that if Mr. Sehestedt was not going to speculate about his motivations, then he doesn't have to talk about his motivations. No one in the meeting last week asked Mr. Sehestedt about Ross Best's motivations. Ross Best said he will be glad to discuss them with anyone who wants to discuss them.

Barbara Evans stated that she once again wished to read into the record the following statement:

"In 1989, Stone Container requested Tax Incentives for their recycling expansion. They met the State's legal requirements and the County's policy requirements. The potential expansion *in no*

way affected my husband's job! Therefore, there was no possible benefit or detriment to either my husband or myself. My vote was not the determining factor in this issue as the other two Commissioners moved and seconded the action to approve the incentives. The recent issue of the boiler's permits could have affected the mill's overall operation, and potentially affect my husband's employment, and therefore could have been *perceived* as a possible conflict of interest. I therefore publicly announced a potential conflict and said that I would not make a public comment on that issue."

Steve Carroll stated that concerning the pesticide issue, he wanted to thank Commissioner Kennedy for his thoughtful comments and vote on this issue. He said he wanted to express his concern and dismay over the policy adopted by the Commissioners for three reasons. First, the pesticide application program has now been adopted when, by Commissioner Hart's own admission, there was conflicting information. Secondly, the Weed Control Task Force was developed after the policy has already been adopted. He stated that he was also concerned that toward the end of the public testimony, after three individuals who supported Commissioner Evans' position were allowed to speak, several others had their hands up and were not called on. And now, because the public comment section comes at the end of the public meeting, those people who wanted to speak at that time are no longer here.

Gail Gutsche, of Women's Voices for the Earth, stated that even though she spoke earlier, she still had several questions, several of which would have been addressed to Bill Otten, Weed District Supervisor, who also had already left the Public Meeting. She said she seconded Steve Carroll's comment about having the public comment session at the end of the Public Meetings. She stated this is really problematic especially when there is an obviously controversial issue on the agenda such as the spraying of 2,4-D and Tordon. She said clearly there is a mix of opinions and a wealth of information presented. She said she still had these questions and asked if she could address them to the Commissioners.

Barbara Evans offered the suggestion that if she submit all of her questions in writing, she will ask Mr. Otten to respond to them.

Gail Gutsche indicated she would do that; however, she said two of her questions were for the Commissioners. First, she asked is Missoula County spraying less pesticides and is it working? She said according to all the information she gathered, it is not working. She said she wanted to be the first to say that she was not an expert on this issue. She stated that what she did was that she turned to the experts. She called a lot of people who are experts and she gave the Commissioners information from several different agencies and hopefully the Commissioners will have a chance to read all of that including Washington Toxics Coalition and a couple of others. Those people in turn gave her information. She said the point is that there is a health concern. This is a public health and safety concern. Yes, it is about weed control but certainly the first concern is about public health and safety. She said that there is obviously a shadow of a doubt, which Fern Hart as well as the three people from the Weed District admitted in stating that clearly it could not be said that the spraying of pesticides was safe. She stated that for the Commissioners to make this decision without even knowing if there is even a little risk seemed unconscionable to her. She said she was really disturbed by that. She wanted to know if the County is spraying less and if it's working. She wanted to the records of the past 10 years. She wanted to know if it is known whether or not the conditions which brought the weeds here in the first place still remain and what is being done about that. She said she wanted the County to take a broader look at this by looking at it as prevention rather than eradication. She commented that the Commissioners, as purveyors of general public policy, should be informed to the fullest extent and not follow private policy which she said she believed Bill Otten alluded to a couple of times when he commented that private folks are spraying so the County needs to match their program. She said that is backwards logic and thinking. She said the Commissioners need to take the lead. If what they're doing is bad, the County should not be following that.

Barbara Evans commented that over the last 15 years, the County has worked very hard with the Weed Board and other people who are experts on weeds. She stated that the County does not wish to blindly spray and cause public harm. Missoula County is considered in Montana as being almost renegades because it does not do routing spraying of weeds. The County has spent a lot of money doing biological weed control because it would much prefer to find natural means of dealing with these things. She said she thought Fern Hart's motion that the County form a Weed Control Task Force to try again to look at all the new toxicology information was a very good one.

Gail Gutsche remarked that she supported the idea of this Task Force as well; however, she said she also supported what was said earlier by Steve Carroll in that establishing this Task Force after-the-fact is a bit problematic. She said she was aware that the decision on this bid award had already been postponed one week; however, in light of the concern with a serious health concern such as this, she said it seemed that postponing the decision one more week certainly would have helped rather than hinder the process. She stated that she heard the concerns of the Commissioners and appreciated the fact that the County is moving toward more biological controls. She concluded by saying that she just thought that this is such an incredibly scary and dangerous situation, that one more week certainly could not have hurt.

Ross Best said he wanted to elaborate on a question that arose last week in an exchange between Commissioner Kennedy and Tony Tweedale. It involved the question of increased emissions from the expansion at Stone Container that was the subject of the tax incentives. He stated that the minutes from the December 13, 1989 Commission meeting indicate, "Barbara Evans asked if there would be any significant increase in emissions of any kind from the mill when this is put on." He said the word "this" clearly refers to the expansion. The response to this question from Clayton Smith, the General Manager, was reported as being, "There will not."

Michael Kennedy remarked that he thought the reason Ross Best brought this up was that the word "significant" was really in question.

Ross Best said he should have added a comment or two before concluding. He said at the same time Stone was preparing for this expansion, Stone was applying for and receiving an alteration or modification of one of its permits

to allow it to burn approximately 15 tons of plastic per day. He said he understood that that plastic comes from the recycling facility. He said he thought that if the minutes of that meeting were correct, and of course they are not verbatim minutes so it's hard to know, it appears that there was a substantial misrepresentation by Stone Container as part of the application for the property tax incentives.

Bethanie Walder, of Women's Voices for the Earth, remarked that the County awarded the bid for weed spraying despite the fact that there was conflicting information. She said that in particular she found it really difficult to understand why the Commissioners didn't instead reject the bid award for this year and then take time to study the issue. Then next year whatever appropriate action that would be determined could be taken. She said the most important priorities need to be determined here. She stated that another concern she had was with regard to the comparative risks that Greg Kennett, soil conservation expert at Shannon Environmental Services, listed. He indicated that the application of the pesticide is like smoking two cigarettes, or drinking 40 cans of soda, etc. She remarked that the critical difference when making these comparisons was to keep in mind that people can freely choose to smoke, or drink soda, or other things of that nature; however, people have no choice in whether or not pesticides will be sprayed.

Tony Tweedale said he first wished to apologize for his earlier interjection from the audience and said he wanted to explain what drove him to do that, even though it wasn't proper. He explained that he is very science-driven and what he witnessed today was a mockery of making good decisions based on good information. He stated that Michael Kennedy showed that he had studied the issue. Mr. Tweedale said that the only thing he slightly regretted was that there was no discussion with regard to alternatives. There is apparently, according to Michael Kennedy, good alternatives available and that is an important part of the equation. He said the main point is that maybe the Commissioners should have postponed the bid award until there was at least one meeting of the proposed Weed Control Task Force. He said he felt that hard data had been presented today in opposition to weed spraying. He said that the Commissioners referred to three EPA reports that showed there is no cancer risk -- he stated that's just not true. With regard to a different subject matter, the Evans family conflict of interest with the Stone Container tax incentive, he said he wanted to comment on the question of whether or not there was a substantial conflict of interest. Things don't have to happen for there to be a potential for conflict. He said he hoped the new law passed by the legislature makes that point more clearly because, as Ross Best said, the old law has not been interpreted in the courts. He asked that since Mr. Evans was employed by Stone before, during, and after the tax break, how can it be said that there was no potential for Stone Container to positively or negatively reinforce his employment conditions at Stone Container because of his spouse's powerful position and voting on a roughly \$1 million tax incentive. He also commented with regard to the General Manager's statement that they expected no substantial increase in emissions. He indicated that he had been talking with the air quality people on this question and their policy on granting permit alterations is when they expect a substantial change in emissions. He said it was ironic that Michael Sehestedt was arguing the point of what's substantial and what's trivial. Clearly, they granted the permit and they showed that there were substantial increased emissions and they engaged in correspondence before granting the permit, showing that they expected substantially increased emissions.

Fern Hart said she appreciated those individuals who had volunteered to work with the Weed Control Task Force. She said she didn't believe that it will be done in a short period of time. She said she thought it was very serious and that kind of hard work should be done in a forum that has acceptable ground rules that is not a public issue repeated again and again with just the same issues. She said she thought this Task Force should be a situation where the issue and the related facts are presented and discussed. She remarked that she counts on this County and said she believes this County is very serious about trying to do the best kind of work that can be done. She commented that she did not know all of the information on this issue and she will have to trust the folks who bring the report -- that is the role that people who are elected are in.

Will Snodgrass stated what was observed today was a process which was pretty twisted and contorted. He said he thought it was also seen the demonstrated incompetence on the part of certain public officials as a matter of record. He stated that he wished to comment on the remark apparently made by Jerry Marks, Missoula County Extension Agent, with regard to the proposed Weed Control Task Force. Mr. Marks stated that with this type of forum, a conclusion could be reached that would not be based on emotional or "unusual" claims. He said it's "unusual" to find endometriosis in children being born without limbs. However, one will respect the data that springs forth from that, linking certain chemicals in a cause-and-effect relationship to those effects. He said he found it somewhat archaic to have a person say, "Well, we're only going to accept information which is not unusual." He said that is not the way to conduct public policy, that's for certain, unless of course a Commissioner wants to avoid controversy, which will not get one re-elected, he added. Regarding conflicting data, Barbara Evans started out with some EPA documents which purport to show that 2,4-D is not carcinogenic and also Fern Hart spoke of conflicting data. He agreed that there are some conflicts. In referring to page 24 of a report he had, it states that "EPA has identified cancer risks associated with 2,4-D. He said the Commissioners heard the tape recording today from EPA officials stating that the cancer information is not complete and that some of those studies are most important. Yet Commissioner Evans stated that the EPA says it's not carcinogenic and that's utterly false. He said he wanted to reiterate the point he made earlier in that Commissioner Evans brought forth some studies which purported to show no cancer risk but at the same time, she failed to bring forth the studies which were provided to her office which showed that 2,4-D was a carcinogen and was contaminated with dioxin which is a known carcinogen. He said he thought that demonstrated a motive here. He said the documents he provided Commissioner Evans were peer-reviewed documents which Michael Kennedy would probably be willing to review with her. He stated that the report, RCED 134, clearly states that a person will not make statement about the safety of pesticides. He said he will provide an abstract from that document for Commissioner Kennedy who is apparently the only person who is either capable or willing to read one. He added that polite people do get poisoned. He said this document very clearly shows that a person will not make false and misleading statements, directly or indirectly implying that pesticides are recommended or endorsed by any federal agency or that they are non-poisonous, harmless, or safe. It also states that a person will not utilize those statements even with the qualifying statement "when used as label-directed". He remarked that here were two County Commissioners who had voted, in the face of peer-reviewed, scientific evidence of substantial quantity, to allow the release of a carcinogenic substance into the Missoula living environment in large quantities along roadways, where drivers and walkers and passersby will be exposed. He said these two Commissioners had done so, in his opinion, out of some unprofessed

motive which he failed to understand, perhaps at a level to which the Commissioners failed to understand the literature. He said he wished to state clearly for the record, and with all due respect, that it was becoming more and more apparent to him, in his own mind, that Commissioners Evans and Hart were not qualified to serve in their positions at this time. He asked them to resign from their positions at this time because of their failure to adequately protect public health in accordance with their oath of office. He asked Barbara Evans if she would resign at this time.

Barbara Evans stated that his request was denied.

There being no further business to come before the Board, the Commissioners were in recess at 3:50 p.m.

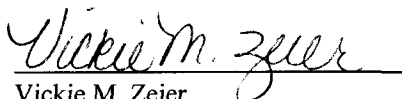
**THURSDAY, MAY 18, 1995**

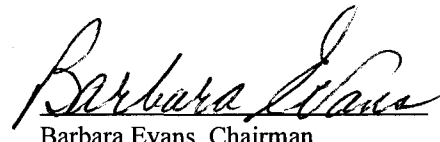
The Board of County Commissioners did not meet in regular session. Commissioner Hart was in Polson attending a MACo District 10 & 11 Counties Meeting; Commissioner Kennedy traveled to Walla Walla, Washington to attend a Columbia Basin Advisory Council Meeting through Friday, May 19; and Commissioner Evans was out of the office all day.

**FRIDAY, MAY 19, 1995**

The Board of County Commissioners did not meet in regular session; Commissioner Hart was in Libby attending a Mental Health Board Meeting.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending April 28, 1995.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, MAY 22, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Kennedy attended a meeting of the Seeley Lake Solid Waste Management District held at the Seeley Lake Fire Hall.

Contract -- The Board of County Commissioners signed a Contract by and between Missoula County and Alan Woodward DBA/ Clearwater Towing as the lowest and best bidder for the collection and preparation of junk vehicles in the area of Missoula County, Montana, between Clearwater Junction and the Lake County line on Highway 83 and Highway 200 from the top of Greenough Hill to the Powell County line, as per the terms set forth, for a total amount of \$50 per vehicle. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to Missoula County Professional Services Contract with C. Curtis Blake, MD, an independent contractor, with regard to the Partnership Health Center Medical Director position, whereby the Performance Schedule is amended to read: "An average of 8 hours per week for 52 weeks to a maximum of 416 hours as scheduled."

Agreement -- The Board of County Commissioners signed a Winter/Summer Road Maintenance Agreement by and between the County of Granite and the County of Missoula, whereby it is agreed that it would be in the best interest of each county to cooperate in the exchange of Chip Sealing of 5.113 miles of Rock Creek Road in Granite County for 2.594 miles of Winter and Summer road maintenance for the next 7 years, as per the terms set forth, for the 7-period commencing with the 1995-1996 Summer/Winter maintenance season, in the amount of \$72,129.15 for FY'96. The Agreement was returned to Horace Brown, County Surveyor, for further signatures and forwarding to Granite County Commissioners for signatures.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated February 1, 1995, between The Western Montana Regional Community Mental Health Center and Missoula Board of County Commissioners with regard to purchasing chemical dependency intervention and early treatment services for youth referred for such services by the Missoula Municipal and Justice Courts in keeping with the goals and objectives of the Title V Delinquency and Youth Violence Prevention Project, as per the terms set forth, for the period from February 1, 1995 to June 30, 1995 and having a total cash value of \$6,160.

Letter of Agreement -- Chairman Evans signed the 1995 Letter of Agreement between the Missoula County Board of Trustees for Museums and the United Peoples Foundation and the Fort Missoula First Nations Powwow and Celebration for the purpose of conducting a Powwow and Celebration on the grounds of the Historical Museum at Fort Missoula, as per the terms set forth, for the period commencing July 27, 1995 through July 31, 1995, for compensation in the amount of \$500 (plus an additional \$500 for use of same in 1994).

Agreement -- Chairman Evans signed an Equipment Maintenance Agreement between Brooks Computer Services and Missoula County for the purpose of providing on-site preventive and remedial maintenance of the development computer for the mainframe for a period of 15 months, as per the terms set forth, for the period commencing May 1, 1995 for compensation in the amount of \$3,000 out of FY'95 budget for services rendered. The Agreement was returned to Sharon Tandberg, Information Services, for further handling.



Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY'95 budget:

- 1) Control No. 95-006, a request from the Art Museum to transfer \$1,000 from the Term Reserve fund to the Meals/Lodging fund (\$600) and the Common Carrier fund (\$400) since planned retirement was postponed; Term Reserve will not be needed this year; funds needed for educational meeting; and
- 2) Control No. 95-012, a request from the Art Museum to transfer \$500 from the Heat/Lights/Water fund and \$504.54 from the Phone-Base fund to the Meals/Lodging fund for food, lodging, etc. at the Pittsburgh, PA Conference for the Art Museum staff.

Resolution No. 95-037 -- The Board of County Commissioners signed Resolution No. 95-037, a Budget Amendment for FY'95 for the Sheriff's Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
1000-300-420180-118 DUI Patrol	\$2,000

<u>Description of Revenue</u>	<u>Revenue</u>
1000-300-396015 DUI	\$2,000

Resolution No. 95-038 -- The Board of County Commissioners signed Resolution No. 95-038, a Budget Amendment for FY'95 for the Sheriff's Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
1000-300-420185-157 Meals	\$177.05
1000-300-420185-284 Tech. Supplies	92.40
1000-300-420185-121 Overtime	18,711.30
1000-300-420185-141 Fringe	<u>3,231.56</u>
	\$22,212.31

<u>Description of Revenue</u>	<u>Revenue</u>
1000-300-342015 Forest Fire Cont.	\$22,212.31

Resolution No. 95-039 -- The Board of County Commissioners signed Resolution No. 95-039, an Approval of the Application of Industrial Design & Mfg., Inc. for Tax Incentives under the provisions Resolution No. 91-101 based on improvements in excess of \$165,010 installed during 1994. The qualifying improvements consist of improvements and expansion of the existing building, ADA Compliance, new equipment, furniture and computers.

#### TUESDAY, MAY 23, 1995

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioners Hart and Kennedy spoke to government classes at Hellgate High School.

At the OCD Departmental Meeting:

- 1) the Commissioners approved the request for a minor plat adjustment for the Westfield Square Subdivision. The said approval is to vacate 14 feet of the no access strip adjacent to Lot 6 at the cul-de-sac on Westfield Court. The purpose for this action is to provide for the placement of the garage such that the two required off-street parking places can be met.
- 2) the Commissioners approved the request for a three-month filing extension for the Kona Rapids summary plat, in accordance with the recommendation of the Community Development staff, making the new filing deadline August 31, 1995.

#### WEDNESDAY, MAY 24, 1995

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Hart opened the Annual Senior Games and Arts Festival at Dornblaser Field.

Audit List -- Commissioners Evans and Hart signed the Audit List, dated May 24, 1995, pages 5-44, with a grand total of \$138,380.13. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Austin Stroup as principal for Warrant #43343 issued April 28, 1995 on the Missoula County MCPS Elem. Payroll Fund in the amount of \$277.52 now unable to be found.

#### DAILY ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #9, Pay Date April 28, 1995, with a total Missoula County payroll of \$519,470.50. The Transmittal Sheet was returned to the Auditor's Office.



Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #10, Pay Date May 12, 1995, with a total Missoula County payroll of \$511,286.61. The Transmittal Sheet was returned to the Auditor's Office.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Betty Springer, D.B.A. Betty's Professional Service, an independent contractor, for the purpose of transcribing minutes of certain Public Meetings of the Missoula Board of County Commissioners, as per the terms set forth, for the period commencing May 24, 1995 through July 12, 1995, for compensation in the amount of \$3.50 per page of final edited minutes.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Lower Construction, an independent contractor, for the purpose of various remodeling projects for Missoula City-County Animal Control, as per the terms set forth, for the period commencing April 1, 1995 through May 30, 1995, for compensation in an amount not to exceed \$7,000. The Contract was returned to the Health Department for further signatures and handling.

Encroachment Permit -- The Board of County Commissioners signed an Encroachment Permit, agreeing to permit William L. Richardson of 2161 South 12th West, Missoula, to encroach upon a portion of County right-of-way being along the South boundary of South 12th West adjacent to Lots 15 and 16 of Block 84, Carline Addition, and shall be limited to the existing fence, effective for a period not to exceed 10 years, renewable at the option of the County.

Resolution No. 95-040 -- The Board of County Commissioners signed Resolution No. 95-040, a Resolution vacating a 10-foot wide portion of the east side of Schilling Street and the south side of 12th Street, from the NW corner of Lot 16, Block 84 of Carline Addition, thence running south to the SW corner of Lot 16, Block 84 of Carline Addition and beginning 10 feet west of the NW corner of Lot 16, Block 84 of Carline Addition, thence running east to the NE corner of Lot 15 of said Block 84, being located in the SE 1/4 NW 1/4 of Section 29, T13N, R19W, Principal Meridian. The \$75 County administrative fee has been paid and Commissioner Fern Hart and County Surveyor, Horace Brown, made a site inspection in accordance with State statute.

Quitclaim Deed -- Commissioners Kennedy and Hart signed a Quitclaim Deed between Missoula County and High School District No. 1 (Hellgate High School Property, Parcels I-IV) for the purchase of property (4 parcels) taken by tax deed, as per the terms and payment schedule set forth. The properties were acquired by the Grantor between 1908 and 1941, at times when the Grantor directly operated all of the high schools in Missoula County, and before the formation of a separate high school district. The document was returned to Michael Sehestedt, Deputy County Attorney, for further handling.

Quitclaim Deed -- The Board of County Commissioners signed a Quitclaim Deed between Missoula County and Thomas H. Boone for the purchase of property taken by tax deed, COS 2651, a tract of land located in the SE 1/4 of Section 27, T12N, R20W, P.M.M., as per the terms and payment schedule set forth. The document was returned to Michael Sehestedt, Deputy County Attorney, for further handling.

Quitclaim Deed -- The Board of County Commissioners signed a Quitclaim Deed between Missoula County and High School District No. 1 (VO-AG property) for the purchase of property taken by tax deed, the NW 1/4 NW 1/4 NE 1/4, the SW 1/4 NW 1/4 NE 1/4, the NE 1/4 NW 1/4, the NE 1/4 NW 1/4 NW 1/4, and the SE 1/4 NW 1/4 NW 1/4, all in Section 36, T13N, R20W, P.M.M., Missoula County, Montana, less and except that parcel conveyed to the Montana Board of Regents of Higher Education in a document recorded in Book 275 of Micro Records at Page 1270, as per the terms and payment schedule set forth. The property was acquired by the Grantor in 1963, at a time when the Grantor directly operated the high schools in the City of Missoula, and before the formation of a separate high school district. The document was returned to Michael Sehestedt, Deputy County Attorney, for further handling.

Other items included:

- 1) the Commissioners approved the request from Kay Hoag, Administrator for the Community Care, Inc., to refund tax year '93 property taxes.
- 2) the Commissioners denied the request from Idaho Timber Corporation of Missoula, Inc. for a reassessment of their property taxes for the years 1992, 1993 and 1994, as their property tax appeal was not filed on time.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

Barbara Evans explained that Horace Brown, County Surveyor, is at the Tribal Complex doing County business there so is not here to comment on either of the bid awards, but we will proceed at any rate.

#### BID AWARD: NEW PC SERVER CONFIGURATION (INFORMATION SERVICES)

Barbara Evans explained that Information Services requested bids on a new PC server configuration. The bids received were as follows: Total bid by Emery \$34,288. Total bid by Unisys \$71,129. The difference between the vendors is virtually all markup. The GB disks are an example. Emery bid Micropolis and Unisys bid Seagate. Both are excellent drives with a 5 year warranty. The Seagate drives cost about \$1,000 more than the Micropolis which leaves an \$8,644 difference between the two vendors. If Emery had bid the same motherboard and case as Unisys it would have added approximately \$2,500 to the \$13,938 price quote from Emery compared to the quote of \$31,498 from Unisys. If Emery

would have bid the identical components as Unisys, their total bid would have been approximately \$40,000. The Staff recommends we award bid to Emery for the PC server configuration. Is there anyone on the Board who would like to comment on this? We did have a briefing on it this morning.

Fern Hart said I would comment for the record that I appreciate the research that was done by the Data Processing Department and I respect their determinations.

Fern Hart moved and Michael Kennedy seconded the motion to accept the bid from Emery for a new PC Server Configuration in the amount of \$34,288 as the lowest and best bid which met all bid specifications. The motion carried on a vote of 3-0.

BID AWARD FOR OPEN BOTTOM CULVERTS FOR MOCCASIN LANE AND DESCHAMPS LANE (SURVEYOR'S OFFICE)

Fern Hart stated that the Surveyor's Office opened bids at 10:00 a.m. Monday, May 8, 1995. They were as follows: Elk River Concrete Products \$59,711.40; Central Pre-Mix Prestress Co. \$56,339.00; Roscoe Steel and Culvert Co. \$32,200.00. The recommended bid is that of Roscoe Steel and Culvert Co.

Fern Hart moved and Michael Kennedy seconded the motion that the bid for the open bottom culverts for Moccasin Lane and Deschamps Lane be awarded to Roscoe Steel and Culvert Co. in the amount of \$32,200.00 as the lowest and best bid which met all bid specifications. The fiscal note states the \$32,200 is covered in the current budget.

Fred Crisp, Project Engineer, Bridges, in the County Surveyor's Office, stated that Roscoe Steel's bid was for corrugated aluminum box culverts and also a footing plate, a support plate. I could not make a determination on whether we could use a footing plate or not at the time the bids were taken because I didn't have information from the lowest bidder's manufacturer. When I got that information, based on soil condition at the site, I determined that we could not use their footing plate. So I deducted \$8,064.00, which is the cost of the footing plate, from their total bid of \$32,200.00 and what we want to award is alternate 1, bid item 1, for 126 feet of corrugated metal box culvert, not including the footing plate. The total amount of the bid will be \$24,136.00. I don't know why you didn't get the current information.

Fern Hart stated it's my error. What I have in my file is an outline, and you did get all the information to us, it's just not really clear until we see the letter that's at the bottom.

Michael Kennedy stated the bid was for open bottom box culverts and what I hear you saying is that you want to award an alternate bid for a circular aluminum culvert. It's not open bottom at all.

Fred Crisp stated two options were available to the bidders. Open bottom concrete box culverts, open bottom corrugated metal boxes.

Michael Kennedy stated I understand that part. I'm referring to what you said about awarding the culverts and there was no open bottom in your presentation.

Fred Crisp stated I recommend that the contract be awarded for alternate 1, bid item 1, 126 feet of corrugated metal open bottom box culvert.

Michael Kennedy asked what will you do for a foundation for those if you're not going to use the footing plate that is presented in the bid.

Fred Crisp stated they would be put on concrete footing.

Barbara Evans stated the first bid would be withdrawn and an alternate bid.

Fern Hart moved and Michael Kennedy seconded the motion that the bid for alternate 1, bid item 1, 126 feet of corrugated metal box culvert be awarded to Roscoe Steel and Culvert Co. in the amount of \$24,136.00, as the lowest and best bid which met all bid specifications. Motion carried 3-0.

BID AWARD FOR USED, ROLL - ROCK CRUSHING PLANT (SURVEYOR'S OFFICE)

Michael Kennedy stated that bids were opened on May 8, 1995, for a used combination roll/jaw rock crushing unit. The units bid did not meet the specifications and requirements or were priced beyond the budget constraints. The recommendation is that no bid be awarded.

Michael Kennedy moved and Fern Hart seconded the motion that no bid be awarded for the roll-rock crushing plant. Motion carried 3-0.

The Public Meeting then recessed as the Board of County Commissioners and reconvened as the Planning and Zoning Commission. Present were Commissioners Barbara Evans, Fern Hart and Michael Kennedy. Also present was member Vickie Zeier, Clerk and Recorder/Treasurer/Assessor.

HEARING (PLANNING AND ZONING COMMISSION) - REQUEST FROM DAN AND PAM MORGAN TO AMEND PRIOR Z.D. #4 APPROVAL TO CONSTRUCT A BARN WITH EXPANDED USES AND GREATER HEIGHT ON PROPERTY LOCATED AT 3146 PATTEE CANYON DRIVE.

Jennie Dixon, Planner at the Office of Community Development, presented the request from Dan and Pam Morgan to amend their prior Z.D. #4 approval from 1992, which was to construct a single family residence with attached garage and a separate barn. In 1992 the barn was approved to be 18' feet tall to the peak of the roof, and the intended use was for

storage of personal belongings and parking of vehicles. The Morgans recently submitted a building permit application for the barn measuring 33 or 34 feet to the peak of the roof and with an additional use as a half-basketball court. This Board recommended that it go back for public hearing for review for determination under the Z.D. #4 regulations if it would conflict with the natural physiography. The OCD does not make recommendations on Z.D. #4 requests. The County did just recently adopt building height regulations which do not apply to this zone but which could serve as a standard for evaluating this building. This building would meet the height envelope of the alternative method but it would not meet the wall element offset.

Barbara Evans stated that the public hearing was open and asked for proponents or opponents to speak.

Jim Decker stated that he was representing the Morgans architecturally. As Jennie pointed out, there is no height ordinance for that area, but we did try to make an effort to comply with the new County regulations. In the alternative method, it meets the height restriction there, but we do have one wall on the downhill side that is exactly 18 feet, which they like to disrupt. We looked at it architecturally to see if maybe there was some way we could break it up, but in the nature of a barn, doing lofted areas looks better to keep it as it is as opposed to joggling it around, so that's how we left it.

Michael Kennedy stated when this was first brought to our attention about a month ago, there was some question about the location of it. It seemed there could be a more appropriate location because the purpose of the height restriction and the rest was partially a visual problem that was presented. It seems like there was a potential for a little different location on site where your client could get what they want and still achieve the intention of that regulation.

Jim Decker stated we looked at the grading with the contractor involved, and it's true that the Planning Board, when the homeowners association did not object to it, the fellow there suggested that maybe we could have pushed it back a little farther onto a flatter surface. It's the way the road approaches. It actually did contour-wise allow us into the lower driveway, overhead doors. It was an easier drive into it, a less steeper grade. The farther back we pushed it the harder it made it and the larger the retaining wall. So we thought this was the better compromise of the two.

Fern Hart asked Jennie Dixon, we didn't have Rural Fire look at this.

Jennie Dixon stated, no, I send out material to a variety of County agencies. Rural Fire has no comment on this zoning request.

Fern Hart stated I think it's an area that has had a fire, and I realize that they were trying to save trees and save trees near buildings. It seems that we ought to have some comment from the fire department.

Jennie Dixon stated one thing I would point out is this did have a fairly thorough review back in 1992, and what's changing is the height. In fact, it's getting smaller in building footprint, but it is getting taller in height. But I agree, I would like to see more comment from Rural Fire in this area.

Michael Kennedy stated you mention in 1992 there was a lot of commentary on it. I question whether there was commentary from the Fire District at that time, and if there was I would like to hear what it said.

Jennie Dixon stated what I meant to say Mike was maybe not a lot of commentary but it is sent out for review to all the agencies. Whether they comment or not is somewhat beyond our control, although we try to follow up with them. Back in 1992 Rural Fire provided no comment.

Michael Kennedy stated I think the whole point that Fern has brought up and one that we've brought up many times in recent weeks is that "no comment" is just not o.k. We need to have some sense so we can offer some sense of security to the people who are building these buildings that there is in fact some fire protection that goes on. And by virtue of the fact that they say "no comment" it doesn't answer that question. It just seems to me the Rural Fire Department needs to be here to talk specifically to that issue about that particular problem and their ability to address that problem should a fire begin.

Barbara Evans stated, at least something in writing.

Michael Kennedy stated, I'm not in favor of advancing this until they do.

Barbara Evans asked for further comment from the audience, either in favor of or in opposition to the proposal. There being none the public hearing on the matter was closed.

Fern Hart stated, I would like to make two more comments. There is a line from the OCD Staff that they would remind the applicant that there is obviously fire danger in this area and response by emergency vehicles takes time and can be difficult, especially at certain times of the year. Use of fire resistant materials in construction should be considered. Would you please come back to the microphone, Mr. Decker. Are you using fire resistant materials?

Jim Decker stated, no, they're not fire resistant. They are simple, light gauge framing, standard wood studs, much as the house and the garage are.

Fern Hart stated, the other thing I would comment on for the record is that we do have comments in the Planning Board minutes that Ron Erickson who represents the Pattee Canyon landowners states, "I would say that if our new standards [which the landowners are now finalizing] were in we would certainly want to have the building height met." I'm not sure he understands what that means. Building heights are very interesting.

Jim Decker stated, in his little talk that he gave he also mentioned that they are working on those standards and they are formatting it after the County standards. Again, that's why we made the effort as opposed to just walking in and saying

hey we have no height ordinance, here it is." We tried to follow that format as closely as we could because we knew they in turn are trying to adopt a similar format.

Fern Hart stated, I think you have been sensitive. I appreciate that.

Fern Hart moved and Michael Kennedy seconded the motion that the matter be postponed for one week to hear from Bill Lindstrom of the Fire Department. Motion carried 4-0.

The Planning and Zoning Commission recessed; the meeting reconvened as the Board of County Commissioners.

Barbara Evans asked if the County Commissioners wished the matter postponed for one week. If so, the Chair will take the prerogative of continuing for one week.

#### HEARING AND CONSIDERATION OF MODERIE LOTS (4-LOT SUBDIVISION)--SUMMARY PLAT

A request was submitted by Andy Fisher, Eli and Associate, to subdivide 20.0 acres into four single family lots of 5 acres each. The proposed subdivision is called Moderie Lots (Lots 1-4).

Moderie Lots is located 7 miles west of Missoula on Mullan Road and Deschamps Lane, E 1/2 of Section 5, T.13N., R.20W., P.M.M., Missoula County, Montana. There is one existing residence on the property.

Barbara Martens, Planner with Office of Community Development, stated, I am here for Pat Keiley today who is handling the project. Moderie Lots is a proposed four lot subdivision on an existing 20 acre parcel. The subdivision is shown on a plat on the wall behind, also it is at the intersection of Mullan Road and Deschamps Lane. Each lot will be served by an individual well and septic system. The zoning in this area is CA-III which allows one dwelling unit per five acres as is proposed. The 1975 Missoula Urban Area Comprehensive Plan designates this area as suburban residential which recommends a density of two dwelling units per acre. The Staff is recommending approval of Moderie Lots subject to the conditions that were stated in the Staff Report, along with two variance requests.

I met with Andy Fisher prior to this meeting and he had some suggested changes to three of the conditions which Staff would concur with. The first one we discussed was condition #5 which states "the right of way for the 90 degree intersection of Mullan Road and Deschamps Lane should be approved by the County Surveyor before Lot 4 is completed." It could be changed to state "the right of way for the 90 degree intersection of Mullan Road and Deschamps Lane shall be approved by the County Surveyor prior to filing the plat." That way when the plat is filed it is clear where that realignment will go and the right-of-way is clearly shown before anyone purchases that particular lot. The other change we would suggest is to condition #10. We recommend that this be deleted. There is no need for a property owners association. There is no common land or private roadway. There is no association proposed and three of these address an association. The one that probably fits the most is (b) which talks about enforcement. The current covenants, which were filed in 1992, does have a provision for enforcement so there is really no need for condition #10. Under condition #11 it states that "prior to occupancy of any residential structure on Lots 1, 2, 3 or 4, each owner of the respective lots shall be required to comply with Section 3-15 Primary Travel Corridors, Missoula County Subdivision Regulations, to be approved by the County Surveyor." We recommend deleting Lots 1 and 2, leaving only 3 and 4, because 3 and 4 are the only lots affected by that requirement. It would only be required along Mullan Road and not along Deschamps Lane.

Based on the findings of fact, the Missoula Office of Community Development recommends approval of the summary plat of Moderie Lots and the variance requests, subject to the following conditions:

1. That approach permits be applied for and granted for access to Deschamps Lane prior to construction taking place.
2. A one (1') foot no access strip to be provided along the Mullan Road frontage of Lots 3 and 4. Shared approaches will be required as shown on Moderie Lot layout.
3. That landscaping have a maximum height of 30 inches along Mullan Road within a minimum of 200 feet of the intersection of Mullan Road and Deschamps Lane to preclude reducing site visibility at that corner, to be approved by the County Surveyor.
4. The developer shall place the following statement 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 for the upgrading of Deschamps Lane, based on benefit, and may be used in lieu of their signatures on an RSID petition."

5. The right-of-way for the 90 degree intersection of Mullan Road and Deschamps Lane should be approved by the County Surveyor before Lot 4 is completed.
6. A \$50 fee per lot shall be paid to the Missoula Rural Fire District toward the purchase of a large diameter hose.
7. The following shall appear on the face of the plat on each instrument of conveyance:

"Acceptance of a deed to a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a Rural Special Improvement District for the installation of public sewer and water service and may be used in lieu of their signatures on an RSID petition."

8. That the plat states, "Driveways greater than 150 feet in length shall be constructed with a turnaround for emergency vehicles within 150 feet of the residence, with the turnaround having a minimum radius of 35 feet, to be approved by the Missoula Rural Fire Department."
9. That a no build zone encompassing the riparian area be shown on the face of the plat and reviewed by the Office of Planning and Program Development and approved by the County Commissioners.
10. That, prior to final plat approval, the covenants shall include the following statements:
  - a. The Property-owners' Association Articles of Incorporation, By-laws, Covenants, and Restrictions shall be prepared by an attorney licensed to practice law in the State of Montana in order that the provisions above are met.
  - b. There are means of enforcement and means of receiving and processing complaints.
  - c. The permission of the governing body is required before the association can be dissolved or the restrictions modified.
  - d. There is a regular maintenance program for private roads, parks, buildings, drainage facilities, and other mutually controlled facilities.
11. That prior to occupancy of any residential structure on Lots 1,2,3,4, each owner of the respective lot shall be required to comply with Section 3-15, Primary Travel Corridors, Missoula County Subdivision Regulations, to be approved by the County Surveyor.

The developer has asked for the following variances:

1. Subdivision Regulation 3-2(5) Sidewalks. The developer is requesting a variance from the requirement of sidewalks along Mullan Road and Deschamps Lane. The developer states that the variance requests are because the proposed lots are rural lots and will generate a negligible amount of pedestrian traffic and due to the excessive cost and lack of need for such a sidewalk/walkway. Staff recommends approval of the request, subject to condition to waive the right to protest a future RSID to improve the roads.
- 2-3. Subdivision Regulation 3-2 Road Rights-of-Way and Surfacing Width (based on 3-2(11) Off-site Street and Road Standards. The developer is requesting a variance from the subdivision regulations for the right-of-way pavement surface and pavement width for the proposed Deschamps Lane. The subdivision regulations require a right-of-way of sixty (60) feet, and a face-to-face of curb pavement width of thirty-two (32) feet. The developer is proposing a right-of-way width of sixty (60) feet and a pavement width of approximately twenty-four (24) feet. The developer states that Deschamps Lane is a county road and would ask to waive the right to protest a future RSID to improve the road when the County deemed it time to improve the road.

Staff recommends approval of the variance requests.

Andy Fisher, Eli and Associate, stated all the conditions we talked about are fine and we don't have any problems. I do have a drawing of the change in the intersection of Deschamps and Mullan that isn't shown on the plat. I talked to Barb about where we would put this, the idea being to allow some right-of-way because that's not a very good intersection right now. This would give you a chance to bring in a right angle intersection into Mullan Road, by changing that condition we can just show it right on the plat. You would bring in the 60 foot and you would end up with a 50 foot tangent from the center of Mullan Road and 150 foot radius curve.

Bob Holm, Operations Superintendent, Road Department, stated, the proposal that Andy just described will benefit us in realigning that intersection which is very dangerous out there. If we went something of a flatter or less sharp curve it would have a major impact on that property, so it's kind of doing us both a service. We're going to achieve something that will be beneficial to the public but yet not be too drastic on that property and will accomplish what we need out there.

Michael Kennedy asked, Bob, are we going to abandon the balance of that right-of-way then on Deschamps Lane.

Bob Holm stated, probably not. We could if necessary, but it wouldn't be necessary. It will help us with site distance out there. We can keep vegetation down in that area. Mullan Road is a high speed road. It's 55 miles an hour out there so we need a lot of site distance.

Barbara Martens stated, in looking at the new easement location, the only thing that pops into my head in looking at that they would actually need to have a variance to the requirement that no single lot shall be divided by public street, road, alley, existing right-of-way or easement or another lot. Because we're ending up with that little triangular piece.

Andy Fisher stated, no, I drew that to show where the road would probably go, but in effect we would just make it all easement because there's really no value to the lot.

Barbara Evans asked, so we don't need to write anything down as a motion or variance.

Barbara Martens stated, if it's all easement then you're o.k.

Fern Hart stated, I have a question for Andy. On some of your stationary I just noticed that as Lot 4 will be developed as a single family residence. Are all of these single family residences?

Andy Fisher stated, yes, they're all single family residences.

Fern Hart stated, I read Shannon McNews letter on ground water monitoring. Are you going to be able to have individual septic systems?

Andy Fisher stated, yes. Based on those results, yes we are.

Fern Hart stated, I notice that there was sort of hope that you might consider clustering.

Andy Fisher stated, Zoe Mohesky wrote in her comments that she would ask us to consider it. I suggested it to the homeowners or brought it to their attention.

Fern Hart asked, how many already are there? There's one house.

Andy Fisher stated, there's one house on Lot 2.

Fern Hart stated, and there are no other homeowners there.

Andy Fisher stated, the owner of the house owns the entire 20 acres.

Michael Kennedy stated, I have a question about the access easement. I'm not sure what the intention of that access easement is.

Andy Fisher stated, it's driveway. Actually I'll end up showing another one between 3 and 4. It's a shared access. They're sharing the driveways. That is the existing driveway there. That's where the approach will be onto Deschamps Lane.

Fern Hart stated, it would be very creative if you would think of something with respect to clustering and that irrigation ditch and making that a really pleasant four lot subdivision rather than just houses in the middle right down the road.

Barbara Evans asked, are you wanting that as a condition of approval?

Fern Hart stated, I don't think I can put that on there, as a condition.

Barbara Evans asked, is there anyone in the audience who would like to speak in favor or in opposition of this proposed summary plat. There being none, I will close the hearing. Do I hear a motion?

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the summary plat and variances of Moderie Lots, based on the findings of fact in the staff report and subject to the following amended conditions:

1. That approach permits be applied for and granted for access to Deschamps Lane prior to construction taking place.
2. A one (1') foot no access strip to be provided along the Mullan Road frontage of Lots 3 and 4. Shared approaches will be required as shown on Moderie Lot layout.
3. That landscaping have a maximum height of 30 inches along Mullan Road within a minimum of 100 feet of the intersection of Mullan Road and Deschamps Lane to preclude reducing site visibility at that corner, to be approved by the County Surveyor.
4. The developer shall place the following statement 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 for the upgrading of Deschamps Lane, based on benefit, and may be used in lieu of their signatures on an RSID petition."

5. The right-of-way for the 90 degree intersection of Mullan Road and Deschamps Lane shall be approved by the County Surveyor prior to filing the plat.
6. A \$50 fee per lot shall be paid to the Missoula Rural Fire District toward the purchase of a large diameter hose.
7. The following shall appear on the face of the plat and on each instrument of conveyance:

"Acceptance of a deed to a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a Rural Special Improvement District for the installation of public sewer and water service and may be used in lieu of their signatures on an RSID petition."

8. That the plat states, "Driveways greater than 150 feet in length shall be constructed with a turnaround for emergency vehicles within 150 feet of the residence, with the turnaround having a minimum radius of 35 feet, to be approved by the Missoula Rural Fire Department.
9. That a no build zone encompassing the riparian area be shown on the face of the plat and reviewed by the office of Planning and program Development and approved by the County Commissioners.
10. That prior to occupancy of any residential structure on Lots 3 and 4, each owner of the respect lot shall be required to comply with Section 3-15, Primary Travel Corridors, Missoula County Subdivision Regulations, to be approved by the County Surveyor.

Motion carried 2-0. Commissioner Kennedy abstained.

HEARING - AMENDMENT TO RESOLUTION NO. 91-013 COUNTY FLOODPLAIN REGULATIONS

Barbara Evans opened the hearing on Amendment to Resolution No. 91-013, County Floodplain Regulations, but stated it would be taken under advisement for one week and continue the hearing for one week so that people could comment at the meeting the following Wednesday.

Bud Hettich, Planner with Office of Community Development stated, in preparing for this hearing, we did mail to all interested parties in the community, such as engineers, surveyors, environmental groups, State and Federal agencies, and most everyone else we thought of who might have an interest in dealing with floodplain issues. We also held a workshop and no one came to the workshop, no one commented throughout this process. I had one phone call on this issue. The Planning Board held a hearing on May 2nd, and they also had no comments from anyone and they recommended approval.

The Missoula County floodplain regulations were written in Missoula County Resolution 75-20 and adopted by Resolution 75-23, on March 28, 1975. Resolution 75-20 has been amended several times since. The latest amendments were adopted by Resolution 91-013, on January 30, 1991.

The purpose of amending the floodplain regulations are to:

- Update and clarify administrative procedures, specifying areas of responsibility, removing redundant language, add language to the sections dealing with the Comprehensive Plan and adding language to meet the State's minimum requirements;
- Streamline the permit process;
- Provide administrative procedure for appeals and variances; and
- Provide a method to require processing fees consistent with fee structures established by the governing body.

With the exception of Appendix A, all of the other amendments are within Chapter IV, Administration. The Staff requests approval and adoption by the Board of County Commissioners on the proposed amendments.

Barbara Evans stated, we will open the public hearing. Is there anyone who would like to comment in favor of or in opposition to the proposed amendments to the Floodplain Regulations? We will continue the public hearing to next week.

CONTINUATION OF HEARING AND DECISION ON REQUEST TO REZONE PROPERTY IN MILLTOWN/BONNER AREA FOR THE TOWN PUMP, INC. TRAVEL PLAZA.

Barbara Evans stated, at the request of Town Pump, this is postponed until June 7, 1995.

HEARING - INTENT TO CREATE RSID NO. 8919 (DUST ABATEMENT MAINTENANCE FOR A PORTION OF NINEMILE ROAD, WEST NINEMILE ROAD, REMOUNT ROAD, ELLIS CREEK ROAD, RIDGEWOOD DRIVE, RANCH LANE, AND PINEY MEADOWS ROAD)

Barbara Evans stated, during the spring of 1995 the residents living along the above described roads contacted County staff for assistance in creating a dust abatement district to serve their area. This led to a meeting with the Board of County Commissioners to discuss the creation of this district without requiring a petition in support. Those residents in attendance felt the majority of property owners in the area would support the creation of this RSID. One community meeting was held to discuss the district with the Board of County Commissioners and the County Surveyor in attendance. One additional informational meeting was held with one County Commissioner and the County Surveyor in attendance. Cost: The total cost of the treatment is \$50,000, the County will contribute 30% or \$15,000, reducing the cost to the residents to \$35,000 or \$119.86 per parcel. Duration of the District: This maintenance district will remain in effect after the initial treatment with the per parcel cost projected to be \$177.30 in the future. District Boundaries: Staff in conjunction with the residents attempted to include properties which derive a benefit from dust mitigation as well as including all properties which use the identified Roads to gain access to their properties. Protest: During the protest period which ended at 5:00 p.m. Monday, the 22nd, 185 protests were received. Staff was unable to verify 8 of the protests leaving 177 valid protests or 63% of the property owners.

By statute, if 51% of those paying the cost protest, the RSID fails. In this case, 63% of those paying the cost protested. Therefore, RSID 8919 fails. It is my understanding that by law they can resubmit it within six months if they choose to do so.

HEARING (CERTIFICATE OF SURVEY REVIEW) AGRICULTURAL EXEMPTION (BICK).

Barbara Evans stated this request has been withdrawn.

OTHER BUSINESS AND PUBLIC COMMENT

Barbara Evans asked for public comment.

Ms. Monroe stated, I have not paid my 1995 taxes. I will be able to pay one-half of the 1995 taxes when I get my Social Security check the 3rd, which is Saturday. And I'm asking for a delay to pay half the 5th of June.



Barbara Evans asked Michael Sehestedt, Deputy County Attorney, should we deal with that here or should we deal with that tomorrow morning at my office?

Michael Sehestedt, Deputy County Attorney, stated, we can do it in the regular morning administrative meeting. I guess I could say that on the issue of property taxes, if they're not paid by the due date, as a matter of state law we have to add the penalty and interest. The penalty is 1%, interest accrues at 2/3 of a percent per month. That we have to do but there would be no other action taken for nonpayment of 1995 property taxes. I would be happy to meet with you to discuss payment options.

Ms. Monroe asked, can you meet with me after this meeting?

Michael Sehestedt stated, certainly.

Wayne Jones from the Ninemile Valley area. I do want to let the Board know that the residents and landowners up there right now are going to be having a meeting on Friday at 6:30 at the Community Center. We are working together right now to create a dust control group of people to be able to put something on the road there so we can work with the Road Department and get this all coordinated. There are quite a few people up there who are very much interested in still controlling the dust up there.

Ross Best stated, as the Commissioners know I delivered a petition last week to the Commission and to the County Attorney's Office having to do with a conflict of interest question involving Stone Container. I will make myself available to the Commission and to the County Attorney's Office in case there are any questions, and I will try to be as helpful as I can in dealing with that. I thought I would mention that last week a group of us met for about thirty minutes with Governor Racicot in Helena about Stone Container. There's a group called Montana CHAIR, CHAIR stands for something I won't try to remember at the moment. CHAIR collected about 6700 citizen signatures on a petition having to do with Stone's use of chlorine and burning of plastics. CHAIR also collected the endorsements of about 115 small businesses. We related various concerns to Governor Racicot. It was a very positive meeting, I think everyone there was pleased by it. I mentioned to Governor Racicot it was disappointing that on the current State Health Board there was no member from Missoula or the Missoula area. Until recently Jeremy Thane, a Missoula lawyer, was on the Board but he was replaced. Governor Racicot acknowledged that that was a problem and discussed the possibility that in the coming months when the State Health Board is reconstituted as the Board of Environmental Review it might be possible to have a Missoulian on the Board. Governor Racicot did mention very favorably Garon Smith, a UM faculty member who is on our local health board and air pollution control board. I mentioned to Governor Racicot that there had been concern about a conflict of interest involving a member of the State Board in past votes regarding Stone and the Governor made a somewhat indirect statement, but I think he was telling me that my raising the question back in December and January had been responsible for the replacement of that member on the State Board. So, unfortunately, the State Board after we met with Governor Racicot made the vote it made on the opacity standard for Stone, but I know that there are a lot of us who are going to continue working to try to clean up our air. I thank you for your time.

Will Snodgrass, President, Chemical Injury Information Network, stated, I'm here to comment on the vote last week allowing the spraying of toxic chemicals on Missoula County roadsides. I note from the written records taken from the County that Commissioner Hart and Commissioner Evans voted in spite of pleas from a number of Missoula residents not to spray, Commissioner Hart and Evans also went against the wishes of Missoula Big Sky Science Department representatives, went against a Women's Voices for the Earth recommendations, Commissioner Evans and Hart also voted against the recommendations of the National Coalition Against the Misuse of Pesticides, the Northwest Coalition for Alternatives to Pesticides, and most disturbingly Commissioner Hart and Evans voted against the recommendations of Dr. Stephen Speckart, Dr. William C. Nichols, Dr. Craig S. McCune of Missoula Oncology and Infectious Disease practice. Now the Commissioners did take the advice of one William Otten who works for the County Weed Board. Mr. Otten submitted among other documents a document called "An EPA Report: Assessment of Potential 2,4-D Carcinogenicity Review" etc. and offered this. Now, a number of people who read this document assumed that it was an Environmental Protection Agency document. It is not. It is a phony document. I would like to read to you from a FAX I received from Jill Bloom, USEPA, Office of Pesticide Programs, this morning. "As you requested I am providing written information. I have attached a copy of the summary of the expert panel's report completed in March of 1994. Please note that it differs somewhat from the interpretive summary [Mr. Otten's document] which you faxed my colleague Judy Coombs yesterday. Those differences concern me because the interpretive summary could be perceived as an EPA document and to my knowledge it is not. I would be grateful if you can identify the source of the document so I can pursue these concerns. As for that interpretive summary of human exposure data which Commissioner Evans quoted from last week, the agency [that would be the EPA] is not ready to conclude that treated turf poses no risk or that 2,4-D is not detected in applicators. Again, any information you have about the source of these summaries is of interest to me." The document to which I am referring and which you relied upon to make your decision last week to apply toxic chemicals to the Missoula living environment was crafted, rather cleverly, by the pesticide industry and references to the source of that document were very handily left off the face of the document, so what you read and what you relied upon was a spurious document and I would submit that there is a possibility here that you may have been misled to some degree, perhaps innocently, by Mr. Otten, who does not know what he is talking about with respect to this issue. The literature on 2,4-D including the Journal of the National Cancer Institute Report called Herbicides and Cancer by Howard Morrison, Katherine Wilkins, Robert Tinenshugh, Yang Mao and Don Wiggle, definitely shows "reasonable evidence suggesting that occupational exposure to phenoxy herbicides, which, of course would include 2,4-D, results in an increased risk of developing non-Hodgkin's lymphoma. Moreover, some findings have linked herbicide exposure with cancers of the colon, lung, nose, prostate, and ovary, as well as lipemia multiple myeloma. Now you received approximately 100 pages of information on this very issue. I know because I copied it and gave it to you, and that documentation clearly demonstrated that we have some concerns about 2,4-D. The EPA, as you heard last week, says that they have not reached a decision on this compound and they are not willing to say it is not carcinogen. Moreover, you completely disregarded the effects of this pesticide which extend beyond cancer. Those would be effects upon the immune system, the reproductive system, the digestive system, the nervous system, etc. So in the face of what you classified as conflicting information, you went ahead and made a decision to spray. To spray an environment where our children will play, ride their bikes. I have a letter which a member of the community has asked me to read. She is not

able to take time off from work. It's very brief. I wonder if I might be able to read that into the record now. Then I'll be back next week.

Barbara Evans stated, you can leave it with us and we will put it in the record.

Will Snodgrass stated, I'll be back and read it next week.

Michael Kennedy asked, apparently Bill Otten, just listening to what you have to say, Bill Otten referred to it as an industry synopsis of an EPA study but not the EPA study itself. Is that correct?

Will Snodgrass stated, that is correct.

Michael Kennedy asked, do you have available the EPA study?

Will Snodgrass said, that will be coming to me by mail and Judy Coombs and her associate, Jill Blume, made it clear to me that Mr. Otten's document is in error. It does not agree with their synopsis. And as I have read they would not say, the EPA would not say what Mr. Otten's document says that there's no risk.

Michael Kennedy stated, you don't know when that will be available. You think by next week, though.

Will Snodgrass stated, I assume so.

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

#### THURSDAY, MAY 25, 1995

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioners Evans and Kennedy attended the Community Budget Meeting held at the Bonner School; and Commissioner Hart attended a "Stakeholders" Meeting for the Scenarios Planning Process held at the Missoula Children's Theatre.

Extension Letter -- The Board of County Commissioners signed a letter to Nick Kaufman of WGM Group approving a filing extension for Forty-Four Ranch Estates Phase II, making the new filing deadline October 7, 1995.

Budget Transfer -- The Board of County Commissioners approved and signed the following Budget Transfer and adopted it as part of the FY'95 budget:

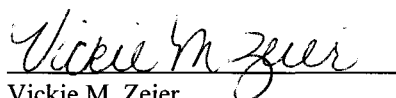
Control No. 95-014, a request from Building & Grounds to transfer \$875.00 from the Building Maintenance & Repair fund to the Capital-Technical Equipment fund for the purpose of purchasing a power pipe threader.

Also included was the following:

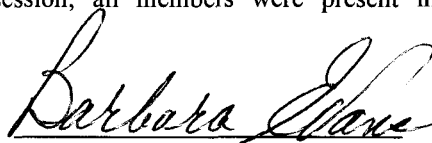
- \* Chairman Evans signed a Certificate of Substantial Completion with regard to County of Missoula Project Number RSID #8454, Maclay Addition Sewer Main Extension, with L.S. Jensen & Sons, Inc. as contractor and a contract completion date of May 9, 1995. The document was returned to Jesse Sattley, RSID Coordinator for further handling.

#### FRIDAY, MAY 26, 1995

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



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners

#### MONDAY, MAY 29, 1995

The Courthouse was closed for the Memorial Day Observed Holiday.

#### TUESDAY, MAY 30, 1995

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

#### DAILY ADMINISTRATIVE MEETING

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

Loan Agreement (INTERCAP Revolving Program) -- Chairman Evans signed the Form of Commitment Agreement Resolution, a resolution to the Board of Investments' INTERCAP revolving program; approving and authorizing participation therein and approving execution of the Commitment Agreement between the Board of Investments of the State of Montana and Missoula County for the INTERCAP Revolving Program for the purchase of replacing the Library's lighting, heating, and cooling systems, having a total project cost of \$134,995. The document, dated May 3, 1995, was returned to John DeVore, Administrative Officer for further handling.

First Amendment to Missoula County Flexible Benefits Plan -- The Board of County Commissioners signed the First Amendment to Missoula County Flexible Benefits Plan whereby effective July 1, 1995, the Missoula County Dependent Care Account Plan is no longer a Component Plan of the Flexible Benefits Plan. The document was returned to Hal Luttschwager, Risk Manager, for further handling.

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

**WEDNESDAY, MAY 31, 1995**

The Board of County Commissioners met in regular session; all three members were present. Commissioner Kennedy attended a Regional Strategies Initiative Meeting held at the Boone & Crockett Club during the day. Later in the afternoon, Commissioners Hart and Kennedy attended the MT Community Forestry Bus Venture Dedication Ceremonies held in the Gazebo; and at 5:00 p.m., the Commissioners attended the Fifth Grade Open House at the Lewis & Clark Elementary School.

DAILY ADMINISTRATIVE MEETING

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

Resolution No. 95-041 -- The Board of County Commissioners signed Resolution No. 95-041, a Resolution disclaiming interest in Glo Road in the SW 1/4 of Section 10, T14N, R19W to the point where it intersects with the traveled way. This Resolution does not intend to affect any rights which may exist in private property owners immediately adjacent to Bench Road in Section 10 to use Bench Road.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present was Commissioner Fern Hart.

Barbara Evans stated, we will recess as the Board of County Commissioners and reconvene as the Planning and Zoning Commission. Present were Commissioners Barbara Evans and Fern Hart. Also present was member Horace Brown, County Surveyor.

DECISION ON ZONING REQUEST (AMENDMENT TO PRIOR APPROVAL OF BARN CONSTRUCTION)  
ZONING DISTRICT NO. 4 - DAN AND PAM MORGAN (FROM MAY 24)

Bill Lindstrom, Missoula Rural Fire District Fire Marshal, stated, I visited the property at 3146 Pattee Canyon and the access is well within the uniform fire code regulations. I do have a problem with it being privately maintained and discussed that with Mr. Morgan, and told him that we may not be able to get there at certain times of the year during inclement weather. He said he understood that and was aware of that possibility. Missoula Rural Fire District would require all construction to be held to Uniform Fire Code standards as reviewed and revisions would require prior approval, and we do not oppose the zoning.

Fern Hart stated, it was really my request that brought you here. I'm concerned that the County continues to build in these interface areas and the concern I had was there was no comment, no particular comment from your office and I'm very grateful to you for going up and looking at the access. I believe I asked at the last meeting this will have a woodshake roof. It will not.

Bill Lindstrom stated, I believe it's composition, similar to what is on the house.

Jim Decker, representing the Morgans, stated, it will be asphalt shingles.

Fern Hart stated, I am certain I asked that. I appreciate getting that cleared up. I know how careful you fire folk are about those things, and also clearing from around the building so there's not low shrubs that will attract a fire close to a building.

Bill Lindstrom stated, I discussed that with the owner when I was up there and he's working on that very problem right now.

Fern Hart stated, I do appreciate this. We are going to do this very consistently and we do want your responses so that we feel we can say to the folks that move into that area that there are some conditions they need to meet in order to protect their houses and their lives.

Fern Hart moved and Barbara Evans seconded the motion that the Planning and Zoning Commission recommend approval of the request from Dan and Pam Morgan to amend their prior Z.D. #4 approval to construct a barn with expanded uses and greater height on property located at 3146 Pattee Canyon Drive, and I especially would note for the record that we have had a response from the Missoula Rural Fire District. Motion carried 3-0.

The Planning and Zoning Commission recessed; the meeting reconvened as the Board of County Commissioners.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners accept the recommendation of the Planning and Zoning Commission to approve the request from Dan and Pam Morgan to amend

their prior Z.D.#4 approval to construct a barn with expanded uses and greater height on property located at 3146 Pattee Canyon Drive. Motion carried 2-0.

CONTINUATION OF HEARING FROM MAY 24 - AMENDMENT TO RESOLUTION NO. 91-013 (COUNTY FLOODPLAIN REGULATIONS)

Barbara Evans asked if there was anyone in the audience who would like to speak on the amendments to the Floodplain Regulations. There being none the hearing was closed.

Fern Hart stated, I would commend the Floodplain Officer, the attorney, and Janet Stevens, the Director of the Office of Community Development for reviewing the floodplain regulations and bringing them into conformance with the State requirements.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the amendments to the Missoula County Floodplain Regulations with these following changes:

- On page 11 delete the second sentence of paragraph B and start the new paragraph as C.
- On page 13 the line in paragraph F becomes a new paragraph G and it begins with "Such files" should not be deleted.
- On page 14 C has two shalls. Delete the first one so the sentence would read: "Applicants who have been granted permits at the time of on-site inspection to determine compliance with permit specifications and conditions, shall provide the following:"
- On page 16, 4.04.A, line 2, delete Board of County Commissioners and replace with Flood plain Regulations Board of Appeals, and add: "Requests for variances from these regulations may be brought to the Missoula Floodplain Regulation Board of Appeals at any time."
- On page 17, C.2.g. and 3, changing to the Missoula Floodplain Regulation Board of Appeals.
- On page 17, paragraph 3.b., end the sentence after the words flood insurance and delete the remainder of the sentence.
- On page 17, c., end the paragraph at "life and property." Renumber the rest of that paragraph (which begins at the bottom of page 17 and goes to page 18) as 4.
- On page 18, Paragraph D, change the Board of County Commissioners to Floodplain Regulations Board of Appeals.
- On page 19, rename 4.09 to Public Notice. Replace the "if it is determined" sentence with: "At the end of the public comment period, the Floodplain Administrator shall either issue or deny the floodplain permit."

Motion carried 2-0.

HEARING ON PROPOSAL TO CONTINUE 0.5% LOCAL OPTION MOTOR VEHICLE FEE IN FY 1996

Action requested: Sign resolution to continue to assess the additional 0.05% local option motor vehicle tax. Montana Code Annotated 61-3-537 allows counties to continue to impose the extra 0.05% local option motor vehicle tax in addition to the 2% tax imposed under MCA 61-3-504(2). The Missoula County Commissioners have exercised that option every year since FY '88, and propose to continue using that option in FY '96. Passage of the proposed resolution would maintain the motor vehicle tax at 2.5% of the aver trade-in or wholesale value, effective July 1, 1995. This local option tax is no longer distributed to all taxing authorities. It is split between the City and the County.

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

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the proposal to continue the half of one percent local option motor vehicle fee in FY 1996. Motion carried 2-0.

HEARING - FLOODPLAIN PERMIT APPEAL SHANE KELLY EAST OF HIGHWAY 93 S., WITHIN THE SW1/4, SE1/4, OF SECTION 25, T11N, R20W.

Bud Hettich, Planner, Office of Community Development, stated there was a resident in the area that was going to get me a letter, and I haven't received it in my office, but it may be faxed at the Police Station. I called my office and had them check that out and they should be getting back to me soon. If it's there they will run it over. In proceeding with my presentation, I will keep this at a minimum.

Consideration of an appeal by Lee Yelin of Water Right's, Inc. representing Shane Kelly, disputing the decision by the Floodplain Hearing Officer denying a Floodplain Development Permit. On December 19, 1994, a floodplain development permit was requested by Shane Kelly, represented by Lee Yelin of Water Rights, Inc., to construct three single-family dwellings within the Bitterroot River floodplain.

On January 10, 1995, a hearing was held for the above request. At that hearing the applicants objected to the advertisement, and on the advice of Mike Schestedt, a re-advertisement was made and a rehearing was scheduled.

On February 22, 1995, a second hearing was held. The floodplain development permit request was denied by the Floodplain Administrator based on the findings and conclusions in accordance with the standards found in Section 4.01.B.1.

It is Staff's recommendation that the Board of County Commissioners sustain the Floodplain Administrator's decision denying a floodplain permit for Shane Kelly. I have given you a sample motion. I would like to explain that in the packet the first part has Mr. Yelin's request followed by the findings by Janet Stevens and some letters and newspaper items that were submitted during and after the hearing. The second part of my packet is what was presented at the hearing on February 22nd.

Lee Yelin, Water Rights Inc., stated virtually you have the whole floodplain permit file request probably in front of you, but I want to go over a few things that need clarification that appear to have caused some misconceptions about the project, just so we're all understanding and coming from the same points. First off, we met before the County Commissioners before we made this request because the original floodplain map by FEMA shows there is a Zone X on the property. That Zone X does not really exist. When we went in and surveyed it, Zone X is typically a 500 year floodplain elevation. In this area, the Zone X is below the 100 year flood elevation. Approximately, depending on exactly what site of that Zone X you're looking at, typically anywhere from one foot to two feet below the 100 year flood elevation. So that's why we came to the County Commissioners to start with. We could have just filed for the floodplain permit and according to Bud they would have just approved blanketly because the map shows a Zone X. But we surveyed in those elevations because we wanted to know whether or not we were going to need a gravity flow or a pump situation for the homes and the septic and found out that the homesites would require a pump system but that those elevations were incorrect on the original floodplain map and, therefore, there was no Zone X on the property so we could not build within that Zone X area since it did not exist. So originally we filed for a floodplain permit with three proposed building sites.

Those building sites, when we went back and surveyed, were below the elevation of the piezometers that were approved, those are ground water monitoring tubes that were monitored for elevation of ground water to determine what type of septic systems could or could not be installed at the sites. When I saw those elevations I was a little alarmed so I ordered the '72 and '74 flood photos of the Bitterroot to see what those sites looked like. During the '74 flood event they were under water. During the '72 flood event they were not under water. So I went back to the Kellys and said I did not feel those were good building sites or that we could get them approved. At that point they picked three alternative sites for their homes. We then submitted that information and when we went to the floodplain hearing there was some confusion and people were still using the elevations from the three original proposed sites not from the three new ones. So to clear that up, I've gone in and put a different table together so there's no misconceptions at all as to the elevation of the building sites and where they are. And I've got some copies for you on those and I'll hand them out right now. The table I just gave you shows the elevation and the proposed building sites and the piezometers which are just PVC tubes that--you excavate a hole down at least six feet, you put in this PVC tube and then you back fill around it, and then you monitor the depth from the ground surface to where the water elevation is. The reason that's needed is if you have six feet of separation of water you can put in a regular septic system. If you have less than six feet, say five feet, then you may have a specific type of fill system, and if you're between four and five feet then you need an engineer design system. If you have less than four feet you're out of luck. What this Table 1 shows is elevation of building site 1, 2 and 3 in relation to the base flood elevation of the 100 year flood. And then the piezometer are what they considered Zone X to be which was the 500 year flood, but as you can see in comparing those they are clearly not a Zone X. Virtually, I guess what we should have done is just come in and filed for the permit and not said anything, but that doesn't seem like the proper thing to do so we submitted the true elevations which ended up haunting us forever.

What the second table shows is so it's clear, these are the new proposed building sites. It shows where it says elevation in feet number 2, that's the current proposed building sites. Building sites elevation number 1 was the original sites requested that have been removed from the request. In Janet Stevens' denial of the original floodplain request, they requested us to go out to the property and find the three highest sites and come back with those as proposed building sites, which we have done and we had done that prior to her request, but that's where I think the confusion lies. They didn't understand that we had already done that. So I just wanted to put these tables together to explain it.

Virtually, what we've got and what we're arguing is about this much (signifies with hands). So your arguing here about this much dirt. One of the things I guess that concerns me the most with this denial is I put together a map showing existing housing development in the area and we have what we call an area called AE which on the floodplain map in the original request, page 18 of the original request, the area that's cross-hatched there and it says Zone AE, that's what we call the floodway and no building is allowed in that whatsoever. The area that is still shaded off to the left or to the west is the 100 year floodplain but it is still a Zone AE but it is not the floodway. Those white areas are what we call Zone X or 500 year floodplain elevations. There are no buildings allowed in the floodway yet we have 17 homes within a quarter mile of this property in the floodway currently.

Fern Hart asked, did they go through a permit process?

Lee Yelin stated, some of them have, some of them have not. Some of them are after the floodplain maps. The only one that I'm aware of that I know did not is the Leo Hansen property but that was exempt because it was in well before we had this set of laws. Now if you see these three little dots over here next to a little pond area, that was the original three homesites requested. Those elevations are on those tables I gave you as site 1 as the original proposed building sites. All three of those homesites have been moved off of the crosshatch area which was the floodway onto the other side of that thick line that runs north and south and kind of wavy. They're all on the west side of that pond now, so they're all in the 100 year floodplain, but what we call the flood fringe area. Now, when we originally applied for this, they wanted these homes in the floodway and then when we got all this information together, the survey and the floodplain maps, we suggested that they not put them there. They moved them over, however, the permit still got advertised as being in the floodway and that's when we held that hearing and then they decided to hold a new hearing because it was advertised incorrectly. Then at that new hearing we discussed that, but I think there was still some confusion that the homesites were going to be in the floodway and they're not, they're on the flood fringe. And that's why I put together that extra table. What I've got here now is a map showing existing homes in the floodplain and the floodway. We have over 40 homes in the 100 year floodplain neighboring this and I can't believe that not one of these homes is approved, but I can check to see if any of them have filed because some of them were built just a few years ago and I'm sure there's probably

some type of floodplain permit, or should have been from the County sanitarian's office when they applied for a septic permit. The homes in the red are in the floodway. The homes in black are on the flood fringe, much like what we're requesting. The purple dots are the piezometers in the Zone X that were approved, and the two little purple homes are where the proposed homesites are going to be and it has now been dropped from three homes down to two.

Your existing development and density is about one home per 4 1/2 acres. We're asking for two homes on 320 acres. There was some concern in the initial hearing that these parties were going to get these two homes in and then subdivide the property and we would have a lot more development in there. The proposed buyers want a conservation easement on the property for no future development and have pursued that and we're willing to accept a conditional floodplain permit that says no future development. However, I guess Janet Stevens said they couldn't condition the permit to that but once we get a conservation easement that would condition it to that anyway. Virtually, next I'd like to go over Janet Stevens' denial and point that out where I feel have disagreements on. Her denial of March 3, 1995, and then we responded April 5th. But first I need to feel a response because I guess I'm quite concerned that Janet Stevens' comments that she made several phone calls to us and attempts to get additional information and says that we never submitted it when in fact we did and it is in the file. So I guess I was kind of upset about that. There's been a lot of mistakes through this procedure and I guess I get kind of frustrated by the fact that we advertised it wrong, we've had to hold two hearings, and now there's comments we didn't respond when in fact we did and that information is in the file because I went down and looked at the file.

Fern Hart asked, did it come after she requested it?

Lee Yelin stated, no, it came before. Some of it came before she even requested it and it was in the file so it made me understand she had not looked through the whole file. Second of all, she then states we never received a map with elevations in on it and we never responded to her February phone calls. Well, in fact, we have responded to her February phone calls because we keep a phone log. We also submitted a letter to her in February of '95 after her saying that we had not responded.

Fern Hart stated, let me tell that's very hard for us. I have great respect for Janet and I think it's only fair to have Janet here, so I'm just not going to hear that. So you see, that's unfortunate for you.

Lee Yelin stated, and that's o.k. because I had this conversation with Janet. And it's not to--

Fern Hart stated, yes, it is.

Lee Yelin stated, no, no, let me further explain. It's not to criticize Janet it's just to show to me that I don't think the whole file's ever been reviewed.

Barbara Evans stated, let me also say that in regard to the issue of your returning phone calls, I don't know whether you reached Janet, but if I had my druthers and could be in Congress I would personally do everything I could to outlaw voice mail, because half the time you can't get a human being. And you may have called and she may not have gotten the call.

Lee Yelin stated, and that could be. And this isn't to attack any of this.

Fern Hart stated, let me just say one more thing. If I understand it right, all that we're talking about here is not the original permit. You have the second application, the second request is not even in the same area. I'm not sure but what she shouldn't hear what your second locations are. That's not our purview.

Lee Yelin stated, I understand that and you are correct.

Fern Hart stated, it's not even the same number.

Lee Yelin stated, no, the first hearing that we held did have both the old sites and the new sites in it. The second hearing had both the old sites and the new sites. This one today has both the old sites and new sites. Originally when we filed, we were going to request these three sites. We did that, but prior to the first hearing we found different sites and that is in the original application packet at the first hearing.

Colleen Dowdall, Deputy County Attorney, stated so when Janet saw the evidence, it was on the sites that you still want?

Lee Yelin stated, yes, that's correct.

Fern Hart asked, did she rule on your second sites.

Lee Yelin stated, I don't think so, even though those were the ones requested.

Colleen Dowdall stated, she had the evidence before her. He thinks she misunderstood and was ruling on the first sites, but the information was before her, the second sites. She denied them.

Lee Yelin stated, that's correct.

Colleen Dowdall stated, and what you're bringing here are those same sites?

Lee Yelin stated, that's correct.

Fern Hart stated, when I read through her responses and I read Doug Kikkert's, I don't think it is for the second site.

Lee Yelin stated, it may not be. I don't know that.

Fern Hart stated, but you see, that's very hard on us.

Lee Yelin stated, I understand that, because I don't know it either. It's hard on us.

Colleen Dowdall stated, I think we have to assume that the application and the evidence presented was for the sites that we are reviewing now. But whether she misunderstood or not--

Fern Hart stated, I'm not going to assume that.

Colleen Dowdall stated, I'm not assuming that she misunderstood either. I think you have to assume she didn't and that she said no.

Fern Hart stated, what I'm not sure about is that the ruling is on the second sites. I've read this stuff and I don't read it that way.

Bud Hettich stated, at the first hearing there was a number of--everyone that was there was allowed to present whatever. But it was determined that a new hearing would be scheduled and at that second hearing it was definite sure that those three sites were the ones that were shown in the flood fringe area, not the ones that were setting between the river and that slough.

Fern Hart asked, are they the same sites that Mr. Yelin is referring to now?

Bud Hettich stated, the ones that Janet Stevens made her decision on are the ones that they propose are their building sites today. Although they changed it from three to two.

Fern Hart stated, so the ruling is on those sites that are in the flood fringe.

(Bud Hettich is showing sites on map and discussion was had concerning Doug Kikkert's and Philip Maechling's comments on the building sites.)

Bud Hettich stated that the sites they commented on were in different areas but were discussed at the hearing and those areas that we suggested they survey to show that they were not, in effect, higher than the proposed sites. Doug Kikkert's memo to me was that he believed there was higher ground to the northwest corner of that because of the vegetation and the tests that were done previously. And that was what Janet Stevens wanted from the applicant, to survey this area to prove that there were no other building sites higher.

Lee Yelin stated, let me go back because you seem to be concerned--I have a lot of respect for Janet Stevens too and I think she understands this procedure quite well and the process quite well, and some of that confusion is our fault because the individuals originally requested property sites in the floodway rather than the flood fringe. And since that application showed both it was very easy to misinterpret it. However, I'm assuming just like Bud, because we held that second hearing, that it was clear that these building sites were in the flood fringe.

Fern Hart stated, I will assume that too.

Lee Yelin stated, but I certainly understand, and Bud and I have both been confused in the process over changes and things like that that have taken place. And that's why I made these two new tables today so it would be really clear as to what the original proposed building sites were and what they are as of today. We have gone out, we did not have to go back out and re-survey based on Doug Kikkert and Phil's comments, because the piezometer areas which is in the northwest corner of the property, which they feel is higher elevation, is actually lower elevation than the proposed building sites. And you can see that from the table I just submitted to you today. If you look at either one of those tables, it gives you elevations of both the piezometers. The elevations of the piezometers, you can see the highest piezometer is 3181.0. All the proposed building sites, except for site 1 are that elevation or higher. So in effect we have surveyed the property and found the three highest sites that we could find on the property and that's what the current proposed building sites are. There are changes in vegetation, but I don't think that's due to elevation, and I guess at this point I'm real concerned for Ogilvie's whether this goes through or not. When you look at this map and you see the density of all these homes in the flood fringe that we're going to deny these two homes on 320 acres and we have 40 plus homes on less than 5 acre lots.

Fern Hart stated, that's not the point. You couldn't build on all those 320 acres.

Lee Yelin stated, that's correct. The building area which we're looking at is about 65 acres for the two homes.

Fern Hart stated, not all building sites.

Lee Yelin stated, within the flood fringe area. There's 65 acres of this 320 that are in the flood fringe.

Fern Hart asked, Bud, I'm surprised at the number of homes in the flood fringe. Were those allowed by floodplain permits?

Bud Hettich stated, I would say just at first glance here that--I would say five have been done by permits. Mr. Ogilvie's and two others that were done in the 70's and I did two since I've been back over at OCD. And the two that I did were at the outer edge of the flood fringe fronting on the 500 year with some fill going into the 100 year area.

Fern Hart stated, I'm asking in the flood fringe.



Bud Hettich stated, in the flood fringe, yes. Those five--

Fern Hart stated, five. How did the others get built?

Bud Hettich stated, in the flood way. You'd have to know when they were built. Our regulations and our maps came to be in 1975. So a number of those could have been done prior to '75 and some could have been done without permits. We didn't have county-wide building compliance permits. We did for a while when the Building Department inspected county-wide, but again, I would have to say they were done prior to '75.

Lee Yelin stated, I have some '72 and '74 photos and there's quite a bit more density now than there is on these photos, so I imagine the majority were probably done illegally, except for the five he's talking about permitted. There are some prior to '75 and there was no law so they could go ahead and build those. The ones after '75 have been done illegally, which is probably the majority. Especially the ones in the floodway. There's no way you guys would approve those. I don't want and our clients do not want to make a bad situation worse like you've got down, well Ravalli County does, like at Poker Joe for example in Florence. That's why we're trying to go through the permitting process and do it correctly. What I've got here now for you to look at, I've got the '72 and '74 flood photos. The original proposed building sites which we're not talking about anymore were not under water in '72, would have been under water in 1974, and we're assuming this to be about a fifty year event. Nobody can tell you whether it's a hundred year or whatever, but it's a fifty year event or less to my understanding. And we don't have any aerial photos of a hundred year event on the Bitterroot. In all cases, these proposed building sites that we're dealing with now are high and dry, and much higher and dryer than the existing developments that are in there. There is one section where the access road is under water but there's no culvert there and there's a low spot so water pools up. The Kellys or whoever ends up building on this property, would go ahead and update that to county specs by putting in a culvert.

Fern Hart stated, I have a question for Horace. Is it good County policy to move water through a culvert in case of a flood and in every case?

Horace Brown, County Surveyor, stated, it depends on where you're moving it to. If you're damaging somebody else's property by the placement of a culvert, then you may increase the liability to the County and we probably would object to putting a culvert in if it's going to damage property. If it hasn't been there for years, unless it's on the same property as the person that owns the land and he says o.k., we probably wouldn't want the culvert there.

Lee Yelin stated, if I show you these air photos you might get a better idea. What we've got there is no direct connection with the river where this water backs up. It's ground water that raises. It raises on both sides of the road and makes a dam, and we talked to those neighbors on the other side who want the culvert, because what it will do it will help water go through their property and then it has a direct connection back to the river or to one of the channels.

(Lee Yelin displayed two photographs to Commissioners Hart and Evans. Fern Hart asked for clarification of location of sites and flood fringe. Bud Hettich pointed out the corner that Janet Stevens wanted surveyed. Lee Yelin explained that it hasn't been surveyed because no building would take place there because there are trailer houses across the road.)

Lee Yelin stated, let me show you another air photo which will show you the difference of where the piezometers are in that one corner which he is talking about. (Lee Yelin displays air photos with overlays showing where the flood way and the flood fringe were and the piezometer sites and the proposed building sites. Bud Hettich then displayed a map, one inch equaling a thousand, showing piezometer areas, and elevations.) I guess in regards to what Bud just showed you. He's showing piezometer, the highest elevation one is 3181.0. That's that one that he's showing to the north and north northwest. But our building sites are a foot and a half higher than that. I did not survey that one little corner piece right there which is about 2 1/2 acres because the people do not want to build there. And frankly I wouldn't either build on a road across from a trailer. Because we're still within the flood fringe even on those areas and we would still be at this hearing even with those properties. We have one more thing I guess I'm concerned with is if the City or the County tends to pass stricter laws than what State law requires, and State law requires that you can add fill to a flood fringe area to build on, then we've got a problem with the new law that was passed that says that the counties cannot pass stricter ordinances than what State law currently requires. I'm not sure what the enactment date of that proposed legislation is.

Fern Hart stated, October.

Lee Yelin stated, if that's the case we'll be back here in October. Otherwise, I guess--Mr. Ogilvie's held this 320 acres for a long time without development because he didn't want to see it developed. He now has to retire, he can no longer take care of that property. And this is his retirement. So, if we can't sell this with a building site then his avenue of what he requested to do was to go in and mine it for gravel and log it. I don't really want to see that and most of the opposition to this project is from people on the other side of the river because they like to view this property. I wish some of them were here because I'd rather view a 320 acre parcel with two homes than I would gravel pit and logged area. But again what we're arguing is over this much.

Barbara Evans stated, that isn't 18 inches, Lee.

Lee Yelin stated, we're not arguing over 18 inches. We're arguing over about 6 inches.

Fern Hart stated, then explain that to me on this.

Lee Yelin stated, on those two tables you were given. Look at the one that says 195 up on it and it has base flood elevation and then building site 1, 2 and 3. There's one that shows 1 and 2. See where it says elevation and then it says flood elevation in feet. Look at building site 3. You have the 100 year flood elevation and the elevation of building site 3. It's half a foot. Then we would be in Zone X if it was a half foot higher. We could go outside and then be in a Zone X area and we wouldn't have this problem. But we're about a half a foot off.

Barbara Evans stated, let me ask Colleen a question or Michael. It seems to me that Lee is stating that there is a State law that allows people to add fill to bring the property up and I think it requires three feet above the 100 year flood and then they can build. Is that what the State law says?

Bud Hettich stated, I think the State's minimum standards--the County regulations require 2 foot freeboard from the first living floor.

Barbara Evans stated, does that mean two feet or three feet above.

Bud Hettich stated, what it means is that you fill above the base flood elevation, and I suggest always six inches, that way when you get over to your building site you've got a six inch foundation showing, then on top of that you've got a 12" floor joist, the 6" raise in the fill, plus the 6" concrete, plus the 12" is a two foot freeboard. Then your first floor elevation is 2 foot above the base flood elevation.

Colleen Dowdall stated, so where you're living is 2 foot above.

Barbara Evans stated, I thought you had to fill.

Lee Yelin stated, no, you just have to have your house at 2 feet above it.

Bud Hettich stated, there's a couple of other points here I would like to clarify. One thing about, the State has concurred with me and the Feds also concur, that should anyone find a location within the designated flood fringe area or even a floodway that is higher than the base flood as recorded by FEMA, then no permit is required. So if he went to that northwest corner, even though it shows flood fringe gray on the map, if they came in with a building site that was above the base flood elevation, I could issue a permit without a floodplain permit hearing. And the State has concurred with that. And we have done that out here on the Clark Fork.

Barbara Evans asked, is that the reason you issued the five permits previously?

Bud Hettich stated, that, plus they provided fill, but they showed that they needed fill. In another area they were definitely above and their surveyor has certified that. They have put their life on the line by saying the elevation is at this point and the building site is at this point.

Colleen Dowdall stated, and I think he's also attempting to justify Janet's request that other areas of the parcel be surveyed so she can determine whether there is an area that is outside of the 100 year floodplain or the flood fringe that's more appropriate, because that is one of the criteria for determining whether a permit should be issued. Is there another more appropriate place on the parcel for building. And that was one of her basis for turning down the permit.

Barbara Evans stated, and I would think there are two components to that. Other and appropriate. And apparently there is another, but it isn't appropriate.

Colleen Dowdall stated, perhaps appropriate for flood purposes and not aesthetic.

Lee Yelin stated, let me go on to add one thing. They seem to think that northwest corner of the property is higher, but as we surveyed it was going down in elevation and it wasn't going up. So my guess is it's going to be very close to the proposed building sites and what we did is we found areas that had natural high spots for those proposed building sites and I'm not sure you're going to find anything on that property any higher than this. But the applicant has already spent in excess of \$5,000 doing a lot of research on this property and at this point I don't think we're going to get them to o.k. me to go out and do any more survey work.

Michael Sehestedt, Deputy County Attorney, stated, I think we could probably solve the elevation of that northwest corner by looking at the two flood photos and a flood is a nice level. If they're both under water we can assume they're approximately the same.

Fern Hart stated, neither is under water.

Lee Yelin stated, it looks like there's dryer vegetation there, because there's no pine trees in that area. But it's been cleared and farmed so it's kind of a disillusion that that type of vegetation isn't there because it's been cleared.

J.R. Iman, Realtor, representing Mr. and Mrs. Ogilvie. Two short comments I would have about this situation. You ladies remember we came to you in November and asked how to go about this process. And at every juncture through this process we've gone through professionals and tried to find out what was true and not necessarily what was on a map that was generated from an aerial photo. I would like to address myself to two things. First of all, if you look at our map with the little red dots on it, it shows that Missoula County has a history of approving or of accepting homes in this area. If you take a look in here where it says 25, Mr. and Mrs. Ogilvie currently own the only piece of ground left in this entire area that ever could have any kind of septic on it whatsoever. And this is the entire piece of the property that they own. They have no other choice. This property obviously has a very limited value if it's not possible to build at least one or two homes on it. It is their desire, of course, to do what already has been proved in all other areas around here before rules were in place and by Mr. Hettich's discussion after rules were in place. The people that I represent who wish to buy this property want that same thing. They want two homes on 300 acres. On this map there's approximately 65 acres that is in the flood fringe where other homes exist. Through our engineering we've located elevations. The County themselves have already done the piezometer tests which is the water monitoring that tells how high the water comes up underneath the soil. The County would approve those four sites today if we had not personally engineered it and said that I'm sorry, your maps are wrong. But we have proved that these four sites are acceptable for septic disposal. We would like two homes to go with those four sites. We're not asking for four sites, we've already approved four sites. If you take a look at your maps and the information and the two tables that were given to you, the homes that we wish to build are

above the sites that are already approved for septic by monitoring. And if you take a look, your point is very well taken, acceptable and legal. The people that I represent as buyers do not mind moving the septic waste to a different area. But we have found the highest sites on the property. They are acceptable home sites and we have proven through the County records, four sites that are capable of accepting septic waste. The other thing I might leave you, these two maps are actually aerial photos of the property and I'll leave one here that you can look at. As you look at that sheet, the black line down the center shows the difference between where water flows on the east, which would be on your left, and on the right the area what is in the floodplain admittedly but is the only site on this property that could possibly accept septic. The piezometer sites, the first two that were put in by the County to test the depth of water, are all lower than the two homesites. We've had comments within this proposal that this is an infringement upon the public's use of the river. You can see by this photo physically that the two homes located where these folks wish to build their homes are at least a quarter of a mile from the river. They are screened visually from the river and also from what they perceive as lesser quality development up on the road in the right hand corner of the airplane wing. Their proposal seems legitimate. The only reason that we're in front of you folks is because of conflict of information, there's no place to go back and explain only to a higher authority. We'd love to go to Janet Stevens and say, hey, here's new information, would you reconsider this. But that is not the process by which the County operates in this particular situation. Once again, on the map with all the little dots on it, the area where it says number 25, that whole area right there is the right side--basically this entire photo, everything from where it says half mile down almost to the bottom of the picture, that's the half mile that these folks own. We're asking for a density one-tenth the density of all the other homes in the area and we are not asking for further development.

Fern Hart stated, I have some questions. Bud, the piezometer test is the height of the ground water?

Bud Hettich stated, I believe so.

Fern Hart stated, so what we're learning by looking at this is that the elevation for building site 1 is .910 higher than the ground water.

Bud Hettich stated, that's the part that's confusing me now. Has it been said that there was elevations of the ground level at the top of the ground at those piezometer sites?

Lee Yelin stated, those survey elevations are at ground level at the piezometer sites.

(Lee Yelin displayed to Fern Hart map regarding the survey at the piezometer sites.)

Barbara Evans stated, let me see if I can explain it. When you put these things all in the ground, and the ground water comes up to a certain height, it's actually sort of like a level in a glass. And you measure from where the water is to the top to determine how much elevation is left.

Michael Sehestedt stated, strictly for purposes of determining the separation of ground water for purposes of installing a subsurface sewage disposal system.

Barbara Evans asked, it isn't to provide elevations?

Lee Yelin stated, the only reason we surveyed those piezometer sites was in relation to the home sites to see if they had to be pump systems or ground disposal.

Fern Hart asked, and which will they be?

Lee Yelin stated, they would be able to be ground disposals.

Fern Hart stated, I still don't know where the ground water is.

Lee Yelin stated, if you look in the original packet that Bud put together, he put the ground water monitors in there and it is page 6. What that shows at that point Russ Hansen was looking at purchasing property and they put in the piezometers and measured the distance from ground elevation down to ground water--to just determine the separation of soil between ground surface and where you hit ground water so when you put in a drainfield, your drainfield doesn't leech into that ground water. So they want certain minimum height. The only reason we surveyed it, you called them survey points, and that may be--that's all they are for at least for what we're dealing with in the floodplain hearing, and if you look at it that way that might be clearer.

Fern Hart asked, so how far is the ground water?

Lee Yelin stated, it depends on which hole you're looking at. It raises from 5.9 feet which is the highest down to--

Fern Hart asked, is that a site you proposed?

Lee Yelin stated, those two ground water monitors, those aren't building sites.

Fern Hart stated, so that's where you put your septic system.

Lee Yelin stated, correct.

Fern Hart stated, and would you choose to put it at number 1 and number 7.

Lee Yelin stated, you would want the higher one, of course. But it's going to depend on whether or not the building sites are approved. Of course, you would want to pick the one with the most separation as possible. Those are in the higher sites.

Michael Sehestedt stated, with that ground water data that I've just heard, these sites will require engineered systems.

Fern Hart asked, whose property was--the section just above 25, Trudy Lane.

Lee Yelin stated, that's Leo Hansen's.

Barbara Evans stated, I'm going to open the hearing to public comment on this. Is there anyone in the audience who would like to comment favorably or unfavorably upon this proposal.

Anita Gleadall stated, I just want to let you know, one thing I did buy across the river from the Ogilvies. When I bought my land I was also told that I could not build on the floodplain area so I had to look at a different area. I would like to have lived closer to the river myself. So I feel that there are reasons for the laws to be made, regulations to be made. And it seems like looking out at the Florence area, there is things that have been developed without taking a big interest into it. And I just feel that laws are there for a reason and I don't think that this State--we don't need anymore taxes or anything to take care of people that have had flood problems and stuff.

Fern Hart asked, how close are you to the river?

Anita Gleadall stated, I live on top of the hill. I'm not on the river. I'm building on the hill. Also, Mr. Ogilvie did buy the land at one time for his own reason. I don't think his financial needs must be--the people of the Bitterroot Valley a burden for us to take care of. I mean, he should sell the land for what it's worth and what it is. He knew it was going to be floodplain and he knew maybe one of these days he was going to sell it. So, I bought the land and I've got to take care of my own retirement later on. But mainly, I just think--I'm just worried about the laws, the regulations. The people of Montana have made the regulations and the purpose was to protect other people, people that--so we wouldn't be flooded or damage our river or elsewhere. I just want that to be clear. At one time we talked about their surveyor, and I don't know if he was really a certified surveyor. It was someone that just happened to work with Mr. Yelin, so I'm not sure--I'm kind of lost if he is a certified surveyor that did this work. Also, now their down to two homes. Is the homes going to be two homes on a five acre or is it one home per five acre. I know that area is supposed to be zoned either 4 1/2 or 5 acres per home.

Barbara Evans stated with 320 acres--

Anita Gleadall stated at one point it looked like they were going to be very close to each other. That was another thing I needed to know. I just hoped you've looked at everybody's letters.

Barbara Evans stated, I would just like to state for Anita and for myself trying to work this out. That part of the laws, Anita, allow for variances. That's why they're here. I'm going to say this so that you folks can jump in and tell me if my thinking is wrong. I don't believe that, in my mind, that density is the issue. In my mind, the issue is the location, potential location of these homes and since this is a floodplain hearing and a floodplain variance request, I think it has to deal with the floodplain issue and whether or not the water, if it rises, can cause damage either to the proposed homes or cause damage to other homes because of the placement of these. Is that an accurate assessment?

Colleen Dowdall stated, with the exception that this is not a variance request. It's just an appeal from the turn down of an application--that you are allowed to permit development in the floodplain if it meets certain criteria that we have in the regulations. And in Janet's report she goes through each of those, and in Mr. Yelin's request for an appeal, he goes through each of those criteria. Then it's your job then to also make findings on each of those.

Barbara Evans asked, do we have to make findings on each one.

Colleen Dowdall stated, they don't have to meet each one. They are factors that you must consider in determining whether they should receive a floodplain permit and they are listed in the report.

Barbara Evans asked, is there a law that says if a person owns a piece of land that the government must allow them to use it, even if it doesn't meet the requirements? One of the comments that I--and I can't quote it verbatim, was something to the effect that these are the only potential sites on these pieces of property and I'm thinking to myself if someone had a piece of property that was a crater, as an example, and the fact that it's in a hole doesn't mean that we have to allow someone to build on it. Unless there is a suitable site based on the flooding issue, I don't see why we have to do any specific thing, and that's what I want to know.

Michael Sehestedt stated, what you're getting to is the taking issue and the question of when a regulatory use becomes a taking. The leading case, I believe, in this application is the Luther Glan case and essentially the standard is whether or not there is any economically viable use of the property. Regulations do not have to and do not constitute a taking if they limit the profitability or limit the uses to which the property can be put. As long as there is the possibility of some beneficial use of the property, then there is not a taking. In this case, the property has value and use as agricultural land. It has been so used. And I think that that would be sufficient to defeat a taking claim. However, I don't think that that's the fundamental issue before this Board at this time. What is before you is, whether or not, based on all the evidence and information presented, if whether or not under our floodplain regulations the requested permit should be issued or whether it should be denied. The criteria against which a permit is tested are set out in both the decision and the appeal and I believe accurately reflect, in both cases, the criteria that are set out in our floodplain regulations. This is not a prohibited use within the flood fringe. It is, however, a use which requires a permit which may be granted or denied based on the conditions set out in the regulations. So, to grant this would not be a violation of our floodplain regulations,

and denial would not be either. You need to measure all of the facts and determine whether or not what they're proposing is appropriate for the issuance of a permit.

Barbara Evans asked, Bud, if they wanted to build on the spots they've designated, do you feel that the elevations are such that they would not have to put fill there?

Bud Hettich stated, they would have to put fill where they selected next to that slough area.

Barbara Evans asked, how much fill?

Bud Hettich stated, I would recommend a foot. But in saying that, there's one other issue that was brought out. In the letter appealing this referencing the State's minimum requirements, that there is no regulation requiring that you fill off of a high spot to gain a building site. What they propose is an island out in the flood fringe area, whereas if they had a building site, if it was large enough without fill, then they should do that. But if the building site is limited then they should fill off of that high point and that's covered by the State's minimum, that the fill area is contiguous to areas naturally above the base flood elevation. That's why we recommended the X area, the 500 year. And there is no information available today as it was February 22nd, that that area on the northwest corner, which is nearly 2,000 feet from those piezometer locations with those elevations that could possibly be higher ground that would be above the base flood elevation, which would require no permit and would be an acceptable building site.

Barbara Evans stated, that's ancillary to the issue because they don't want to build there. The issue is whether we ought to let them build where they want to.

Fern Hart said, I would say this for our discussion here, is that I've looked through Janet's recommendations and I think I can support all of them. I've looked through the rebuttal. I think the question really is whether or not there is other land in the area that would be acceptable and we are assuming that there is other land and that it is higher and that seems to me to be the most important decision to make in a flood fringe. I also understand from reading the floodplain regulations that mobile homes are often in flood fringes as that is an area where people do allow mobile homes.

Bud Hettich stated, I think in this case it's cheap land and cheap housing. And how they got there, when they got there, is anyone's guess. As I stated before I know of five that were done by permit and if it's true that there are all these other homes out there, and I don't doubt that, I don't know how they got there other than to say that they could have been there prior to 1975 when that area was delineated, designated and regulated for flood hazard or they came in later illegally.

Fern Hart stated, another thing I want to say is, taxes are not an issue. We have determined that residential development costs more in services than it returns to the County. That is the case and I don't see an increase in the benefit to the County and I don't accept that as that. I think if those roads flood the County will have to go out there and bail folks out. I don't support this.

Lee Yelin stated, I guess I want to put the rest the delusion of other sites on this property as higher elevation.

Fern Hart said, you can if it's surveyed.

Lee Yelin stated, I can prove it to you here. You have an irrigation ditch that's running to the north, northwest. Water doesn't run uphill, it runs downhill. These building heights are higher than the piezometers. They're saying this site's higher than these sites. Then why are the irrigation ditches running that direction. We've found the highest sites we could find on the property. But I do have a question regarding the taking issue. If we're going to approve certain ones in the flood fringe and not other ones, do we have a problem with that?

Colleen Dowdall stated, no, we are allowed to look at each individual site based upon the information that is brought before us, and it may be that on other sites where we have granted a permit, we asked for the information about whether there was any more appropriate site in terms of elevation, and that information was given to us and those didn't exist.

Barbara Evans stated, so let's assume we in exactly the same position. There are no other locations.

Colleen Dowdall stated, we have no way of knowing that, except if you take the information just presented to you about the direction of the irrigation ditch. I think Janet did it based upon the fact she asked for other areas to be surveyed, and the Floodplain Administrator has that option, and it wasn't presented to her, so she assumed there were other sites that may be less prone to flooding. That's the language of the regulations.

Fern Hart stated, the only thing I would say is that the letters that I read discuss, and they're from folks in the area, discuss building in the flood way. And this is not building in the flood way and I have not considered them.

Barbara Evans stated, I wish I had a real clear picture in my mind of what is the right decision to make here. Mr. Ogilvie, did you wish to say something? I hate to tell you but I have another meeting in 15 minutes, so if we can tie this up that would be good.

Alex Ogilvie stated, I've owned this ground for 39 years. I thought when I got ready to retire I'd be able to get a dollar or two out of it. It don't look like I'm going to. When I bought the property there was no such thing as flood way or flood fringe and I never have seen it flooded and I've been there 39 years. Where they want to build these houses, that's the highest piece of ground down through that stretch where the old ditch ran. Water runs from either side to the river or used to and to the west. I guess it's up to you people to decide.

Barbara Evans stated, some of my thinking, which I'll throw out for discussion, Fern, is there are certainly numerous houses in the area, some of them in a much worse place than these are being recommended. How they got there I haven't a clue. I have lived here for many years, I have seen floods, but I don't know if they've been in that particular area. If we

gave permits to folks under similar circumstances, I think that should play in our thinking, but I don't know that for sure. I've also seen floods, and I've had people call me in the night and say I need sandbags because the water is rising. We didn't tell them they could put the houses there in the first place, but 3:00 in the morning they wanted us out there with sandbags to protect their property. As Ms. Gleadall points out, that should not be the responsibility of everyone else in the County to provide sandbags for you in the middle of the night or whenever. I think that there is a potential for flooding in the area. I've seen much of the Bitterroot flooding in my time here. I can't say that it has been in this particular area but I've certainly seen some flooding. I think putting houses in the way of the water is a dangerous game to play, and I'm not even going to discuss the septic system, because I don't think that's my responsibility. That's up to the Health Department to decide. So all this conversation on piezometers and whatever, I don't think should have been here, I think it should have been with the Health Department. If you can prove elevation versus a flood, that's all I think that I should have heard. It would have been far less confusing. I always like to try and give people the opportunity to use their land because I think that's the fair thing to do if there's anyway to do that. I am concerned, and I really don't want any more calls at 3:00 in the morning telling me to come bring sandbags. I haven't got any. And that's certainly beautiful land and I can understand why somebody would want to build there.

Fern Hart stated, I don't think that you do a service to the County by continuing to build in an area where there shouldn't have been buildings before. I don't know what was the determination for that, but I don't think that's an excuse to continue. I can't support this.

Barbara Evans stated, the only other thing I would throw into the conversation is that if Janet Stevens did not have elevations on which to base the comment that there were other, higher places on which to build, that that decision may have been based on no information or erroneous information.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners sustain the Floodplain Administrator's decision denying a floodplain permit for Shane Kelly, for property located east of Highway 93 S. within the SW1/4, SE1/4, of Section 25, T11N, R20W. Motion carried 2-0.

Lee Yelin asked, what is the process now with this appeal. Do we go to District Court with your denial?

Michael Sehestedt stated, an appeal would be to the District Court of the denial. The time of appeal is 30 days. You can also request a reconsideration if you come up with some additional data.

#### OTHER BUSINESS

Barbara Evans stated, I have asked Jerry Marks from the Extension Office to come over and address us. To give a little background for the record, we have had some concern expressed by certain members of the public in regards to our awarding a bid for weed spraying along highways. I was willing to hold that in abeyance for a short period of time to do further looking at it, however, I asked Jerry to find out whether we were too far along on the awarding of that bid to make any changes, and I will ask him to speak to that issue for us.

Jerry Marks, Missoula County Extension Office, stated, I did follow up and check. The bid was approved two weeks ago. The bid has been let, the contractor is already in progress of doing that work, which means if we pulled it we would be in breach of that contract. My recommendation is that we do not pull that contract. The second thing, there has been a lot of discussion as far as the use of herbicides along roadsides. The Weed District's policy has been to give priority to those areas that have organized groups and want the spraying done. The State Highway itself may have some problem areas of disturbed sites with weed problems that they want treated. We also have in place a policy that if a landowner does not want the roadside treated we do have signs and can work it out with them. So we do have some things in place that will help maybe deal with the issue a little bit. The other thing I will say, there's been some interesting of discussing this further. The Weed Board has not been directly involved. The landowners have not been directly involved. So I would be happy if there could be a positive move to try to bring some of these interests together. If it doesn't look like that, I may have to rethink it, but I'm willing to explore it.

There being no further business to come before the Board, the Commissioners were in recess at 3:35 p.m.

**THURSDAY, JUNE 1, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a MAEDC dinner meeting with U.S. Senator Conrad Burns; and Commissioners Hart and Kennedy held a Community Budget Meeting at the Lolo Community Hall.

No Administrative Meeting was held; however, the following items were signed:

Audit List -- Commissioners Evans and Hart signed the Audit List, dated May 31, 1995, pages 5-33, with a grand total of \$197,436.81. The Audit List was returned to the Accounting Department.

Request for Partial Reconveyance -- The Board of County Commissioners signed a Request for Partial Reconveyance to Western Title Escrow or any successor trustee stating that Missoula County is legal owner and holder of the note and all other indebtedness secured by that certain trust indenture dated March 29, 1994, and recorded at Book 410, Page 1142, Micro Records of Missoula County, where Robert J. Rangitsch and Helen F. Rangitsch are grantors, Western Title and Escrow is trustee, and the County of Missoula, Missoula County Commissioners is beneficiary. The value of the trust property exceeds the value of the obligation secured. Therefore Western Title Escrow is requested and directed to reconvey without warranty Lot 2, Rangitsch Addition No. 4 to the parties designed by terms of the trust indenture.

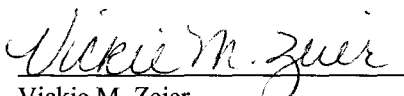
**FRIDAY, JUNE 2, 1995**

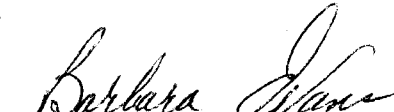
The Board of County Commissioners met in regular session; all three members were present.

No Administrative Meeting was held; however, the following item was signed:

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for the month of May, 1995.

Resolution No. 95-042 -- The Board of County Commissioners signed Resolution No. 95-042, a Resolution to continue the 0.5% Local Option Motor Vehicle Fee in FY'96.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JUNE 5, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners conducted a Community Budget Meeting at the Frenchtown High School Commons.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending May 31, 1995.

**DAILY ADMINISTRATIVE MEETING**

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated March 29, 1995, between the Missoula Board of County Commissioners and Missoula City/County Health Department with regard to conducting a survey of water availability and use in the Missoula Irrigation District ditch system, as per the terms set forth, for the period from March 29, 1995 to September 15, 1995 and having a total cash value of \$10,000. The tasks, schedule, and budget contained in the attached "Missoula Irrigation District Mapping Project Workplan" represent the scope of work to be accomplished under this Memorandum of Agreement.

Other items included:

- 1) the Commissioners approved the request from MACo for a contribution of \$500 for Montana Local Government Energy Committee.
- 2) the Commissioners, according to MCA 15-16-702, ordered the County Treasurer to cancel personal property taxes that are more than five (5) years delinquent and are not a lien on real estate, as indicated on a report dated May 25, 1995, submitted by Vickie Zeier, Clerk & Recorder/Treasurer. The report was returned to Vickie Zeier for further handling.
- 3) the Commissioners appointed Patricia Swan Sexton to a 3-year term as a "regular" member on the Seeley Lake Community Council through April of 1998.
- 4) the Commissioners approved a Minor Plat Adjustment for Wildflower Hills Subdivision. The approval was granted to allow Lots 2 and 3 to access by a proposed new upper driveway (with four conditions as stated on June 6 letter of approval).

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



**TUESDAY, JUNE 6, 1995**

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 June 6, 1995, pages 5-36, with a grand total of \$253,684.53. 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 E. Odlin, for month ending May 31, 1995.

No Administrative Meeting was held; however, the following items were signed:

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #11, Pay Date May 26, 1995, with a total Missoula County payroll of \$524,512.30. The Transmittal Sheet was returned to the Auditor's Office.

Budget Transfer -- The Board of County Commissioners approved and signed the following Budget Transfer and adopted it as part of the FY'95 budget:

- \* Control No. 95-010, a request from the Health Department to transfer \$20,778 from the Contingency fund to 7 other funds (per attachment) for the purpose of separate activity for audic/monitoring purposes (Partnership to Strengthen Families); and

Agreement -- The Board of County Commissioners signed an Agreement between Montana Department of Transportation (DEPARTMENT) and the County of Missoula (COUNTY) for Preliminary Engineering and Construction Work to be Accomplished under Federal-Aid Project No. STPHS 7-2(19)84 located in Lolo, Montana for the purpose of implementing the preliminary engineering and acquisition of a portion of the right-of-way for the upgrade of Glacier Drive and Ridgeway intersections with US-93, Milepost 84, as per the terms set. This Agreement modifies and supersedes the Agreement between the COUNTY and the DEPARTMENT dated December 3, 1992. The Agreement was forwarded to John Marron, DOT Engineering Services Supervisor, for further signatures and handling.

Amendment to Agreement -- Chairman Evans signed a Renewal Amendment to the AT&T Commission Agreement, Contract #1465 (entered into as of February 16, 1989) whereby: (1) the term of the Agreement is extended for a period of three years; and (2) per Attachment B, the commission rate payable to Agent for each Location listed in Attachment A, is 29% of revenues from AT&T Non-Sent Paid Collect Calls placed from the Inmate Telephones, the total number of which is 14. The Agreement was returned to Mike O'Hara in Sheriff's Department for further handling.

Agreement -- The Board of County Commissioners signed an Agreement for Professional Engineering Services for Sanitary Sewer, Water and Street Improvements for the Proposed Gleneagle Subdivision between the County of Missoula and Druyvestein Johnson & Anderson for the purpose of engineering services for the proposed water, sewer and street improvements for Gleneagle Subdivision (61 residential lots), as per the terms set forth, for compensation in the amount of \$140,000. The Agreement was returned to Orin Olsgaard, Special Projects, for further handling.

Resolution No. 95-043 -- The Board of County Commissioners signed Resolution No. 95-043, a Resolution to Amend Resolution Numbers 75-20 and 75-23, adopted on March 28, 1975, Floodplain Regulations for Missoula County. A public hearing on the proposed amendments to bring the County Floodplain regulations into compliance with the minimum requirements set by the State of Montana was held on May 24 and May 31, 1995.

**WEDNESDAY, JUNE 7, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners conducted a Community Budget Meeting at the Target Range School.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Big Sky Mechanical Inc. as principal for Warrant #069197 issued May 18, 1995 on the Missoula County High School Fund in the amount of \$345.00 now unable to be found.

**DAILY ADMINISTRATIVE MEETING**

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

Certificate of Survey -- The Board of County Commissioners signed Certificate of Survey #2976 with regard to a boundary relocation and agricultural exemption for tracts of land located in the NW 1/4 of Section 18, T13N, R19W, P.M.M., Missoula County, Montana, for Elmer and Mary Flynn and Edward and Marifrances Courtney, for the purpose of relocating common boundary lines between adjoining properties (Tract 1) and to enter a covenant running with the land and revocable only by mutual consent with the governing body and the property owner that the divided land will be used exclusively for agricultural purposes.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and the Montana Department of Transportation for the purpose of restoring and/or extending the service life of paved Secondary Route S-263, locally known as Mullan Road in Missoula, as per the terms set forth, with the contract work being accomplished during the 1996 construction season. The Agreement was forwarded to Gary Larson (DOT in Helena) for further signatures and handling.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

HEARING: PETITION TO VACATE "ALLEY LOCATED IN EAST MISSOULA ADDITION, FROM LOTS 1 THROUGH 5 AND LOTS 20 AND 21, IN BLOCK 37, LOCATED IN NE 1/4 OF SECTION 24, TOWNSHIP 13 NORTH, RANGE 19 WEST, MISSOULA COUNTY, MONTANA."

Barbara Evans stated the reasons for this request are as follows: The alley does not physically exist. Fences and one storage building on lot three and fences on lots four and five encroach on "alley" causing title and financing problems for lot three. The alley does not continue into Braaten Addition which is the adjoining subdivision. The landowners have been notified of this hearing. I will open the public hearing for comment. Missoula Rural Fire, do you have any problem with this?

Bill Lindstrom, Missoula Rural Fire, stated, no.

Barbara Evans stated, by law the Surveyor and one Commissioner must go out and view this alley before we can act on it. We will postpone any action on this until next week.

#### HEARING: REVISION OF OFFICE OF COMMUNITY DEVELOPMENT FEE SCHEDULE.

Janet Stevens, Director, Office of Community Development, stated you have before you the Request for Commissioner Action. I would like to just briefly go through the history of this for your information and for the record, and then let Susan Reed also talk to you for a little bit as well before we open to the public. In OCD's FY'95 work plan, we were authorized to do an analysis of our fee schedule. The last time this was done in OCD, I believe, was in 1991, and that is when they were adopted as well. At that point, a fee system was set up as a deposit-base fee system, which means there was a minimum and a maximum deposit fee set on all fee schedules, and the ultimate cost would be somewhere between that minimum and maximum at the end of the project. Susan Reed, County Auditor, agreed to provide the analysis for us based on the current 50% cost recovery deposit system. Most of the fees we collect and as approved in 1991 are based on 50% of the cost of the project from OCD's standpoint. As a result of the review, Susan determined a number of issues:

1. The current deposit based system is cumbersome and irritating to the public and OCD staff in having to keep track of the time spent.
2. OCD's relationships with clients is also strained when additional fees need to be collected after a case has been decided (particularly if the decision is in opposition to what the client has proposed).
3. Developers find the deposit system cumbersome because of having to either ask for more fees (again, after work has been completed) or refund fees that were not used.
4. When deposits are collected under the current system, the money for City projects is transferred by the City to the County upon collection of the fee. When money is refunded at the end of the project, the County is notified to return money to clients but the City does not get notified. This caused a loss of revenue to OCD in FY'94 because the City's budgeted amount of a maximum of \$35,000 for fees was reached and the City would not allow OCD's budget to reflect any additional revenue past the \$35,000. However, in reality, we were about \$15,000 short of collecting \$35,000 in real fees because of refunds that the City did not subtract from fees collected.
5. A considerable amount of time is being expended by staff keeping track of hours worked on every project for the purpose of billing.

You may recall we set up a citizens committee to arrive at the fees now being requested. We also took the proposed fees to the Neighborhood Network, Chamber of Commerce Board, Building Industry Association and the Missoula Downtown Association. The Downtown Association chose not to take a position of support or opposition to the revised fee schedule, but did review them. The other reviewing agencies, including the Neighborhood Network, are in support of the new fee structure, and so Staff recommends that the proposed resolution revising land use fees for services be approved.

Susan Reed, Missoula County Auditor, stated I would like to provide a brief explanation of the fee structure and the methodology of arriving there. The proposed fees are based on actual project costs as compiled by OCD Staff over the past three years. The Staff tracked the time spent on each project. We analyzed this information according to the type of project and based our recommendations on those types of projects for which there were sufficient number of cases for some projects, even though they were fee schedules, there were really too few projects to do an analysis on, and in some instances there were no projects under specific category. Therefore, those fees were based on the current maximum or flat fee schedule. In most instances, the cost fell within a relatively limited range. It is therefore recommended that a single fee be established for each type of project. The fee for service and each service is based on the average level of effort for that service as established over the past three years, and again, for the most part based on the 50% cost recovery. After meeting with community interest groups, and Janet mentioned from the Neighborhood Association, builders and developers, we did change some of the fee structures and some of our recommendations to address their concerns. We also reviewed the fees to ensure that City and County charges were identical. In order to keep these fees current and up to date, we recommend that OCD review its effort level for each kind of activity on a five year cycle. There was some concern that this proposed fee schedule would result in a revenue loss for OCD. As Janet mentioned there would be an additional gain in revenue because of the City financial aspect of it. But I also reviewed the revenue

received in 1994 and fiscal year 1995 up to the end of February when I completed this study. I compared the actual revenue for those periods versus the revenue which would have been received had this proposed fee schedule been in place. In FY '94, the increase in revenue under the proposed structure would have been \$6700, and for eight months of FY '95 the increase would have been about \$4200. If we extrapolate that to the end, it's probably going to be between \$63 and again \$6700. This is actual cost savings. This doesn't include the cost savings due to more efficient use of Staff time. It doesn't include the savings in time for clerical activities involved in tracking time, receiving deposits, refunding over-payments, billing for under payments, etc. Ideally, therefore, with the proposed fee schedule we'll see some increase in revenue as well as increased savings because of the efficiencies related to the use of Staff time. This is a rather brief explanation of what I did. I'll entertain any questions that you might have about the methodology.

Barbara Evans asked, is there anyone in the audience who would care comment on the proposed fee schedule?

Michael Jaworsky, Executive Vice President, Missoula Area Chamber of Commerce, 825 East Front, stated, in March, Janet Stevens came to our Governmental Affairs Committee with this proposal. Our Governmental Affairs Committee, after due review endorsed the revision for our Board to adopt at its April meeting. After Mr. Nick Kaufman, who has been actively involved in this, answered questions that various Board members had, and after presentation by the President of the Building Industry Association, Bob Richards, who told us about the Building Industry's position, we voted unanimously at our Board meeting to endorse the revision, and we hope that you will vote that way also.

Barbara Evans asked if there was anyone else who would care to speak either for or against? There being none, we will close the public hearing.

Michael Kennedy asked, in this budget discussion there is a question about added staff that may be necessary to fulfill your obligations and responsibilities that are anticipated, and that discussion comes after formulation of these fees. I would like to ask you to comment on that because the additional enhancement that you're requesting does require an additional source of revenue, so I would like you to comment on that.

Janet Stevens stated, I would point out that some of these fees are at 100%, particularly the subdivision fees, the CLB overlay zone for the City, floodplain permits and things like that, so some of these are at 100%. When we were reviewing these fees, particularly the County zonings and rezonings and Design Review Board and other variance requests fees, we determined that if the fees were raised to a large, significant amount that it may very well deter people from coming in and getting a permit, which would be just the opposite of what we were trying to achieve in the first place, and because most of these other fees are used by individuals like you and me, they may in fact become cost prohibitive. And so while I understand exactly what you're saying in that we need to try and recover as much cost as we can, I'm not sure that in this fee structure we can bump them a whole lot more to make up that difference. The impact fee that we will be reviewing in FY '96 may be another way to do that and may be a more appropriate way.

Michael Kennedy asked, also we had a discussion about applicants who present either an incomplete or inadequate application, and I don't find any language in there that deals with that. It's my understanding that that is a problem and it does not only cause a cost problem, but it causes a time lost problem to you, and I'm wondering whether you could address that.

Janet Stevens stated, the only way for me to address that is to say that the proposed flat fee is an average cost, and so we've taken the range of expense as Staff has compiled their hours, both on those cases that take a whole bunch of time as a result of things like you're talking about, as well as those that take an hour or ten minutes. So the average or the proposed flat fee is what you see here and it does really take into account some of those extreme cases. One of the things from the public's point of view that would be helpful that this takes care of is when, for instance, a Board like yours continues cases which require Staff, not only in our office but others, to come back several times. This provides a specific flat fee and has taken into account those kinds of circumstances in the review, so they are not so apt to be upset then when we come back, particularly if you happen to turn down what they are requesting and we've spent all that extra time considering their case, and we've added those hours in.

Susan Reed stated, I just wanted to make an additional comment to address your question, Michael. OCD loses approximately \$15,000 per year because of the way the City manages their accounting procedures and so that additional \$15,000 as well as the additional \$6,000, according to my computations, would be rather close to the cost of another Staff member.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the resolution to generally revise and enact new land use fees for services rendered by the Missoula Office of Community Development. Motion carried on a vote of 3-0.

RESOLUTION NO. 95-045 -- The Board of County Commissioners signed Resolution No. 95-045, a Resolution to generally revise and enact new land use fees for services rendered by the Missoula Office of Community Development.

CONTINUED HEARING REZONING REQUEST FOR PROPERTY IN MILLTOWN/BONNER AREA (TRAVEL PLAZA) TOWN PUMP, INC. POSTPONED FROM MAY 24.

Jennie Dixon, Planner, Office of Community Development, stated this is a continued public hearing and what I present to you this afternoon are conditions which have been proposed by Town Pump and slightly modified by OCD, and attached to them are the signage proposals submitted by Town Pump for your review. The conditions are:

1. Development of the site shall comply with the Design Standards for Primary Travel Corridors as established in the County Subdivision Regulations dated May 4, 1994, including all landscaping, setback and design standards, with the following modifications:

- a. Landscaping installed along the private road adjoining the Travel Corridor may consist of an average 25 foot width rather than an absolute 25 foot width.
  - b. Approval of signage as presented by the applicant and shown in an attachment to these conditions, if the County Board of Adjustment approves of a sign package that does not comply with the Travel Corridor Standards.
2. If a water supply well is proposed to be located on the property:
- a. It shall be located as far away as possible from the known extent of the groundwater arsenic plume, subject to the approval of the Missoula Valley Water Quality District;
  - b. It shall be monitored for arsenic after its construction and development, and quarterly thereafter for a period of three years. Following that time period, if there have been no exceedances of federal drinking water standards or state groundwater standards, monitoring frequency may be reduced to once per year. After five years, if there have been no exceedances of federal drinking water standards or state groundwater standards, monitoring frequency may be reduced to once per three years. Results must be provided to the Missoula Valley Water Quality District and the Montana Department of Health and Environmental Sciences. This monitoring schedule may be revised, upon approval of the Missoula Valley Water Quality District, if remedial actions at the Milltown Superfund site result in groundwater clean up of a reduction in the extent of the arsenic plume; and,
  - c. If arsenic monitoring indicates an exceedance of state or federal standards, the well must be closed or a treatment system installed to bring the system into compliance.
3. Lighting of the site shall be designed to minimize the effect on neighboring tracts. All lighting shall be directed downward and inward toward the site and no lights shall shine directly toward any residential areas.
4. Any structures of significant historical value located within the area covered by the rezoning application will be given appropriate consideration. New construction will be generally compatible with the existing building characteristics including lines, angles, landscaping, taking into account the nature or extent of the architecture-recommended modifications for structural, mechanical or electrical components, as well as other requirements for compliance with ADA, fire, safety and sanitary regulations.
5. The applicant shall provide a contiguous area of thirty-thousand square feet for recreation and storm water retention on the portion of the property closest to the Blackfoot River. This area shall be landscaped with grass and trees and/or shrubs and shall include a minimum of four picnic tables and public use of and access to any future Riverfront Trail system.
6. Should the sign package proposed by the applicant not be approved by the County Board of Adjustment, the applicant shall reserve the right to revert the zoning back to prior C-II zoning.

Number 6 has been crossed out. In consulting with Colleen Dowdall, she stated that is achieved through 1-b, condition 1-b, that if they do not get approval from the Board of Adjustment on their signage, they can either choose to meet the Travel Corridor Standards for signage or else they wouldn't meet the condition for zoning and therefore the zoning would not take effect. The only other change aside from number 1 with the addition of a and b, is to number 4, and this would give consideration to buildings of significant historic value on the parcel that's being rezoned, so that would not include the brick building, it only includes the headquarters building. Number 5, the only change to that instead of one acre it was changed to 30,000 square feet. These conditions are agreeable to OCD and the applicant, with the exception possibly of signage. Colleen provided a table comparing the different sign standards in the Corridor Standards, the commercial zone and what Town Pump is proposing.

Barbara Evans stated, Jennie, so that I understand, you are recommending we approve this request, according to what I find written here.

Jennie Dixon stated, OCD has recommended approval. The signage is a discretionary decision. It doesn't comply with commercial sign standards, and definitely not the Travel Corridor Standards. I understand you went out on the site yesterday and maybe have a feel for how this might look on the landscape or how you might feel about the type of signage they are proposing.

Bill Wagner, with Garlington, Lohn and Robinson, the attorney for Town Pump, Inc. and affiliates, the applicant in this particular rezoning matter, stated I would like to point out to the Commissioners that we do not anticipate having all the representatives of Town Pump address the Board, but for the record, Tom Kenneally, the Vice President of Town Pump, Inc. and affiliates is here as is John Webster, the Town Pump Construction Manager, Tony Thelen with Epcon Sign Company, in Great Falls, and also John Kellogg with Professional Consultants, Incorporated. Any of those four individuals will be happy to answer any questions that the Commissioners may have in specific reference to the signage. In the way of some brief introductory comments, I would like to point out that the applicant is a Montana family-owned and operated business. It is headquartered in Butte, Montana, it has extensive experience in operating travel plazas as well as motels and convenience stores. Town Pump employs 1300 employees. All of its employees and all of its assets are situated within the State of Montana. The applicant has received strong support from the area of Bonner and Milltown as evidenced at the prior hearing, I think because this project will provide a service to the area residents, not only this project, but also the businesses that it will house. It will add to the tax base in the area and we think it will serve as a catalyst to future development that is being sought by the area, Bonner and Milltown, and it will employ approximately 100 people. The zoning conditions that were just presented to you have in fact been consented to by the applicant. We have found that working with the OCD Staff in this situation has been quite simple, if you will. It's been very easy from the standpoint of trying to reach consensus on certain points and we have done that through the situation

of compromise, discussion and negotiation. In that regard, the conditions, I believe, speak for themselves. They've been properly and accurately stated in the document that Jennie Dixon has presented to you. We've had several work sessions with the Board of County Commissioners in the last week and so, and we know that the primary issue is signage, but one question was raised yesterday that I would like to address, and that is the fact that the area in the site plan that was presented to the Board includes area that is not within the area that we are rezoning. A question was asked as to why that is being done, and I would like to address that at the outset, if I may.

The first reason is there is a brick building on the area that is remaining an industrial zoned area, not within the commercial area. That brick building may perhaps have historical value and has to be considered in that regard. The use of that building is still somewhat up in the air and, frankly, that building may be used as an accessory to future uses in industrial ways. We do not have any plans, the applicant has no plans whatsoever at this time for the area that is the western area of the site. It is remaining in industrial zone. But nonetheless, that building may become an accessory use to the industrial usage and therefore we need to retain it in that particular zone. Secondly, the area in question that is not being rezoned but is shown in the site plan is being used primarily for overflow parking, and again that's within the industrial site and that usage is consistent with both commercial or industrial zoning. In this particular situation, the parking may again be an accessory to some type of future industrial use that is permitted in the current zoning on the property. Thirdly, Town Pump has been discussing and negotiating with the Highway Department what to do with the material stock pile that is on the southern part of the property, and that is where a large material stock pile is presently situated. We believe that an agreement has been reached, at least in principal, with regard to moving that existing stock pile to the area in question that will remain industrial. And that use is not a commercial use, it is an industrial use, and for that reason we are not zoning that part of the property. There may be a situation in which the State Highway Department will want to use that existing brick building, we don't know that. But if they do, that again would be a use that would be accessory to an industrial use and not to a commercial use. Overall we are showing the area in question that is not being rezoned to give the Commissioners an idea what we intend to do with the entire site. Again, we are not rezoning that at this time simply to keep all options open, to keep our situation flexible. Because of the type of zoning the County has as opposed to what City zoning currently here is in Missoula, according to Jennie Dixon there is a study being undertaken now whereby the type of city-type zoning may be looked at by this Board, we understand. In other words, where there is a lesser intensive use allowed in one zone it would be allowed in all least restrictive zones, if I said that correctly. It may be the other way, but nonetheless currently County zoning only allows for specific permitted uses, and in that regard we bought the land as an industrially zoned piece of property and what the usage will be we do not know at this time. The other reason I think overall, and this will give me a lead in to the signage issue, and that is the fact that this is a unique piece of property. It is large, it is bounded by the freeway, the overpass and Highway 200 as well as the Blackfoot River. It is somewhat in a hole as a result of that, especially when you're looking at it from the freeway. From that standpoint the signage is of critical concern to our client, and Town Pump has made it clear that the sign is a critical concern to this project, and in Town Pump's opinion the project does depend upon appropriate signage. We've gone through substantial cost and effort to try to meet the concerns that have been expressed and I think the Commissioners will take notice of that, that we are attempting to or have made a tremendous attempt, I think, to move far away from where we were originally in two tower signs down to one and redesigning the sign from what it was previously to limiting the tower sign to three separate words rather than having a series of signs advertising particular businesses, also taking into consideration the pylon signs and reducing the size of those substantially and trying to incorporate the river rock theme into that to coincide with some of the aesthetics in that particular area. I am not a sign expert, but Tony Thelen is here as are the other representatives of Town Pump that I introduced, and although we do not have any specific presentation, if you have questions about the particular signage I would request that you direct them to members of the Town Pump representation and we would be happy to answer those questions.

Barbara Evans stated, before we go on to other testimony, I would like to ask you one question, and that is, I do have a letter here from the Department of Transportation regarding the seriousness of reaching some sort of an agreement to maintain the stockpile of the sanding material, and I would want it in the record that you will see that that gets done.

Bill Wagner stated, I can state that, based upon negotiations that took place as recently, I believe, as of this morning. John Webster can address that specifically if need be.

Barbara Evans stated, I just want to make sure that the safety of the public out there is protected by having this pile available.

Bill Wagner stated, so noted in the record.

Colleen Dowdall, Deputy County Attorney, asked, so with the industrial zone and the commercial zone, would the tower sign be in the industrial zone?

Bill Wagner stated, yes it would be.

Barbara Evans stated, I will accept testimony from anyone else who would care to speak in favor of or in opposition, or to make just general comment. We have two representatives of the signage concerns here and I would like to hear what you have to say, please. I don't usually insist somebody testify, but I really want to hear.

Daphne Jones stated, I am speaking for SAVE, Save America's Visual Environment. What I don't understand in this is what Colleen suggested about an industrial zone versus the needs of the Traffic Corridor that we're talking about. What is the law between these two things?

Colleen Dowdall stated, we are asking the applicant to comply with the Corridor Standards, but the Corridor Standards are in our subdivision regulations and they are not before us requesting a subdivision, so we are conditioning rezoning upon a set of standards that are not actually in the zoning. However, if you look at the zoning, the zoning allowance in an industrial zone, the maximum allowance is less than in a commercial zone. And the reason I shook my head and muttered to myself was because it just made life a little more complicated than it was before I realized that the sign would be in the industrial zone. Legally, in my own head.

Daphne Jones stated, I'm very disappointed that the Town Pump company did not come with a visual--with a map of what they're going to do, pictures of what they're going to do so that the public, and we are nothing but the public, have an idea of what they're going to do. Putting things in just numbers and words does not adequately handle the problem of what SAVE wants, which is to save the view of our mountains.

Tony Thelen, with Epcon Sign Company, displayed pictures to the Commissioners and people present in the audience.

Al Bellusci, a member of the Bonner Development Group, stated, I would like to comment in approval of the signs. Our group was somewhat split, because some members questioned a tall, pole-type sign, but I agree that when you look at the site that coming from the west and traveling east that there would be some problem identifying that site as the particular business that it's in. We in this group want in every way possible for this business to be a financial success. It means a great deal to us, both from the standpoint of being a catalyst for future businesses in the area, as well as an improvement to the tax base. Thank you.

Bruce Hall, a member of the Bonner Development Group, stated, through the progress of this I've kept in pretty close touch with John Kellogg in regards to the site and the uniqueness of the site, and I am certainly not a person that is greatly in favor of signage, and I'm looking at the result of what the folks have put together here as far as compatibility with the area. I think they've done a real fine job in attempting to maintain the quality while at the same time providing themselves with the type of signage that they will need to draw business in off the interstate.

Tom Collins, with SAVE, stated I just have a question about this sign, and I hadn't seen this before until now. The sign is quite attractive, but they put on top of it this mountainous scene to obliterate the actual mountains behind the sign. Why couldn't they put it underneath the sign, Travel Plaza, rather than put it on top where it will be right in view of the mountains? Just a comment. I know they probably like it this way. I'm all for business, but I'm also opposed to signs that are going to destroy the visual sites that we are so proud of in Montana.

Barbara Evans asked, is there anyone else who would like to speak for or against? Seeing none, I will close the public hearing.

Michael Kennedy stated, yesterday during our discussion we talked about the same thing that Daphne spoke of, and that is we're being asked to make a decision without really any good reference information on what this structure might look like on the site. And we asked for that information yesterday with respect to that, and I wonder whether you can give us that information today.

John Kellogg, Professional Consultants, Inc., stated, I do and this is kind of a rush project. It takes them a long time to do this, so they did superimpose that high rise sign on one of the two photographs that we showed you before, and I'll pass that around.

Michael Kennedy asked, this is from the east, do you have one from the west?

John Kellogg stated, no, that hasn't been completed yet.

Michael Kennedy asked, and the distance from the ramp is what? Do you have any dimension at all?

John Kellogg asked, from where that photo is taken to where the sign is, do you mean?

Michael Kennedy stated, from where the car is parked, the photograph is taken to the off ramp.

John Kellogg stated, that photograph is taken about 1800 feet, I would guess, from the off ramp.

Michael Kennedy stated, just to give some scale to this. I thought about this this morning and really what was going on and the dimension. The overall dimension of the Exxon part of that sign given to us is 8'4" x 16', and I'd like to give you some perspective as to what size that is, and it is basically represented by this edge of the door all the way to the window and about to the top of the blue area here. That's about the size of the Exxon portion of it. The part that says Travel Plaza is represented that wall from this point where my hand is all the way to the end of the wall, the full height of the building. So if you imagine Travel Plaza on that entire wall that is the lower part of this sign. So it gives you some sense of the scale. In addition to that, anyone who is interested who wants to step into the hall from the Commissioners' office down to the last office in this building is about 90 feet, so you'll get some notion about what that is. By the way, from that wall to this wall is about 42 feet or 43 feet. The length of this room is less than half the height of this sign. So that would give you some sense of the scale of it. I'm interested also in new legislation which was lobbied really heavily by the outside sign advertising people and was substantially diluted from the request before the Legislature. And the compromise size that came out of that legislation was 672 total square feet. This sign is yet one-third larger than that allowed by State law under normal conditions on the highway. That would also give you a sense of the scale of this sign. I agree that economic development, particularly in an area that is depressed and had the hit that they did in the Milltown area because of the loss of industrial tax base out there, is important. I also know that our open space and the visual notion where we live is more important, and I know that because of the negotiations between all parties there has been a remarkable improvement over what might have been, and it's good to note that we could have approved the application that came through, which was two signs and I think pretty garish signs, and it's a complement to the Town Pump people to willingly negotiate downward the size of that signage and also the character of that signage. Personally I think we still have some distance to go. I think we're headed in the right direction. I believe this sign is still on scale large for the area and I think, and my own belief is, that we haven't been presented with technical information that supports the need for a sign of that size. That's the extent of my comments at this moment.



Fern Hart stated, I need some legal leadership. I need to know what is the authority of this Board. We can approve the zoning request. We can approve it with conditions, 1, 2, 3, 4 and 5. What is the limitation on this Board with respect to what we can say about signage?

Colleen Dowdall stated, Chapter 8 of the Zoning Resolution allows you to impose conditions on any approval for anything that comes before you under the Zoning Resolution. Under that authority you have asked that Town Pump comply with the Travel Corridor Standards or stricter standards for signage. However, before they can do what they are asking, which is to exceed not only the Travel Corridor but the Zoning Resolution, they do have to go to the Board of Adjustment. I think the recommended Staff Report is that you approve the zoning contingent on the Board of Adjustment approving the signage, and this is at the request of the applicant because if they don't get adequate signage on the property they are not certain they want a commercial zone. So they want to have the option then of not having it zoned commercially. They way we have worded that condition is that the approval is contingent upon them meeting the Travel Corridor Standard and going before the Board of Adjustment for anything that exceeds the Travel Corridor Standards. I think the Board of Adjustment has the authority to grant a variance from the Zoning Resolution and not actually the Travel Corridor Standards, but the Travel Corridor Standards are more strict than the Zoning Resolution. We would have to work through that a little bit. That language might have to change to anything that exceeds the Zoning Resolution.

Fern Hart asked, are you saying it needs to be worked through in this meeting? In the Board of Adjustment meeting?

Colleen Dowdall stated, correct. In the application before the Board of Adjustment.

Fern Hart asked, does it mean to you that if we do not grant the commercial zone that no development would be in the form of the Town Pump?

Colleen Dowdall stated, the current industrial zone is light industrial and that includes industrial uses that do not require an operational permit from the Missoula County Health Department, or the Missoula County Air Pollution Control Board, retail and service facilities buildings or uses which are accessory to the principal uses, public utility offices and installations, veterinary services, animal hospitals and kennels, research laboratories, accessory buildings and uses, industrial miniwarehouse, natural resource management office. Conditional uses are industrial uses which conform to light industrial standards, excluding whose principal activity is to processing, refining, transfer distribution, or bulk storage of flammable liquids, automobile, marine, trailer and mobile home sales, building material, hardware and farm equipment sales, storage and service, and distribution and transportation facility excluding railroad facility.

Michael Kennedy stated, this is a little confusing to me. In the event we approve the zoning and do not take any action on the sign, then these people would appeal to the Board of Adjustment and they are restricted by the scenic byways restriction, which means that they could not approve anything greater than that?

Colleen Dowdall stated, no, my understanding of the State law is that it applies to off-premise signs. These are on-premise signs.

Michael Kennedy asked, your reference to the scenic byways was for what purpose then?

Colleen Dowdall stated, the Travel Corridor, I've never heard it referred to as that. This Board originally asked them to comply with the Travel Corridor, and I think that was at the recommendation of OCD. And at this point they are telling you that not only can they not comply with the Travel Corridor, which is our strictest regulations which are within the subdivision regulations, they can't comply with our commercial zoning sign restrictions, and they would have to go to the Board of Adjustment in order to comply.

Michael Kennedy stated, and the Board of Adjustment would have to grant a variance.

Colleen Dowdall stated, right. They would be before them for a variance from the commercial zoning signage allowance.

Michael Kennedy asked, whatever restriction we might put by way of a condition on the zoning as to the signs, would that be a limitation on what the Board of Adjustment could grant in the form of a variance?

Colleen Dowdall stated, no, but if the Board of Adjustment--the way it's written now you are saying that anything that goes beyond the Travel Corridor has to be approved by the Board of Adjustment, and I think that's what the recommended motion from OCD says. What you are saying is you want them to comply with the Travel Corridor. And the Board of Adjustment has the authority over granting variance to the Zoning Resolution, not the Board of County Commissioners. If they're going to exceed the Zoning Resolution they have to go to the Board of Adjustment, and you want them to not exceed the Travel Corridor Standards.

Jennie Dixon stated, the way condition #1 is written, the very first part is they have to meet the Travel Corridor Standards regarding landscaping, signage, set backs, everything. And then it says with exceptions--the one on signage, if you wanted to not approve any type of signage and leave it they have to conform to the Travel Corridor, you can put an exception that the County Board of Adjustment may approve a sign package that does comply with Travel Corridor Standards. I believe you could just cross out the first part of that letter "b" condition and that would leave the decision on signage up to the Board of Adjustment beyond the Travel Corridor Standards.

Fern Hart asked, Jennie, if we didn't want to leave it up to the Board of Adjustment, our options are either the Commercial Zone or the Travel Corridor Standards?

Colleen Dowdall stated, it's up to the applicant--if the applicant wants to seek a variance, I think they have the right to go to the Board of Adjustment. Even if you tell them that the 90 feet, 800 square feet is o.k., I still think they have to go to the Board of Adjustment.



Fern Hart stated, I'm afraid I agree with you.

Jennie Dixon stated, your options would be #1 without letter "b" which would mean they would have to conform to the Travel Corridor Standards, #1 maybe giving them exception to just meet the current Commercial Zoning sign standards, or as written you could approve it with their signage as they propose as long as the Board of Adjustment approves it. So you have a couple of different options.

Fern Hart asked, Colleen, when I look at the Commercial Zone they can have a higher pole in Commercial Zone than they can in the Corridor. None of those poles will go 90 feet, so in any case, the question of the 90 feet is for the Board of Adjustment?

Colleen Dowdall stated, as far as I can tell through the Zoning Resolution, yes.

Fern Hart stated, the total allowed for the Corridor is 300 square feet, and the total for Commercial is 300 square feet, and they're pole sign is 800 square feet, so they'll have to go to the Board of Adjustment in that event.

Colleen Dowdall stated, correct. The total square footage per sign, from I can tell, is 72 square feet and then there's a total signage allowance, and part of that--what is complicated about this is that there are multiple businesses and the Zoning Resolution is not incredibly clear about you apply that. With six businesses, and you could multiply 6 x 72 in terms of the total square footage of signage allowed--I think in any event they exceed it any way I could calculate it for square footage.

Fern Hart stated, if we did the Commercial Zone, we wouldn't have a requirement for landscaping, or could we use that anyway.

Colleen Dowdall stated, there are landscaping requirements in the Commercial Zone, but only if we do a PUD?

Jennie Dixon stated, for a commercial business I think it's 6% of the parking lot needs to be landscaped, and then there's a five foot strip along rights of way that need to be landscaped, but you could still retain the landscaping requirements from the Travel Corridor Standards and not rely on the Zoning Resolution.

Barbara Evans stated, in other words we could do a mixture.

Jennie Dixon responded affirmatively.

Fern Hart stated, for the record and for the public, I do appreciate the work that we've all put in and I know that Town Pump has stretched to be more innovative. I also notice that the Office of Community Development's Report does not seem as restrictive as the first one they brought in with respect to the historical structures and the new construction, and I want to assure, at least attempt to reassure, the folks out in that area that Town Pump will work with any building of significant historical value and give it appropriate consideration. They're not committed to total preservation, as I understand it. They will try to deal with it as reasonably as they can. They have agreed to keep the construction generally compatible with existing building characteristics, including the lines, angles, landscaping, and taking into account the nature or extent or architecture recommended modifications as they adapt to the different codes, like ADA, fire, safety and sanitation. I think that's an important aesthetic aspect for all of that area and I appreciate that they'll do that. They did sort of undo the leash a bit on that for them. So I'm ready to make a motion.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the request from Town Pump, Inc. for rezoning from "C-11" light industrial, to "C-C2" general commercial to allow their intended use, a Travel Plaza in the Milltown/Bonner area, including a family restaurant, a fast food restaurant, a lounge which may include alcoholic beverage service and gaming machines, a convenience store, and a car and truck service center dispensing gasoline, subject to the five conditions.

1. Development of the site shall comply with the Design Standards for Primary Travel Corridors as established in the County Subdivision Regulations dated May 4, 1994, including all landscaping, setback and design standards, with the following modifications:
  - a. Landscaping installed along the private road adjoining the Travel Corridor may consist of an average 25 foot width rather than an absolute 25 foot width.
  - b. Approval of signage as presented by the applicant and shown in an attachment to these conditions, if the County Board of Adjustment approves of a sign package that does not comply with the Travel Corridor Standards.
2. If a water supply well is proposed to located on the property:
  - a. It shall be located as far away as possible from the known extent of the groundwater arsenic plume, subject to the approval of the Missoula Valley Water Quality District;
  - b. It shall be monitored for arsenic after its construction and development, and quarterly thereafter for a period of three years. Following that time period, if there have been no exceedances of federal drinking water standards or state groundwater standards, monitoring frequency may be reduced to once per year. After five years, if there have been no exceedances of federal drinking water standards or state groundwater standards, monitoring frequency may be reduced to once per three years. Results must be provided to the Missoula Valley Water Quality District and the Montana Department of Health and Environmental Sciences. This monitoring schedule may be revised, upon approval of the Missoula Valley Water Quality

District, if remedial actions at the Milltown Superfund site result in groundwater clean up of a reduction in the extent of the arsenic plume; and,

- c. If arsenic monitoring indicates and exceedance of state or federal standards, the well must be closed or a treatment system installed to bring the system into compliance.
3. Lighting of the site shall be designed to minimize the effect on neighboring tracts. All lighting shall be directed downward and inward toward the site and no lights shall shine directly toward any residential areas.
4. Any structures of significant historical value located within the area covered by the rezoning application will be given appropriate consideration. New construction will be generally compatible with the existing building characteristics including lines, angles, landscaping, taking into account the nature or extent of the architecture-recommended modifications for structural, mechanical or electrical components, as well as other requirements for compliance with ADA, fire, safety and sanitary regulations.
5. The applicant shall provide a contiguous area of thirty-thousand square feet for recreation and storm water retention on the portion of the property closest to the Blackfoot River. This area shall be landscaped with grass and trees and/or shrubs and shall include a minimum of four picnic tables and public use of and access to any future Riverfront Trail system.

Motion carried by a vote of 3-0.

Michael Kennedy stated, just by way of clarification I hope that everyone understands that the 6% allocation to landscaping cannot be mitigated by that drainage swale which is a functional structure rather than landscaping. The drainage swale is not part of landscaping, it's a functional drainage structure and the landscaping requirement is in excess of the requirement for the drainage swale.

Bill Wagner stated, for the record that is correct.

Barbara Evans stated I have one question or comment to make for the record as well. We discussed this yesterday, but we didn't discuss it here for the record, and that is that the sign that has "Food Court" at the top also shows in this rendering a drive safely changeable portion to the sign, and yesterday it was discussed that if that were to be the case, it would be a time and temperature and that that would be limited to that, or there would be no changeable face on the sign. I would like you to address that for me, please.

Bill Wagner stated, for the record that is also correct. If that type of readerboard sign is to be used, it will show time and temperature only. It will not flash messages or contain any kind of message running across its screen.

Barbara Evans stated, I would like to comment very much in favor of the effort that you went to on these signs. We threw something at you that I think was sudden and you responded to that, and I think your signs are much more aesthetically pleasing. I hope SAVE is not too disappointed in that we allowed the size of this. It's kind of tough to walk a tight rope. Sometimes your feet feel bruised up to your knees.

Michael Sehestedt, Deputy County Attorney stated, I need to put one thing in on that. You haven't approved the signs. You simply approved the change in the zoning. They are now in a position to go to the Board of Adjustment and make whatever case it is they can make there that the unique circumstances of the land, the property, are such that they should be granted a variance for the literal application of the zoning. So this action is not an approval of the signs, except you are saying we will accept the possibility that they can make the showing, so you did the rezoning and they will move on to the next step.

Barbara Evans stated, I would ask that everybody in the audience who has those renderings to either give them back to the applicant or give them back to us. I would especially like to have the one showing the sign superimposed on the scenery.

Fern Hart stated, this is the way we try to do the best we can. We do have to have participation and we appreciate that very much.

Michael Kennedy stated, I think that Town Pump has been around a while, and they up until now have succumbed to what I think is kind of a--for lack of a better word, a classless kind of advertising gimmick that every other oil company and vendor has, and I think you've improved your lot substantially and I commend you for that. And I think you kind of stand above the rest. Keep it up and I hope you improve even more. Thank you for your effort.

RESOLUTION NO. 95-044 -- The Board of County Commissioners signed Resolution No. 95-044, a Resolution of intent to rezone from "C-11" (Light Industrial District) to "C-C2" (General Commercial District) with conditions, property described as the Southeast portion of Tract A, COS #3441, located in the NW 1/4 of Section 21, T13N, R18W, P.M.M.

#### PUBLIC COMMENT

Barbara Evans asked for public comment.

Tony Tweedale stated, I want to comment about Stone Container generally first. We are proceeding to gather petition signatures at an astounding rate. I can gather between 150 and 200 signatures an hour. We're closing in on 10,000 and our interim goal is 15,000 signatures. We're drafting an open letter to the Missoula medical community, which I'd like to read parts of. I'll just jump into the middle. First, Stone is permitted to emit several hundred tons of particulates a year. Much of their particulate, such as the massive recovery boilers, emit almost completely in less than one micron diameter

range, meaning the particles can reach the terminal alveoli of the lungs with dirty urban and industrial valley air such as Missoula's exchanges with blood. Missoula's last airshed apportionment study concluded that at least 25% of the particles less than 2.5 microns and smaller come from Stone and even a higher percentage of particles less than 1 micron comes from Stone Container.

Michael Kennedy asked, would you repeat that please?

Tony Tweedale stated, Missoula's last airshed apportionment study concluded that at least 25% of the particles less than 2.5 microns in size come from Stone Container. That was inferred from the last source apportionment study. And biological extenuation an even higher share of the particulate matter of less than 1 micron would come from Stone because recovery boilers emit almost nothing larger than 1 micron. The evidence on these small particles is excellent as to the health effects they cause. There's an information response, proteins are released that thicken the blood, which likely explains the strong association between particle exposure and heart attacks and strokes. There's irreversible fibrosis of the lungs as a ubiquitous result of chronic small particle exposure, weakening of the immune system, association between asthma, obstructive pulmonary disease, bronchitis is there, immunological evidence is excellent. All the studies say that as small as a 10 to 15 microgram per cubic meter concentration of PM10 is linked with increased death, asthma, etc. The second issue, chlorine, they're permitted to burn 690 pounds a day of chlorine as plastics, and probably going to be permitted to burn several hundred pounds more in sludge. EPA's new reassessment of dioxins from light compounds which includes the average American already carries these toxins in hereditary tissue at levels approaching or exceeding these observed health effects, such as severe immune impairment, cancer and developmental or reproductive failures and malformations. These serious effects occur at parts per trillion body concentrations, largely because dioxins and like compounds act as hormone mimickers and blockers. For example, human maleness is initiated by testosterone in the ninth week of gestation unless dioxin feminizes or masculinizes at the wrong time. Whole populations of many types of dioxin exposed vertebrate species show gross reproductive abnormalities. In man the verified 50% drop in sperm production since the mass production of organochlorines in the 1930's and other semen deformities are thought to be linked to dioxins and like compounds. In women, the endometriosis epidemic is strongly linked to dioxin exposure. EPA is also advising women to breast feed their babies no more than four months because of such fat soluble organochlorines. But unfortunately, almost all dioxin is transferred in utero not through breast milk. On a separate issue I'd like to ask the attorney, Mr. Sehestedt, or the Commissioners, I suppose, if there's going to be any response to Ross Best's request to reconsider the tax break that was granted to Stone Container on the basis--

Barbara Evans stated, there has been a response from the County Attorney's Office, and there was no conflict of interest.

Tony Tweedale stated, let me reiterate in my last few seconds that the definition of substantial is going to be challenged. We believe substantial means not trivial and there's a lot of analogous areas of the law where that is the way the term substantial is interpreted. Think of it. What kind of numerical figure are you going to put on substantial. The most logical definition we believe is that substantial means not trivial.

Will Snodgrass, Chemical Injury Information Network Montana. We drove back from a high school graduation celebration in Butte. We drove through the area which had been sprayed on I-90 east of Missoula. Upon entering that area and being unaware that we were in the area, Grandma's eyes began to burn, one passenger's stomach began to cramp up, she became quite ill, and my voice disappeared and the lymph glands along my neck began to swell and become painful. Gastrointestinal effects are listed in material safety data sheets which you were provided, along with effects on the eyes. Commissioners Evans and Hart claim that the information was conflicting, therefore, we'll spray. They did not make the safe choice for Missoula children. I later called Commissioner Evans who said she had not read the paperwork, could not find the paperwork, had a pile of paperwork on her desk and was too busy. Everyone else who received the same paperwork read and understood it, including the Missoula news media at large. I understand that Commissioner Evans later received a call from a reporter and that Commissioner Evans said, "Ask the farmers who grow our food." That would have been a good idea to ask before Hart and Evans voted to spray toxic chemicals in Missoula County. Had you asked the farmers you would have learned that their wells are contaminated with pesticides, the food they grow and sell us is contaminated with pesticide, and they, their families and our families are being struck down painfully by cancer. That was pointed out to you in the letter from Missoula Oncology and Infectious Disease, which you apparently chose to ignore. Your so-called experts did not tell you about the other known effects of pesticide exposure, possibly because they are uninformed and therefore unqualified. Nor did you, Commissioners, bother to bring other health effects to the public light, although they were listed in the literature which you were provided. The Commissioners were provided ample scientific evidence regarding these effects beyond cancer. The following information came from the Commissioners' files, and I'm referring to an Encamp Watch Sheet on 2,4-d which lists peripheral neuropathy, or irreversible loss of feeling in the extremities, depression, lethargy and coma, and also effects on the eyes. Commissioner Hart, during our phone conversation you claimed that you had read the literature we provided you and that raises a serious question about your decision to spray around pregnant women and children. The literature clearly describes pesticide exposure effects beyond cancer, including those which I just listed, and it also refers to groundwater contamination potential of both chemicals. In the material safety data sheet for Tordon it lists it as infinitely soluble and the letter from Encamp the National Northwest Coalition against the Misuse of Pesticides cites examples of such contamination in Montana groundwater. Commissioner Hart, you said you would like to hear from the EPA from this problem. In point of fact, Commissioner Hart, you did hear from the EPA from this podium on the day of your decision before your ill-advised decision to spray toxic chemicals along Missoula roadways. I provided that information to you in the form of audiotaped conversations with the representative of the EPA. You were given ample written documentation. In light of this, what good would it do for you to speak to the EPA. Yesterday's Missoulian editorial referred to your "leap before you look" methodology. That editorial also referred to your manipulation of public process. I would characterize your conduct as a blatant disregard for public process. Disregard for public health, and utter disregard for the well-being of Missoula County senior citizens and children who are, of course, most vulnerable and who are being stricken in alarming numbers by cancer. Commissioner Kennedy, I have received the EPA summary which you requested and I will provide it to you after the meeting. I thank you for your wise vote against spraying of pesticide and can only wish that concerns for public health similar to yours were shared by other members of the Commission. Unfortunately, this community suffers from a lack of comprehension and properly focused concerns on the part of those other two individuals.

There being no further business to come before the Board, the Commissioners were in recess at 2:40 p.m.

**THURSDAY, JUNE 8, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners conducted a Community Budget Meeting in Seeley Lake at the Community Hall.

No Administrative Meeting was held; however, the following items were signed:

Resolution No. 95-046 -- The Board of County Commissioners signed Resolution No. 95-046, a Resolution Abating Belated Assessment, with regard to Carline Addition Lot 28, Block 46 (SUID No. 6000668), and whereas the belated tax bills for 1991, 1992, and 1993 are abated based on the fact that the property is committed to low-income housing and based on the fact that the omission occurred without fault on the part of the taxpayer, William McDonald.

Resolution No. 95-047 -- Commissioners Evans and Hart signed Resolution No. 95-047 (Lower Miller Creek Road R.S.I.D.), a Resolution to accept real property from Lloyd A. Twite, Helena M. Twite, Eldora A. Graham, Marilyn Nisbet, Raymond P. Twite, Raymond M. Erickson, Sheila L. Erickson, George L. Reynolds, Frances M. Reynolds, Lance D. Kidder, Pamela D. Kidder, Robert J. Cole, Deborah P. Cole, Norman F. Balko, Doris A. Balko, easements for public road and all other public purposes, located in a portion of the S 1/2 of Section 1, T12N, R20W, and the NW 1/4 of Section 12, T12N, R20W, P.M.M., Missoula County, Montana; and being filed in the Missoula County Clerk and Recorders Office in Book 382 Micro at Pages 1460 through 1472.

Resolution No. 95-048 -- The Board of County Commissioners signed Resolution No. 95-048, a Resolution stating that the question of creating the proposed Florence-Carlton Park District will be submitted to the voters at a special election to be held in conjunction with the election in Ravalli County on September 12, 1995.

Resolution No. 95-049 -- The Board of County Commissioners signed Resolution No. 95-049, a Budget Amendment for FY'95 for the Sheriff's Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
1000-300-420180-120 STEP Grant	\$4,000

<u>Description of Revenue</u>	<u>Revenue</u>
1000-300-333095	\$4,000

Resolution No. 95-050 -- The Board of County Commissioners signed Resolution No. 95-050, a Budget Amendment for FY'95 for the Sheriff's Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
1000-300-420182-946 STEP Grant	\$17,165
video cameras	

<u>Description of Revenue</u>	<u>Revenue</u>
1000-300-333094 STEP Grant-Video	\$17,165

Resolution No. 95-051 -- The Board of County Commissioners signed Resolution No. 95-051, a Budget Amendment for FY'95 for CBO Trust, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
2315-676-450110-111 Personnel	\$5,250
2315-676-450110-141 Fringe	1,365
2315-676-450110-206 Office Supplies	1,200
2315-676-450110-359 Mileage	2,868
2315-676-450110-364 Training	1,000
2315-676-450110-311 Printing	1,017
2315-676-450110-328 Cont. Services	59,789
	\$72,489

<u>Description of Revenue</u>	<u>Revenue</u>
2315-675-333004 Strengthening Families	\$72,489

Resolution No. 95-052 -- The Board of County Commissioners signed Resolution No. 95-052, a Budget Amendment for FY'95 for the Sheriff's Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
1000-300-420180-140 STEP Grant	\$6,000

<u>Description of Revenue</u>	<u>Revenue</u>
1000-300-333095 STEP Grant	\$6,000

Resolution No. 95-053 -- The Board of County Commissioners signed Resolution No. 95-053, a Budget Amendment for FY'95 for the Sheriff's Department, including the following expenditures and revenue, and adopting it as part of the FY'95 budget:

<u>Description of Expenditure</u>	<u>Budget</u>
1000-300-420185-121 Overtime--Fire Security	\$19,361
1000-300-420185-141 Fringe	<u>2,851</u>
	\$22,212

<u>Description of Revenue</u>	<u>Revenue</u>
1000-300-342015 Dept. of State Lands	\$22,212

Budget Transfer -- The Board of County Commissioners approved and signed the following Budget Transfer and adopted it as part of the FY'95 budget:

- \* Control No. 95-015, a request from Disaster and Emergency Services to transfer \$6,000 from the Perm. Salaries fund to the DES Cap-Tech Equip fund (\$3,500) and the Spec. Proj. Cap-Tech. Equip fund (\$2,500) for the purpose of purchasing a computer system for Bill Silverman and a replacement computer for Orin Olsgaard.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated June 8, 1995, between The Missoula County Park Board and the Linda Vista Homeowners' Association with regard to assisting with neighborhood park development, as per the terms set forth. The Missoula County Park Board agrees to provide up to \$1,700 in matching funds for capital improvements as delineated in Attachment A. These funds must be expended before June 30, 1996.

Modification of Agreement -- Chairman Evans signed Modification No. 3 of Agreement (DHES Contract Modification No. 340238-03) between Missoula County and the Montana Department of Health and Environmental Sciences for the purpose of modifying the terms of the agreement between them concerning AIDS prevention and intervention in order to add duties and funding for SFY 1995 HIV prevention community planning, as per the items set forth. The Agreement was forwarded to DHES in Helena.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Ms. Huntley Holland, an independent contractor, for the purpose of consultation on Performance Evaluation Systems, as per the terms set forth, for the period commencing March 1, 1995 through March 30, 1995, for compensation in an amount not to exceed \$225.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Silvertip Painting, an independent contractor, for the purpose of painting the following items at the Missoula City/County Animal Control Shelter: main hallway (to include walls, ceiling & floor); main office & entryway, 6 doors & jambs (1 side); 3 doors and jambs (2 sides), stain trim around countertop and stain & finish 1 door, as per the terms set forth, for the period commencing April 1, 1995 through May 30, 1995, for compensation in an amount not to exceed \$845. The Contract was returned to the Health Department for further signatures and handling.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated June 8, 1995, between the Missoula Board of County Commissioners and the Missoula County Library Board with regard to financing the cost to replace the Library's lighting, heating and cooling systems, as per the terms set forth, for the period from June 8, 1995 to January 15, 2000. The Missoula Board of County Commissioners agrees to provide a total credit line not to exceed \$134,995. The repayment will be amortized for a period not to exceed five years at a variable interest rate of 4.75% beginning from the effective date of this agreement and adjusted on January 1 of each year thereafter.

#### FRIDAY, JUNE 9, 1995

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart attended all-day Scenarios Planning Meetings June 9 and 10 held at the Missoula Children's Theatre.

Monthly Report -- Chairman Evans examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending May 31, 1995.

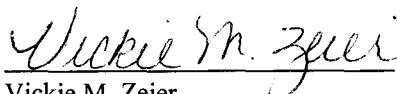
No Administrative Meeting was held; however, the following items were signed:


Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY'95 budget:

- 1) Control No. 95-017, a request from Fin. Admin./JPZ to transfer \$6,911 from the Term Reserve fund to the JP 2 Perm. Salaries fund (\$5,529) and the Fringe fund (\$1,382) for the purpose of termination pay-off (sick, vacation, & fringe) for Shirley Gosselin; and
- 2) Control No. 95-018, a request from the Historical Museum to transfer \$1,559 from the Building Maintenance fund to the Temporary Salaries fund since it was discovered that the Historical Museum had \$1,558.37 unspent in FY'94 in its Institute for Museum Services grant and the oversight to put that amount back into that account for FY'95. **(THIS BUDGET TRANSFER REQUEST WAS VOIDED).**

- 3) Control No. 95-019, a request from the Office of Community Department to transfer \$7,500 from the Contracted Services fund to the Permanent Salaries fund for the purpose of increasing Barb Martens' time from .75 FTE to 1.0 FTE for the duration of FY'95. Beginning July 1, 1995, Barb will return to .75 FTE status. The reason for the additional time is to provide extra help with Building Permits plan checking; and
- 4) Control No. 95-020, a request from the Office of Community Development to transfer \$5,742 from the Permanent Salaries fund to the Contracted Services as per the attachment from Janet Stevens, Director.
- 5) Control No. 95-021, a request from the Library to transfer \$52,320 from the Cap-Library Books fund to 7 other funds, as per the attachment from Dave Pauli, Library Director; and
- 6) Control No. 95-022, a request from Employee Benefits to transfer \$12,000 from the Excess Claims fund to the Permanent Salaries fund (\$4,000), the Capital-Office Equipment fund (\$4,000), and the Capital-Tech. Equipment fund (\$4,000) as a result of expenses incurred related to personnel for overtime and temporary staff. Also, additional capital expenses will be incurred related to the move to Spruce Street; and
- 7) Control No. 95-023, a request from Justice Court #1 to transfer \$810 from the Jury/Witness fund to the Capital-Office Equipment fund for the purpose of the joint purchase of a copy machine; and
- 8) Control No. 95-024, a request from Justice Court #2 to transfer \$1,144 from the Office Supplies fund to the Capital-Tech. Equipment fund for the purpose of the joint purchase of a copy machine.

Site Inspection -- In the afternoon, Commissioner Evans accompanied Horace Brown, County Surveyor, on a site inspection for the request to vacate an alley in the East Missoula Addition (from Lots 1 through 5 and Lots 20 and 21 in Block 37).

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JUNE 12, 1995**

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

DAILY ADMINISTRATIVE MEETING

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

Contract -- Chairman Evans signed a Vaccine Contract between the Montana Department of Health and Environmental Sciences and Missoula County for the purpose of providing vaccines and program supplies for local immunization activities, while establishing the guidelines and conditions for their use, as per the items and terms set forth. The Contract was forwarded to DHES in Helena. (Note: Effective July 1, 1995, the Department of Health and Environmental Sciences will become the Department of Public Health and Human Services.)

Contract Modification -- Chairman Evans signed the First Modification to Purchase of Service Contract Number 95-024-0023 (Project Title: Partnership Project) between Missoula Board of County Commissioners and the Montana Department of Family Services. The parties to this contract determined that Attachment B (Budget) in its entirety is deficient and inoperative and that the document attached to this modification (which is entitled Attachment B - Budget as Amended on May 30, 1995) shall appear in its place. Chairman Evans also signed, with regard to this modification, the Certification Regarding Environmental Tobacco Smoke and the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions. The documents were returned to Leslie McClintock, Office of Planning and Program Development for further handling.

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

**TUESDAY, JUNE 13, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Hart gave a budget presentation at the MAEDC Board of Directors Meeting; and at noon, Commissioners Hart and Kennedy attended the Missoula Downtown Association's Membership Luncheon Meeting at the NP Grill at noon.

Audit List -- Commissioners Hart and Kennedy signed the Audit List, dated June 13, 1995, pages 5-40, with a grand total of \$345,778.76. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Missoula Electric Coop. Inc. as principal for Warrant #7544 issued May 8, 1995 on the Missoula County 7260 Fund in the amount of \$172.21 now unable to be found.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Verna Denton as principal for Warrant #44483 issued May 26, 1995 on the Missoula County MCPS Payroll Fund in the amount of \$106.57 now unable to be found.

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Corey Wolferman as principal for Warrant #45072 issued June 9, 1995 on the Missoula County SD#1 Payroll Fund in the

amount of \$3,849.49 now unable to be found. (Note: This Indemnity Bond was sent through on Korey Wolferman's signature only because she brought in the remains of her check after it went through the washing machine.)

No Administrative Meeting was held; however, the following item was considered:

- \* the Commissioners approved the request from Rachel Vielleux, County Superintendent of Schools, regarding printing for the Missoula Area Education Co-op for FY'96.

### WEDNESDAY, JUNE 14, 1995

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

#### DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Ross Homesite, a subdivision of Missoula County located in the NE 1/4 NE 1/4 of Section 21 and the NW 1/4 NW 1/4 of Section 22, T14N, R20W, P.M.M., a total area of 6.38 acres, with the owners of record being Waldo W. and Doris L. Williams.

Closing Documents -- Chairman Evans signed the Loan Closing Documents (Missoula County Board of Investments) for the additional documents necessary to completely fund the GMC Safari van, including the additional Origination Fee. The documents were returned to John DeVore, Administrative Officer, for further handling.

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

#### PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy.

#### DECISION ON REQUEST TO VACATE ALLEY (EAST MISSOULA ADDITION, FROM LOTS 1-5 AND LOTS 20 AND 21 IN BLOCK 37).

Barbara Evans explained that she and Horace Brown, Missoula County Surveyor, had gone out to East Missoula and looked at the alley.

Horace Brown, Missoula County Surveyor, stated the portion of the alley that is being vacated is not built, and vacating the alley would not change the use. There is no way the alley can be put all the way through because of another subdivision which blocks it. I see no reason not to vacate it.

Fern Hart stated, so we have an alley that's not there that we are going to vacate. Is that right?

Horace Brown stated, part of it is being used up to the line, I can't recall the lot number, but the portion of it that is being vacated is not built, and there are two buildings within the alley location.

Fern Hart asked, what happens when we vacate it? How does that property go?

Horace Brown stated, each half goes to the adjacent neighbor and then they pay taxes on it.

Fern Hart asked, didn't I see something here--maybe it was on another one. So they don't have garages on it?

Horace Brown stated, no. The utilities, if there are any, would still remain.

Michael Kennedy stated, by inference the building that is constructed within the existing right-of-way is the one who is the petitioner for this, I presume. The building across the alley from that is a separately owned piece of property and adjacent to that, up the alley if you will, on Lot 20 it appears to me that if this is vacated then there will be an isolation of access to that building on Lot 21. Is that not correct?

Horace Brown stated, no, I believe that building on Lot 21, they still can get there from the other end.

Barbara Evans stated, the way it looked when we went up there, the first part of the alley is being used as access to other homes, but the part they want to vacate had a fence across it, and there is grass in it, and there are buildings in it, and it is clear that no one is using that portion of it for access because they built on it.

Horace Brown stated, the building can still be accessed from Iowa Avenue.

Michael Kennedy asked, so there is no objection from the owners of Lot 20 and 21, or Lots 4 or 5, correct?

Horace Brown stated, no.

Fern Hart asked, in light of those, you are vacating the entire pink portion, is that right?

Horace Brown stated, that's true. From Lot 1 through 5 and 20 and 21, the alley adjacent to those lots.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the Petition to vacate the alley located in the East Missoula Addition, from Lots 1 through 5 and Lots 20 and 21, in Block 37.



located in NE1/4 of Section 24, Township 13 North, Range 19 West, Missoula County, Montana, in that it has been approved by the Surveyor and one Commissioner. Motion carried 3-0.

HEARING: CONSIDERATION OF DREW ADDITION: AGRICULTURAL EXEMPTION AND BOUNDARY RELOCATION.

Kathleen A. Smith, Paralegal, Missoula County Attorney's Office, stated this is a consideration of whether to approve an agricultural exemption and boundary relocation for a portion of the N1/2 of Section 33, T16N, R14W, as described in Book 161 Micro, Page 2351 and a portion of the S1/2SE1/4SW1/4 of Section 28, T16N, R14W, as described in Book 321 Micro, Page 889, for Kerry Drew and A.P. Hollinger.

Kerry Drew has submitted an agricultural exemption request for a +/- 320 acre parcel located off Woodworth Road East of Salmon Lake. Mr. Drew wishes to create a 10 acre agricultural parcel in the NW1/4 of the property which is undevelopable due to the fact it was previously the Seeley Lake Land Fill. This request is in conjunction with a subdivision review of the Drew Addition in which Mr. Drew proposes to create two parcels on the property, one of which is adjacent to the proposed agricultural parcel. He then plans to sell both parcels to the person currently residing in the trailer on the proposed subdivision parcel. It is believed the agricultural parcel would be used as pasture for horses. Mr. Drew and Mr. Hollinger then propose to relocate the boundary between Mr. Drew's 320 acre parcel and a 20 acre parcel in the S1/2SE1/4SW1/4 owned by Mr. Hollinger. This is also in conjunction with the proposed subdivision and would allow Mr. Drew to add 8.17 acres to his proposed subdivision lot to create a 27.33 acre parcel for sale to the people already residing on the property. This would also allow Mr. Hollinger to create a 42.66 acre parcel in the NW1/4 of the property to provide a buffer for the recreation area known as Big Sky Lake.

The history of the parcel is as follows: Mr. Drew acquired his property in March, 1981, through the Estate of Sam S. Drew. He created a parcel greater than 20 acres in size in February, 1983, along the South edge of the property under Woodworth Road, a 5 acre occasional sale parcel in the NW1/4 in October, 1987, and another parcel greater than 20 acres in size along the East edge of the property in May, 1992. Mr. Hollinger's parcel was created prior to 1974 and purchased by him in October, 1990, from the Big Sky Lake Company.

According to the records kept by the Missoula County Surveyor's Office, Kerry Drew has used the exemptions to the Subdivision and Platting Act as described and Mr. Hollinger used an agricultural exemption on unrelated property.

Barbara Evans stated, we will open the public hearing. Is there anyone here who would care to speak on this matter?

Tim Wolfe, Territorial Engineering and Surveying, stated I am representing Kerry Drew and Mr. Hollinger is here too to answer any questions, if there are any for him. I apologize for the complexity of this whole thing. If there are any specific questions that I can attempt to answer I would be more than happy too.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve an agricultural exemption and boundary relocation for a portion of the N1/2 of Section 33, T16N, R14W, as described in Book 161 Micro, Page 2351, and a portion of the S1/2SE1/4SW1/4 of Section 28, T16N, R14W, as described in Book 321 Micro, Page 889, for Kerry Drew and A.P. Hollinger. This is not an attempt to evade the subdivision and that the usual considerations be added on the plat, as there is a subdivision request on this property. Motion carried on a vote of 3-0.

Michael Sehestedt, Deputy County Attorney, stated I should state for the record that in addition to the subdivision on this property, two parcels are being created here and here. Under the eminent domain exemption they will become property of the Seeley Lake Refuse Disposal District. On the survey Tract 1 is the agricultural exemption and Tracts C and D are the eminent domain parcels, so in addition to the boundary relocation there will be created those two parcels.

HEARING: SUBDIVISION REQUEST--DREW SUBDIVISION - SUMMARY PLAT. KERRY G. DREW TO SUBDIVIDE A 320 ACRE PARCEL INTO TWO SEPARATE PARCELS WITH ONE REMAINDER.

Lisa Moisey, Planner, Office of Community Development, stated this is a request by Kerry Drew represented by Tim Wolfe of Territorial Engineering, to subdivide a 320 acre parcel into two separate parcels with one remainder. Lot 1 is 27.33 acres and the proposed Lot 2 is 20 acres. The remainder parcel is over 160 acres and is not being reviewed with this subdivision. The subdivision plat is also being used as a record of survey for three exemptions from subdivision review.

The Drew Addition is a two lot minor subdivision located in the N1/2 of Section 33, T16N, R14W, about one mile northeast of Salmon Lake. Lots 1 and 2 are the proposed residential lots being reviewed, and both have existing residences on them whose occupants intend to buy the created lots. The size of the entire parcel is 320 acres. Forty-seven acres are proposed for the two lots. There is an approved well and septic system on Lot 1. Lot 2 also has an approved well and septic system. The property is unzoned in Missoula County. The Missoula County Comprehensive Plan designation for this area is rural low density which allows for a maximum density of 1 dwelling unit per 10 acres. The developer is requesting a variance from Section 3-25 of the Missoula County Subdivision Regulations for Sidewalks, Pedestrian Walkways and Bikeways. The developer states that this requirement would cause a financial hardship to make such an improvement in a rural area where sidewalks would seldom be used. Staff recommends approval of this variance given the rural character of the area, and the limited use of sidewalks in this subdivision would receive.

One outstanding issue with this subdivision request regards the comments from the Seeley Lake Fire Chief. I did receive a phone message from Pat at Seeley Lake Fire that the Fire Chief had, "no comments on the Drew Addition." They will provide a letter to OCD stating their comment as such. At the time I prepared your Staff Report I had not been able to make contact with Seeley Lake. That issue has been resolved.

Staff recommends approval of this Summary Plat given the Findings of Fact as stated in the Staff Report and subject to the following conditions:

1. The developer shall provide future lot purchasers with *Living with Wildlife* brochure at the time the said property is sold.
2. Grading, drainage, erosion control and road plans shall be approved by the County Surveyor prior to plat filing.
3. The developer shall obtain a sixty (60) foot minimum easement for access to Lots 1 and 2. The developer shall provide a signed and notarized document that grants such easement.
4. The purchasers and/or owners of Lots 1 and 2 understand and agree 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.
5. Plans for the private driveways for Lots 1 and 2 shall be approved, and stated as such in a letter, by the appropriate fire chief before filing of the plat.
6. The appropriate fire jurisdiction shall approve plans to create a defensible space for fire protection purposes before filing of the plat.

Barbara Evans stated, the hearing is open and anyone may speak either in favor or against the proposed subdivision.

Tim Wolfe, Territorial Engineering and Surveying, stated if anyone has questions on this subdivision request, I would be happy to answer them. This is where the boundary adjustment comes in for Lot 1.

Fern Hart stated, I remember that Janet Stevens, Director of the Office of Community Development, did prepare a letter that was to go out to the fire departments indicating that we would expect a response. I trust that one will get to Seeley Lake and they realize that we can't honor their conditions if they get a letter to you after we have considered the subdivision.

Lisa Moisey stated, I will pass that on.

Fern Hart asked, should I deal with the variance first or deal with the subdivision and the conditions?

Colleen Dowdall stated, we typically do the variance first.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners grant the variance request for the 2 lot subdivision in that it is a remote rural area and the sidewalks, walkways and bikeways are not applicable in that area as they are in more urban areas. Motion carried 3-0.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the Summary Plat of the Drew Addition (2 lot subdivision) located 1 mile northeast of Salmon Lake and in the N1/2 of Section 33, T16N, R14W, subject to the following conditions, and subject to receipt of the notification from the Rural Fire District.

1. The developer shall provide future lot purchasers with *Living with Wildlife* brochure at the time the said property is sold.
2. Grading, drainage, erosion control and road plans shall be approved by the County Surveyor prior to plat filing.
3. The developer shall obtain a sixty (60) foot minimum easement for access to Lots 1 and 2. The developer shall provide a signed and notarized document that grants such easement.
4. The purchasers and/or owners of Lots 1 and 2 understand and agree 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.
5. Plans for the private driveways for Lots 1 and 2 shall be approved, and stated as such in a letter, by the appropriate fire chief before filing of the plat.
6. The appropriate fire jurisdiction shall approve plans to create a defensible space for fire protection purposes before filing of the plat.

Motion carried on a vote of 3-0.

HEARING: CONSIDERATION OF A REQUEST TO CREATE AN ALLEY, BLOCK 1, LOLO, SECTION 35, T12N, R20W, P.M.M., HUGHES ADDITION, FROM U.S. HIGHWAY 93 RUNNING ALONG THE UTILITY EASEMENT IN BLOCK 1, HUGHES ADDITION, BEING 20 FEET IN WIDTH TO ANN'S LANE.

Barbara Evans stated, the alley is needed for public garbage collection, for rear access to the lots of Block 1. Fourteen landowners were notified of the hearing. Is there anyone in the audience who would like to speak to this issue? What is the requirements on this?

Colleen Dowdall: This is the same as an abandonment. You have to inspect the location and determine if it is in the best interest of the landowners. It is my understanding that the land owners are in agreement with the alley request.

Fern Hart asked, what sort of action should we take that we will postpone a decision on this until it can be viewed by a Commissioner and the Surveyor?

Barbara Evans stated, the Chair will take the prerogative of postponing this request for one week. The public hearing on this matter is closed.

CONSIDERATION OF: LINDA VISTA EIGHTH SUPPLEMENT (SUMMARY PLAT AND REZONING REQUEST)

Philip Maechling, Planner, Office of Community Development, stated, this is a request by Druyvestein Johnson and Anderson for Lloyd Twite for approval of a the Linda Vista 8th Supplement. The Linda Vista Eighth Supplement is a proposed residential subdivision consisting of 72 dwelling units on 72 lots on 16.5 acres. The location for the subdivision is northeast of Linda Vista 7th Supplement, west of South Pointe Addition and south of Meriwether Addition in the Southeast 1/4 of Section 12, Township 12 North, Range 20 West, Missoula County. The total area of the subject parcel is 24.65 acres, with 16.5 acres proposed for residential lots, 3.6 acres for streets and roads, 1.5 acres for common area and 3.0 acres for park area. The current zoning is C-RR1, 1 dwelling unit per acre, to C-RR2, 2 dwelling units per acre, with a PUD overlay. The resulting densities would be 2.9 dwelling units per acre. There would be 42 single family detached houses, 16 townhouses, and 14 single family attached or detached units, 0 lot line units, for a total of 72 units.

The developer of the project, the Lloyd A. Twite Family Partnership, proposes a Planned Unit Development and a rezoning for the subdivision, the intent of which is to allow for a mixture of residential housing and for clustering of housing. The original proposal was for 77 units on 16.5 acres. The revised proposal is for 72 dwelling units on 72 lots on 16.5 acres, which is a reduction of five lots from the original proposal. At its meeting on May 23rd, 1995, the Missoula Consolidated Planning Board recommended unanimously that the Board approve the request for 72 lots.

The Eighth Supplement is the ninth phase of the Linda Vista Development. In January, 1995, Lloyd Twite requested that the OCD provide insight into developing the 25 acres between Linda Vista and South Pointe, now called the Linda Vista 8th Supplement. OCD noted that the South Hills Comprehensive Plan provides flexibility in locating development on the 25 acre parcel rather than on the remaining Linda Vista lands, but could not support a significant increase in building approvals until a neighborhood planning process occurred. This process has begun, and as you know, there will be a first meeting of the Miller Creek valley area planning process tonight at the Linda Vista Golf Course. OCD encouraged the integration of parkland and nonmotorized circulation features into the design of this project. The proposed development consists of common area between and around the townhouse units and a park area located at the north-north central areas of the property adjacent to Meriwether Park to the north. The townhouse common area and individual lots abut the park area. According to the PUD standards, development is allowed a maximum residential density bonus in the C-RR2 district of 100%. We've outlined the remaining development issues in your Request for Commission Action on the second page that remained after the Planning Board hearing.

Staff recommended approval of the original proposal as presented, 77 units. The Planning Board recommendation after being presented with a second alternative essentially, negotiated between the Upper Linda Vista Homeowners Association and the developer and the developer's representatives, resulted in the recommendation from the Planning Board of 72 units on 72 lots, a decrease of five residential units, two of them coming out of the single family detached units and three coming out of the single family detached lot area, and a set of conditions attached to that as part of what was called a memorialization of an agreement reached between the Twite Family Partnership and the Upper Linda Vista Homeowners Association as follows:

The request is for two actions from the Board of County Commissioners. The first is for rezoning from C-RR1 to C-RR2 with a Planned Unit Development overlay, and the second would be approval of the Preliminary Plat for the Linda Vista Eighth Supplement with the Planning Board recommendations, and Staff would concur with them. I might also add that Barbara Evans received a letter from an adjacent property owner, Christine Ryan, and I spoke with her today and she did want the Board to know that not all of the adjacent property owners were in support of this project.

Michael Kennedy requested Philip Maechling to explain to everyone the overall comprehensive planning process and the zoning that led to the Staff recommendation to allow this change in density.

Philip Maechling stated, the Comprehensive Plan designation for this area which was adopted in 1990, designates the area two dwelling units per acre. That designation is not an uncommon designation for areas where they are essentially sub-urban areas for which sewer and water are not currently available, and it's based in part on the Health Department's requirement at a time in the past that would allow two units per acre with well and septic. Currently it is one unit per acre with onsite well and septic, but if there is either a common drainfield or a common water supply system, those densities can be approved by the Health Department. The Comprehensive Plan also states that at the time when services are available to those areas that are designated for two units per acre, that density may be increased to some other number up to perhaps six units per acre. Again, based on site planning, neighborhood design, and the availability of services, and all the other goals of the Comprehensive Plan being met, which includes transportation. The Planned Unit Development process allows a person, landowner, or group of landowners to request a change in zoning or an overlay that could increase the density above the designated zoning density, in this case two units per acre for the C-RR2 based on a set of other criteria, which include community goals, one of which is adequate park and open space areas, better circulation, meeting certain needs that are identified by the community, and one of the needs that has proposed to be met by Mr. Twite in this development is that 40% of these units will be available for Board of Housing funding, and it's written on the plat to that effect. In this case, that allows the Staff and the local agencies, after their review process, to make a recommendation to the Board that an increase in density might be warranted based on the design of the project and its ability to meet the goals and the policies that the Board of County Commissioners has adopted for land use.

I might add that one additional criteria, because this is a Planned Unit Development and there are no variances requested, was for this project to go beyond 600 feet for one cul-de-sac and the Planning Board recommended denying that extension beyond 600 feet unless the Rural Fire Department certified that they could agree to a 700 foot cul-de-sac, and you have in your packets a letter from Bill Lindstrom from Rural Fire saying that he and the Rural Fire Department will accept the 700 foot cul-de-sac and the 35 foot radius at the end of the street.

The conditions for approval of the Preliminary Plat are:

1. Plans for grading, drainage, sewer, sidewalk, and streets shall be approved by the County Surveyor prior to final plat filing.
2. That a cul-de-sac be provided at the end of Brandon Way, to be approved by the County Surveyor.
3. That the developer waive the right to protest a future RSID for improvements to Miller Creek Road and Lower Miller Creek Road.
4. The septic tanks must be easily accessible to roadways for maintenance. Minimum twenty foot (20') easements must be provided for all public sewer collection lines, to be approved by the City Engineer.
5. The proposed four-foot wide sidewalks be increased to five-foot to allow two people to walk side by side, to be shown on the preliminary plat and approved by the County Surveyor prior to final plat filing.
6. The Missoula Rural Fire Chief shall review and approve plans for fire protection.
7. The parkland dedication be expanded into the common area onto a flat grade slope (no greater than 3%) for the development of a pocket park (for play structure, picnic tables, sand box, small open play area, trees, etc.) of a minimum of 100 feet by 100 feet, which would blend into the common area, to be shown on the submitted preliminary plat, subject to approval of the County Surveyor and County Parks representative prior to final plat filing.
8. That the covenants state that the common area will provide public access to the park, subject to approval of the County Attorney prior to final plat filing.
9. That the covenants state that no fences will be allowed to separate the common area and the park area in order to retain continuity between the park and the common area to the park, subject to approval of the County Attorney prior to final plat filing.
10. That Marias Street connect with a 20' public walkway easement between lots on Justin Court, providing access to Marias Street and that the easement is visibly marked, to be shown on the submitted preliminary plat, subject to approval of the County Surveyor and County Parks representative prior to final plat filing.
11. That a 20' wide public walkway easement be provided between Lots 1 and 2, Block 1 to allow access to the park.
12. That a 20' wide public access easement be provided through Block 3 and Block 2 to provide access from the southerly portion of the development to the park on the northerly section of the development, subject to approval of the County Surveyor and County Parks representative prior to final plat filing.
13. That the covenants contain the required information prior to filing the final plat.
14. That a grading plan be provided for the development showing the limits of cut and fill, finish grade of all lots where driveways where slopes may approach a 10% slope, and all storm water catch point, prior to building permit approval and approval of the County Surveyor.
15. That an erosion control plan be provided to protect adjacent property during construction, prior to filing of final plat, subject to approval of the County Surveyor.
16. That all zoning and other applicable regulations must be complied with prior to filing the final plat.
17. That the "agreement" between the Twite Family Partnership and the Upper Linda Vista Homeowners Association, Inc. dated May 23, 1995, attached to this document be adopted and followed as stated.
  1. The proposed residential subdivision of 77 lots will be reduced to 72 lots. The five lots to be deleted are as marked on the plat presented at the Planning Board meeting.
  2. Three buffer zones will be created on the west side of the proposed residential development. The buffer zones are as marked on the plat presented to the Planning Board.
  3. If approved by the Park Board, the Twite Family Partnership will construct a French Drain on the Meriwether Addition Park to address drainage from the proposed development.
  4. The Twite Family Partnership will follow the recommendations of the hydrology and geology consultants employed by the Upper Linda Vista Homeowners Association, Inc. to correct and address drainage problems determined by the consultants.

5. A block of 72 residential units approved but not platted by the Twite Family in the area will not be developed until the neighborhood plan is approved or three (3) years have passed, whichever occurs earlier. The Twite Family will abide by the results of the neighborhood plan with regard to development of the lots if the plan is adopted. If no plan is adopted within three years, the 72 lots are eligible for development under then existing rules and regulations.
6. The covenants for the Eighth Supplement will be immediately merged with the covenants applicable to the fifth, sixth and seventh supplements except that the Twite Family Partnership will retain the right to control the membership of the Architectural Review Committee regarding the Eighth Supplement until 100% of the Eighth Supplement is developed and then the control of the Architectural Review Committee will revert to the members of the Upper Linda Vista Homeowners Association, Inc. This condition shall not apply if the Upper Linda Vista Homeowners Association does not vote to merge with the Eighth Supplement by the time the plat is ready for recording.

Gilbert Larson, with Druyvestein, Johnson and Anderson, stated, I'm here today with the developers, Lloyd Twite and his son, Scott Twite. Just quickly, I would like to give a brief history of why we're here with this proposal. Some of you may know that we were going to come before the Board with a much larger proposal, about eight months ago, and that proposal was withdrawn. That was the Miller Creek View Addition, a very large subdivision that would have provided a plan for many years. It was withdrawn to allow the neighborhood an opportunity to go ahead with the neighborhood plan and to look at some of the key issues for this area prior to coming back in on that land. At the time we withdrew it, we did meet with the organized neighborhood associations for the area and also with OCD to determine if we were to leave this alone, this area where Miller Creek View was, what may be appropriate to proceed with in the meantime. This approximately 25 acre site was chosen as an area that would be in-fill development that would be appropriate to proceed with while the rest of the plan is proceeding. After meeting with the homeowners associations and with OCD, we determined that we would move ahead with this area and then wait on the rest of the land until the planning process is complete. Given that, we wanted to first make sure that what we are going to propose was going to be in harmony with the existing plan, so before we started any design we submitted to OCD to have a review done of what would be appropriate for an affordable housing project within this 25 acres. We received a letter back that it would be appropriate to do a plan for approximately 75 to 100 units, within this 25 acres. The plan that is before you has 72 units. With that then, we're comfortable in coming before the Board and telling you that we are in harmony with the Comprehensive Plan and what has been proposed for the area. It's also in harmony in what the neighbors would like to see, I should say with several of the neighbors and the homeowners associations. We have letters of support from both the Upper and Lower Linda Vista Homeowners Associations which represent much of the area. With that then we moved forward to develop the plans. We have continued to meet with the neighborhoods and the plan that is before you today does represent several compromises and quite a bit of give and take that has gone on with the neighborhoods in order to receive their support and come with a fair amount of consensus before the Board today.

We looked at a lot of issues. A lot of them came up during the Miller Creek View Addition process. We've looked at schools. We have determined that there is capacity at present, mainly due to the Chief Charlo School. This will not cause overcrowding to the schools. We have also identified future sites for schools on the Twite Family Partnership land and will continue to work towards dedicating those lands to the schools as it later becomes necessary. Again, that will be looked at as part of the neighborhood plan. I'd also like to mention that the developer is in favor of impact fees for schools, and we have met with the schools and we recognize that there are some State laws and some things that will have to be dealt with, but I think it's important to note that this developer is in favor of having these fees assessed as long as they are done on a universal basis to all people developing, regardless of whether it is one or two lots or 50 or 100. If there can be a system put in place, he would be in favor of it.

One of the key issues we have looked at is traffic. We have reached an agreement with the Homeowners Associations and OCD. What it amounts to currently, and this would be from information provided by the County Surveyor, Horace Brown, there is current capacity for about 300 additional homes to be serviced by the Miller Creek Road system. Virtually all of these 300 homes have been approved. One hundred fifty-five of these are within the master plan for the Linda Vista area. What we have agreed to do is to transfer the rights of 72 of those units that have been approved within the master plan over to this Linda Vista Eighth. So what we are doing will not increase the number of approved homes that will be using Miller Creek Road and it will not exceed the capacity of the streets as determined by the County Surveyor's Office. We recognize that in the future there is going to be a need for improvement and we have included waivers of RSID rights for both Upper and Lower Miller Creek Road. The development will provide a connection through South Pointe so there will be one more way in and out of the area, and this will be through Brandon Way, and it will also be the same type of streets as what has been approved for South Pointe and also for Linda Vista. I may come back to that a little bit later.

With regards to the drainage, we have looked at the drainage. We've incorporated more than three times as many sumps as what would be required by the County. We are also proposing that in the Meriwether Park, Lloyd has agreed to do a drainage swale within the park if approved and this would be to fill in a ravine there with cobble and it would be similar to what was done in the park in the Fifth Supplement. A French drain is where you fill the area in with cobble, put top soil over the top, and have a pipe network in it that would dispose of the water. In addition to dealing with the drainage, this would also make the park more usable by making it a more level surface and giving it a lot better usage as far as an active park.

We have also looked at the geology and I have met with the representative of the Homeowners Association and we have agreed that there are no geology problems. There are some concerns with regards to drainage and in talking with Bruce Anderson of Land and Water, we both feel we can address the problems, and what we've done is an adequate approach to dealing with the drainage.

The density will be 2.9 units per acre. It is a little greater than the Linda Vista area which is 2 per acre, but on the other hand we feel that it is compatible and does provide for some good mix in the area. As mentioned, even since the 1990 Comp Plan update, there have been some changes to services. The Linda Vista Water Company is able to provide service

to all of these units without any expansion or modification to the system. There is also City of Missoula sewer available and there is capacity in the existing lines for this development. So no modifications to water or sewer is necessary. The covenants will be fairly similar to what's been done through Linda Vista with regards to many of the requirements for on-street parking, for RV's, with regard to the type of homes, with regards to architectural control. The only differences really will be regarding the common areas and some of the common upkeep of the townhomes and the shared units. Other than that, the covenants will be very similar to Linda Vista. Along that same line, we are also requesting that the area have a park RSID similar to Linda Vista. All of the people will contribute to the park maintenance and there is a significant amount of park being dedicated. The park is four and a half acres, which is approximately 25% of the area, more than double what would be required. As mentioned in the special conditions, it will be proposed that this area be merged with the Linda Vista Homeowners Associations and that all the parks in the area be dealt with on an area-wide basis.

I did want to mention two other quick items. We have had an independent appraisal done. The appraisal looked at different areas of Missoula to determine whether an affordable housing project and mixed use like we are proposing will affect property values or not. This has been a key issue raised by several of the residents and also one that was very important to Lloyd. He is going to continue to develop in Linda Vista and did not want to do a project that would threaten his own projects. What we've determined--we looked at Fairviews, we looked at the Rattlesnake, we looked at quite a few different areas of town where there is a mix of higher income homes with affordable near by, and what we found is that there has been no impact on the value of the homes by having them mixed. We found that there is no correlation at all. We also looked at Grant Creek and this was an interesting one in that we had an area where we had a valley that was virtually all upper end single family, and as we know, just a couple of years ago a large multi-family development went in at the bottom, and in the meantime the prices in Prospect and the other area has gone up. The last item is in regard to phasing, and in the PUD we are proposing a five year preliminary plat proposal and it would be done in three phases. And that's a part of the PUD. I just wanted to mention it, though, so that it's clear that this will be a phase development.

There was one other thing I wanted to bring up and that is in regards to condition 5. We had requested from the Planning Board, and to be honest I've got to look back sometime and see if the notes--I thought it had been corrected but apparently it had not been. There was a request to widen the sidewalks from four feet to five feet. We had proposed to have that condition struck. In condition 1, it already says that the plans for the sidewalk will be approved by the County Surveyor. As I mentioned, we already have approved street plans for South Pointe and for Linda Vista. We're proposing the exact same street section through this affordable housing project. To me it doesn't make sense to require a higher standard of an affordable housing project than the two upper scale developments on either side. We also believe that, and I'll get political just a moment, but a suggestion from the City Engineer we would rather just have the plans approved by the County Surveyor and deal with the approved plans that we've been dealing with before. I believe with that I'll close, and if there are questions later, any of us are here and available to answer them.

Barbara Evans stated, we will open the public hearing. Is there anyone who would care to speak in favor? If you will come to the podium, and if your name is difficult to spell, please spell it for our record.

Charlie Brown, President of the Upper Linda Vista Homeowners Association, stated, mine is not so much proponent as to give you information relative to the negotiations with the Upper Linda Vista Homeowners Association. What happened was on May 22nd the Upper Linda Vista Homeowners Association held a meeting and Mr. Twite, as well as Gilbert Larson, were there to present their plans. After presenting their plans, a vote was taken of the membership to determine the feeling of the Upper Linda Vista Homeowners Association. That was unanimously or overwhelmingly in support of this project. Approximately 66% of the people were in favor of the plan, based on the conditions that we have here memorialized in this agreement. We also--I do want to make one other comment, probably more for Phil than anyone, but at the meeting with the Planning Board, on item number 5, I'm sure that the recommendation that was made that night on the sidewalks, one of the concerns of the Upper Linda Vista Homeowners Association was the amount of cement and the amount of drainage problems that we would have in that area, and we specifically, and I'm sure in that Planning Board motion, said that that would go back to four foot approval on sidewalks. And that was one of our concerns and I don't think it is more accessible for two people to walk down a street to have five feet rather than four feet. I know as we get older we get a little wider, but I can still make it down a four foot walk with my wife. I do think that this memorializing agreement that we talked about took a great deal of negotiation. Lloyd has agreed to work with the people that were involved and with the geologist which we consulted relative to the drainage up there. Drainage was definitely a major concern of those of us that live in the area. Thank you.

Bob Richards, President of the Missoula Building Industry Association. I come here today in support of the project and also as a member that has served for several years on the Affordable Housing Task Force and on the recent Hillside Development Task Force. In a meeting last night in summary of that Hillside Development Task Force, the question was asked of me as President of the Association, what is the developer's attitude towards the Hillside Development Plan as it ended up with a Plan. And I think what Lloyd has done here with this shows exactly what the developer's attitude is. It's a complete willingness to cooperate and do all the things that are within the Plan that are regulating us anyway. And I think that's the feeling of all the builders here, and I think it's an excellent plan. It coincides with everything that we've talked about for many years in both affordable housing and hillside development. Thank you.

Lloyd Twite, one of the Developers, stated, I would just concur with everything that Gilbert Larson has laid out for you so I won't reiterate that, but I would just be here to answer any questions that you may have for me.

Carl Prinzing stated, one of the things I would like to bring out in this development, I think it's gone through the proper channels, it started out and has gone back and forth between the neighborhood. Mr. Twite has also devoted his time to the New Growth Task Force Stakeholders and has completed last Friday and Saturday, with all the nice sunshine and everything, we were sitting in there trying to decide on which way growth should go in Missoula, so I think you have a developer here that not only wants to develop his land but also is concerned about the entire Missoula area. So I think this should be noted.



Barbara Evans asked, just for the record, you're not just here as a realtor, you also live in that general area?

Carl Prinzing stated, no, I live in the Frenchtown area, but I'm involved with the Growth Task Force, I'm on the MBAIA Board of Directors, I'm in the Realtor Board of Directors. I just try and stay involved and know what's going on in Missoula, and what I would like to reiterate is that we are in the entire Missoula area and not just Linda Vista, Rattlesnake, Target Range. We have to be concerned with how everything is going to flow.

Scott Twite, a member of the Twite Family Partnership, stated, I would just like to voice my support for this and answer any questions that may be directed at me.

Barbara Evans asked, is there anyone else who would speak in favor of this proposal? Is there anyone who would like to speak in opposition?

Steve Overholt, Secretary-Treasurer of the Upper Linda Vista Homeowners Association, on the Board of Directors for the Homeowners, stated, I live at 4275 DJ directly bordering this development. I would just like to clarify a few things that were maybe perhaps misstated earlier and that is that there is no agreement between the Linda Vista Homeowners Association and Lloyd Twite. There is an agreement between Mr. Charlie Brown and Lloyd Twite, but the Board of Directors of the Upper Homeowners Association has never addressed this development, we have never had any votes on anything, we've never approved any letters any agreements, nothing. We have never done anything as a homeowners association board regarding approval of this development. There was a meeting with the Lower Linda Vista Homeowners Association which is quite removed from this development prior to Lloyd submitting his plans which was referred to, that's the Lower Linda Vista Homeowners not the Upper. The Upper Association was fairly defunct at that time from what I understand. Also this does not affect only the Linda Vista Subdivision, there is the Meriwether Subdivision, and the South Pointe Subdivision that also border this. If you look at the map you can tell that this 25 acres is completely surrounded by current developed lots. And 25 acres, if you look at that as far as size, that is about three football fields by four football fields approximately in size, so it's a very small area. And this is being inserted in basically hundreds of acres of dissimilar development. Linda Vista was developed all around this on the basis of 1/2 acre lots as it states in the Comprehensive Plan. Now whenever this development has completely encircled this, somebody is deciding to go back and planning 25 acres at a time and change things, change both the zoning and put in a PUD to change the character of the neighborhood, so I hope that is taken into account, that these things are completely out of character with the current neighborhood. Also, this area is not in the zoning district for most of the area that surrounds it. If you look at the zoning map on the right hand side where it says C-RR1, the little square that comes up and back down, that's where this is. And most of the houses that either currently border that or will border that with the South Pointe Addition are not in that zoning district. So we do not have the opportunity to protest this development through a petition because it is in a different zone because of the way that border comes up in there.

Also, I've twice gone around and talked to everyone of the adjacent property owners in Linda Vista, in Meriwether, and South Pointe Addition. Everyone of them is opposed to this. The vote that was taken at the Homeowners Association meeting came out as was stated 66% in favor, 33% opposed. However, just before the vote was taken the Homeowners were basically told it's pointless to oppose this because everybody downtown is for it, meaning the Planning Board, the Commissioners, etc. In talking to the neighbors, several of them have mentioned to me, why bother showing up at the hearings. It's a done deal anyway. So I hope that it is not a done deal and that you'll take into account the surrounding homeowners, every single one that I contacted, are opposed to it. I'm talking about the people that directly border that. Also, Lloyd is stating that he is concerned about the character of Linda Vista, and I'm sure he is. We're concerned about it also. The only difference is he receives all the benefit, we receive none if this devalues our neighborhood. He stands to make a substantial amount of money by doing this. We only take the risk, that's all that we get out of it. Also, again, the planning, this was not planned. In my business, I run a mail order business, a catalog, and if I sell someone a ten dollar item or even a thirty cent item, when they receive it if it's not what I told them they were going to get, if it's not what they thought they were going to get I take it back and I give them their money back. Now here we have people who have just bought lots, a couple here just moved from Texas. Just was moving in when I talked to them. They had no idea this was going in behind them, and they bought this lot thinking they were buying into a neighborhood of similar houses like they live in. This is their life savings. This is my life savings. This is everybody who surrounds this, our entire life savings we've got in our house. And when we looked at the fact, and I don't disagree with the surveys that were done in Missoula that shows where there's affordable housing with upper level housing that those upper level houses I'm sure have increased in value in the last few years in Missoula. A dog house has increased in value in Missoula. I don't think there would be anything you could do to housing in Missoula that could cause it to not increase in value. The problem is every boom is followed by a bust, every single one. Sooner or later a bust is going to come along and if I want to sell or any of these other neighbors want to sell at that time, we have a nice house that we're offering, someone somewhere else has a nice house that they're offering in a nicer neighborhood. In order to get the person to buy my house as opposed to the other one, I have to lower my house value. I have to lower my asking price to get them to buy into my neighborhood. So I contend that yes, this will affect our property values. Why would all the neighbors around there opposed to it on a property value issue if it wouldn't. Property value is a perception in a person's head, what they think they're going to buy when they buy into a neighborhood. It has a lot to do with the character of a neighborhood.

Also, I would like the County Commissioners to consider the current residents when you're considering this. The people who have spoken in favor of this either do not live immediately adjacent to this or they're builders and developers and engineering firms that all stand to make a tidy bundle of money off of this. We don't receive anything except this inserted after the fact in our back yards. I just want to state again as far as the NIMBY factor, or not in my back yard, everyone recognizes that that's not a good attitude to take but I'll state that there are people who are on the other side of the fence going in your back yard, in your back yard. And I think that's different and worse than saying not in my back yard. On one side you've got people saying not in my back yard, however, on the other side they're saying in your back yard, in your back yard. I think we have a higher right to decide what goes on in our back yard and what affects us and make the decision on how it affects our property values, because property values, as we all know, it's in the mind of the buyer. I just want to check my notes to make sure I've talked about everything. I did. Thank you very much.



John Quackenbush stated, I live within 300 feet of the proposed development, and I am on the Linda Vista Board of Directors and Covenants Committee. I would like to address this map over here. One of the major concerns of all of us in this whole process is the fact that you can see--this is Linda Vista and this is the proposed area. One thing as Steve mentioned, we're in this zone and this piece just out here and it's in another zone, which means, like Steve said, we can't petition or anything, and it's kind of retroactive to come down into an existing area with a development that is out of character with the area, and when I say out of character I'm talking about duplexes, zero lot lines, townhouses versus single dwellings. Regardless of the lot size, the development is out of character with what is all surrounding it. The main thing, our concern is why don't we take this affordable housing and work it into future proposed development as part of a plan instead of coming in and trying to do a micro-plan in the middle of a community that's already planned.

As Steve mentioned, when we bought up there, the real estate agent, everybody said this is what Linda Vista is going to be, here's the proposed supplement. When we bought the house we didn't just look at our lot and say, gee, this looks like a nice lot. We want to see what's going to be across the street, what's up the way, and the whole development and the whole sales pitch was half acre lots, these covenants. You read the covenants before you buy the lot, unless you're stupid. We looked up Grant Creek and we looked for an area that was something that we wanted to build a house on. I built that house up there within 300 feet of this proposed subdivision. It's worth something like \$275,000. And I'm concerned about having duplexes, townhouses that can be purchased and rented out in this area as being out of character with the rest of the development, and retrofitted kind of into our area instead of planned as part of a comprehensive plan. I think it's really good that there's going to be comprehensive planning on the rest of the area, and I think that's where the affordable housing needs to go as part of a comprehensive plan and when people go up there and buy a lot they know what they're getting. They know that over here is going to be some townhouses, over here is going to be a park, and that's the whole purpose of planning is so that people know what they're buying into in a neighborhood. This is being retrofitted into an existing neighborhood, and all of the neighbors that are close to it, not necessarily in the back yard, but all the neighbors who are affected are against it. The people who tend to live all the way down in Lower Miller Creek, it's way up where they can't see it. They mentioned the Grant Creek development at the bottom end not affecting the property values. It's not inserted into the high rent district in Upper Grant Creek, it's a block at the lower end and then you go up into other divisions, and it's completely different than if you took a section right jutting out into the middle of Grant Creek in \$250,000 to \$300,000 homes and put townhouses and duplexes in there. The other concern that is being--there's a huge gully down there, I don't know if you've ever been up there. But where that proposed development is is at the top of a huge draw which comes right down behind my house and my neighbor's house and the two neighbors. I had to go to work at Life Flight the night they had the vote so I was not able to participate in the vote. My wife was not there because she was working. A lot of people aren't here because they're working. A lot of people aren't here because they're working. None of my neighbors, the next three down, that oppose it are not able to come today.

But the drainage, the hydrologist came up and looked at it and said there's a lot of problem here and we have a problem right across the street from my house. We have a huge mud puddle because the City Engineering plan, it was built in accordance with the City Engineering plan, but the drainage is not adequate. If you drive up there right now, today, there's mud that thick all over the street. Whenever it rains, and I'm not talking about a 100 year rain, we have drainage problems in the present Linda Vista and it's not this high density. When you take more roofs, more driveways, more sidewalks, more streets, this higher density housing right in the draw where all the natural drainage, you're taking up all that absorption up there. The hydrologist that looked at it proposed much more drainage than the City was going to--that the plan was going to be approved with. Lloyd has agreed to address the drainage problems mentioned by the hydrologist, but what I'm trying to point out is it was not addressed up front and until the Upper Linda Vista Homeowners Association got these kind of people involved, we were going to have tremendous drainage problems coming right down behind my property, maybe onto my property, definitely onto the neighbor's property, and the hydrologist said it was going to be very expensive to address this. We would like to see the drainage fixed in the present Linda Vista before they approve what's going on here in the natural drainage that occurs on that open land that's already there.

We just want to make sure that we have an actual plan and not just go in and say, gee, let's stick some affordable housing here, here's 25 acres, let's rezone it, let's put some affordable housing in here--that's not comprehensive planning, and this is what concerns us. We would like to see this little insert developed in the same character, even if it's rezoned to the same thing we have where we are, which is basically a house on half an acre, it gives you more absorption for the drainage up there, it's in character with everything that surrounds it. The South Pointe that overlooks it. The neighbors that are around it, and then take the affordable housing and put it in the area that's not built yet, where people have already bought the lots where it's not already developed and do it as part of a comprehensive plan. That's the correct way to do it, is to plan this kind of development ahead of time, then everybody that buys there they know what's there, they know what's planned, they know what they're buying into, instead of trying to retrofit back into an existing area. And if you look at--I mean it just looks strange. It just sticks out like a sore thumb when you look at up there. And that's basically our concern is, like I said, duplexes, the zero lot line, attached dwellings, and the townhouses are out of character with the rest of the area. We're not saying don't develop it, we're saying develop it in character with the rest of the area, even if it's slightly higher density. I'd like to see it not be townhouses and duplexes in there, at least detached dwellings. They're in character with the area of all the people who overlook it and surround it. Thank you.

Mel Newill stated, and I guess I represent Mel Newill. I'm on Meriwether Avenue and we are against this development of Lloyd's, and to compare this with Miller Creek would be about like comparing the old Woody Street with Higgins Avenue, I would think, because Miller Creek is not as high developed, and I agree with Mr. Overholt about the duplexes and such, and basically that's it. Thank you.

Cheryl Urban stated, we live at 4275 Scott Allen Drive. And my concern also is with the decrease in the value of our property. We've only lived there since the end of March, and as the other gentlemen said, we asked and were told that it was residential because it is right adjacent to our property within 300 feet. The park is going to be literally in our backyard, look out the door and you'll see the park. So I am concerned--and all of the townhouses and the duplexes will all be right there when we go out into our backyard or anywhere on the west side of our house. Because that will all be park areas. So I am concerned that it will decrease the value of our home. And I'm also concerned with what's going into the park area because we're right at the end of a cul-de-sac and if a park is on the other side of our house, guess where all

the neighborhood kids are going to go. Right between our house and the house beside us to get to the park because there is no other way to get down to the park. So I'm also concerned with that if it does go through.

Sarah DeGrandpre stated, I live on 4305 Scott Allen Drive. My concern is that--I worked really hard to move into that house. And I also agree with the several people, I worked really hard to move into that house, and I asked several people several times, and talked to my realtor and said, is this going to be a place where there's no apartments, duplexes or townhouses because I had just moved away from a neighborhood that was like that. And I was told, no, this is single family development, these are single family homes, this is the way it's going to be, this is the whole area. And I was so happy to be able to move into the area and I was very much in shock when I found out that 600 yards away from my house there was going to be duplexes and townhouses. I understand the need for affordable housing, and I think that's fine, but my big concern is rental houses, because I've experienced duplexes and townhouses with college students living in them, which is what happens quite often. Not to say that it couldn't happen in this area. Because I was really afraid because I couldn't let my children out because of the way people drove their cars around the neighborhood that I used to live in. And just because of the bad language and things that I heard with people near by that were younger and not family oriented. And our cul-de-sac is very much family oriented with working parents, and it's a very safe neighborhood right now, and so I'm quite concerned. I feel a little bit like I was deceived by my realtor and by the people in this neighborhood that this was going to be all single family homes. That's what I would like to say.

Case Kuiper stated, I reside at 6787 Linda Vista. I've been a Montana resident for about a year and a half now, and I lived in what's known as affordable housing for a year while I searched the corners of Missoula to find a quality of life-style, a quality of house that I could raise my family in. Like some of my neighbors I'm extremely concerned about property values. I'm proud of Mr. Twite and the quality of the development that he's put together, and certainly the kind of house that I live in in that development. Like some of my neighbors I feel I'm a little blind-sided. I spent the year looking, Rattlesnake, Grant Creek area, and decided Linda Vista held for me and my family the needs that we were looking for. Open spaces, family environments, quality of life-style, and now to know that 300 or 400 feet from my doorstep is going to be multi-units. I'm concerned about rental units. I haven't heard anyone address that as of yet. Whether that's a possibility, but that encourages a high transient rate. When I looked at the area and spoke with neighbors and owners, and spoke with realtors, they told me what I saw was what I was going to get and that was going to be the quality of the development. And I don't want to take up any more of your time, but I've heard words like "in harmony with our neighborhood, in concert with the development, to complement what we live." I've got over 15,000 square feet, I've got wide open spaces, no fences, and I'd be hard pressed to look across the street or down the block and see four units and four families living on less space than I currently have right now. I don't believe that's in concert, I don't believe that's in harmony, and I don't believe it's what I was told and represented for the development of the property. Thank you very much for your time.

Beth Kennedy stated, I've been a Missoula resident for about nine days. I moved up here from Texas, and when I spoke with a realtor I was told the main thing to look for when choosing a home, three main things to look for are neighborhood, neighborhood, neighborhood. And with that in mind we looked at neighborhood and Linda Vista stood out big time as the place we wanted to live because of the type of the neighborhood it is. And I just found out that this was going. We just moved in last Saturday into our Linda Vista home, and while I was unpacking my many boxes someone knocked on my door and told us about this. And we were quite concerned and shocked because you can sit out on our wonderful deck with a wonderful view and look across and see this. Again, I'll just make it short. I agree with everyone who has spoken in opposition to this, that it really isn't in concert with the rest of the neighborhood, and I hope you'll keep that in mind when you make your decision. Thank you.

John Quackenbush stated, the other thing I wanted to say, as Steve Overholt mentioned, this letter saying that the agreement between Twite and the Upper Linda Vista Board of Directors, or the Upper Linda Vista Homeowners Association. I'm on the Board of Directors, we didn't vote on this. There isn't actually a formal agreement. And the other thing about the letter, the Board was never involved in that.

Barbara Evans asked, Charlie, would you clarify that for us, please? And would you explain for me the fact that there's two homeowners associations and where they are located and who they represent.

Charlie Brown stated, the Upper Linda Vista Homeowners Association basically represents everyone from Jack Drive on up Linda Vista, and that's probably the easiest line of demarkation, up until you get up into South Pointe and Meriwether. What happened was as Steve said, and I think Steve knows this very well so I'm not going to get into pandering over the usage of the proper verbiage. But what happened was there was no homeowners association in Upper Linda Vista at the time this development was proposed. And for those of us, and I happen to be one of those that received the letter, within 300 yards I think it was of the development, that was the first acknowledgment we had, well after the plan had gone into effect. I immediately called OCD and they said well, it has been advertised in the paper and so forth, and apparently I missed it as well as most of my neighbors. So several of us got together and Lloyd was kind enough to come and meet with several of the homeowners in the area the weekend before this was all going to go to OCD, and to the Planning Board. We then talked to him about serious concerns that we had developed throughout, the hydrology report, and so forth. And told him that we were having a meeting that Monday night, we advertised it the previous Thursday. At that meeting, our advisor, an attorney named Dan Cedarberg, as an informal group, not as the homeowners organization, had arranged for this memorializing agreement. We asked the general membership of the homeowners, not the Directors, the general membership that was there if this memorializing agreement were in effect would you support it. Two-thirds said they would. That is what happened. It was not a vote of the Board of Directors, it was a vote of the general membership of Upper Linda Vista.

Barbara Evans asked, how many people are represented and how many voted?

Charlie Brown stated, there were I believe, there were 56 people there and 37 or 39 voted for it, something of that effect. It was roughly two-thirds.

Dan Adcock stated, I live at 6762 Linda Vista Blvd. And I think what I'd like to say, first of all Lloyd Twite, thank you for building what you've built up there. It's a magnificent development and I'm a proud owner of a home up there. And it does, it gives me great satisfaction and with Beth moving up here from Texas, it's just outstanding. I do have some concern there. I see them up here, and I feel rather arrogant saying that I'm concerned about people that are going to come in that maybe don't have the resources that I might have, or we have, are going to come up and live in that area. And I'm saying, no, don't do that because I'm really concerned about the cost of my home going down. But yet I do have to say that I am concerned about that. And I am concerned about the fact that this particular section is an anomaly. It's going to come and it's going to gouge right in the middle of a whole bunch of people's homes and a lot of those people we've heard from today and some of those people aren't here. And that is a concern of mine. And I just wonder if this is absolutely the best way to handle this. If there's another way to handle it. As we travel through this, I hope if the development does go on, that we are made privy, that this is an open exchange of the type of homes that are going in there, and what's going to happen, that that's really clear. That that's made clear to all the homeowners up there, and if by chance this does not go, I would really encourage Mr. Twite to keep on with your dream and your vision on this, and maybe work it another way, because I think there's room for all of us around, and we all can have our dream and we all can have a piece of what you built for us. But thank you, that's all I want to say.

Steve Overholt stated, I would just like to reiterate what Charlie Brown said, that some of the neighbors informally got together like a week before the OCD hearing, and talked about this. And I would just like to point that way. It wasn't until a week before the OCD hearing that people really became aware of this and it was kind of a rush, rush thing, let's get together, let's have this meeting, this homeowners meeting where the vote was taken, etc. People weren't prepared, didn't have time to really consider everything, and it was kind of dropped on us all of a sudden, and a lot of people weren't really prepared for this because it wasn't planned, unfortunately.

Barbara Evans asked, Lloyd, if you wouldn't mind coming up to the podium, please? Lloyd, I would like to have you explain to me the process that you use when you are deciding to do a development and the process that sort of drops it in the people's lap that what they feel is the last minute. And then if you would explain what kinds of things the folks had asked for that you tried to accommodate, and then I'd like you to address what potential buffers you might be able to accomplish between the present homeowners and this new proposal.

Lloyd Twite stated, inasmuch as the process that we do in a development, and I've been doing it for several years, Gilbert can give you more date by date, but the general process is to number one, meet with the engineer, in this case Gilbert Larson and his associates, say here's a plat of land that we're wanting to do something with, let's try and do a master plan to start with, you proceed with that, obviously in concurrence and cooperation with the OCD department, that's the general review bounce board for this Commission, if you will. Oftentimes there's guidelines that they require because of the County Commission's requirements. We'll take that back to the drawing boards and come back in with submittals. They are numerous meetings with OCD staff, prior to any formal submittals, and again Gilbert could give you more date by date scenarios as to what the process of this is. Once the verbal portion of the preliminary submittal, if you will, is agreed upon, I as the developer and through my engineers will draft it up in forms as what you see in front of you now, and then meet with OCD staff, say this is what our thoughts are, get their input. Go back into what will meet criteria, what will meet guidelines, what will meet from the developer's perspective what will sell, which is obviously the bottom line, what's desirable in the community and what are some of the community needs. At that point the engineers will draft it into formal sections, we'll make a formal submittal. It is publicly notified, the ground is posted, publicly with a big three foot square signs, and have been posted on this ground also. At that point you get a date set for your Planning Board meeting and subsequent Commissioners' meeting, which is why we're here, which is the basic format. Calendar-wise Gilbert could give you more specifics as to how far the calendar goes. To follow up a little more on the comprehensive plan scenario we have, and I would invite anyone in this room, and particularly the Commissioners, to be at Linda Vista Golf Course tonight. We are doing a major, I'm off the subject slightly here, in which we are doing a major comprehensive plan just to address this kind of scenario as to not necessary in-fill development, but to try to give both homeowners, future homeowners, and developers a chance to somewhat come together and be more compatible in what should we do where. So from that standpoint, in a nutshell that's the development is done. Accommodation wise, do you mean in terms of housing?

Barbara Evans stated, I mean the concerns that the folks have that were expressed to you, and what things you did or were not able to do to accommodate their concerns.

Lloyd Twite stated, there were a numerous amount of concerns, and that's obvious, and that's why we've come to the compromise position, number one was density. We compromised from going for 77 units down to 72 units, trying to meet two ends of the scale and trying to balance the scale to try to do something for an affordable section of homes, which I think is good, I don't think that you need to try to put all the whole quandary of affordable housing in one specific area because then you have more of a run down specific area, and I can name different areas around Missoula that are prime examples of that. If you do an in-fill here and there, give yourself a mixed community if you will, it has a tendency to get the affordables more inspiration, if you would, to try to keep up with the Jones next door.

Fern Hart asked, would you answer about rental or lease?

Lloyd Twite stated, rental or lease, I think the economy will dictate that these will not be rentals. They're not intended to be rentals, there all single family lots. As you go into a rental market, you'll find that these houses due to architectural control standards and government standards are not going to be rentable. I mean the economics won't allow it.

Fern Hart asked, all of these will be owner-occupied?

Lloyd Twite stated, that's the intention, yes.

Barbara Evans asked, buffers?

Lloyd Twite stated, buffers were part of the compromise, if you would, with the Homeowners Association, the Upper Linda Vista Homeowners Association. There are buffers within the compromise status that you have there in front of you that we have agreed to.

Barbara Evans asked, would you explain to me, please, understanding that the Meriwether and South Pointe Subdivisions are adjacent or thereabouts, would you explain to me was there any attempt to involve those folks in your decisions, in what you designed here?

Lloyd Twite stated, yes, in fact there was. The Marias Drive that comes out of Meriwether was designed to come through the new South Pointe Subdivision and tie in into Linda Vista property on the east. Upon reviewing that and going through it with OCD, and these were part of the verbalisms that you have with OCD Staff, and I commend them for it, number one, we did not want to bring more traffic through South Pointe Subdivision, nor did we bring that traffic through Meriwether Subdivision. We thought we would have that much more opposition from those folks, plus the traffic pattern would have been seven 90 degree turns if we would have done that. Subsequently we did Brandon Lane that goes through the new South Pointe Subdivision so we would have more artillery traffics into this new phase of Linda Vista.

Barbara Evans stated, something was said this morning that led me to believe that the connection or proposed connection with South Pointe was too steep to do that. Did I misunderstand that?

Lloyd Twite stated, no, you must have misunderstood. No, the grade is not steep at all.

Barbara Evans stated, the Friendship Force visitors are ready to visit with the Commissioners and the hearing would be recessed.

The Friendship Force from Devon, England, visited with the Commissioners, and a gift from the Board of County Commissioners was presented to the Friendship Force.

Barbara Evans stated, the hearing will resume.

Barbara Evans asked, what will make up the buffer zone? Are you planning to plant trees, things that will help to protect between the two, block vision, block noise?

Lloyd Twite stated, yes, we talked about that and I've agreed to coordinate that with the Upper Linda Vista Homeowners Association people and the people immediately adjoining the areas. Yes, I do anticipate planting a numerous amount of trees for these buffers. One thing I would like to clarify on valuation factors. The average sales price of these homes is \$118,500 and my son just closed on a house here, a month ago, for \$130,000, so we don't have a major disparity of pricing here. There are going to be definitely some in the range that we can meet the requirements of the PUD but there's going to be some in the range of \$150,000, so as we go into this portion of the \$150,000, as we go into this portion of the subdivision, we're going to phase our way into it, so it isn't going to be a \$160,000 house and then a \$100,000 house. As a developer I'm very cognizant of that and I've got a long way to go up the hill, and I've got a lot more land then just this piece that we're working with, so I don't want to shoot myself in the foot as far as the reputation that we've established for Linda Vista. I think that it's a necessity to do some mixed housing units as this is proposed, and that's why we've done them and to try to do the buffer. Yes, we are going to do numerous amounts of planting to try to buffer those areas, and particularly around the townhouses.

Michael Kennedy stated, it seems to be that it could be three years before you develop up there, depending upon whether or not the Neighborhood Plan takes place before that.

Fern Hart asked, is that correct or is this a three year build out?

Lloyd Twite stated, it's anticipated to be a three year build out. We would immediately, assuming that we would get approval from this Commission, we would start with our final designs and drafts and like things that need to go with it, and subsequent offices of those plans and road permits, or road approvals, and sewer and water designs and approvals. That's going to take several months to do that. So physically ground breaking would not be immediate. It's got to go through, number one, the drafting and design through Gilbert's office and, secondly, through the respective offices of the County as well as the State to get approvals of Gilbert's submittals. So ground breaking would not be immediate, but I would anticipate it being this fall.

Michael Kennedy stated, I guess I'm reading from the memorialization that says, "A block of 72 residential units approved but not platted by the Twite family in the area will not be developed until the neighborhood plan is approved or three (3) years have passed, whichever occurs earlier."

Lloyd Twite stated, that's a trade off, if you will, of land that we already have in the master plan of Linda Vista that is off to the complete west of this property. It's a time trade off.

Michael Kennedy stated, the next thing has to do with the dedication of 40% of the housing will be made available to the Board of Housing eligible applicants and your statement that the cost of the houses are going to average \$118,000, seems to be a bit out of whack because I think that the maximum allowable under that is \$94,500.

Lloyd Twite said, right, I'm saying the average price. If you take the \$150,000 houses that we're going to build blending into this area versus affordable housing price, and average them out, the total sales price average is \$118,000. In other words, the affordable ones at \$96,500 versus \$150,000, by the time you blend all the houses combined, the average sales price will be about \$118,000.

Michael Kennedy asked, there was an appraisal done, is that appraisal available to us?

Lloyd Twite stated, yes.

Michael Kennedy stated, the next question has to do with the buffering. I did attend the Planning Board meeting and there was some discussion about the connection and the access between the park and Marias Street. And during that long discussion that was initiated by Helen Cipolato, I seem to remember there was an agreement there would be a change in the location of that access if this were approved so there would be a direct route between Marias and the park. And what I note is you have a connection between Lots 14 and 15.

Lloyd Twite stated, I recall Helen bringing that up at the Planning Board meeting you're referring to. Topography for one discussed and withdrawn, I believe, and I think the access that we concurred with at the Planning Board meeting is as it's shown. That was quite a lengthy thing and Helen brought that up and then the concurrence after a long discussion was that the more practical place was where we have it drawn in for easements.

Michael Kennedy stated, then a lady who gave testimony earlier talked in terms of access to the park. Other people will be using the park, obviously, whether they live in the subdivision or not. I am wondering how you might address the access to people surrounding that area, particularly the people on Linda Vista 7th Supplement, Scott Allen Drive area.

Lloyd Twite said, right, there is no easement through those folks' property in terms that children could ride bikes through their property. Certainly they can fence that off if that does become a problem. I personally live above, it's almost a six acre park in Linda Vista that I developed, and kids at one time started going through there, through the older part of Linda Vista, and that's easy to deter just by a fence or keep out type thing. But there's no legal access through there, no, so the kids don't have to go through there.

Michael Kennedy stated, I'm not certainly as familiar with that area as you are. I had noticed that over time there seems to have been some regrading of that area, substantive regrading of it, and I'm just wondering about that.

Lloyd Twite said, we're salvaging every piece of top soil that's there for reclamation purposes and obviously the lawns around the houses, that type of thing.

Michael Kennedy asked, but the current grade is going to be the grade that's used for development or are you going to do more grading?

Lloyd Twite said, that will be shown on topography maps, but whatever else is going to be graded or regraded would certainly have to be approved by the County Surveyor's Office for roadways and through the Building Department for the construction of homes.

Michael Kennedy stated, I was just wondering if you had any thought about that, whether the current grade will come close to representing the final grade for development.

Lloyd Twite said, other than drainage changes, yes. I mean roadway drainage changes so that we can divert water to the sumps and subsequently to a natural flow.

Michael Kennedy stated, we've had a lot of discussion about developments, in fact it was just today, about dust control and road maintenance during the process of a development. Would you care to discuss that?

Lloyd Twite stated, we in the past, in Linda Vista, have used a road abatement treatment which is a chemical, we used to use road tar but that's not the ethical thing to use any more, so there's a road abatement treatment for dust abatement. We've used that on the Linda Vista Blvd. road summers so that we do in fact control the dust factor on it. Linda Vista Blvd. at this point in time, matter of fact as we're speaking they're putting the curbs and sidewalks in the rest of that area. That will be paved probably within a month. To further your question what do we do with dust abatement like in this project that's proposed, very similar to what we've done in the Linda Vista area. Obviously you have to disturb the ground to build on it, but during the time of construction we will use dust abatement.

Michael Kennedy stated, we've heard some, I thought, conflicting commentary. One was that you're going to hire a geo-hydrologist to do some work out there. Is that correct?

Lloyd Twite stated, that's been done. Gilbert and the hydrologist that the Homeowners Association had contacted met and concurred on drainage plans.

Michael Kennedy stated, they're feeling is that the drainage problem can obviously exist can be resolved, and when you do add all of this impervious area in curbs, sidewalks, roofs and all the rest that it's still a plan that is workable there.

Lloyd Twite stated, absolutely. A gentleman asked what our dust abatement is, or the product used for dust abatement. I'm not in that occupation, but there is a chemical that I hired an individual that does that type of contracting to do that for us.

Barbara Evans asked, is it magnesium chloride?

Lloyd Twite stated, I think that's what it is.

Barbara Evans stated, I have a question for you, Philip, and it's because I heard you folks and I understand your concerns that when you buy a place and your realtor, or your understanding of the system is that the rules are in place and you assume that the rules are there forever. Would you explain, Philip, that the rules allow for and include the potential for change.

Philip Maechling stated, I think that all of us understand that neighborhoods are going to change a little bit and a lot of what we see in urbanizing Missoula is undergoing a lot of change. The zoning process is one that is not static. It is a dynamic kind of process. And built into it are provisions for the changes in land use regulations, sometimes they involve up zoning which would increase density, sometimes they involve down zoning because lands have been zoned inappropriately for their actual land use or the ability for the services in place to handle them. In the case of County zoning, County zoning has the ability to change zoning built into it, it also has protest provisions and they've been talked about briefly and I think the general statements are correct, that the C-RR1 zoning district is the district that would have the rights of protest in this case for the rezoning requested for the C-RR1. The Comprehensive Plan itself is intended to be a dynamic document rather than a static document and it has provisions and has designated this area 2 per acre, but it has provisions in it when services are available to allow for changes to take place. Both as the marketplace changes and as the community's needs change, and that causes things that sometimes appear to be static to actually not be static, and provisions for change can and probably will continue to take place. Whether or not realtors present neighborhoods as being whatever they appear to be today, I don't have any thoughts on that in particular, but the fact is that the land use processes we have in place right now do have provisions for change and I think we see those daily.

Barbara Evans stated, I'd like to say to the folks out there that the Commissioners don't have all the latitude that you think we would have in making decisions. The rules are in place that a developer is supposed to follow, and those rules are put in place after many hearings at which the public can come and give their opinions that they either like this part or don't like that part of the rules. Once the rules are passed and the developer is using those rules, if we deny a subdivision based on something outside of the rules, and they choose to take us to court, we in all likelihood will lose because we didn't follow our own rules. And when we approve something and you folks who are not happy with it assume that we did it just because, I would like you to understand that we don't always have all the latitude that you think we've got. So if, and it appears to me from what our Staff has told us, that they have met the rules and if we choose to approve this subdivision, I want you to know that it isn't because we didn't hear you. When we ask for buffer zones and we ask them to work together with you folks to try and help you to achieve the things that you want as well as they achieve their development based on living up to the rules, we do hear you and we do care. I would ask before we hear a motion, and I don't know what we're going to hear here, I would like to ask Lloyd and Scott to work with the folks in Meriwether, to work with you folks to determine what kind of buffers would be put in, to provide the same quality of homes that one of you gentlemen spoke about, so that you can be proud of the area in which you live so that your homes won't be devalued, because we do hear what you have to say.

Horace Brown, Missoula County Surveyor, asked, the concrete trucks which are going to be brought to this area in the building of basements, what route are you going to follow?

Lloyd Twite stated, we will be taking the Upper Miller Creek Road. We've directed all of the incoming concrete trucks, delivery trucks, Intermountain, Boyce that type of supply outfits, to come in through the Upper Miller Creek Road. It's a bigger, better road as opposed to coming in the lower road and through all of the lower Linda Vista areas.

Barbara Evans asked, and you will be doing dust abatement in any area that requires it until the area is paved?

Lloyd Twite stated, yes.

Horace Brown asked, on Jamie Ann Lane on the contour map you show a turn around area. That's on common area. How am I going to turn around my snowplows and sanders up there? I can't go on the common area without right-of-way being given to the County.

Lloyd Twite stated, we'll accommodate that.

Fern Hart stated, I was up there today at noon and I think most of the real concern has been from South Pointe and Meriwether and probably the Board from a certain Homeowners Association. Who developed Meriwether?

Lloyd Twite stated, Meriwether was done in the 80's by the Frames.

Fern Hart asked, is not a lot of the concerns about the drainage due to South Pointe?

Lloyd Twite stated, there were some problems this winter that was in fact, not to pass the buck, but South Pointe was under construction, roadways were under construction, and credit South Pointe because I'm in the same scenario. As you dig up and displace earth you've got water going different directions what it did originally and what it will do when they get done with their drainage and roadway areas and sumps. We had a problem this winter and on one occasion we had snow run off and water came from South Pointe and came down in a different area than it normally does, and as it does today in fact because they're doing the road work in South Pointe today also.

Fern Hart asked, did I understand you did not have enough adequate sumps in some of Linda Vista? Did I hear that?

Lloyd Twite stated, no, there's an area that one of the gentlemen spoke about earlier, that indicated there was this much mud, and in fact I guess there's whatever, but there's one area there that I've talked with Bob Holm with the County Road Department and we have corrective measures we're going to take care of that with, and I as a developer will take care of that. What it is as you start at the bottom of any development, you start at the bottom because of the sewage factor as opposed to starting at the top, you have put in a place for the sewage to go, so you start at the bottom, which unfortunately every time you start at the bottom and go up the hill a ways more you're disrupting the earth above it so you get the sediment from the earth above it causing the problems for those folks the following year and as the roads get developed and the houses get built and the lawns get in and the roots get established you don't have that sediment problem. But unfortunately it's kind of the nature of the beast when you work with a hillside.

Fern Hart stated, I did read about the concern for a wildlife corridor, and I believe there's wildlife, I saw a bluebird today. Did I understand in this planning that you will leave some corridors for wildlife?



Lloyd Twite stated, yes, there are easements to accommodate that.

Fern Hart asked, like Barbara, I'm assuming that if there is a plan, a comprehensive plan amendment, is that what it would be, that it will involve all of the Miller Creek folks?

Lloyd Twite stated, and a lot more. There's about 7500 acres that are outlined.

Fern Hart asked, we will get all the subdivisions whether they're ones that you've grown or that others have grown? All those people will participate?

Lloyd Twite stated, we hope so. We've made it very public. I was on a two and a half hour talk show yesterday morning, it's been on the radio and TV, in the paper yesterday and today again. We would invite everyone to come to that so that we can try to get this much of this type of thing ironed out up front for the people that will be moving in, that are there today, and for the developer so that we don't run into brick walls and have a bunch of bad feelings with our development as we go.

Fern Hart stated, I know all of you are concerned about zoning and your lack of control of your area. I promise you that none of our zones are neat packages. They are all different shapes and configurations. When we worked Wal-Mart we had the same situation with a very unique zone. We don't make zones of any kind. Areas zone themselves. They do and they look very strange. So we don't have a way to make all our zones look compatible. I want to compliment the developer for meeting with the homeowners. I've worked with Linda Vista since I've been in office and those folks are bruised at best with the whole sewer issue, and I understand, and it's never easy if it's close to us. I will ask about the sidewalks. I thought that was taken care of when I read the Planning Board Minutes.

Colleen Dowdall, Deputy Missoula County Attorney, stated the Planning Board recommendation was to eliminate that condition of expanding the sidewalk to five feet. I also found the place where Helen Cipoloto's motion was made to ask the developer in a general way to provide more access to the park.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the rezoning request for the property known as Linda Vista Eighth Supplement Subdivision, west of South Pointe Addition and south of Meriwether Addition in the Southeast 1/4 of Section 12, Township 12 North, Range 20 West, Missoula County, consisting of 24.65 acres, from C-RR1 to C-RR2 Planned Unit Development, based on the Findings of Fact as set forth in the Staff Report. Motion carried on a vote of 3-0.

Michael Kennedy stated, I second with a comment first. The second comes with some difficulty for me and it's only made acknowledging a couple of things, and that is, that we're in the midst of a process that hopefully will result in not only better planning, but more effective ways to deal with land use and more effective in the sense that more people will be more pleased with it over a longer period of time. And as a transitional stage, I think this project in some ways rather remarkable. According to my own standard, which certainly isn't the standard of the County, it is less than desirable and I believe it would have been differently formulated had it not occurred in this transitional stage of growth management. I still commend the developer for this effort. Again, under the circumstances, it is a rather remarkable effort and again, with some hesitation, I do second the motion.

Fern Hart stated, all our zones have unusual lines. And our Comprehensive Plan has included the opportunity for PUD planning, which increases the zoning since, my recollection is, 1975.

One of the reasons for zoning increase that I support in the Linda Vista area is that the community has invested in the sewer in that area, which increases the value of property and allows for a greater density.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the request by Druyvestein, Johnson and Anderson for Lloyd Twite of the Linda Vista 8th Supplement Subdivision consisting of 72 dwelling units on 72 lots on 16.5 acres, located in the Southeast 1/4 of Section 12, Township 12 North, Range 20 West, Missoula County, subject to the amended conditions and the memorialized agreement between the Twite Family Partnership and the Upper Linda Vista Homeowners Association, Inc. Motion carried on a vote of 3-0.

Fern Hart stated, a PUD allows the Staff and the local government to add more stringent conditions. We can do more with park planning, more with landscaping, buffering, trails. We can do more with specifying that between the houses that there be some space or different views. We don't have those kinds of controls outside a PUD. It allows for a creation of diversity in neighborhoods. This is one of my goals for Missoula County, that we don't create ghettos, that we may make neighbors feel like neighbors, and it permits a responsible use of public services which is in everybody's tax dollars.

Barbara Evans stated, before I call the question, I would like to reiterate to you folks that I'm going to vote for this proposal, not because I didn't hear what you have to say, partly because I trust that Lloyd Twite will look after your concerns as best he can and keep in mind that this is not the last subdivision he will come in here on, and if it appears that he made no attempt to ease your concerns and work with you, I won't forget that. We have had a long journey trying to find affordable housing and by that I don't mean low income ghetto housing. I don't think there really is any low income housing in this town. I think anyone who is trying to find a home will find it is most difficult. I spoke to a banker recently and I asked him what the average price of a house in town was, and he told me \$150,000. That absolutely boggles my mind that that's the average price of a house. The young folks just married, just wanting to start a family, there is no way they can afford that kind of a house. And we have virtually little to nothing for those folks in this town. For your mothers, for your children, for mine and my children, we need to have affordable housing. And that means nice housing that you can be proud of to have next to you and they can be proud of to live in. I think Lloyd's subdivisions in Miller Creek are beautiful and many, if not all of you, live in the homes that he built signifying you felt they were worth spending your money on. It isn't that we don't hear you, it isn't that I don't care, it's that I have to look at the whole picture and I feel he abided by the rules and, therefore, I have to approve this subdivision.



Fern Hart stated, we are growing as Michael pointed out, we are growing and none of us now can afford to let someone else do it for us. I applaud you for being here and speaking up and I count on you to do the same for the rest of the planning. We can't say anymore that something was done to us. If it was, we weren't there. We really have to keep informed and have to keep active.

The conditions are:

1. Plans for grading, drainage, sewer, sidewalk and streets shall be approved by the County Surveyor prior to final plat filings.
2. That a cul-de-sac be provided at the end of Brandon Way, to be approved by the County Surveyor.
3. That the developer waive the right to protest a future RSID for improvements to Miller Creek Road and Lower Miller Creek Road.
4. The septic tanks must be easily accessible to roadways for maintenance. Minimum twenty foot (20') easements must be provided for all public sewer collection lines, to be approved by the City Engineer.
5. The Missoula Rural Fire Chief shall review and approve plans for fire protection.
6. The parkland dedication be expanded into the common area onto a flat grade slope (no greater than 3%) for the development of a pocket park (for play structure, picnic tables, sand box, small open play area, trees, etc.) of a minimum of 100 feet by 100 feet, which would blend into the common area, to be shown on the submitted preliminary plat, subject to approval of the County Surveyor and County Parks Representative prior to final plat filing.
7. That the covenants state that the common area will provide public access to the park, subject to approval of the County Attorney prior to final plat filing.
8. That the covenants state that no fences will be allowed to separate the common area and the park area in order to retain continuity between the park and the common area to the park, subject to approval of the County Attorney prior to final plat filing.
9. That Marias Street connect with a 20' public walkway easement between lots on Justin Court, providing access to Marias Street and that the easement is visibly marked, to be shown on the submitted preliminary plat, subject to approval of the County Surveyor and County Parks representative prior to the final plat filing.
10. That a 20' wide public walkway easement be provided between Lots 1 and 2, Block 1 to allow access to the park.
11. That a 20' wide public access easement be provided through Block 3 and Block 2 to provide access from the southerly portion of the development to the park on the northerly section of the development, subject to approval of the County Surveyor and County Parks representative prior to final plat filing.
12. That the covenants contain the required information prior to filing the final plat.
13. That a grading plan be provided for the development showing the limits of cut and fill, finish grade of all driveways where slopes may approach a 10% slope, and all storm water cat points, prior to building permit approval and approval of the County Surveyor.
14. That an erosion control plan be provided to protect adjacent property during construction, prior to filing of final plat, subject to approval of the County Surveyor.
15. That all zoning and other applicable regulations must be complied with prior to filing the final plat.
16. That the "agreement" between the Twite Family Partnership and the Upper Linda Vista Homeowners Association, Inc., dated May 23, 1995, be adopted and followed as stated:
  1. The proposed residential subdivision of 77 lots will be reduced to 72 lots. The five lots to be deleted are as marked on the plat presented at the Planning Board meeting.
  2. Three buffer zones will be created on the west side of the proposed residential development. The buffer zones are as marked on the plat presented to the Planning Board.
  3. If approved by the Park Board, the Twite Family Partnership will construct a French Drain on the Meriwether Addition Park to address drainage from the proposed development.
  4. The Twite Family Partnership will follow the recommendations of the hydrology and geology consultants employed by the Upper Linda Vista Homeowners Association, Inc. to correct and address drainage problems determined by the consultants.
  5. A block of 72 residential units approved but not platted by the Twite Family in the area will not be developed until the neighborhood plan is approved or three (3) years have passed, whichever occurs earlier. The Twite Family will abide by the results of the neighborhood plan with regard to development of the lots if the plan is adopted. If no plan is adopted within three years, the 72 lots are eligible for development under then existing rules and regulations.

6. The covenants for the Eighth Supplement will be immediately merged with the covenants applicable to the fifth, sixth and seventh supplements except that the Twite Family Partnership will retain the right to control the membership of the Architectural Review Committee regarding the Eighth Supplement until 100% of the Eighth Supplement is developed and then the control of the Architectural Review Committee will revert to the members of the Upper Linda Vista Homeowners Association, Inc. This condition shall not apply if the Upper Linda Vista Homeowners Association does not vote to merge with the Eighth Supplement by the time the plat is ready for recording.

Barbara Evans asked for public comment.

John Quackenbush stated, that the signs announcing the hearing are placed on metal poles and wrapped around and can't be read but from a few feet away. And a couple of things about the notification so we could have gotten involved in this process before the 11th hour, the month before the Board of Directors, they had already addressed this whole issue and people 300 feet in front of it didn't know. I realize some of it has to do with peculiarities of zoning. But maybe somebody could look at this and saying we're not notifying anybody who is directly affected by this. I mean all the people around. None of us knew until the 11th hour. We had our homeowners meeting the day before OCD had the hearing on it. There's no time to react, no time to get together and talk about it. That's a problem that maybe could be addressed in the future. When they put a zoning request sign up, get one of those street signs up like a barricade or something and put it up so you can see what it is. I mean if you go up and see the zoning request. People go by and they don't know that it's a zoning. It could be a garage sale sign.

Barbara Evans stated, we're going to ask Philip to be sure that he conveys that concern to Janet Stevens, Director of OCD.

Colleen Dowdall stated, one of the problems is that when we look at notice we look at the last assessment roles for those particular lots, so if you have purchased since January you might not receive notice. The other is, our Zoning Resolution exceeds the requirements of State law. It may not be perfect, but we do more notification than we're required to by law, just in doing the mailings. Also, we are required to do the publication and the posting, but we do a mailing.

Barbara Evans stated, the publication is done in the legal section of the newspaper, and we know that most people don't see it. That is why we do the extra with the mailings.

Michael Kennedy stated, he brings up a good point though.

Barbara Evans stated, I would like to ask you to visit with Lloyd and his representative and see if there are additional things, and I'm not saying hold him up, I'm saying if there are things that he can do that he is willing to do to help make your problems less and it makes his problems less.

John Quackenbush stated, we have spoken with Lloyd and Lloyd has agreed to do a lot of things. But we are concerned with future development and that we are informed of what is going to happen.

Barbara Evans stated, Philip is on his way to another meeting, and he may forget to convey the notice concerns to Janet Stevens at the Office of Community Development, and I'm going to ask you folks to reconvey that to her, and she's very good at trying to find proper responses and do things that will make it better for you folks, for everybody out there. So if you would convey that to her, she may find some additional ways to notify bigger and faster.

Michael Sehestedt, Missoula County Deputy attorney, stated, there's one thing we might do. One of the weaknesses in our mailing, we use the last complete assessment list. We might try some supplemental or additional occupant mailings. Presumably people will look at those and not throw it in the trash can.

Fern Hart stated, I think you need a good homeowners association and you need to be committed to it and work in it, because I believe that one of these mailings goes out to the homeowners.

Charlie Brown stated, it did, but the problem was there was no organization at that time.

Fern Hart stated, you know you can't afford it anymore. That's what I mean. We're in such a changing climate that we really can't lay back.

Charlie Brown stated, the biggest problem, if you look at the area, the C-RR1 district goes into a C-RR2 zone, so all the people in the C-RR1 were notified, the people in the C-RR2 that immediately surround the area were not notified because it was not in that zoning. What I talked to Janet about was common sense. If you're going to affect people in an area, those should be the people, legal or not legal, those should be the people that should be notified. If they're the ones that are affected and you have bordering C-RR2 and you only have to notify the C-RR1, the C-RR2 should still be notified because they surround the area. Mike Zimorino had to leave and Nick Kaufman couldn't be here today, so I guess I'm the spokesman for this planning committee in Miller Creek. We cordially invite you to participate tonight with us. We'd really like to see at least one County Commissioner there this evening. The meeting starts at 7:00 p.m. at the Linda Vista Golf Course.

#### OTHER BUSINESS

Angela Leiter, Missoula Horsemen's Council, stated that I have been asked to come and ask you for your help for the Missoula Equestrian Park. They need their response today. They have a fund raising program coming up.

Fern Hart asked, has the Park Board responded yet?

Barbara Evans stated, yes, they have recommended to accept the advertising program. It fell short. They sent me a note and it's on my desk in a pile and I did not get that out.

Angela Leiter stated, if we can accept a verbal approval now, I can go back and put their fundraising together right away and then follow up with a formal letter, then they will be absolutely in heaven.

Fern Hart asked, you went before the Park Board?

Angela Leiter stated, yes we did, and I believe that was last week.

Fern Hart asked, Horace, were you there?

Horace Brown stated, yes.

Angela Leiter stated, that the folks in charge of the Horsemen's Council, George Lake, and Rita Baumgartner asked me to come today and ask for your final approval so that they could go on with their fundraising event which is beginning in the next couple of days, and unless we have your approval they can't go on with it.

Fern Hart asked, Horace, did they approve it with any conditions.

Horace Brown stated, no, there were no conditions. It was accepted the way it was set out at the public meeting, and we made a recommendation to accept the proposal, and now the Commissioners have to make the decision. We can't do that.

Angela Leiter stated, we have a wonderful opportunity with Tim Ryan, a local celebrity, who will come July 16th, and it all hinges on today.

Fern Hart stated, one of the things I thought about. This is a fee situation. They will be able, once these are built, to rent these stables. It looks to me like Larchmont. It looks to me like an enterprise, and I wonder what the benefit to the County is. Is this money?

Barbara Evans stated, I think what they plan is to put what they raise back into the facility, but I may be wrong on that.

Horace Brown stated, they're required to do a certain amount of improvements every year, and I think they're going to use this money to do the improvements.

Fern Hart stated, I wouldn't think they would use it for anything else. Also, what happens if this becomes a real go like Larchmont and we have enabled a--

Horace Brown stated, your lease comes up in ten years.

Angela Leiter stated, the intent with the funds that are being raised at this time is to complete a three phase transition, which would give the first barn with 50 stalls and then would give them, once that barn is raised, would give the funds to go on into the second barn. So the intent is to provide for the nonprofit groups and families and children to have the park continuously as a place to use as open space, entertainment, education and sportsmanship.

Barbara Evans asked, are you an official nonprofit group?

Angela Leiter stated, they are, yes.

Michael Kennedy stated, I really need a question answered. I'm really starting to have some discomfort about this. It's a permanent private use of public land. You had to pay a fee to become a member of that in order to use it.

Angela Leiter stated, that was the Horseman's Council, I believe, and this is the Missoula Equestrian Park. I am not up on some of that information. I was here only to request your answer. The intent that has been given to me through Rita Baumgartner was that there are already nine different clubs that use the park and that they are going to open it to public use through entertainment throughout the summer, people can come and enjoy the horse shows and be a part of it.

Horace Brown stated, I also attended the hearing and this was not brought up in the hearing. Of all the people that testified at the hearing, there was nobody that testified against the use of this as a equestrian park. I guess this is a legal question, whether it's legal to do this or not. That's something that should have been looked at before you brought it before the County Park Board because we were required by the Commissioners to hold a hearing and listen to the testimony, and we did and based our approval or recommendation to the County Commissioners on that hearing. We could see no problems with that.

Fern Hart stated, I think that this could be a real money maker, and we don't have anyone on that Board. We really watch Larchmont which is a money maker, and I don't quite see us just saying go for it. But I said phase one, and I want them to go ahead and try their fund-raiser and get that going. I'm going to want to put some strings on that with respect to revenue.

Fern Hart moved and Michael Kennedy seconded the motion that the Missoula County Commissioners, based on the recommendation of the Park Board, per Horace Brown, in attendance at today's Public Meeting, authorize the Missoula Horsemen's Council to proceed with Phase I (fund-raising campaign) for the Equestrian Park. 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 4:10 p.m.

**THURSDAY, JUNE 15, 1995**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners, members of the Rural Planning Staff and Representatives of the Salish-Kootenai Tribe took a field trip to the Evaro Wildlife Corridor.

No Administrative Meeting was held; however, the following items were signed:

Modification of Agreement -- Chairman Evans signed Modification No. 3 of Agreement (DHES Contract Modification No. 340270-03) between Missoula County and the Montana Department of Health and Environmental Sciences for the purpose of modifying the terms of the agreement between them concerning tuberculosis services (DHES No. 340270, as amended) as follows in order to add funding for the services, increasing the maximum amount from \$20,000 to \$22,000, as per the items set forth. The Agreement was forwarded to DHES in Helena.

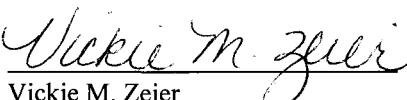
Quitclaim Deed -- The Board of County Commissioners signed a Quitclaim Deed between Missoula County and Jack W. and Virginia M. Thibodeau for the purchase of property taken by tax deed, 1255 Aabear Lane, Missoula, MT 59802, Lots 39 and 40 Block 65 Carline Addition. The document was returned to the Clerk and Recorder's Office for further handling.


Other items included:

- 1) the Commissioners signed a letter approving a Minor Plat Adjustment for Trails End Estates Subdivision. The approval was granted to move the pedestrian access easement presently located between Lots 11 and 12 to the location between Lots 12 and 13.
- 2) the Commissioners signed a letter to Bill Lindstrom, Fire Marshal, stating that Missoula Rural Fire District rarely takes the opportunity to comment on subdivisions and zoning requests. The concern was that projects were possibly being approved that had not had the full review of the Fire District and, therefore, may cause harm to those who live and build in these projects.

**FRIDAY, JUNE 16, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was in Thompson Falls attending a Mental Health Board Meeting.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JUNE 19, 1995**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was on vacation the week of June 19-23.

Indemnity Bond -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Beacham Publishing Inc. as principal for Warrant #272639 issued January 11, 1995 on the Missoula County Library Fund in the amount of \$166.00 now unable to be found.

**DAILY ADMINISTRATIVE MEETING**

At the daily administrative meeting held in the forenoon, the following item was signed:

Resolution No. 95-054 -- The Board of County Commissioners signed Resolution No. 95-054, a Resolution granting an agricultural exemption under the Montana Subdivision and Platting Act for a portion of land located in the NW 1/4 of Section 33, T16N, R14W (approximately 10 acres) owned by Kerry Drew.

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

**JOINT HEARING WITH CITY COUNCIL -- URBAN AREA OPEN SPACE PLAN**

The meeting of the Missoula City Council was called to order by Acting Mayor Harrison at 7:00 P.M. in the Council Chambers, 435 Ryman Street. Present were Alderwomen Gingerelli, Shea, and Tracy and Aldermen Bennett, Harrison, Hermes, Horton, Reidy and Sampson. Alderwomen Cregg and Rosenleaf and Alderman Sweet were absent. Also present were Chief Administrative Officer Walsh, City Attorney Nugent, City Clerk Baker and Finance Director Mason. Mayor Kemmis was absent.

Acting Mayor Harrison said, before we begin, I'd like to welcome Michael Kennedy, the Missoula County Commissioner and we'll be holding a joint public hearing later on here.

Public Hearing on Resolution of Intention to be held jointly with Missoula County Commissioners on Urban Area Open Space Plan -- Proposed Amendment to the Missoula Urban Comprehensive Plan. (PAZ)

Acting Mayor Harrison opened the public hearing.

Doris Fischer, OCD. I'll start off our presentation this evening first with some background and introductory comments. Then my colleague from OCD, Kate Supplee, will pick up and outline the basic features of this proposed Plan which is proposed to be an amendment to the Missoula Urban Comprehensive Plan. Our Parks and Recreation Department colleague, Doug Waters, will then comment on the utility of this kind of Plan and this particular Plan to the work of his department and to our local Park Boards. Richard Gotschalk, who is a member and former chairman of the Citizens Advisory Committee on Open Space, will then comment on the role of that Citizens Committee and, in fact, the larger community in this effort. Kate and I will wrap up our report, but I want to mention that in addition to the four of us we have actually had three more working together with us as a kind of core project group, and those additional persons may not be with us tonight, I believe, Jim Van Fossen with the City Parks and Recreation Department, Tim Hall with the Rural Planning Office and Eric Benson with OCD. I might be wrong, Jim might be here. I'd like to quickly also, but sincerely, acknowledge a steady support of this Open Space Planning process for a whole lot longer than just one year or two years, for the past several years actually. And that support has been shown by three OCD Directors, and I refer specifically to Mike Kress, John Merrell and mostly certainly Janet Stevens. Despite some years of hard transition and organizational change within OCD, our three OCD Directors have managed to provide a continuous leadership without which the Open Space Program within OCD might not have come into being or evolved into being a significant part of our community development program. Missoula's interest in open space preservation goes way back. Our first community Comprehensive Plan was prepared and adopted in 1968. That Plan calls for preserving open space and for providing very fully for our park and recreation needs. That Plan anticipated a growing community. Those themes have held firm through the decades of the '70s, the '80s and now the '90s through our continuing community Comprehensive Planning process. But how we can deliberately and strategically work to achieve those objectives is a piece of our community planning that isn't finished. We just really haven't gotten around to pulling that open space goals and objectives together with some strategic actions of how we're actually going to accomplish it in a methodical way. This Plan before you makes one major recommendation and that is that we can best implement our open space goals and policies by making a commitment, as a community, to achieving an urban area open space system. It is such a system and a means for achieving it which are the subject of the plan. The Plan offers a vision of an open space system as food and fuel for the City/County Growth Management process now entering its own scenarios planning phase. The Plan outlines work to be done, involving a variety of tools, many of which are not only ways of preserving open space but also managing growth. The Plan makes four assumptions. One, that the Missoula urban area will continue to experience some measure of growth and change. Two, that the process of growth and change means that more land will need to be dedicated to development. Three, it also means that more open space will need to be preserved for public benefit if Missoula is to maintain its beauty and livability. And then, four, given our finite land base, we must work hard to achieve and maintain a harmonious balance between development and open space. This Plan recognizes open space as a key element in Missoula's overall urban development pattern. Other elements include land uses such as residential, commercial, industrial, institutional and infrastructure development, social, economic and cultural activities such as learning, working, playing and family life. It's not an easy thing to integrate these many elements into an attractive and vibrant community able to grow and change without losing its distinctive appeal. But that's the challenge facing Missoula and, hopefully, this Urban Area Open Space Plan will be a useful tool in helping us meet that challenge. At this point, I'll turn things over to Kate for some of the specifics regarding the Plan itself.

Kate Supplee, OCD. I wanted to let folks know a little bit more about the Plan and the basic system and some of the process that went into this plan. First of all, you should know that this Plan takes a pretty broad look at what constitutes open space. It considers six different types of open space. The central types being conservation lands and park lands, complimentary types of open space being urban forest and agricultural lands, and then linking types of open space that includes views and vistas and trails. The system laid out by this Plan envisions types of connections among these types of open space making connections within the different types of open space and between different types of open space, say, between trails and park lands or views and vistas and also between open space and built environment. For example, between a park and the surrounding developed community. I'm going to walk around and show you some of the maps that we've developed. These were developed for our open houses in April, the graphics were done. The Open Space Plan itself contains these maps. Some of them refined lightly. Now, I'll see if I can take this mike..., we have two posters in the back that I'll just start out with. I've already covered much of what's on the..., this poster shows the six different types of open space, park lands, conservation lands, trails, etc. Toward the rear is a graphic that explains the notion of an open space system a little bit further and the connections among the different types of open space, and the coherence that such a system could display. One of the first mapping efforts that we made was to look at who owns what around the greater urban area. And the map here entitled "Missoula Area Lands" shows lands held by the State, by the City and parks and conservation easements, by the Fish, Wildlife and Parks, by the Plum Creek Timber Company, by the U.S. Forest Service and also University of Montana. You can see the BLM lands in gold here, Plum Creek Timber is in the red, the green is City parks and conservation easements and what is white, and striking to many people who look at this map and think about what they see around them in the Missoula area, what we see around us is a great deal of open space. What's white on this map is land that's privately held. And there's an awfully lot of that when you look at the amount of white on this map. I'll move on to the second map which shows what's recommended for good open space land according to the 1990 Missoula Urban Comprehensive Plan. These lands in red, which include the river corridors, it's going up towards the Rattlesnake north hills, some land down here, Blue Mountain, some of the river area, Mount Sentinel have all been recommended and designated for open space in the Comp Plan. Now I'm going to see if I can get down..., I think that'll work. There's a companion piece to this map and it's included in the plan, and what that is is a map of trails, proposed trail networks developed with the Non-Motorized Transportation Planning process. We don't have that map up tonight. It is in the plan. Next we have the current open space map or designated open spaces. What you see in green here includes lands that are, the dark green especially, lands that are pretty well locked up in terms of open space land. It includes City parks, some County parks within our planning boundary, conservation easements, recreation areas, such as Blue Mountain and the Rattlesnake Wilderness, and also some Fish, Wildlife and Parks lands. We also drew upon the County's carrying capacity study. And this map shows Urban Area Big Game Winter Range. We especially drew upon the species of special concerns work that was done by the Rural Planning office of the County. On the other wall is a map of cornerstone elements of the Plan and this is the map that interests a lot of people, maybe more than any of the others. And I'll walk over here. The cornerstone elements of the Plan are key land that have been designated by at

least three different planning processes as being having very high potential very high quality open space plans with one exemption, Champion Mill site which was added a little more recently and has, more recently, become identified as eventually an available piece of land, so that's the one that hasn't been identified through a different planning processes. Our work on developing this Plan didn't name anything new. We just are saying what's been out there and identified as having good potential for open space lands. The darker gold colored pieces of land are already existing as open space potential..., I mean, sorry, open space elements that are existing as far as being designated and preserved in open space. The circles that are kind of roughly drawn here show the lands that have very high potential for open space, and we're not saying here that these lands would be, say, zoned for no development. These lands would be kind of looked at a little more closely in terms of their potential and if they came out really high on the list and became available, then it might be well for government to look at possible ways of acquiring them, whether through conservation easements or through outright purchase. Finally, the two maps that you see on the other side of this mural show open spaces in different neighborhoods. And by looking at them, you can kind of get a sense of what neighborhoods have parks, where there seem to be connections made, what might be more fragmented. We had a third map for open houses. We had a map of the Rattlesnake area and that map of the three probably showed the most open space system starting to develop in terms of connections being made among different types of open space and distribution of open space types. In terms of our work going forward from this Plan, after its adoption, we have a lot of different projects to look forward to. And one of these is to complete the Park Needs Assessment that's laid out. The beginnings of it are in the Plan. We want to go forward with that and do a wider citizen survey, get together with neighborhood groups and look at what are the needs for parks within various neighborhoods. We intend to do a feasibility study of different potential cornerstone lands to talk with the landowners, to get a sense of what plans are being made for these lands, are they available, what they might cost, that type of thing. We want to do a lot of education, not just public education about open space issues, but also staff education and education for local officials. Another thing we plan to do is to refine some of the criteria for looking at these open space lands, to refine the criteria for park lands, conservation lands, agricultural lands, etc. There are many more things we're planning to do. Work more on conservation easements, work more closely, maybe tie into the growth management effort, etc. They're listed in the Plan and at this point, I'd like to ask Doug Waters to talk a little bit about how he sees the Parks Department using this Plan.

Doug Waters, Parks and Recreation Department. Our department's been involved in land issues for many, many years and I've worked with many of you, and it turns out that our department's responsible for subdivision review, for park dedications, common areas, trails, urban forestry, and this Plan involves that. And for many years we would be asked the question, where is this park located, where is that park located, and actually the County and the City really couldn't answer that question. So we were making some decisions on not knowing what was next to us, what was further away and so with the Plan we've been able to bring together all of the property ownerships in the urban area which includes a large portion of the County. This, along with what the County did in their park inventory, and the City with what they did in their park inventory brought together some key pieces for not only agencies like ours or the Office of Community Development or Rural Planning but also for the public and private and developers to start looking at the areas that the land's in, where there's possibilities for parks, where's possibilities for trails, open space, conservation land. This Plan then puts that all together. And what that information now, not only is staff people, but staff people relaying to the public and also other agencies, we can start making some critical decisions on what direction we want to go with, not only parks and conservation land and trails and urban forestry, but where we want to go with development. So, I see this as a really useful tool and guide for all of us to participate in. It's also another part of the piece along with the Comprehensive Plan, along with open space plans. It also has beginnings of a Park Needs Assessment which is really important to understand what they're saying in that for the future. And so along with growth management, I see this as just another key for all of us to be successful, or more successful, in the kind of land use decisions that we make. Thank you.

Richard Gotschalk, Open Space Advisory Committee. I'm the member of the Open Space Committee that was most closely associated with the development of this Plan. If you remember the Open Space Committee itself sent around to both the City and the County and the..., a variety of private individuals and groups a memo in October of 1991, talking about something that had come out of our discussions in Committee when we had tried to assess where the community was with regard to open space. We had noted that after passage of the bond attention was focused almost totally upon expenditure of the funds or acquiring new funds in the case of the Rattlesnake, for example, but that we had not really taken stock of where we were as a community, as a whole, and looked at the changes that were taking place in the community because through the '80s not a lot of changes were taking place. The..., sort of impetus to think in long range terms was not obvious and we didn't respond. But our sense was, in 1991, that we needed, as a community, and I don't mean as a City, I mean as an urban area, to think about that long range future and to think comprehensively about our situation that change is taking place in the community, it will take place, look long range and comprehensively at open space as a part of the larger community contributing and importantly to the quality of life of our community. In that memo, we proposed that the best way for City and County and for the citizens of Missoula County as a whole to meet the challenge that we saw was to do something like we had done, in fact, project a notion of an open space system in the urban area, project the need to think coherently about that development and change that's taking place in the place of open space in it and to develop a plan which would give a coherent vision of what the community in 20, 25 years would like to see itself be like as far as the open space component in it might be. What we did, at that time, was begin the development of the idea of what open space would mean and develop the notion of the six types of open space that you've seen embodied in this Plan. And we talked about the need for a kind of concerted effort to think of open space in a complex way. Normally you don't want to do that in the public setting. Normally you want to simplify things. But you all know me well enough to know that I would try to make things complicated. I would try to see things from a million different sides and that's what we attempted to do in our Committee discussions in our attempts to promote with City and County governments, and the staff through the Parks and Rec and OCD, in particular, the ideas of an open space system. What we did is borne fruit in the sense that out of three, three and a half years' effort, in which our Committee had a continuing role but OCD took the lead. Parks and Rec had a very important role to play, a lot of initiative and impetus coming from Doug and from Jim both, and we've been joined by the Rural Planning office and Tim Hall, in particular, and a variety of other people, at the staff level, have contributed to the series of developments that lie behind this particular Plan. If you remember, the City funded an open space a pilot project in 1993 and the City's funded an Open Space Planner position that Kate now occupies.

The County Park Board has taken an initiative independently of what we were doing to inventory park lands throughout the County, the City has done the same. And that has been entered into this development as well as what Tim Hall brings the Carrying Capacity Study information in it, the resources and contributions and perspective that Tim, in particular, has brought to the core group. Our Committee, in particular, has after its initial proposal to the City and County and citizenry of the Missoula County, after that initial memo, held a number of a couple of meetings..., public meetings in this very room in May and June, as I remember, of 1992 in which we had maps, which we had inventory forms and asked people to identify all the areas of open space that they thought were of major community importance. We did that similarly with a booth at the fair in the summer of 1992 and 1993 and compiled in this way considerable input from a variety of people in the community about important open spaces in their minds. We also were participants in an open space summit, a gathering together of City and County and State and Forest, Federal agencies, private land trusts, other people interested in open space at the end of 1993 in which all this was gathering kind of a momentum. What has come out of it is what you have before you tonight as a subject for our hearing and what you will have in your deliberations, a plan which projects the notion of a system of open space, complex in character, different types of open space, insistence that we think of our open spaces both in connection with each other, a variety of interconnections they have with each other and in connection developed space so that we have an integrated view of urban development of the urban design. I would, on the basis of what I have seen happen in the course of these last three or four years, hope you will take seriously this Plan as coming not simply from a few bureaucrats, let alone a few appointed or self-appointed citizens, it has a fairly large community basis. We had, most recently, several open houses in connection with this Plan, in this present form, which are the final form of public participation other than tonight, in the formation of the Plan. We hope you will take that seriously and adopt it as an amendment to the Comprehensive Plan. Among the groups that has contributed to some ideas to this and who has a letter of support for this, which is unfortunately not gotten to you in time, is the Neighborhood Network. That group had its discussions about 10 days ago or so and unanimously adopted a motion or passed a motion to support this, to have a letter written, drafted for City and County governments urging you to adopt this Plan, seeing it as expressing what was embodied in our policies, which we adopted as a group in September of last year, if you remember, seeing this is quite consistent with what the Neighborhood Network stands for. Seeing that there will be an important role in the follow-up if this Plan, if you remember part of the implementation of it will be through a process that involves identifying with the help of neighborhood area residents, those important neighborhood open spaces that mean a lot to people in an area that are not of community-wide significance ordinarily. So the Neighborhood Network is fully behind this Plan as well as the Open Space Committee which others will speak about tonight as well and some of them are here to express themselves. That has been our role put briefly, and I again repeat please act favorably on this. Thank you.

Doris Fischer said, I would just like to conclude our presentation by calling attention to a few items that have been distributed to you in recent days. Most particularly the staff is recommending a few language revisions in response to comments about the proposed Plan that we have received from both members of the public and from our agency colleagues. And those suggested language revisions are contained in a memo from Kate Supplee dated June 16th. The OCD staff recommended motion to you regarding the Plan is to pass a resolution of intention to adopt the proposed Missoula Urban Area Open Space Plan as an amendment to the Missoula Urban Comprehensive Plan. Today we have received a couple of additional public comments. These are on your desk tonight. One is from Janet Sproull. One is from Dick Ainsworth. And then, finally, I'd like to mention that the Planning Board held a special meeting at noon time today in order to be prepared with a recommendation for your consideration tonight. And the Planning Board's recommendation is that the Missoula Urban Area Open Space Plan be jointly adopted by the City Council and Board of County Commissioners as proposed with two language revisions, and that is contained in your memo on your desk. One, pertaining to the tool of Special Improvement Districts that is available for open space purchases and tree plantings but the Planning Board wanted to add language regarding the protest provisions that should also apply wherever an SID like this might be utilized. And then, secondly, their proposed change would delete the paragraph on page 8 regarding the use of utility extensions in connection with efforts to preserve open space.

Alderman Reidy said, are you saying that under our rules we could take action on this tonight? I thought you were talking about having a work session with the Commissioners before we did that. Am I right or am I wrong?

Doris Fischer said, you're right. The process with the City Council, I believe though now, is to have a motion ready for you just in case, so the motion is there when and if you're ready to act upon it.

Alderman Reidy said, in other words, we could act on it tonight?

Doris Fischer said, if you were comfortable.

Alderman Reidy said, yeah, I just wanted to explain that you had planned a work session with the Commissioners.

Doris Fischer said, that's right. We have...,

Alderman Reidy said, you would prefer one.

Doris Fischer said, we would suggest one in the spirit of recognizing that the Urban Comprehensive Plan is a joint City-County document of land use policy. This Plan ideally could, and should, be jointly adopted in one form so that preferably we don't have two versions of an Open Space Plan for the Missoula area, and a work session might be a way of sharing language suggestions with one another.

Alderman Bennett said, I had a question, Doris, on the deletion of the paragraph regarding withholding municipal services. I noted also in the preliminary report that that was being questioned. And I wanted to know if this was something that is legally impossible to do or if this is just something that the Planning Board doesn't want to do.



Doris Fischer said, we had much discussion about it. The way it is written currently in the proposed plan left open the possibility of denying someone the right to develop their land at all perhaps by withholding services from them. And that raised, I believe, a real red flag with both our County legal counsel and the City Attorney. We did work on some possible revised language which I'd be happy to share with you. We talked that through today and I believe there's at least one or two members of the Planning Board here tonight that might also want to speak to this, but the sense was that they were just more comfortable acknowledging, yes, a community can decide where it does and does not want to extend municipal services. But in terms of making that connection to deliberate open space preservation efforts, I believe they felt it was better left not stated.

Alderwoman Gingerelli said, I think Jack is right. We rose or we asked the question in PAZ about whether we should pass this tonight and I think some of us may have been ready to do that, however, I certainly have some concerns with deleting that paragraph and I think that we will probably be getting into committee work if we discuss that much further tonight. And it was my understanding that this would go back to Committee so I think it should.

Alderman Horton said, withholding services is the way Boulder created its greenbelt, if I'm not mistaken.

Doris Fischer said, that's one strategy that they used in their open space program, but I believe their greenbelt was actually defined as an area beyond which they would not encourage development.

Acting Mayor Harrison said, okay, then we're going to go ahead and get to public comment. Go ahead, Al.

Alderman Sampson said, I'll pass until the public comment is over.

Acting Mayor Harrison said, we're going to open this up for public comment. What we'll do we'll ask for proponents of the Open Space Plan. We'll ask for opponents and then we'll ask for any comment at all, neutral or otherwise. So, are there any proponents to this Plan?

Ron Erickson, Chair of Open Space Advisory Committee. The Open Space Advisory Committee has met since we had a chance to talk to the Planning Board and the Open Space Advisory Committee approves the Plan as it sits before you. There are a two major points that I wish to make. One is that there are certainly some ideas that need emphasis, the idea of system, the idea of open space types, and the idea of cornerstones. Those are three key ideas and we like all three of those ideas. Second point has to do with boundaries. It's interesting, if you look at this map, it doesn't look like Missoula as you usually see it. We like that. We think that there is a problem between the City and the County and that an open space system has to be broader than City limits so that I, for example, live in Pattee Canyon and Pattee Canyon is in the urban zone for this Open Space Plan. On the other hand, Target Range also is in that area but there are areas that are excluded. Frenchtown isn't in the Urban Open Space Plan for Missoula. Neither is Lolo. Neither is Seeley Lake. All of those are important. And then, one last point, here's a fact. The fact is that Hampstead Heath in London was..., became an open space park in 1871 and that may be something that you didn't know and didn't care about. But the interesting thing about it is that until that time all of the great open space parks in London came because there was royalty and the land was donated..., [tape change]..., the neat thing about 1871 and Hampstead Heath was a group of citizens said, we want a different kind of open space. They didn't call it open space then, they called it a park. We want a different kind of park than we've had before. They wanted variety, just like we're deciding here in Missoula right now that there should be six types of open space. So it was citizen initiated. There were a variety of kinds. And here was their argument, their basic argument was that they needed Hampstead heath because they needed a wilderness..., London needed a wilderness for its own civic health. And I would suggest to you that an Open Space Plan, the last two words I want to leave for you, have to do with civic health. What we're talking about is the health of a whole community here. London understood that back in 1871, that there was more than one kind of park to have. There's more than one kind of open space. They went ahead and purchased, with public monies for the first time in England, a couple of hundred acres, the Wilderness Heath that turns out now to be in the center of London. Thank you.

Bob Balleau, Open Space Advisory Committee. I've been a resident of Missoula for about 2-1/2 years and on the Open Space Advisory Committee for the last few months. I want to talk to you about time, the time we have and the time we don't have, to do something. Population experts tell us very certainly that within 50 to 60 years the population of the United States may very well, will probably double. We, in Missoula and the surrounding area, will probably follow that same trend of increased population if we don't even exceed it, because as the saying goes, we have been discovered. You have before you a Plan which is designed to anticipate what's coming at us in the way of people and the way of lost opportunities unless we are willing to act soon. I don't think we have much time. Having being newly on this Open Space Committee, I haven't had really a great deal a part of it but I have been involved in the last few months and I have read the Plan carefully. I think it's a good Plan. I don't think it's a perfect Plan. I'm sure it can be improved on but it's something that we can start with and start dealing with what we know is coming at us, and something we've got to do if we don't want to be overwhelmed. So I just urge you that you do pass this Plan to approve it and that you start implementing it as soon as you can. Thank you.

Pete Talbot, 1501 Dickinson, Co-Chair of the New Party. And on behalf of the Missoula New Party I encourage the Council and the Commissioners to adopt the Open Space Plan in a comprehensive approach, and to move quickly on implementing it while there's still some open space left to preserve. The Missoula New Party also encourages citizen involvement in the decision making process. Thank you.

Joe Glassi, Open Space Advisory Committee. And I'd like to just speak on behalf of the Plan and encourage you to approve it. I feel like the Plan's undergone considerable revision, several revisions actually, in a long evolution. And I really think there's a lot to like in this Plan. It combines a balance of vision with enough implementation direction to really get us off in the right..., on a good start. Secondly, as a holistic approach, it really serves as a critical foundation block for continuing the kind of open space program we've already begun to keep Missoula a livable place in the face of continual change. Lastly, I'd like to say that this Plan and this hearing both come at a time with

considerable possibility in the air. So I'm really hoping that we can take advantage of that tail wind and approve this Plan and get on with the job. Thanks.

John Fletcher, 655 Evans. I just wanted to sort of report to you, as a member of the Planning Board, the Planning Board, at three of its meetings, discussed this amendment to the Comp Plan. To address the questions that were just brought up a bit earlier, pages 47 and 48 of the Comp Plan, to use Mr. Gotschalk's image, it is an inventory of the toolbox, and these are some tools which were available. The Planning Board, with the assistance of some legal help from Mr. Nugent and Ms. Dowdall, decided that one of the tools in our toolbox, although it was a legitimate tool that we did recognize, we felt it would be better to remove it from the toolbox. And what convinced us, I believe, was that were the tool left in the toolbox, I don't mean to get too metaphorical, we're talking about the withholding of the extension of municipal services to certain areas after balancing whether open space values would outweigh the..., a planned development. It was decided that if we took this out of the Comp Plan, then someone else would not..., I mean, people would not say, hey, this tool is in your toolbox, we ask that you use it. So, I think that was the convincing argument for us to delete that one paragraph. Thank you.

Acting Mayor Harrison said, John, maybe you'd yield to a question. Chris?

Alderwoman Gingerelli said, John, would you please come to PAZ if you can when we have one...,

John Fletcher said, Tuesday afternoon?

Alderwoman Gingerelli said, ..., when we can take up with this item so that we can ask you more questions about the whole process.

John Fletcher said, okay, I'd certainly..., if they're ready, we had some very good discussions and if you have a chance to read our minutes, it may save you some time and also Dr. McCarthy is here, if you'd like to ask him any questions.

Alderwoman Gingerelli said, thank you.

Acting Mayor Harrison said, okay, John, that's Wednesday at 4.

Alderman Reidy said, I don't know whether we'll..., Doris, are we ready to have the work shop with the Commissioners this Wednesday, cause I think that's when we'll take it up.

Doris Fischer said, I think we imagined that there might be that discussion this evening later between the two governing bodies about whether or not that's a good idea, whether or not that schedule works, whether we can do it this week, so I'm not sure.

Alderwoman Gingerelli said, I was just going to suggest that maybe if we ask Mr. Kennedy and Ms. Hart tonight about the possibility of 4 o'clock. That way, people who want to can come to PAZ or who have additional information that we may need to ask them about. If we can figure that out now, we can let them know if that's happening. Does 4 o'clock work for you, Mike and Fern?

Mike Kennedy said, ..., [off the mike]

Acting Mayor Harrison said, okay, so we'll plan on that at 4, at least to begin.

Elmer Frame, 3695 Tina. I brought a letter with me that my daughter wrote. She was born and raised in Missoula. And I gave her the Plan to look at and she was not even aware that one was being worked on. And her letter, I think, expresses how a lot of people in Missoula might feel. And she says..., Kathy says, "I support open space for Missoula. I remember learning, as a child, that all of the Missoula valleys was once a great open lake. I like to picture that sometimes sitting maybe on one of our, as yet, undeveloped mountains and looking at this valley at what it was long ago. Of course we can't have that kind of open space again but we could save some islands of natural beauty or create some. I think park area should be mandatory for blocks of new businesses just as subdivisions are required or should be required to preserve or create common areas of open space. This would dilute traffic noises and draw people to these areas of business for the parks as well as the shopping. With all the new construction on Reserve Street wouldn't it be enhancing, from a monetary as well as an aesthetic view, if there had been a little..., a beautiful park with walkways planned for part of this area. I think bike paths throughout Missoula and surrounding area would be excellent planning for the future. I support the Urban Area Open Space Plan. I like the idea of cornerstones as a skeleton of the big picture of preserving open space. The six types of open space, detailed in the Plan, conservation lands, park lands, urban forests, agricultural lands, trails, views and vistas are all special and important in their own way. I hope that this Plan will be adopted for Missoula. Sincerely, Kathy Riley." And I would also like to share my thoughts on the Plan with you. I was recently appointed to the Open Space Committee and have served on it a very short time so I can't take any credit for this Plan, but I thank you for whoever was involved in my appointment on that Committee. I would like to request that you jointly adopt the Urban Area Open Space Plan. I think it is important that you know of my personal experience with regulations and how they relate to business men and women. I'm not sure that all developers, business people and landowners agree with me but after 39 years as a mobile home park operator, 27 years as a campground operator and 20 years as a developer, I can say that I have been exposed to County and City rules and policies as much, if not more, than most. If I have been successful, it is because of the regulations, not in spite of them. Can you imagine a basketball game..., I guess I better back up. Can you imagine a basketball game without rules. You have chosen to be the referees and give your time and energy in the interest of us, the residents of Missoula. I applaud you for this. Approving this Plan may well be the most important decision you make and it is mostly important because it is a joint decision with City and County representatives. The manufacturers of this Plan are not City residents but residents of the urban area. It is not your fault that City limits are limited to a boundary that has not encompassed the entire urban area that it should. The above Plan is just a plan and it is meaningless unless it is adopted and followed. If one draws a set of building plans and never builds the building,

the plan is wasted. Please give special attention to part 4, pages 40 to 50, "Making It Happen." I have reviewed the Open Space Plan and find it to contain a good inventory of existing open areas and suggestions for additional planning. I would like to see more detail on the Transfer of Development Rights, TDR, on page 50. I see TDR as the key to planned growth. And please don't view this plan as a restriction on landowners' rights but rather as a means of enhancing values to landowners and other residents alike. Land in Missoula has increased in value because people live here. The people then have the right to expect you, as their representatives to preserve Missoula as a place we can continue to enjoy. Don't be influenced by a minority of realtors and developers whose only interest is to make money. Most land brokers know that a well planned community helps their business. The vast majority of your constituents will thank you for approving this Plan. Respectfully submitted, Elmer Frame. I do have some copies.

Katy Steenburg, 106 Shelby Drive. As a resident of the South Hills area, I'm seeing rapid growth and development with little or no planning made for open space, in particular, connected park space. I'd like to encourage the governing bodies to support the Open Space Plan as presented. It's an excellent Plan. It's well considered. This is an issue that's not only important for the City of Missoula but the surrounding County as well, and I don't feel that time is on our side in this issue. Please approve this Plan before it becomes an imperative. Thank you.

Tom Woodruff, 1315 River Road. I would like to commend the folks, OCD and its cooperators, that have put this Plan together. I think it's an excellent revision and it has done a good job of identifying the more current problems and trends that are going on in the area covered by it. I would also encourage the City Council and the County Commissioners to adopt this Open Space Plan. As the folks speaking ahead of me have already indicated, time is not on our side. I travel a fair amount doing my job, which is conserving ecosystems, including natural space, open space and wildlife habitat, and when I travel to areas such as Sun Valley, Vail, Aspen, Jackson Hole, Sante Fe, Tahoe, areas that used to be the quiet, sleepy towns that are now overcrowded, the one common thread is everyone there wishes they could turn back the clock. They wished they had planned things a little sooner, a little faster, a little earlier. And Missoula is certainly growing and we're looking at it. People might say 10 years ago it wouldn't have been too early. We had earlier open space plans. Some things did get done. Some good things got done well, Kelly Island, Kim Williams Trail, the little park there by the pedestrian foot bridge. It was a start. And it's not good enough to rest on that. We have to keep moving. So, I encourage you to adopt this Plan.

Carol Toppins, 1210 Tower. I'd like to encourage you all to adopt this Plan. Time is running out. Missoula's growing very fast and if we don't save these areas now, they're gone, and we'll be really sorry afterwards. So, it's important that we plan for the future and have some vision and do something about it. Thank you.

Judy Smith, 224 Crosby. I want to just say a word about, in some ways, what a thrill it is to come from the time I went door-to-door for the Open Space Bond, which seems like ages ago but probably was, I'm trying to think, 16 or so years ago, when open space was basically a citizen's participation idea, to have now a Plan in place that will become part of the Comprehensive Planning document of the community that you live in. And I think that's really a tribute to you all in the work that you do and a tribute to us all as part of this community that something this important is being addressed in this way. So, to me this is a very significant evening in acknowledging those kinds of partnerships that we have. Let me say a couple of very quick things. I think the idea of cornerstones and building around cornerstones makes a great deal of sense because, again, if you go door-to-door and talk to people about open space, that's the kind of thing that they really understand. That's part of their experience. Those are the things that they can begin to say yes, it's worthwhile to preserve those. I was glad to see that the Plan built around cornerstones. As someone who's also very concerned, though, about connections between pieces of open space, I'm glad the Plan went beyond cornerstones and took a good look at connections and the different elements that are there, even to the point of when you get up in the morning and look out at the vista, it makes a difference that that's an open space. It is how I explain sometimes how I live in Missoula and don't get out into the wilderness but still use the open space because I can get up and take a look around me in the morning. So, to me that's a powerful part of this Plan. Something that I also really appreciate that folks spend a great deal of time on thinking through here is what is the nature of growth and how do we actually address affordable housing in an Open Space Plan? So, again, I want to congratulate the folks who did this work in thinking this through. As someone who's an advocate for affordable housing, I took it up and I looked through every single page and said, okay, where did they address this issue? Because usually we don't see the two coming together. And so I can say that I'd have liked to have seen it a few more places but I did count three times that affordable housing appeared in this document so I want to congratulate the folks who worked on that. And I want to say that to me the kind of premiere discussion point is how the neighborhood is to discuss open space and affordable housing together. If we can accomplish that, in my opinion, then we've done, I think, very great things with this Plan. If we actually have a focal point where people are bringing those issues together and solving them, then we are really being a community that's addressing growth. And I really like the like, I have to just say that, Dick probably wrote it, but it was probably edited by someone who knows how to edit Dick's work, which is basically that Missoula, through growth, can be larger and more dense but still livable and beautiful. And what a concept.

Bruce Fryer, 500 Keith. I'm just in favor of this Plan. I helped work on it as a member of the Open Space Advisory Committee. And my only support here would be to..., needs to be one more map. I worked on this map over 20 years ago. It's a land use map. And it shows the open space that you no longer have a choice to make a decision about, and I think that should be right next to that one unless we have to wait 20 more years and see if that changes. I'll leave that.

Troy Kurliss said, I have a couple of questions. I've never really been to a Council meeting before but my questions are, does this Open Space Planning appropriate land that's held by..., give the Council the ability to appropriate land that's held by the public owners and then juggle with it what they..., what we decide is best?

Acting Mayor Harrison said, actually, no. Maybe one of the staff can answer it fairly clearly. At this point, that's really not one of the considerations but maybe one of the staff could answer that more clearly.

Doris Fischer said, this Plan does, for instance, on the cornerstone's map, identify areas and most..., in nearly all cases those areas are privately owned areas that have high open space value. But then the Plan goes on to talk about the many ways that we can work together to bring all or a part of those areas into an open space system. And part of the context for that happening is with additional development happening too. Every time you have a subdivision you are either conserving a portion of that new subdivision for park land to service the residents or the person creating the subdivision is putting money aside for new park land for the community. There are opportunities through conservation easements that are a way that the landowner himself or herself can decide to protect all or part of their land and get a tax credit for it. So we're not proposing to just, as a couple of governments, take these lands and play around with them or pick and choose which ones we want for open space and declare them open space, if that is your concern.

Troy Kurliss said, that kind of leads to my second question. My second question is, have you contacted any of the members that own this land? She said it is all privately owned. So have you contacted any members of this land and have you asked them whether they support any specific plans concerning the land? And if you haven't done that, than I feel..., no? You have no right.

Doris Fischer said, by way of response, I can attest to a lot of outreach that we've done in order to invite the major landowners and other citizens in the community to both participate in the planning and as it really moved forward into mapped form, through our open houses this spring, to have a look at what we were proposing, we have mailed directly to many of the major landowners. I know we didn't capture all of them and one of the major first steps of implementation, keeping in mind that the Plan is a guide, and that the Plan is not setting any rules and regulations for exactly what can and can't happen on these lands. One of the first steps of implementation in the Plan is to get with the major landowners and talk with them at some length about their own interests and hopes and plans for their land, and talk with them about different opportunities for enabling both their interests to be realized and the community's.

Cliff Phillips said, I've lived in Missoula all my life. I think it's time some of the senior citizens should talk and commend the people for what they have done in regards to the Open Space. I'd like to go on record as being in favor of the Open Space. I think it should have been started 20 years ago. Thank you.

Bill Ballard, 5120 Larch. I'm a member of the Open Space Advisory Committee. And you may be, by this time, tired of hearing from members of that Committee, but we all seem to be in favor of this and don't mind you knowing that. I wrote out a statement, which I was planning to read, but I'll spare you that because for the most part, it said things that have already been said. I will mention a few things, though, very, very briefly. I see a history of developing public interest in and support for the kind of action that I hope you're going to take, adopt this Plan. We've seen the City's efforts in its bond issue acquiring Kim Williams Trail, the land on Sentinel, the land on Jumbo and so forth, the developments along the river. We've seen the public interests in the Fort Missoula situation. The bond issue that didn't pass showed a lot of interest in open space in a very positive way. So I think the support is there. That's one point. Another point is that this Plan puts forth an open space system. It isn't just open space but it defines kinds of open space. It anticipates the system, plans for a system with coordination and balance. Also, notable is the cornerstone idea. That's a way of planning how you're going to go ahead. It leaves you with..., or gives you something definite to work with, and those cornerstones are very well chosen, and actually that's already been pointed out. I won't say more. The fourth thing is the urgency. And that's been mentioned but I think we all realize that growth and development, if not regulated by the community or participated in by the community destroys and degrades open space. And growth and development seem to be taking place and the time is now. Something has to be done. Adopt the Plan.

Vickie Watson, 509 Daly. And I want to thank the City and County officers here for being so forward thinking as to work on developing an Open Space Plan to protect the important view scapes and river corridors that are shown on the Plan over there. I also want to thank the landowners who have kept them beautiful open space all this time, but now it's time for the public to work with them to preserve them into the future. It's a burden we can't expect private landowners to continue to carry for the entire community. It's time for us to help them keep these beautiful open space and I want to speak particularly to the importance of preserving those river corridors for maintaining water quality and habitat for both aquatic organisms as well as the very large number of birds and other diverse wildlife that make use of our stream corridors and also the importance to protecting those areas to make flooding less of a problem. If those areas to become developed not only the areas..., not only the actual development in those areas will be subject to flooding but it'll also increase the incidence of flooding downstream as well. So, I urge you to take all this into consideration and recognize that you're not just buying open space, you're also buying water quality, habitat and a reduced incidence of flooding. Thanks.

Gail Gutsche, 1530 Cooper. I didn't serve on any committee around this open space planning but I certainly applaud all those folks who did have input into it. And I urge your support of the Plan. I think it's a Comprehensive Plan. It's an evolved plan. It's a holistic plan and I ask that you support it. And I also would ask anyone else in this room who supports it and who has not had a chance..., or anyone else to stand up if you do support it.

Joe Kendricks said, I don't feel prepared to speak in opposition to the Plan because I don't understand all the details of it. The only point I'd like to make is that if I was in a position of government, I think that I would do everything in my power first to alleviate the property tax burden that some landowners have because I think that..., well, I spoke to a landowner just the other day that I met. He has a fairly sizable tract of land and it's been in the family and I don't think he really wants to subdivide it. He ranches it and..., but his comment to me was that with the taxes, and he's a bit overweight and he's getting older and he, you know, he doesn't log anymore and so he faces, according to him, now I don't know the details of his taxes, so I can't speak to that, but I do remember knowing an older man intimately when I was a senior in high school. And he had 10 acres of prime land within a city right near a community college and he had a big beautiful garden and he had a chicken farm building which he was zoned out of using. It was grandfathered for his life only but he got it before he was born so basically his land was..., he couldn't get someone else to use the chicken farm cause residential was moving in and he had a wooded ten acres that was very beautiful but I watched him lose that land because he couldn't make a living on it and his taxes were too high. So what I'm

saying is I think that I'd do everything in my power to, as she mentioned, conservation easements, so I don't even know what this Plan provides in that way but that's what I would do, everything in my power first before I went ahead and approached that, because I see that as a..., and if the Plan increases taxes by increasing, you know, the amount of money needed to say, buy land from people or compensate them or whatever, then you could even be helping to speed up the process that if what I'm saying is correct, that taxes are causing people to want to subdivide or whatever. I hear it all the time and, you know, maybe I'm over-stating that but I hear people saying they're being taxed to the point where they, you know, a big ranch down in the Bitterroot or whatever and they..., it's just not making enough money compared to what the taxes are and everything so they sell.

Alderwoman Tracy said, I wonder if staff could just comment on it. I don't believe that Mr. Kendricks just had the opportunity to read the Plan, and there are a couple of provisions that speak to preserving agricultural land that might be helpful if either Kate or Doris could briefly speak to that.

Doris Fischer said, I know it's in here but I can't find it at the moment. We are, as a part of the implementation of the Plan, emphasizing the need to work with agricultural landowners in figuring out what would help them, if they want to hold onto their land, what is it that makes it difficult for them to do that and what might we, as a community or perhaps as a state, if it would involve some state level change in legislation, what could we work toward to help make that happen.

Alderwoman Gingerelli said, Doris, I also wondered if you could explain to Joe, I'm sorry I didn't get his last name, but he makes a good point about taxation on private land and if you could explain perhaps how conservation easements work with income tax, I believe that's the primary tax benefit is through income..., personal income tax, but maybe if you could explain a little bit about how they work, there's still a tax benefit to those private landowners that perhaps many people in the room don't know, fully know about.

Doris Fischer said, I would actually defer to one or two other people in this room who could speak to that a whole lot better than I, and we can do it now or we could do it later. But perhaps someone working with the Land Trust or the Elk Foundation.

Alderwoman Gingerelli said, Andy Sponseller, would you like to bite that one because I think it's timely to answer it now because this fella has raised a good point.

Andy Sponseller, 1025 Rollins. And the question is specifically?

Alderwoman Gingerelli said, well, he's asking about, specifically about, tax benefits for private landowners and he was, I believe, referring to property taxes but maybe if you could explain a little bit about the private or the personal income tax benefits on a conservation easement.

Andy Sponseller said, well, conservation easements work in a variety of ways. There's an initial tax benefit when a donation is made in regards to income taxes. It reduces your taxable income in the first year up to 30%, I believe, and if I'm wrong, please someone that's here, I know there's several individuals that can back me up on this, one way or the other. As well, conservation easements typically reduce the taxable value of land by transference of development rights and once those development rights are transferred or extinguished that considerably reduces the taxable value of the property. So, it's two-fold. There can be an income tax relief and also an ongoing relief in regards to property taxes.

Melody Loop said, I'm from Kalispell but I grew up in Missoula and my mother still lives in Missoula. She lives out on the corner of 3rd and Clements and according to your Plan, she's totally surrounded by this thing. We want to know what's going to happen to her and her property down there. She owns 30 acres that borders Clark Fork River. She lives on the corner of 3rd and Clements which is part of your cornerstone. What happens to these people that are engulfed in this? Is she to move out and give this property up? Are you going to compensate her for this? What is the plan?

Kate Supplee said, well, I'll answer this one. The answer is no, we're not going to tell her to move out. We're not going to take her land. It's within what's called a cornerstone and that means that it's in an area that would be well considered to be a valuable contribution to the open space system, just considered. It wouldn't be taken from her. It wouldn't be zoned for non-development. We're not talking about that sort of thing. It's one of a number of different areas that would make a good open space acquisition. It may or may not come out on top when the lands are examined for their feasibility. And at any rate, it would be very voluntary, as far as she..., whether or not she would be interested in selling it or donating a conservation easement on it to the City or County.

Melody Loop said, okay, and then if you do decide to do this, do you give the landowners any say in what goes on if they give you some of this property, do you allow them any say or is it just what you guys decide what's going to be done with this?

Kate Supplee said, [tape change, loss of words]..., a little more closely, we'd be getting together with the landowners and talking to them about what they would like to see happen with their land.

Melody Loop said, well, I do know that she has not received word from anybody. Nobody has talked to her and it's kind of strange because she is totally surrounded by this, so that's, I guess that's all I need to say right now but I do want to talk to you people and get more answers to this cause I'm kind of new in it. I just come in from Kalispell.

Acting Mayor Harrison said, if I could suggest, it might be worthwhile if you could make it to this committee meeting at 4 o'clock on Thursday when it will be discussed..., Wednesday.

Melody Loop said, I'd love to but I have to get back to Kalispell. If I would have known this was going to go on, I would have made different arrangements. I'm sorry, I can't do that.

Ron Erickson said, may I give two really specific examples about dollars. One that you've perhaps seen in the paper in the last few days and that the Mount Jumbo's possible sale. There the landowner had a chance to decide to sell it to developers or sell it to a conservation organization. He's going to get the same money either way. He's going to make..., he has made the decision to go ahead and give the option first to the conservation people but it's basically the price of the land. He made the decision or they made the decision, it's a group decision, about yes, we'll sell the land and we'll sell it for conservation. The second example I'd like to give involves a conservation easement and relates specifically to how it works out for you for income tax and it's mine. I gave a conserv..., my wife and I gave a conservation easement for 45 acres in Pattee Canyon. We had to have the land looked at by an appraiser. The appraiser said, well, if you wanted to develop this and to go ahead and log it, you could get \$150,000. I only paid \$23,000 for that land, the whole piece quite awhile ago. Now, my decision had to be, do I want to go ahead and develop this land or do I want to go ahead and see it be a part of, in this particular case, it'll connect right on into the Pattee Canyon recreational area. So I looked into conservation easements. Did I make any money out of it? Well, certainly I didn't make \$150,000 but because I've given away \$150,000, as far as the government is concerned, I got about \$5,000 a year for five years. That's about what I paid for the land and that works out well for me and for my wife to go ahead to get back what we put into it. So conservation easements give you a big profit? No. Conservation easements don't give you a big profit but you've..., in any event where you've had some land for awhile are certainly going to get your money back. In this particular case that land is going to go ahead and be able to stay there for awhile. So, yeah, you can..., those are the two extremes. The people up..., the Klapwyk family are going to get 2.7 million dollars. That's what they wanted. That's what they're going to get. Your mother could go either of those two directions or she could simply say, no. And all of those are possible under the Open Space Plan. No, conservation easement or sale.

Michael Jaworsky, Chamber of Commerce. I'm not here on behalf of the Board, however, an ad hoc committee got together and went through a good part of the document. I congratulate anyone who's in planning because I cannot, I mean anybody who can get together and take all these wonderful ideas and feel the currents in the committee and put a plan together, I think there's a lot of commendation to be given to all those individuals. I congratulate OCD and Kate and everyone else who was involved in it. My frame of reference is more once the Plan is there, what do I like about it? What don't I like about it? And there's very much to like here. And there are a couple of things that I'm concerned about. Number one is that language about withholding municipal services. I just don't think it belongs in there. It's one paragraph and it's the kind of thing that contrasts so strongly with the rest of the language in this document which is to build good will and work with landowners and there are a lot of uses of the word voluntary and cooperation and so on and so forth and then you throw something like withholding municipal services, that you beat somebody over the head with, I just don't think it belongs in this document. If you think that's a tool that you need, eventually down the line you can institute it any time you want but we've been just doing a lot of community building and consensus building in recent times and language like that I just don't think belongs there. Another tool and ability to dispose of public land enable City or County to sell off park land which is not useful. In the context of open space and proponents of open space is there such a thing as park land that is not useful? So I don't understand that. I see that there are other things that are happening in the City to try to turn unzoned land into park land or trying to bring more inventory in yet there's language in here to be able to sell off park land in the context of an Open Space Plan. I just don't understand it. Maybe someone can explain it to me, why that would be a tool in building up inventory of open space for any of those six categories. And, finally, to put on my hat as a member of the Growth Management Committee, we have just embarked on this scenario's process. About 50 of us met for a couple of days and we did this kind of planning, I guess, that I'm not very good at and the rest of the process involves a lot of community feedback and input and then our group comes back into it and there's a lot of personal hours that are being lined up devoted to growth management, and I'm looking at a plan that essentially, in a lot of ways, does our job for us. Here's a..., here places we're not going to go after in years. Maybe we can and so on and so forth. So I'm wondering where the rest of the community in the scenario's process is and maybe that's kind of an inside question to members of City Council that attend the Growth Management meetings and members of the Commissioners. I guess I'm confused now that as a Growth Management person how does this fit in? Is it a chicken or an egg thing with this scenario process? Thank you.

Alderwoman Gingerelli said, Michael, I'll take a stab at that, answering that since I'm a member of that Growth Management Task Force also. This process was begun well before the Growth Management Task Force started to meet so that may be a cursory first reason why this process has gone forward prior to that beginning. And it's my understanding that the Growth Management Task Force intends to use very carefully the ideas that have come forward from the land use professionals that have actually looked at these land use issues in the Plan itself and also in tandem with scenarios, the process that's right now going out to the public and asking the public about growth management. We will also use the public input process that happened through the open houses for the Open Space Plan. So they're not mutually exclusive at all and they'll work together and I think the two will go hand in hand, and I don't think you should look at it as that this open space Planning is separate at all from growth management.

Alderman Sampson said, yeah, I don't want to prolong this but perhaps I could ask Doris a question. She might be able to answer it for me. You've indicated that probably the major landowners in the areas of the cornerstones have or aware of this whole process. I'm more concerned about the little landowner who may have an acre or two acres or three acres or maybe hoping to retire on a little parcel of land or something like that. Is the cornerstones defined enough so that you know who the landowners are of those areas?

Doris Fischer said, we deliberately did not draw boundaries, hence, the dotted lines. We certainly could look at the County ownership records and get a grouping of owners in each vicinity of the cornerstones, and, in fact, that is part of the next step that we envision doing exactly that. And going beyond the discussions that we've had with many of the major landowners within these areas. And then also the other first next step is working at a more neighborhood level where I think it would become more likely that we would be talking with the smaller landowners as well.



Alderman Sampson said, I think, from hearing and reading the comments from many of the proponents, there seems to be probably a variety of controls that they envision on some of this property. And I would hope that there was some way of notifying the people who may be very closely concerned with this, notify them before we take the final action on it. Although I understand it is a plan and it's very broad but I think there's some indication that some people think that this is a plan for nondevelopment, and I think this would come as a great surprise for some of the people, such as the lady that come down from Kalispell tonight, and 30 acres in urban area here is a fairly sizable hunk of ground.

Harry LaForge, 5030 Skyview Drive. And the quality of life is very important for people, developers and for the people that are being developed, but some mention has been made to Boulder, Colorado and my sense of what Missoula is, is what Boulder, Colorado was 25 or 30 years ago, and I lived in Boulder at that time. And if we don't do something now, when do we? I see a lot more open area in the environs around Missoula than is available around a place like Boulder, and I think it needs to be looked at. I urge support of a plan and I hope that there's enough flexibility within it that it'll speak to several of the people that feel that they're being impacted against their will perhaps. But developers are developing in an area for a quality of life. And I think we all are here by choice because of quality of life, and I think this speaks to that ultimate goal and I hope the Plan is approved in some form.

Andy Sponseller, 1025 Rollins. I've been active in open space and land conservation for the last two or three years in Missoula and it's become apparent to me that open space is important to Missoulians on two different levels. I think that it's of incredible importance to our health, both physically and mentally, and I think that in a sense open space is infrastructure. And if we expect to maintain open space and its important affect on our health, then I think we need to identify that, we need to act on it, and this Open Space Plan is a way for us to start to do that. I've done a lot of talking in this community the last two or three years about what the rules are and identifying what the playing field is all about. And I think that this Plan is an important component in developing a vision for ourselves and, in a sense, saying what the rules are and defining what it is that's important to us. And it's a place to start and we need to do it. In another sense, and I'm a businessman, I believe open space has a very tangible economic value to this valley. It's why people want to move here. It's why people are here. And I assume that in the future quality businesses will be attractive to this town because it has one of the last best-type atmospheres. So, I think, in many ways, open space is an economic asset and we need to value that. I also think that it's necessary for us to realize that citizens' needs is being met in regards to open space, need to be balanced with meeting those of private property owners. And I'd just like to reiterate that there's many ways that that can be achieved. There's several items some of which were mentioned by the staff and some of the founders of this Plan, and I'd just like to mention them again, some of which have been used recently. Coop open space and development projects can get us where we want to be in regards to meeting the needs of private property owners and also providing open space for the community. We've already talked about conservation easements so I won't go into that any further. I'm not ruling out fee simple purchase. I believe we came awfully close to a community commitment to an open space bond recently and I think that if tried again, we will have a community commitment to purchasing open space land. The gentleman in the back made a mention of land exchanges and I think that that's a very viable way of achieving open space and as well the transfer of development rights is something that the City and the County, I believe, are looking into and have on some level practiced. And I think that we can do more with that in the future. The reason that I've mentioned some of these items is that I think that we can meet the needs of the community in regards to open space and private property rights, and we can do those things simultaneously. It's unnecessary to pit private property owners against the community's needs. And I ask you to support this Plan. Once again, I say it's a place to start and we need to do it now. Thank you.

Greg Martinsen. I'm a lifelong resident of Missoula and, as Andy Sponseller can probably tell you, as can Tom Woodruff, I'm not opposed to open space, but I would like everyone to listen to what Mr. Sampson said and consider the people who don't even know what may be happening to them. These people need to be better informed. I know I have two clients, one of whom I have a subdivision that came before the Planning staff, and Planning staff saw it, and these people weren't even contacted and they are involved in this directly. I think there should be a little more effort to inform those people who are going to be directly effected. And I'm saying that because I know there are some people that aren't aware. And I quite often, as a land surveyor and land planner, get chewed out something fierce for things people didn't know about when it comes down to it and they want to know why in the hell I didn't tell them, and I didn't know that they needed to know. Thank you.

Doug Waters, Parks & Rec Dept. I'd just like to answer Michael's question on land exchanges, sell of land. That was done a few years ago in Missoula under the Lovegrove administration. It does have to go to a public vote. I believe also it has to go to a public vote in the County. The idea behind that, that it's in our toolbox, is to allow certain areas that possibility won't need a park but other areas where a park needs assessment, that need a park, allows the County Commissioners or the City Council to have that ability, through going to a public vote, to sell that to improve another area. So, it isn't something that we can just do. We have to take it to the public.

Alderwoman Gingerelli said, I just wanted to briefly respond to Mr. Martinsen. You're absolutely right about landowners needing to be involved and I guess maybe a helpful way to look at this process is that this is sort of phase 1 of helping the public identify which lands might be important to the community as a whole. And so if let's say Parcel A that maybe one of your clients might own is not identified, then they certainly wouldn't need to be informed about anything, but if it turns out that Parcel B is a parcel that turns up as something that's important to a lot of people in the public, it would be then down the line that those property owners would be then absolutely contacted by the appropriate people in OCD or whoever would be doing that, and then start looking at a whole list of options. And then, like Ron Erickson pointed out before, the landowner has an absolute ability to just say, not interested. So, I hope that's helpful.

Acting Mayor Harrison said, okay, before we close this public hearing, I'd like to give the County Commissioners an opportunity to speak.

Fern Hart, County Commissioner. Thank you. I take it this is on. I applaud the folks that worked so hard on this. I think it does express a very deep commitment for our whole urban area to have a place that we know that is our place



and that feeds the kinds of needs that we have psychologically and physically, to live in an area that lets us expand, that lets us share. I want to just talk specifically. This is a good Plan and I have some comments about it. Some elements which I would particularly emphasize are on page 48, that we continue to upgrade local subdivision regulations, that we encourage adjacent landowners interested in subdividing to coordinate their park land dedication, trail design and open space management plans. This needs also to feed in to number 2 which is a preliminary plat review process which involves the developer with the neighborhood. We've seen that work very well in County planning processes. The developer visits with the neighborhood, talks about the kinds of plans that is proposed for an area. The neighborhood has input. It's a situation where both needs are served. I think that's a good part to include in this Plan. Number 3, the way we use cash in lieu funds, which are funds which a developer pays instead of dedicating park land. In some cases, it's inappropriate to dedicate a small portion of land for a park but to pay an amount of cash in lieu of dedicating that then those funds can be used to acquire other park lands. That's very important for planning the kind of links that I read in this Open Space Plan that we might see. Number 4, a park environs overlay district so that we see a way to have areas around a park to protect that park, enhance that park and enhance the development near that park. I see that as benefiting both the users of the park and the folks that have houses near that park. Number 5, applying a river corridor overlay zone. We don't know how valuable our river corridor is. There are places..., if you grew up in West Texas and you never saw more than rain, and that not very often, a river park zone is certainly a gift of God. So I'd say encourage that. And I think Andy mentioned the transfer development rights, and the County has worked hard to do those kinds of things. It's out ahead of us. We don't even have written policies. We need that. We do work with landowners. We try to give a landowner all of the rights that they have and we try to benefit them as much as we try to benefit the public. What we want to say is, let's work together. It's good for all of us to come together to do what is best for our community. Then some suggestions that I have or some questions that I have is on page 46. I simply don't understand this statement and I'll bring it to whatever committee the County and the City goes to. We may also want to consider whether the current staffing arrangement or the organization of citizens boards and committees, or both, needs to be adjusted to address the community's open space goals more effectively. We really respect our boards. We encourage them to be participated, we encourage them to be independent of us. I don't plan to monkey around with those boards unless there's a real good reason, so I just thought I'd let you know. Then I would like to emphasize a letter from Geoff Badenoch, which is in our file. I think his reference to some of the language application, which is more personal in style than is suited to a planning document, we need to consider seriously. This Plan will live past all of the folks, the current planners worked on it, passed all of the County Commissioners and passed all of the Council. It should be written in a form that is not we and our but that will live forever as a planning document we can build on. I think then the other comment I have is on page 46. I'd like to see this written in a broader scope that the City/County adoption of a plan should consider additional neighborhood plans such as the Fort Missoula Plan, the Miller Creek Plan, the Mullan Road Plan and preserving a substantial portion of the areas' open space resources and developing its terms and developing its open space potential. I want us to have a plan that we can live with for a long time. I think this is ground breaking. I think it should be a formal plan. And those are my comments. Thank you very much.

Michael Kennedy, County Commissioner. The purpose of this meeting, of course, is to gain public insight into this process. And acknowledging that, the public participation in this process has just begun, it hasn't just ended, it's just begun. And it's like that this process will continue for well into the distant future. Since our workshop is coming up, I'm going to restrict my commentary to more philosophy than anything. And one thing has to do with the legitimacy of government. One legitimate role of government is, of course, to reflect what the public need truly is. And it's pretty evident, in the last several years, just because of growth and development, that open space is coming into the consciousness of Missoulians, county-wide, and certainly there is a need there. And so it is responsible for government to take this action since taking action on considering an open space plan for the simple reason that there are certain things that only government can do. It's not likely that a citizen alone or a group of citizens or a group of groups would be able to formulate any coherent land use plan or comprehensive open space plan. And that is a legitimate role of government. And that said, this process is a very important one for all of our futures and does demonstrate the responsibility of government to take that step. Again, participation by all of we citizens is what will make this Plan a success, and I would urge that.

Alderman Reidy said, is the public hearing closed now?

Acting Mayor Harrison said, we're going to close right now. We'll close this public hearing right now. We'll take this matter up at 4 o'clock on Wednesday in the Plat, Annexation and Zoning Committee. Do you have....

Alderman Reidy said, I was just going to say we'll send it back to Committee and take it up at 4 o'clock on Wednesday. And I think they've got a small amount of business to go ahead of this so I would think that we would take this particular subject up probably about 4:15 so we can get the other things out of the way and we'll have plenty of time to do these things there.

Acting Mayor Harrison said, okay, we'll take this matter up at 4:15 on Wednesday. What we'll do..., I realize we have a rather lengthy agenda here go on but I think we'll take a 10 minute break so that people can go out if they'd like to.

Acting Mayor Harrison closed the public hearing.

## TUESDAY, JUNE 20, 1995

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

No Administrative Meeting was held; however, the following item was signed:

Indemnity Bond -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Robert L. Ayre as principal for Warrant #41837 issued April 27, 1995 on the Missoula County Payroll Fund in the amount of \$493.31 now unable to be found.

Site Inspection -- In the afternoon, Commissioner Kennedy accompanied County Surveyor Horace Brown on a site inspection for the request to create an alley in Block 1 of the Hughes Addition in Lolo.

**WEDNESDAY, JUNE 21, 1995**

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

Audit List -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Bolton Rothwell as principal for warrant #44816, dated May 26, 1995, on the Missoula County Public Schools Elementary Payroll Fund in the amount of \$350.67 now unable to be found.

**DAILY ADMINISTRATIVE MEETING**

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

Resolution No. 95-055 -- The Board of County Commissioners signed Resolution No. 95-055, resolving that the alley in Block 37, from Lot 1 to Lot 5 and Lot 20 and 21, located in the NE 1/4 of Section 24, T. 13 N., R. 19 W., PMM, Missoula County, be vacated.

Contract -- The Board of County Commissioners signed a Contract, dated May 31, 1995, between Missoula County and Roscoe Steel & Culvert Company, the lowest and best bidder for the fabrication and delivery of an open bottom box culvert, as per the terms set forth, at a cost of \$24,136.00, with all materials and products to be available for delivery by March 1, 1996. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Missoula County Public Schools, Willard Adult Learning Center, an independent contractor, for the purpose of successful teaching of computer classes for County personnel, as per the terms set forth, commencing July 1, 1995, and concluding June 30, 1996, with compensation not to exceed \$12,000.00.

Agreement -- The Board of County Commissioners signed an Agreement between the Missoula City-County Health Department and the Frenchtown School District for the purpose of providing school health services, as per the items set forth, for the period from August 21, 1995, through June 7, 1996, for a total amount paid to the Department by the School not to exceed \$29,580.00. The Agreement was returned to the Health Department for further signatures and handling.

Other items included:

The Commissioners made the following appointments to the Lolo Water & Sewer Board (RSID No. 901):

- \* Judy Hugelen was reappointed to a three-year term through June 30, 1998;
- \* Ron Moser was appointed as a member of the Board through June 30, 1998; and
- \* David W. Sullivan was appointed as an "alternate member" of the Board through June 30, 1998.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chairman Fern Hart. Also present was Commissioner Michael Kennedy.

**DECISION ON REQUEST TO CREATE AN ALLEY IN HUGHES ADDITION - BLOCK 1 (LOLO)**

Fern Hart explained that the County Surveyor and a Commissioner had gone out to look at the alley.

Horace Brown, Missoula County Surveyor, stated, we looked at the alley--the easement that is proposed for an alley. At the west end the easement is partially blocked by a guy wire. That could cause a problem. It would be up to the people that live there to take care of that problem in order to open that alley up.

Fern Hart asked, do I understand that you recommend that we create the alley with a condition?

Horace Brown stated, yes, you either create the alley with a condition or postpone action to talk to the people that want to create the alley to see if they will take care of the problem. The County is not going to address that part of it.

Michael Kennedy stated, I am concerned a bit about that problem, because when Horace and I visited it yesterday because the guy wire does descend to the center of what would be the problem providing a 10 foot passage only on the north side. If that guy wire is changed, it would have to be changed so it would be located on Lot 14 and I don't know that the owners of Lot 14 are aware of that possibility. My proposal would be to delay this proceeding until a resolution of that problem is at hand.

Fern Hart asked, although this isn't a hearing, is there anyone here today who has a comment about this alley? I see none.

Michael Kennedy moved and Fern Hart seconded the motion to delay the decision on the request to create an alley in Hughes Addition, Block 1 (Lolo) and the matter be returned to staff to seek a resolution of the guy wire problem and to determine if the owners of Lots 1, 2, 13 and 14 are aware of the problem. Motion carried on a vote of 2-0.

CONSIDERATION OF MORRELL CREEK SUBDIVISION (5 LOT SUBDIVISION) - SUMMARY PLAT

Barbara Martens, Planner at the Office of Community Development, explained Morrell Creek subdivision is a proposed five lot summary plat. The total acreage of the subdivision is 26.08 acres. The lots range in size from 2.312 acres to 5.18 acres. The proposed subdivision is located in Seeley Lake, west of Morrell Creek and east of Tamarack Drive, in Section 2, T16N, R15W. The lots are currently vacant.

The 1975 Missoula Comprehensive Plan designates this area as "Open and Resource Land" with a recommended density of one dwelling unit per forty acres. The Plan further recommends "a density of up to two dwellings per acre adjacent to the community of Seeley Lake, where the central water system is available." The 1989 Seeley/Swan Comprehensive Plan suggests that areas adjacent to the Water District should be considered for use as residential homes among other residential uses.

Tamarack Drive is currently located within a 30-foot public access and utility easement. The developer proposes to dedicate an additional 30' to bring Tamarack Drive up to right-of-way standards. The overhead power lines will need to be moved to the easterly right-of-way line.

Lot 5 does not comply with the 3:1 lot length to width ratio requirements of the Missoula County Subdivision Regulations and therefore is a non-conforming lot.

Staff is recommending approval of the Morrell Creek Subdivision subject to nine conditions:

1. Sanitary restrictions shall be lifted by State and local health authorities, prior to plat filing.
2. All easements shall be shown on the face of the plat. Utilities shall be placed underground.
3. Any future improvements to Tamarack Drive shall include the relocation of the existing overhead power line, at no expense to Missoula County. This language shall be added to the RSID waiver statement on the face of the plat. The County surveyor and appropriate utility company shall approve any plans for the removal.
4. An additional 30' of right-of-way for Tamarack Drive shall be deeded to the County and shown on the face of the plat.
5. A no-build/no-excavation area shall be shown on the face of the plat that prohibits all structures and motorized transportation routes below the 4125 contour line.
6. The developer shall incorporate the recommended changes of Zoe Mohesky, Office of Planning and Program Development (OPPD), in her letters dated September 20, 1994 and April 20, 1995 into the proposed covenants. A section shall be added stating that permission of the Board of County Commissioners is required before the association can be dissolved or any of the restrictions suggested by OPPD can be modified.
7. Prior to plat filing, the Property-owners' Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall be prepared or reviewed by an attorney licensed to practice law in the State of Montana, and that they contain the applicable provisions required by the County Subdivision Regulations, and any provisions upon which plat approval was based or conditioned and that the provisions do not conflict.
8. Prior to plat filing, the developer shall provide Articles of Incorporation and By-Laws for Property-owners' Association, with proof of filing with the Secretary of State.
9. Prior to plat filing, the developer shall obtain a letter of approval from the Seeley Lake Fire Department. The developer shall be responsible for any improvements required by the Seeley Lake Fire Department. Any plans for road improvements shall be subject to the approval of the County Surveyor.

After the report was written, Staff did receive a letter from the Seeley Lake Rural Fire District, Jeff Lien, states in a letter dated June 14, of this year. "Dear Barbara: This letter is to inform you that we can provide emergency services without requiring improvements at this time for the current platted subdivision of Morrell Creek Addition."

There are two variance requests:

No lot shall have an average depth greater than three (3) times its average width. The developer states that even though the lot exceeds this allowance, there is a public benefit with the establishment of the riparian protection area. Therefore, the lot area that is useable for development, complies with the intent of this standard.

Staff agrees and recommends that the variance be granted along with the applicable conditions.

Sidewalks and pedestrian walkways shall be provided in all subdivisions and bikeways should be considered. The developer states that no sidewalks exist in this area. The proposed subdivision is located within an area located close to services. Tamarack Drive does not meet current subdivision standards and will at some point in the future require upgrading.

Staff is recommending that the variance be granted, based on comments from the County Surveyor, that improvements to Tamarack Drive should be handled through a future RSID.

Staff is recommending that the Summary Plat of Morrell Creek Subdivision be approved based upon the Findings of Fact and subject to the stated conditions.

Fern Hart asked, is there anyone who would like to speak about this?

Andy Fisher, Eli and Associates, Inc., stated we represent the owners and we have no problem at all with the conditions and are in agreement with the Report. I would be happy to answer any questions.

Fern Hart stated, I have a concern or two. One is, the easement which we will discuss, but first the road. I can't remember this street and I wonder how many are going to be using it. This subdivision adds five. Are there others on the narrow end of the dirt street.

Horace Brown, Missoula County Surveyor, stated, Cedar Drive intersects this street, and it's a lot wider, and most of the residents that live in that area use that street, and maybe one or two that use, in addition to the new subdivision, that use Tamarack. Other than that it will be primarily these people.

Fern Hart asked, would you advise that we put in some conditions relating to dust abatement?

Horace Brown stated, there will be a dust problem here and it will probably affect some of the people that live on the west side of that area, because they are lower and dust will go down into the valley there. There are quite a few trees that help protect that area, but there probably will be a dust problem.

Fern Hart stated, I think I was mentioning that with respect to sometime during construction. Do you see this being slowly developed?

Horace Brown stated, I have no idea.

Fern Hart stated, Andy, we're really overwhelmed by the easement.

Andy Fisher asked, between Champion and the School District?

Fern Hart stated, yes. It seems to contradict what we would like for a riparian area, and we're trying to do our job protecting riparian areas and yet you have an easement which allows both the District and the homeowners, as I understand it, to use both sides of Morrell Creek.

Andy Fisher stated, but their uses are restricted as to what they can do down there.

Fern Hart asked, Colleen, would you comment on those uses?

Colleen Dowdall, Deputy Missoula County Attorney, stated, I think the use that we're concerned about is allowing trails for bikes, horses, people and ATV's, and what impact that could have, and also the ability to build bridges or boardwalk or something like that across marshy areas. The concern is not that these new owners or the subdividers will do that because the covenants restrict them, but it appears to me regardless of what the covenants say to you, the District has the right to do that on their property.

Andy Fisher stated, there is one small problem that the property came with the easement when it was purchased. The easement was placed on it by Champion. It all centered around the definition of the boundary using Morrell Creek. Morrell Creek has moved since the original boundary agreement back in whatever.

Fern Hart asked, was this in 1960, this easement?

Colleen Dowdall stated, in 1968 there was a grant of property that used the description and it described the boundary line as the center of Morrell Creek, and so the easement came about because of a conflict between Champion and the District as to where the boundary was because there was a COS that gave a metes and bounds description and documents that described it as the centerline of the creek. They decided to go with the metes and bounds description, but because they both thought they owned on either side of the creek they granted to each other this easement, with restricted uses. Most of the restrictions are ones that we approve of, but one that is of concern is the trails and motorized vehicles and building bridges and such, because those are things that we don't necessarily allow the homeowners to do within the subdivision because the covenants restrict that. The result could be that the homeowners can't do this activity on their land, but perhaps the District could come across and do it on these folks' land.

Andy Fisher stated, my understanding is the School District uses the riparian area as an educational tool. They're running classes out there, science classes and biology classes. It's not a playground. They're not using it for playground purposes or recreation. That was the problem that came up with this boundary. They did not want to lose access to the creek where they had been running their science classes.

Colleen Dowdall stated, I think I recommended in a memo to you folks that if we approve the subdivision that isn't going to make things any worse in this easement area. If anything, it's better because the homeowners at least are restricted from this kind of activity, and if the homeowners or the subdivider wants to go to the District and talk about taking away that one permitted activity of building trails and the use of ATV's in the area that possibility exists for you. But approving this subdivision won't make it worse, but only, I think, better because the covenants at least provide a more restrictive use.

Andy Fisher stated, the easement is there whether it's subdivided or not. If he was a single owner he still has the same easement.

Michael Kennedy stated, I'm not really sure that's the issue. It certainly isn't the issue with me. I understand what Colleen is saying and I agree with her from a legal standpoint that that is the case. I think from a practical standpoint, though, we have to look at what's real out there, and what's real is that we don't have property that is significantly used or

intensely used at the moment, it just isn't. The school uses it for educational purposes, there's no question about it. But this thing, should it be developed, is going to intensify the use of that property beyond what it is currently used, and we have a lot of concern about that. That's one of the reasons why the County has riparian regulations to prevent that. What we're looking at is how do we get the most out of this should this development up there be approved, knowing and acknowledging that we will have more activity on the site. We're looking at how do we deal with that easement and how do we deal with that easement with respect to you, and if your client gets his or her way, again there will be more intense use, and possibly we can restrict that use by doing a variety of things and one of those is to find ways for the School District to reduce their needs under that easement. Clearly they don't take advantage of every use that they can have under that easement. One possibility is asking you, or perhaps even demanding of you, to go back and renegotiate that easement with the School District to see whether they are willing to restrict their use on it to what we would restrict the uses of your client on the property if it's developed.

Andy Fisher asked, is it the ATV's and the bridge?

Michael Kennedy stated, I think anything that extends beyond current use. I don't know that anyone is going to argue with the educational use on that property, but when you start talking about ATV's and all the rest, it just flies in the face of the reason why we had riparian regs to begin with. And, frankly, for me plus just the ordinary standards of approach to subdivision here it just seems like it is out of touch with what is happening in Missoula County right now from the standpoint of cluster development and wanting to concentrate housing in certain areas, being responsive to resource needs and also reducing impact on habitat. This seems not to do any of those things. I think there is every reason to consider that in this application.

Emery Johnson, President of the group that owns the land, stated, I'd like to show the map and comment on what I think would answer your question. At the present time the road coming off High School Road comes along here. It has been used in the past by a lot of people for fishing, it has been used by people with all-terrain vehicles and what not. What this subdivision will do will eliminate all that traffic that now accesses the creek up here. What we have done is put a "no trespassing" sign here, so that creek that everybody has gone up there with ATV's, local kids go up there and party, and things like that, we have I think accomplished what you want to protect this riparian area. With the easement that we agreed to with the School system which has been about a year ago, we invested in this land a year ago, what we proposed was to have five homeowners here that would control all of this area. And if you look at the covenants, they're pretty strict, so we think we've accomplished what you want to do to protect this. With the School District here, in order for us to get this property line through, we agreed with what they wanted for covenants. They just wanted access to do what they've done in the past, to use the creek.

Michael Kennedy asked, with respect to the first comment that you made that this would actually improve the use down there, you can place a no trespassing sign there. I don't think that you need a subdivision to place a sign. You can place a sign up there right now and stop that activity. So that's really not, in my view, germane. I'm worrying how that would work. You can place a sign there restricting activity before the subdivision is constructed. Is that not correct?

Emery Johnson stated, the investment group, and there's 10 of us in the investment group, we purchased this land from Champion with the idea that we would be able to subdivide it and get our investment back and hopefully make a profit on the thing. If we can't subdivide it then we have to choose some other buyer, he might come in here and do something a lot worse. What we've done here, we think we've bent over backwards with all the restrictions the School District wanted, and try to protect these property owners that nothing's going to happen down here. If you read it, it's very strict. All we're talking about is five additional property owners in the Seeley Lake area, and use an existing road here and not causing any hazard. Just three homesites that would be beautiful homesites. Five, excuse me. And it's beautiful building property and they can build some beautiful homes there. They would access it from Tamarack. We thought we were adding to the protection of the riparian area and the Seeley Lake community.

Fern Hart stated, I'm still wondering what is the best way to work with the roads.

Horace Brown asked, as far as dust?

Fern Hart stated, yes. Our rural subdivisions come back to haunt us with respect to dust. Even urban subdivisions do.

Horace Brown stated, you can probably make a requirement that they use dust abatement during the summer months as part of the approval of the subdivision.

Fern Hart asked, what about trying to get that road graveled?

Horace Brown stated, gravel is not going to help. You still get dust off gravel. It may reduce the dust a little, but it's not going to take care of the problem. The County is not going to build or gravel the road as part of the subdivision.

Fern Hart stated, Colleen, talk to me about requiring the developer to attempt a RSID.

Colleen Dowdall stated, we have the option of requiring that they attempt a RSID prior to filing the plat, and we have done that in the past. That would be a RSID to improve the road to whatever standard we wanted. The other option which we have, Staff has recommended to delay that because Rural Fire and Horace have both said the road is adequate for these additional residences. It doesn't require upgrading for these residences, but in the future as there is future growth there will be a required update. So the future RSID, these folks will be required to participate in because they have signed a waiver of the right to protest. So they will have to pay for their impact on development as that RSID is imposed, just as other people will have to pay for the impact they have had to require the upgrading of the road.

Andy Fisher stated, if you would like to have the homeowners association be responsible for dust abatement on their frontage, that's fine with us. There is going to be an association because of the common area there and we would be

happy to incorporate dust abatement on Tamarack as their responsibility on their frontage by whatever methods the County Surveyor recommends.

Fern Hart asked, does Tamarack run north and south?

Andy Fisher stated, yes.

Michael Kennedy stated, I would like to know about the character of the development that is north of Lot 1, whether there is any, how many people live out there.

Andy Fisher stated, north of Lot 1 is Forest Service land.

Michael Kennedy asked, so the boundary is right at Lot 1?

Andy Fisher stated, right, that's the section line.

Michael Kennedy stated, then what I hear is that the only opportunity for development in that length there would only be on the west side.

Andy Fisher stated, to the south.

Michael Kennedy stated, no, I'm talking about the length of this subdivision. The only place there could be development would be on the west side.

Andy Fisher stated, and that's already subdivided.

Michael Kennedy asked, subdivided into what size parcels?

Andy Fisher stated, they're quite small. It's an old--one of the Seeley Lake Townsites.

Emery Johnson stated, they're various sizes. There are mobile homes there and some cabins there.

Andy Fisher stated, they're less than an acre.

Michael Kennedy stated, the only people then that are going to access Tamarack Road, as I understand it from listening to you, north of Lot 5 would be the five potential owners of those lots, plus the two or three whatever that own on the west side, so basically about eight potential ownerships that would use Tamarack north of Lot 5. Is that not correct?

Andy Fisher stated, right, unless there is traffic coming from Cedar which comes from the west and turns onto Tamarack.

Colleen Dowdall asked, do folks use Tamarack to access the Forest Service property?

Emery Johnson stated, the snowmobile trail starts there.

Colleen Dowdall asked, so folks would use it to get to the snowmobile trail?

Emery Johnson stated, in the wintertime they ride their snowmobiles through there. Most of the folks use Cedar to get to the Forest Service property.

Michael Kennedy stated, I have another question, which has to do with the comment that was written by the power company that said that yes, they would agree to move the power poles to the edge of the future easement which would be 30 feet on the east side of the existing lot line. It also said they wouldn't be responsible for that, that someone else had to, and that cost right now would accrue to the development interest, and presumably what you would want to do is to somehow make the purchasers of those lots responsible for that move.

Andy Fisher stated, it would be incorporated into a RSID.

Michael Kennedy stated, I understand all that. What I also understand, though, is that what happens with SID's and RSID's, and it's really a serious thing that happens in Missoula County, and that is that originally SID's and RSID's were designed to provide improvements for existing areas that are already built up. More and more we are starting to use them as a way for developments to defer to the loaners up front cost that normally would accrue to the development. And one of the downstream results of that is that when they are confronted with that RSID that shows up on their tax bill because they have no choice as that is a condition of the approval, then their taxes go up and they think kind of unfairly and it gives them every incentive to vote down bond issues like school bond issues. That implication is really a serious one and I think it's time that we began taking it seriously rather than just allow development to continue on the back of a RSID for which it was never intended. So I've got a big problem with that. Moving those power lines is going to be a big cost and building that road also will be a big cost and that's a hidden cost in a way to whoever buys those lots and it will eventually show up on their tax bill if a SID is formed. One way to avert those costs and reduce them is to reduce the overall resource commitment to developments of this kind and it seems like this is an opportunity to do it. There's 270 feet of frontage roughly on four or five acres apiece. People can't do anything agriculturally with four or five acres. What they've got is a problem where they have to commit a lot of resources to roads and everything else to get in between the lots. It would make some sense that you might go back to the drawing board and reconsider how you might develop this little five lot subdivision where it would make--where they would take advantage of open space in an undivided area for the advantage of the people who live there and also cut down on the amount of resources that you commit to developing those lots. I personally would like to see you do that. And in another mode this abuts Morrell Creek that we've spent a lot of time and effort protecting the riparian regulations, because it's my view that just the intensity of human activity in

that area is simply going to degrade what the people who might buy those lots would buy them for, and that is the wonderful environment. And if there is some way in the very beginning before this is done that I would really urge consideration of it. I guess I'd like to hear a response from the developer.

Emery Johnson stated, I'm not quite sure how you want to redefine the land.

Michael Kennedy stated, we've got conventional lots as if they were in the city. They're all squared up and they all have about 270 feet of frontage, in fact it's 270.59 feet in every one of them. I'm wondering if you would give consideration to taking that entire parcel of property and building a subdivision where all the houses are centrally located where they might have less commitment to resources on your part, roads, streets and potentially even sewer, and leaving the balance of the land in common to ownership for all the rest, and that would do a lot of things it would seem to me. It would help protect that creek.

Emery Johnson stated, we thought we were doing that with the easement that we had with the School District that that whole creek is being protected. We felt with five parcels there would be less impact. The street is plenty adequate for five people to drive or not to, to gain access to the property. We thought we were doing that, sir.

Michael Kennedy stated, I guess I'm asking you--no, I'm not guessing, I am asking you whether or not you would reconsider that on this proposal. To cluster those houses and reduce the overall land commitment to the development, leaving the balance of the land in common and open.

Emery Johnson stated, I think our group now if we don't go through this will try to sell it to somebody else to develop it. We've worked on this for a year, and we need to get those lots sold so we can pay for the land.

Fern Hart stated, I need to have some help in wording a 10th condition, that the homeowners be responsible for dust abatement on Tamarack Drive. Shall I simply say until the road is paved?

Colleen Dowdall stated, I think that language is o.k. That might be provided for in the covenants along with a means of assessment so that the folks have a way--because they won't be able to comply with it if they don't have that in their covenants.

Andy Fisher stated, I'd like to make some comments to Mr. Kennedy. I understand what he's saying. Our problem is we work with the regulations as they are, and try to deal with the rules that we are given. RSID's, I know how they're used, and sometimes misused, but we use the comments that we receive from reviewing agencies, and go with the rules. As far as clustering, I know that's being pushed more and more. I guess I would like to see further changes in the regulations because it is very difficult to get that concept through to private land owners. If they feel they have options that doesn't require that, why should they have to do that. This is the way things have been done in the past and this is the way they wish to pursue it.

Michael Kennedy stated, I won't argue that. And you're right, and that's why I asked whether or not you'd consider it. It's not placing a demand on you to do that, but at the same time I just think it's time we begin acknowledging that's where we're headed.

Andy Fisher stated, I understand. With regard to this particular site, Commissioner, the housing sites--there's kind of a ridge that runs through there. It slopes up to a ridge, and then a short drop and the actual housing sites are along that ridge. I'm not sure how we would cluster five. I'd have to think about it quite a bit, but I'm not sure that this is feasible on this particular site, because the buildable area is along ridge top that goes along there, so it would be more difficult.

Fern Hart asked, Barbara, would you read us the proposed condition? I want to thank you for taking stricter considerations on what is the public that you're serving for the riparian areas. I appreciate that and we're working in that area and I think you're one of the first maybe five or six that have looked at that and dealt with it and the stronger restrictions on you than are on the School. I appreciate that. And I hope the folks that buy there understand that they're stewards of that area and we will try to convey to the School that we made it tighter on you and we hope that they will observe the higher conditions.

Barbara Martens stated, what I recommend is that a section be added to the covenants stating that the homeowners association shall be responsible for dust abatement on Tamarack Drive and that any plans for dust abatement be approved by the County Surveyor prior to implementation and that they assess fees to cover the cost of the dust abatement.

Fern Hart asked, will that be a condition?

Barbara Martens stated, yes, it will be a condition.

Michael Kennedy stated, we had some discussion about whether or not we could in fact make it a condition of this approval, a requirement they renegotiate that contract. Would you care to comment on that?

Colleen Dowdall stated, the question from Commissioner Kennedy is whether we can require that these folks renegotiate the easement with the School District so that the same restrictions that are on the homeowners on their property would be on the District, both on their property and on the District property. My concern is that we were seeking to extend our jurisdiction beyond the property that is the subject of the subdivision. I felt we could do it, but I was a little uncomfortable with how we survive a challenge of that because we simply have jurisdiction over the property that is brought before us.

Michael Kennedy stated, so from my view if this is a sticking point, which it is for me, I look at it as three options. One, making a requirement and risking a challenge. The second would be to request and have the owner-developer accept the responsibility to renegotiate that easement without a requirement, and the third would be perhaps either defeat or delay action on this until we came to some other resolution of how we could deal with that particular problem.



Michael Sehestedt, Deputy County Attorney, asked, are you asking them to approach the School to see if the School will renegotiate or to actually accomplish renegotiation? I guess what I'm thinking if we do any of those maybe we could get an agreement by the School District to subject their easement interests to the same restrictions on construction that we're imposing on the homeowners through the required covenants. I was not involved with the District during the negotiations for this easement. I recall the property dispute that gave rise to it, but did not get in--I don't know whether the trail building, bridging, ATV were requirements of Champion or of the District in getting the easement. I would rather suspect that the District would be willing to do far more restrictions providing they could take some steps to assure educational access to the area and perhaps both sides of the creek. I can't speak for the District. If we're simply requiring the developer to approach and make a request of the District, are you willing to accept these restrictions and get a written response from the District, I don't think that would be too troubling for them. If we're requiring a third party agreement before we approve it, I have more reservations then. Just so we know whatever we're imposing is real clear.

Michael Kennedy stated, my objective is to figure out some way that if this thing is approved to have the intensity of land use there minimized and if we can do that through this mechanism of reducing the approved uses within that easement, it seems to me it is worthwhile making that attempt. I am at a loss right now how to proceed today without any more information.

Colleen Dowdall stated, if you wanted to impose an additional condition that they approach the School District prior to final plat filing, then you could approve the plat and they couldn't file it unless they had correspondence with the amended easement.

Michael Kennedy stated, just listening to what Michael had to say, I guess I'm more concerned about getting a result from the School District rather than just approaching them. I'm thinking in my own mind that maybe we need to approach them ourselves and find out whether they would give consideration to that prior to approving this.

Colleen Dowdall stated, my concern with that is we might condition this subdivision on requiring the action of a third party that is not subject to this jurisdiction.

Michael Kennedy stated, no, you misunderstood me. I'm saying that now delaying action on this until we in fact do that work.

Barbara Martens stated, the only comment I was going to say is that we have 35 days in which a decision has to be made on the proposal. Keep that in mind, and the 35 days started June 1, or we need to get an o.k. from the developers to continue beyond that 35 days.

Andy Fisher stated, approaching the District is not a problem at all. We would be happy to go ask them can you drop the ATV, can you drop trails and bridges, but I don't know what answer we're going to get.

Michael Kennedy stated, the 35 days then gives us until the 5th of July. Right?

Barbara Martens stated, yes, I think that's right.

Michael Kennedy stated, my inclination is to do that.

Emery Johnson stated, from where I'm sitting I think that working with the School District on one proposal versus--we have purchased the land and gone through a tremendous amount of work with lawyers and what not about the border line with the School District, and that has been done. We can't change that. We purchased the land and we must subdivide it or sell it to somebody else who has some other use for it. I would think as a taxpayer up there, the School District is going to work with any requirements. They don't want to destroy that riparian area. We feel that we have gone way far to protect that area and that's all we can do. We can suggest to the School District that they also protect that and I'm sure they will. They want that to be as good as we do, and we've done nothing but improve that land. We've cleaned it up and we intend on continuing to clean it up. But we can't do that unless we get this thing through and get some of those parcels sold, and we feel that working with the School District is not an option. They can do that independent of us. We have protected our side, and I can't envision them building a bridge across that creek. They have no need to. They just want to protect the rights they had before with Champion. But Champion is now out of it.

Michael Kennedy stated, I understand that. I think where I'm interested again is protecting that environment as well as it can be protected under the circumstances. And it just seems to me that approaching the School District, if that is what we choose to do in some unencumbered fashion about the use of their existing easement, has some stronger possibility of success before rather than after approval of the development. That's my only point. I understand you're separated from it and I've gotten through that myself.

Emery Johnson stated, I think as local taxpayers we would have an influence on the School District, and I can't see that they would not want to cooperate and provide what we have to protect that area. But I think to hold up, there may be more disadvantages then any advantage to hold up our plan. It could be something worse would happen.

Fern Hart asked, do you want to make a motion?

Michael Kennedy stated, the only motion I would be prepared to make right now would be to defer this action for a period of time until we have some indication from the School District about this particular issue, because I'm not prepared to make a motion for approval, regardless of the conditions, until I'm satisfied in my own mind that that avenue has been explored.

Fern Hart asked, do we have any standing to go to the School District and is it the Seeley Lake District?

Colleen Dowdall stated, it is the High School District. My concern is that we have jurisdiction over the property that's brought before us for subdivision review, and in order to approve that subdivision we can impose conditions upon how that subdivision occurs. I am uncomfortable attempting to require that these subdividers take action to protect land outside the subdivision in order to have their subdivision approved.

Michael Kennedy stated, we're past that problem. We're not talking about that issue any longer.

Fern Hart stated, I am. I'm concerned that the County could exceed its legal jurisdiction by holding up the subdivision in a case where we don't have--either we don't own that land and we're not a signatory on that easement.

Andy Fisher stated, just in the interest of moving along, I think that on the prior side we could approach them faster and quicker than--nothing against the County--

Fern Hart stated, we are slow.

Andy Fisher stated, if that is the way this is going, I'll be on the phone this afternoon to those people to find out, at least get an initial response. If it's the Commissioners' pleasure to defer this until next week until we at least have some kind of response--

Fern Hart stated, I'm not willing to defer it any longer. I respect what you've done so far and I appreciate the help on the dust abatement. Barbara, would you read clearly into the record your covenant for dust abatement.

Barbara Martens stated, a section shall be added to the covenants stating "that the homeowners association shall be responsible for dust abatement on Tamarack Drive. Any dust abatement measures shall be approved by the County Surveyor prior to implementation, and that there shall be a mechanism within the homeowners association to assess fees to cover cost of dust abatement."

Colleen Dowdall stated, Horace wanted to add that the dust abatement be--

Horace Brown stated that unless the Commissioners change what they had the first time, their responsibility would be the frontage along the front of their lots. If you want to add the full length down to Locust then you need to state that in the requirement.

Fern Hart asked, Colleen, can we require a subdivision to pay for dust abatement outside its road?

Colleen Dowdall stated, normally we would only require dust abatement for internal roads. Adding it here I think it makes sense for the length that we know is being used by these homeowners, but I was just looking for that map again to show the folks across the road--there is a pretty heavy development across the road. I just don't know if it accesses onto Tamarack. It looks like Willow Drive and Spruce Drive both access onto Tamarack from that subdivision.

Andy Fisher stated, the traffic from the subdivision will either go out Tamarack or go out Cedar, so you'll have either end to reach heavier roads.

Fern Hart stated, my inclination is to say the in front of the Morrell Creek Subdivision.

Michael Kennedy asked, I'm sorry what did you say about the dust decision?

Fern Hart stated, we need to make a decision about what kind of motion we want. We've drafted the condition about dust abatement in front of this subdivision.

Michael Kennedy asked, only in front of the subdivision? The question needs to be answered what do we do with the dust in front of those other people who are not causal to the dust problem? We're impinging on their current lifestyle, air and everything else by this development.

Andy Fisher stated, you can go south and hit Locust or you can go from the corner of Lot 1 that is Cedar Street that heads west right over to the highway, so you can go either way from this subdivision.

Colleen Dowdall asked, so, Andy, what you're saying people going to Morrell Creek could come on Cedar and turn right on Tamarack or they could come on School Lane and turn left on Tamarack, or they could come the full length of Tamarack from Locust?

Andy Fisher stated, School Lane is not that likely to be used. School Lane is not a suitable road.

Colleen Dowdall asked, is it paved?

Andy Fisher stated, no. None of them are paved, except Locust.

Colleen Dowdall stated, but there are other people that use Tamarack Lane the full length.

Andy Fisher stated, if they go up to Cedar they are using the full length of Tamarack.

Colleen Dowdall asked, and they're using it now?

Andy Fisher stated, right.

Michael Kennedy stated, I think there's a little difference. I don't know how often you use it, but to listen to Horace, people make between five and seven trips a day. I think that's what it is per lot, so we're looking at 25 to 35 additional trips per day, and I'm not sure that you get that many from people who are accessing it. I think it's a little different thing. You certainly are going to increase the intensity of the use of that road simply by the fact that you have the subdivision. I don't think there's any doubt about that. To the extent that that's so, it's going to create a dust problem not the making of the people on either side of it.

Colleen Dowdall asked, so you're suggesting that these developers be responsible for dust abatement on all of Tamarack Drive?

Michael Kennedy stated, that seems a bit inequitable as well, yet at the same time it seems that there is some way we could find an equitable distribution of costs for dust abatement along the entire length.

Colleen Dowdall stated, the development to the west is quite--at least the number of lots with streets coming from those subdivisions onto Tamarack Drive are numerous. It's possible to include them in dust abatement or have the County do it?

Horace Brown stated, no.

Michael Sehestedt stated, by requiring the developers to initiate RSID for dust abatement on Tamarack from Cedar Street to Locust Drive using either an area or per lot, we need to talk about what assessment method. If that fails because the others do not wish it, then in the alternative the homeowners association will be directly responsible for dust abatement on that section of Tamarack fronting on their development. That way we're giving the people who will be impacted by the dust the option of participating in the solution, because that would be a neighborhood dust abatement district, yet County participation at whatever level we participate in those. If, however, that fails then for the section fronting directly on the development, the developer and/or homeowners association will have dust abatement responsibility until such time as the road is paved. I don't know if that's entirely satisfactory or not. We have used the dust abatement by a homeowners association with a backup RSID in Double Arrow and whether it's abated the dust or not, it certainly has abated the complaints because we don't get complaints about dust in Double Arrow. I submit that might be an answer.

Fern Hart stated, my experience is this is a worthy cause, but the folks won't respond.

Michael Kennedy stated, explain once again, Colleen, please, why we can't extend the dust abatement requirement south of Lot 5.

Colleen Dowdall stated, my concern from the map I have is that other folks use that road and perhaps create a significant amount of dust also, and there might be some inequity in requiring these five lot owners to provide dust abatement for not only their subdivision but the heavy development on the west side of the road.

Michael Kennedy stated, you keep saying heavy development and I'm not really sure that that's so.

Colleen Dowdall stated, I'm not either, but it sounded to me like there were trailers and cabins. It is certainly heavily platted. I've never been there, I don't know what the development is. If we can justify, or you folks can justify in your collective minds that these folks are going to be responsible for dust to the extent that they have to abate it on all of Tamarack Drive, then that's your decision.

Michael Kennedy stated, my biggest concern, of course, is during any construction activity. We only need to look around town to find out what that's all about. I'm willing to compromise to this extent, that during the times of construction that whoever--the ownership of this subdivision be responsible during that construction activity, no matter how long it takes. If they do it in one year, they've one year, but if it takes five years, it takes them five years, but they are responsible for it. Usually that construction happens during the summer and obviously that is the dust season, and it seems to me that is a reasonable thing to do because we have inordinately high activity during that construction season that creates the dust. I'm willing to impose that.

Andy Fisher stated, maybe add to that provision that during construction of housing that whoever is building it is responsible for dust control on Tamarack Lane.

Michael Kennedy stated, from Cedar down to Locust.

Andy Fisher stated, sure.

Fern Hart stated, we have several conditions on that. That this be in the covenants, the homeowners association have a method for assessing for payment, and that the subdivision, Morrell Creek, be responsible for dust abatement, until that road in front of you is no longer a problem, and during construction the contractor--

Andy Fisher stated, I would say the homeowner, whoever is doing the building, is responsible for their contractor. If you make it the contractor they're just going to add it to the owner's bill anyway.

Fern Hart stated, the owner who is having construction completed is responsible for dust abatement during the time of construction from Cedar Lane to Locust Lane.

Michael Kennedy stated, my concern is how do we enforce it.

Fern Hart stated, the neighbors will call.

Michael Sehestedt stated, and the neighbors call and we tell them it's in the covenants.

Horace Brown stated, I have one problem with that in that it may move the builder to Cedar Street because the developers will have taken care of the mag chloride in front of those five lots, but what I would not like to see that the builder now uses Cedar Street to get around not putting mag chloride on Tamarack Drive.

Michael Kennedy stated, they wouldn't get around it. They would have that requirement no matter what, regardless of what street they use.

Horace Brown stated, if they don't use it nobody is going to complain, except maybe on Cedar Street. If you're going to require them to do it, then also require that they not use Cedar Lane as a route for the construction.

Michael Kennedy asked, would that be the normal route anyway, Tamarack to Locust?

Horace Brown stated, you could go either way.

Michael Kennedy stated, I'm just asking if that would be the normal way to do it.

Horace Brown stated, that would be the normal way.

Colleen Dowdall asked, so the condition would read instead that during the time of construction the builder provide dust abatement for access to the building site using Tamarack Drive and they must use Locust.

Michael Kennedy stated, Michael Sehestedt stepped out and talked to the School District and they seem to think that--they expressed the willingness to talk about restrictions on that easement so that relieves me significantly.

Michael Kennedy moved and Fern Hart seconded the motion that the Board of County Commissioners grant the variance request to Section 3-3(E), since the lots are unusable to their full extent, on a depth to width ration. Motion carried by a vote of 2-0.

Michael Kennedy moved and Fern Hart seconded the motion that the Board of County Commissioners grant the variance request for Section 3-2(5) for sidewalks, pedestrian walkways and bikeways, as being out of character with this development, and in that no sidewalks or other of those improvements exist in that area. Motion carried by a vote of 2-0.

Michael Kennedy moved and Fern Hart seconded the motion that the Board of County Commissioners approve the Summary Plat of Morrell Creek Subdivision, with lots ranging in size from 2.312 acres to 4.18 acres, located in Seeley Lake, west of Morrell Creek and east of Tamarack Drive, in Section 2, T16N, R15W, based on the findings of fact in the Staff Report, and subject to compliance with the following amended conditions.

1. Sanitary restrictions shall be lifted by State and local health authorities, prior to plat filing.
2. All easements shall be shown on the face of the plat. Utilities shall be placed underground.
3. Any future improvements to Tamarack Drive shall include the relocation of the existing overhead power line, at no expense to Missoula County. This language shall be added to the RSID waiver statement on the face of the plat. The County surveyor and appropriate utility company shall approve any plans for the removal.
4. An additional 30' of right-of-way for Tamarack Drive shall be deeded to the County and shown on the face of the plat.
5. A no-build/no-excavation area shall be shown on the face of the plat that prohibits all structures and motorized transportation routes below the 4125 contour line.
6. The developer shall incorporate the recommended changes of Zoe Mohesky, Office of Planning and program Development (OPPD), in her letters dated September 20, 1994 and April 20, 1995 into the proposed covenants. A section shall be added stating that permission of the Board of County Commissioners is required before the association can be dissolved or any of the restrictions suggested by OPPD can be modified.
7. Prior to plat filing, the Property-owners' Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall be prepared or reviewed by an attorney licensed to practice law in the State of Montana, and that they contain the applicable provisions required by the County Subdivision Regulations, and any provisions upon which plat approval was based or conditioned and that the provisions do not conflict.
8. Prior to plat filing, the developer shall provide Articles of Incorporation and By-Laws for Property-owners' Association, with proof of filing with the Secretary of State.
9. Prior to plat filing, the developer shall obtain a letter of approval from the Seeley Lake Fire Department. The developer shall be responsible for any improvements required by the Seeley Lake Fire Department. Any plans for road improvements shall be subject to the approval of the County Surveyor.
10. A section will be added to the Covenants stating the homeowners association shall be responsible for dust abatement on Tamarack Drive in front of Morrell Creek Subdivision on Tamarack Drive. Any dust abatement measures shall first be approved by the County Surveyor before implementation. A fee shall be assessed to the homeowners to cover the cost of dust abatement.

11. During the time of construction on any of the five lots in Morrell Creek Subdivision, the land owner shall be responsible for dust abatement on Tamarack Drive to Locust Street and all construction traffic to the lots shall be restricted to use Locust to Tamarack Drive for access.

The motion carried on a vote of 2-0.

HEARING - PETITION TO ALTER COUNTY ROAD (PETTY CREEK)

Horace Brown stated, this is a proposal to put the road in the right-of-way. The road which was built in the late 1800's gave a specific area for the road to follow, and since that time the road has been moved out of the easement. What we would like to do is move the easement to the road, and this is the way it is done.

Fern Hart stated, the background is to improve traffic safety and change the alignment to match the existing road. Do we need to have someone go with you?

Horace Brown stated, yes, we have to view it just as we do a vacation.

Fern Hart stated, I will open the hearing related to the petition to alter the county road which is Petty Creek.

Pat Davies, the owner of question on the road, stated, I would answer any questions you might have. We have owned the property since 1972 and have been in permanent residence since 1974. The road has always been where it is at this time. In 1974 my husband called and was told there were no easements on that particular road and we had a building on the edge of the road. This spring we rebuilt the building farther away from the road than where it had been. Someone had a concern about it and called the County Surveyor's office and the finding was that where the road is now is not where the petitioned road should be. I believe the whole purpose of this is just to get the road in alignment.

Fern Hart asked, do you have any objections?

Pat Davies stated, no, I have none.

Michael Kennedy stated, you understand that if this is approved after this process, which will take another week, that you will be required to give up some right-of-way in the form of an easement that is the width that Horace Brown our Surveyor indicates. You do understand that?

Pat Davies stated, I've always had to do that anyway, and I've always paid taxes on the road anyway. All they're doing I think is changing the book work.

Horace Brown stated, she really understands it.

Pat Davies stated, I would like to thank the Surveyor's Office and Mr. Wright, particularly, for their help in this matter.

Fern Hart stated, we won't take action on this. We will postpone this until next week. In the meantime, a Commissioner will go with the Surveyor and start this book work. The public hearing is closed.

CONSIDERATION OF REQUEST FOR FAMILY TRANSFER, LOT 8 OF COS 3611- GRENAGER FAMILY TRANSFER

Kathleen Smith, Paralegal, Missoula County Attorney's office, explained, this is a consideration of a request for a family transfer for Lot 8 of COS 3611 in the E1/2 of Section 33, and the W1/2 of Section 34, T15N, R22W, for Lyle Q. Grenager.

Lyle Grenager has submitted a family transfer request for a 20 acre parcel located in the Ninemile area between Highway 90 and the Clark Fork River. Mr. Grenager proposes to split the parcel in half for transfer to his adult daughter Gwendolyn Allen. The comprehensive plan designation is currently open and resource (one dwelling per 40 acres), however, the area covenants allow this parcel to be split no smaller than 10 acres in size.

The history of the parcel is as follows: COS 1452 was filed in April, 1978, creating 4 parcels greater than 20 acres in size along with a 15 acre remainder and retracing two already existing parcels. COS 3611 was filed in October, 1988, creating 10 parcels greater than 20 acres in size. Mr. Grenager purchased Lot 8 in January, 1994.

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 and three family transfers in December, 1978, an agricultural exemption in March, 1982, and an occasional sale and remainder in June, 1984. All exemptions were on unrelated parcels of property.

Fern Hart stated, the public hearing is now open. Is there anyone who would like to make a comment on this family transfer? Seeing none, I will close the public hearing.

Fern Hart asked the applicant to come to the microphone and explained that in order to divide land we have to, even with the statute which allows a parent to give a property to a child, and in this case that is what it is, it still has to be considered to determine if you are trying to avoid the subdivision rule. This is for your daughter, will she live there?

Lyle Grenager, applicant, stated, she will live there eventually if possible.

Fern Hart asked, you do know that the comprehensive plan indicates that this is 1 per 40?

Lyle Grenager stated, yes.

Fern Hart stated, when she starts to build that, that will be looked at and she will need to have some kind of clearance on that.

Lyle Grenager stated, we understand that.

Fern Hart asked, and you also know that covenants are between the folks that live in the area and covenant together. It does not necessarily mean that we enforce those covenants. We will in cases of riparian areas, but in these cases it does not necessarily grant that each person can build on five acres. Do you have any questions?

Lyle Grenager stated, no, no questions.

Michael Kennedy moved and Fern Hart seconded the motion that the Board of County Commissioners approve the request for family transfer for Lot 8 of COS 3611 in the E1/2 of Section 33, and the W1/2 of Section 34, T15N, R22W for Lyle O. Grenager, in that it does not appear to be an evasion of the subdivision rules and the County does not accept responsibility for services or roads which a subdivision would do. Motion carried by a vote of 2-0.

#### PUBLIC COMMENT

Fern Hart opened the meeting to public comment.

David McEwen, President of Save the Fort, and I and others are here today as a result of the decision that was rendered yesterday by the Supreme Court, and it has prompted us to come here before you today. There was a lot of talk about dust today and some dust has finally settled out at the Fort. I might also add that a very loud wake up call bell was rung a year and some months ago and I truly believe that it's time for the Commissioners to seize the day and to look carefully at the 1994 Fort Missoula Plan that was so carefully put together and throw it out for discussion and everything, and I think that's what we want and I think it's also what you want, and I think the time is now to do that.

Fern Hart stated, I intended to call you and say that we received your letter, and in order to do this we have to do public noticing. I also will tell you I'm very interested in seeing how you would use the document which has been developed out of growth management and related that to planning now.

David McEwen stated, I appreciate your comments and I might add that we would very much like to see that everything is done legally.

Gerard Behrens, 2085 Edward Court, Missoula County, stated, I too am here to echo what Dave has said. This Plan was completed in its draft form July 22, 1994, and we've been waiting on the Supreme Court decision and the equestrian decision, and both of those decisions have taken place. And I want to take this opportunity to read some excerpts from the Supreme Court decision, because what the Supreme Court, while it isn't necessarily part of their decision, it is certainly a recognition of certain aspects of the Fort that fit nicely in the Fort Missoula Plan. On page 2 they state, "The Fort Missoula U.S. Military Reservation was established in 1877 and has served many purpose of historical significance over the years." On page 8, they say, "The land in question" and that's the Divot land but it also applies really to much of the Fort land, "The land in question here has historic and social significance for the entire City. The public has used this property for many years for various community-wide functions. Were the land to become use for the multiple of private residential housing units that are planned, the entire community would be affected by the added pressures, financial, social and environmental. Thus, the community as a whole is affected by what happens to this property." And then finally the Court went through the trouble to take a large excerpt from the District Court Opinion, and there again they reiterate, "The proposed construction of this housing for several hundred people in what has historically been public, accessible open space on the edge of the City, affects the perspective development, residence, public services, schools, city housing market, near by residential facilities, city traffic and development patterns." And basically, what I think the Court recognizes and what we feel is very significant and important in this Fort Missoula Plan, is that we not lose sight of the history and the open space that the public has come to enjoy and that this Plan, we feel, after a lot of work, encompasses those aspects and takes them into strong consideration and will help guide the Commission in future decisions regarding this particular planned area.

Richard Gotshalk, member of the Open Space Committee, stated, both Fern and Michael were at the joint hearing with the City and County Monday night on the open space plan, and I would urge, as Jerry and David have done, that the Fort Missoula Plan be put on the table and gotten out into public discussion as soon as possible. It has been characterized as a recreation plan by one of the Commissioners, I believe, and I believe that's in recognition of the multitude of resources in the area that are of an open space and recreational nature. That sort of thing is recognized in the open space plan as an important community asset. It's not simply an asset for people who live in the area but it has significance to all of us in this community. That draft Plan of 1994 did express that sense of that area. I think it's time that it be brought out and seen in its community significance, acted on, and get on with it.

Ron Erickson, stated, I was one of the people in 1993 who worked on the revised Fort Missoula Plan. You will recall that a lot happened after that Plan came to you. There were two major concerns that all of us, not all of us but many of us, who were working on that Plan had. One was that there was an incredible rush to finish it, and the second was that the make up of the people who were working on that Plan included a lot of people who had a very, very specific development project in mind. I made the deliberate decision not to continue to work on the 1994 Plan that you will be considering. I simply want to comment now that that 1994 Plan has the benefit of more time and I think that's the most important thing that happened. There was more time to work on it. In 1993, we were really crunched to try to get it done by a date certain. The 1994 Plan is better, and I will make one last comment and that's that the 1994 Plan ends up arguing for a district park, and a district park is not a new idea but it's well stated about what that means and shows how that full area can work as a district park. That's the best thing about the new Plan and I surely hope that you are able to commit yourselves to it.

Ross Best stated, I'm here today to talk about two things. First, the Fort Missoula Comprehensive Plan and, second, the matter of conflict of interest that I've addressed to the Commission. It's a great pleasure to be standing here today in a room populated with people who have done an enormous amount of work in the last year and a half. My awareness of the significance of open space as an urban concern began with Fort Missoula about a year and a half ago. As you know, the Supreme Court has upheld the people's preference for zoning on one part of the land at Fort Missoula that has been controlled by the University. There's another part and that's about 215 acres which I don't think has been annexed. Is that correct? It's still in the County. And I want to let you know that that 215 acres is also going to be the beneficiary of our efforts because before it's all done that land is going to be back in state ownership and when it's in state ownership, the people who control that land will be called the Board of Land Commissioners. They'll be state officials, state-wide elected officials. The Regents will not be making the decision to sell that land, I believe. And that means that the people are going to have a chance to talk about how it should be used, and the idea of a district park sounds wonderful to me. So I just want to make sure everyone knows we're talking about 298 acres there, not just 83, and we're talking about land that is in the County as well as land that's in the City. On my second point, several weeks ago I spoke to the Commission and then the next week I petitioned the Commission and the County Attorney regarding a conflict of interest involving County Commissioner Barbara Evans and an action of the Commission to grant a property tax incentive to Stone Container. I have attended a couple of Commission meetings since then. I've missed two or three meetings since then. I want to let you know that I am available to deal with any questions that anyone may have about that. I intend to try to talk to the County Attorney to find out whether he intends to take any action. As I see it, there is no question that Commissioner Evans should not have voted on the matter. There is a question about the legality of reversing the decision. I'm considering taking that question to court and I want to let you know that so that there are no undue surprises, and I will inform the County Attorney of that also. And it's possible that I'll try to take that to court in the next few weeks, probably not before the end of next week.

Sue Mathewson stated, I did sit in on the process of working on this Plan, and I think it holds a lot of promise for the future of Missoula, and I'm really excited at the prospect that now maybe we can get on with the public hearings and let more people know, because the people that I have spoken to about the Plan have felt really positive, and I'm just here to say I'm anxious as anything to see it go forward, and really happy that it hopefully will soon.

Michael Kennedy stated, I know somebody back there who was really patient during a lot of the work on Save the Fort and I'm wondering whether, Erin, is there anything you'd like to say about this? In any case, I think the effort that you all are here about is something that is--there's no other word to describe the feeling other than just euphoria as a result, and for all of you who worked on it, I guess all we worked on it, I offer my deep congratulations and good feelings about it. I want to divert a bit from that now just to single out a single person, not that all of you don't deserve recognition, but one person does for a lot of reasons, and that's Richard Gotshalk, who, over nearly the last 20 years has spent just a remarkable part of his life's time on these kinds of issues in Missoula, making it really better for everyone who comes after him. And I say that because he soon will not be with us here in this community, which is regrettable in some people's view, but in other people's view he goes on to bigger and better things and that's really quite wonderful, and we certainly wish him all the best. So I feel good for knowing Dick professionally, and find him a friend and colleague, and certainly a friend of the earth and the land, and I can't think of good enough words to applaud him, so please join me in that effort and we wish you the best.

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

#### THURSDAY, JUNE 22, 1995

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

Audit List -- Commissioners Hart and Kennedy signed the Audit List, dated June 21, 1995, pages 5-39, with a grand total of \$328,655.32.

No Administrative Meeting was held; however, the following items were signed:

Lease Agreement -- The Board of County Commissioners signed a Lease Agreement between Missoula County and David Harrison, whereby the County agrees to lease a mobile home space located on the Missoula County Shop property located in the NW 1/4 of Section 1, T. 16 N., R. 15 W., PMM, to Mr. Harrison, as per the terms and conditions set forth, on a month-to-month basis, commencing in the month of June, 1995, and shall terminate on the final day of his employment with the Road Department of Missoula County, for rent in the amount of \$9.20 on the execution of the Lease for June and \$37.50 bi-weekly from the lessor's payroll check, commencing the first pay period in July, 1995. The Lease Agreement was returned to Chuck Wright in the Surveyor's Office for further signatures and handling.

Resolution No. 95-056 -- The Board of County Commissioners signed Resolution No. 95-056, resolving that the petition for inclusion in RSID 8901 (Lolo Sewer and Water System) submitted by Ken Allen, owner of Rossignol Orchard Tracts II be accepted and approved, as per the terms and conditions set forth.

Agreements to Sell and Purchase -- The Board of County Commissioners signed two Agreements to Sell and Purchase between Missoula County and the Missoula Bottling Company Board of Directors, whereby the County is making two offers on the property on Ernest Avenue owned by the Bottling Company--namely, one is for the warehouse and the vacant land across Ernest Avenue for \$596,000.00, and an accompanying offer of \$465,000.00 if they elect not to sell the land on the north side of Ernest--requesting a response to one offer only. The Agreements were returned to John DeVore, Administrative Officer, for further handling.

#### FRIDAY, JUNE 23, 1995

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy was out of the office all day due to illness in the family; Commissioner Evans was on vacation, but available for signatures as needed.



Audit List -- Commissioners Evans and Hart signed the Audit List, dated June 23, 1995, pages 5-34, with a grand total of \$185,478.08. The Audit List was returned to the Accounting Department.

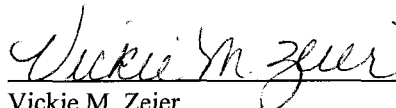
Memorandum of Agreement -- Chairman Evans signed a Memorandum of Agreement between the Missoula County Park Board and the Upper Linda Vista Homeowners' Association, whereby the Park Board agrees to provide up to \$2,500.00 in matching funds for capital improvements for Rainbow Park and "Two Acre" Park, as per the attachment to the Agreement and as per the terms set forth, with the stipulation that the funds must be expended before June 30, 1997.

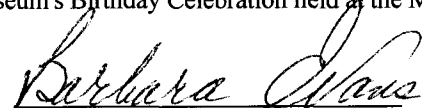
Resolution No. 95-057 -- The Board of County Commissioners signed Resolution No. 95-057, a joint resolution between Missoula County and the City of Missoula endorsing the airport area grid right-of-way concept for the purpose of avoiding undue delay for developments proposed in the area while still assuring that transportation needs for the area as a whole are considered, and to assure that development of one parcel does not preclude or interfere with the development of others. The Resolution was returned to John DeVore, Administrative Officer, for forwarding to the City for further signatures.

Service Contract -- Chairman Evans signed a Mineral/Missoula County Service Contract, whereby Mineral County contracts with the Superintendent of Schools of Missoula County to perform the duties required of County Superintendents for the period from July 1, 1995, to June 30, 1996, as per the terms set forth, with Mineral County agreeing to pay the Missoula County General Fund at a yearly rate of \$3,300.00 for the services. The Contract was returned to Rachel Vielleux, Superintendent of Schools, for signature and handling.

**SATURDAY, JUNE 24, 1995**

On Saturday evening, Commissioner Hart attended the Art Museum's Birthday Celebration held at the Museum.

  
Vickie M. Zeier  
Clerk & Recorder

  
Barbara Evans, Chairman  
Board of County Commissioners

**MONDAY, JUNE 26, 1995**

The Board of County Commissioners did not meet in regular session. Commissioner Evans was on vacation June 26th and 27th, but was available for signatures as needed on those days; Commissioner Kennedy was out of the office June 26th and 27th due to illness in the family. In the evening, Commissioner Hart met with residents of the Greenland Mobile Home Park in Milltown.

Audit List -- Commissioners Evans and Hart signed the Audit List, pages 5-6, dated 6-23-95, with a grand total of \$23,039.80. The Audit List was returned to the Accounting Department.

Loan Closing Documents -- Chairman Evans signed the Loan Closing Documents for Missoula County to enter into a loan with the State Board of Investments in the amount of \$134,995.00 on July 7, 1995, for the revamping of the heating and lighting system at the Missoula Public Library, as per the items and terms set forth. The documents were returned to John DeVore, Administrative Officer, for further handling.

Site Inspection -- In the afternoon, Commissioner Hart accompanied County Surveyor Horace Brown on a site inspection for the petition to alter a County road in the Petty Creek Area.

**TUESDAY, JUNE 27, 1995**

The Board of County Commissioners did not meet in regular session.

Resolution No. 95-058 -- Chairman Evans signed Resolution No. 95-058, a Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), approving the form and terms of the Loan Agreement and authorizing the execution and delivery of documents related thereto.

**WEDNESDAY, JUNE 28, 1995**

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 6-27-95, pages 5-36, with a grand total of \$467,866.00. The Audit List was returned to the Accounting Department.

No Administrative Meeting was held; however, the following items were signed:

Resolution No. 95-059 -- The Board of County Commissioners signed Resolution No. 95-059, resolving that a levy be assessed on the taxable value of each lot and parcel of land in the East Missoula Sewer District, exclusive of the improvement on said lot or parcel, in an amount necessary to raise a total of \$36,000.00 in tax year 1995 and tax year 1996.

Resolution No. 95-060 -- The Board of County Commissioners signed Resolution No. 95-060, a Resolution Fixing Salaries of Certain Elected Officials (replacing Resolution No. 95-033 due to an error in calculating the County Attorney's salary), effective July 1, 1995, as follows:

Clerk of the District Court	\$38,037.97
County Auditor	\$38,037.97
County Surveyor	\$38,037.97
County Commissioner	\$40,037.97
Clerk & Recorder/Treasurer	\$45,645.56
County Superintendent of Schools	\$40,037.97
County Attorney	\$59,528.00
County Sheriff/Coroner	\$50,395.46

Resolution No. 95-061 -- The Board of County Commissioners signed Resolution No. 95-061, resolving that Missoula County accepts the Utility Lot, Block 5, Linda Vista Third Supplement as a County park as the property is adjacent to an existing park and is suitable for use as a park.

Agreement -- Chairman Evans signed an Agreement between Missoula County and the Montana Department of Health and Environmental Sciences for the purpose of providing the services of the USDA's Special Supplemental Food Program for Women, Infants, and Children (WIC) to the residents of Missoula and Mineral Counties, as per the items and terms set forth, from July 1, 1995, through June 30, 1996, with the total payments by DHES for all purposes under this Agreement may not exceed \$321,542.00. The Agreement was forwarded to DHES in Helena.

Extension Letter -- The Board of County Commissioners signed a letter to Andrew C. Fisher of Eli & Associates approving a two-month extension for filing the Summary Plat for Sorrel Springs Subdivision (Lots 35A and 35B), making the new filing deadline September 26, 1995.

Payroll Authorization Forms -- The Board of County Commissioners signed the Payroll Authorization forms for Bill Silverman and Kim Vietz of the DES Office; these forms are updated annually and sent to the State DES office, indicating the current salaries and benefits, and the Emergency Management Association compensates Missoula County for a portion of the DES salaries, resulting in an approximate \$20,000.00 salary savings to Missoula County for FY'96. The forms were returned to Kim Vietz in DES for further handling.

Labor Agreement -- The Board of County Commissioners signed the Settlement on the MPEA (Health Department - Nurses) Collective Bargaining Agreement for the period from July 1, 1995, through June 30, 1996. The Agreement was returned to John Pemberton, Director of Personnel/Labor Relations, for further handling.

Plat and Improvements Agreement and Guarantee -- The Board of County Commissioners signed the Plat for Kona Rapids, a subdivision plat located in the SW 1/4 of Section 8, T. 13 N., R. 20 W., PMM, a gross area of 5.598 acres and a net area of 5.03 acres, with the owners of record being Arvis and Rachel Wells, and cash-in-lieu of parkland in the amount of \$2,900.22 received by the Missoula County Treasurer. The Commissioners also signed an Improvements Agreement for the improvements which remain to be completed, namely the placement of asphalt paving on Melody Lane, Kona Rapids Drive, and the shared access to Lots 4 & 5 off of Kona Ranch Road, at an estimated cost of \$4,356.00, to be completed no later than June 16, 1996, with the Owner guaranteeing performance by a Trust Indenture signed June 22, 1995, encumbering Lot 3 of Kona Rapids, with a value of at least \$5,000.00, in favor of Missoula County.

#### PUBLIC MEETING

The public meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioners Fern Hart and Michael Kennedy

Barbara Evans stated, the item that originally was scheduled as number five which is the Proposed Off-Premises Sign Regulations - we've been asked to move that up to number one. And I don't have any problem with doing that nor do the other Commissioners. So we will open the Public Hearing on the Proposed Sign Off-Premises Sign Regulations.

#### HEARING PROPOSED OFF-PREMISE SIGN REGULATIONS

Philip Maechling, Office of Community Development, explained that this is a request by Missoula County for off-premise sign regulations to be created and to be applied to all lands under the jurisdiction of Missoula County excluding those areas already in an existing zoning district.

In 1993, the County Commissioners adopted interim zoning regulating off-premise signs and establishing a size of thirty-two (32) square feet. That interim zoning was extended for one (1) year in 1994 and expires in August of 1995.

This proposal is consistent with the interim zoning that has been in place for two (2) years and establishes measurable standards for location, size, height, and setback of off-premise signs. The district does not regulate signs on moving vehicles.

On June 20th, the Missoula Consolidated Planning Board held a public hearing on the off-premise sign regulations and unanimously voted a recommendation for adoption of the district as the corridor advertising zone.

Off-premise signs are currently regulated by the State of Montana on some major roadways. In Missoula County this has caused a proliferation of very large signs and billboards in areas that have been identified as significant scenic and visual resources.

The lack of local control over the local landscape has also caused signs to produce types of visual chaos and off-premise sign advertising that are inconsistent with the goals and policies for land use and resource management in Missoula County. The County has adopted standards for signs in commercial and industrially zoned areas of Missoula County consistent with the commercial and industrial use of the land. Intensive use of lands accompanied with adequate signage to advertise activities on- and off-premise.

The County has also adopted land use policies and zoning consistent with the open and resource lands in rural, semi-rural, and suburban land uses in Missoula County. Large signs close to roads, high in the area, and brightly lit impose messages on residents and travelers.

Most often the signs are erected without regard for whether these signs represent a need as expressed by the residents or the travelers. These signs are inconsistent with responsible land use practice and responsible stewardship in the Missoula County landscape. There is a purpose for signs - to inform and to direct.

It is the position of Missoula County that this information, direction function for activities that are not located on the site where the sign is located on off-premise signs can be accomplished adequately on signs no larger than thirty-two (32) square feet with minimal height, a hundred foot (100') setbacks, and minimal lighting.

These standards should accomplish both the goals of allowing off-premise information and direction and the conserving of resources in Missoula County.

Briefly, the corridor advertising zone establishes sign setbacks a hundred feet (100') from the right-of-way, a maximum sign height of ten feet (10') in elevation above the elevation of the center line of the adjacent roadway with an absolute sign height not to exceed twenty-two feet (22'). It provides for:

- One (1) sign per thousand feet (1,000') of frontage, a maximum of thirty-two (32) square foot sign area, no more than one (1) face of a sign visible and readable from the same direction.
- Indirect lighting, lighting only the message on the face of the sign.
- Maximum reflected light, one footcandle or ten lumens.
- No sign shall have flashing lights, movement or moving parts or simulate motion with reflective parts.
- Each sign shall have the owner's name.
- All other off-premise activity signs are prohibited.
- Abandoned signs are prohibited unless they meet the standards contained in this regulation.

All other applicable County zoning standards apply with the addition of two new definitions.

The first definition is that of an abandoned sign, which is a sign which no longer correctly directs or exhorts any person, advertises a bona fide business, lessor, owner, product or activity conducted or product available, or any sign that remains blank, or contains only the owner/agent's advertisement for its lease for more than sixty days.

The second one is absolute sign height: the vertical distance from elevation of the finished grade at the structure to the highest point of the structure.

And that concludes the staff's report.

Barbara Evans opened the public hearing. Is there anyone who would care to speak either in favor of or in opposition to these proposed sign regulations? Come to the podium, and if your name is difficult, would you spell it for the secretary, please, for our minutes.

Helen Bolle, stated, folks from every corner of Missoula County say make the ban permanent. People are represented from Missoula County, Huson, Lolo, Greenough, Bonner, Frenchtown, Arlee, Big Flat, Grant Creek, Rattlesnake, Upper Miller Creek, Target Range, Clinton, East Missoula, Evaro, Seeley Lake, Condon.

Montana visitors are from Alberton, Victor, Whitefish, Stevensville, Florence, Kalispell, Darby, St. Ignatius, Swan Valley, and Hamilton. Out-of-state is represented from Nevada, Maine, Idaho, Pennsylvania, and Washington.

Let's make permanent the ban on over-sized billboards. We support making the existing ban on new signs over thirty-two (32) square feet in unzoned areas of Missoula County permanent. The County already has over two hundred (200) over-premise signs. That is enough. Out-of-state sign companies have continued to erect large billboards in other parts of the state the past two (2) years, and are poised to move back into Missoula County on August 17th, when the temporary ban expires. New signs must be only six hundred and seventy-two (672) square feet because of a new state law. That, however, is too large. If we want to preserve Missoula County's stunning roadside scenery for our own quality of life and economic health of the tourist industry, Western Montana is in direct competition with neighboring states who have limited signs in rural areas while providing visitor centers with advertising kiosks and logo and TOD signs on interstates and primaries to connect travelers with services. Missoula County must protect her visual resources by permanently banning over-sized billboards. Thank you.

Bob Zimorino stated, I tend to think that as people our basic instinct is to be reactive instead of pro-active in a lot of cases. And I think that that's fine if that's how we choose to be. But there comes certain points where you can look at situations as they happen and see what the effect can be. And I think billboards are one of them. Growing up in the '50s

and '60s I saw, at that time it seemed like business had the grip on everybody and there was a lot more pollution. I grew up near Niagara Falls where Love Canal is. And we saw ... we waited until people became very ill and did things before we ever reacted to creating some environmental legislation that would maybe diminish this and improve the quality of life on the planet.

Well, when you get into quality of life on the planet, while I realize billboards are not life threatening unless you are, of course, trying to read one I had ... one out on the highway that was fairly wordy. And so if you're doing this number trying to read it, it could be a health concern. But realistically I don't see them as that. But I do see them as an intrusion. And the visual aura that draws people here.

The unfortunate thing about business is that when business gets dragged into something they then try to look to shining knights. Think about fast-food packaging over the last few years which also didn't necessarily kill anybody. Up until a few years ago when enough people complained and said that there was too much packaging at fast-food places, you got a burger wrapped in paper, in a box, wrapped in paper, in a bag, probably wrapped in paper. As people complained these things changed. And they got better. Business ended up responding.

And I cite McDonald's as probably one of the more environmentally, or at least their pitch is that we are on the wagon here. We're environmentally concerned and we're moving forward and stuff like that. Well, what they ended up realizing is it wasn't going to hurt them to do this. It was actually going to benefit them. Unfortunately, the same thing doesn't always hold true when you're trying to get ... if you want to get everybody to say don't go to any place that has billboards, I think that that's ridiculous. But if you want to say to people that as a government we have the right to say that there are certain limitations that you should have to fall under with these signs I think that that is okay. I think that ultimately what you'll end up seeing happening is that these businesses will jump on the bandwagon and say it is okay to have a smaller sign. We don't need to beat each other over the head. As I drive through this state and I get to Billings, I see the signs and I go oh, wow, there's a McDonald's here. I wouldn't have guessed. Who'd of thought? Taco Bell, you know. But the reality is we know that these places exist. And a small sign at the exit on the interstate like we currently have where there's four (4) or six (6) little businesses put on one (1) sign that basically says this is the exit if you want these services. I think that that is more than sufficient. I think smaller businesses like myself, I used the billboard for years out here. I opted to not do it on my own because of something that I believe in but ultimately I don't think that we're going to get hurt either as long as we are able to share some space on the signs with these people so that they know that if it's restaurants, they have our services available too.

And I don't think that anybody gets any greater benefit. The bigger the sign the more people will see me, you know. I think if everybody is on the same playing field then everybody shouldn't ... then no one has a right to complain. I also think that there's a lot of small businesses that can't afford to be out on that interstate any more because the big corporations are willing to buy them out. So by virtue of their money they have a greater chance of being there. So I think level the playing field and go to smaller signs and make it a more equitable deal and everyone will benefit ultimately in the end. Thank you.

Lee Ballard stated, today I want to consider the problem of large, eye-catching billboards and the matter of safety. In some places, billboards have been prohibited because they cause accidents. When you are looking at a fetching female figure, or trying to catch the instructions for finding a certain motel, you aren't giving your full attention to the road and the traffic. As Bob says, if you're looking that way, the road goes on.

And I also want to add that if you are a senior citizen and suddenly you come to a brake because you've got this sign you want to read, you've been looking for, that's probably not very safe either.

The signs are well-designed and planned with bright, contrasting colors just to catch and hold your attention. Studies have shown that on similar stretches of road, with and without billboards the accident rate was higher by forty percent (40%) on the roads which had the billboards. I've handed to you some explanations of these studies. Under these circumstances, some governments have felt that the safety factor alone justifies a ban of billboards. The courts have accepted this as a reasonable action. In a landmark case, *Metromedia vs. the City of San Diego, California*, the Court held that as a matter of law, an ordinance which eliminates billboards designed to be viewed from streets and highways reasonably relates to traffic safety. Also in a Raleigh, North Carolina paper the ... it was reported on October 18th, '85, that a Federal Judge had ruled that no empirical studies are necessary for reasonable people to conclude that billboards distract drivers and their passengers from maintaining a view of the road. We feel that safety is an important element and that should be considered. Please act to make our streets and highways safer.

Joanne Rubie stated, I live in Missoula. And we looked at five surveys, all we could find to learn what motorists traveling on highways want to experience in their travels in Montana. The first two surveys on your sheet are state-wide ones. The last three surveys, Western Montanans because this part of the state has experienced the most recent rash of large sign construction. The first survey showed that 91% of the tourists wanted scenery. And that was most important to them in traveling through Montana. The second survey shows that 65% favored fewer billboards and commercial signing. The third survey by the Kalispell Chamber of Commerce shows stricter regulation of billboards by 73% of those surveyed. And in the fourth survey, 75% showed people wanted more regulations of billboards. I hope you pass this. Thank you.

Meagen Ryan Hartse stated, I live in Evaro. And I thank the County Commissioners for holding this public hearing today. How often do we need to say it? Missoula County has enough billboards. Previous to this meeting, I was reviewing some of Evaro's past work on this subject and in re-reading 16 of the letters to the Editors of the Missoulian, I noticed that all but two contain the same message, that the newer billboards were just too beastly large. So we've sent that message to the sign industry. But unfortunately they are still allowed to construct huge 672 square foot billboards. We in Missoula County need to make that much smaller. Under current law and without today's proposals each and every billboard on unzoned land could become 672 square feet. We already know this is very probable in the Seeley-Swan area come August 19th, should today's proposals fail. Billboard regulations serve to stabilize the industry. Out-of-

state companies that are the main culprits in erecting monstrous billboards may find it no longer worthwhile to be here. Long standing Montana companies will remain leaving advertising dollars here in our economy.

As the County becomes zoned, there will, unfortunately, be new opportunities for billboard construction. We are not down-sizing an industry. Just ask the sign painters how much they are earning on the six blank billboard faces within one mile of the base of Evaro hill. In reality these proposed regulations could make existing regulation more valuable to their owners. On the basis of supply of demand, the billboard companies could command a higher price for the ad space while still paying a new low 6% personal property tax on the billboard. And while still paying the same earlier negotiated contract dollars to the landowner. Newly negotiated billboard contracts could result in more money to the landowner. It seems to me that this is an enhanced property right to make more money. But more importantly, we need to protect what little is left of scenic Missoula County. In a 1993 survey of Evaro area residents, even those opposed to zoning regulations wanted some regulation for billboards. Given a choice, people, residents and tourists alike, prefer billboard-free areas. Let's give our scenery a break. Please enact the proposals before us today. Thank you.

Kate Campbell stated, I live west of Frenchtown. Do neighboring states, our competitors for tourists, allow off-premise signs in unzoned rural areas? Washington State allows no new billboards on interstate highways outside of incorporated towns and cities. Between Seattle and the Idaho line on I-90, a 300 mile stretch, you'll find only twelve (12) billboards. In Montana, there are 53 billboards in 15 miles west of Missoula. Washington allows billboards in unzoned commercial industrial areas on primary roads but only if three businesses are close together to form a commercial area. And then the signs must be 1,000 feet apart. Montana requires that only one business exist to qualify for a billboard and they may be spaced 500 feet apart. Washington permits no signs in scenic areas. And so far Montana has not designated any areas as scenic for sign purposes.

Oregon prohibited any new outdoor advertising signs in rural unzoned areas in 1971. It provides an extensive system of visitor information centers with advertising kiosks and phone reservation systems to help motorists find roadside services. Our neighbors, Idaho, Wyoming, and North Dakota, are not generally considered major tourist states. Their state outdoor advertising laws are more lenient than Montana's new law and do allow new billboards in unzoned commercial industrial areas. Colorado and California have not allowed new billboards in unzoned parts of their states for 15 years. Motorists are clearly capable of finding businesses as their economies are thriving.

A major goal of many on Governor Racicot's Outdoor Advertising Task Force last fall was to prohibit any new signs in unzoned areas. The new state law limits businesses to two signs. That law doesn't prevent Missoulians from completely banning new signs over 32 square feet in our County. If we want the 7.7 million people whose visits to Big Sky County generated 2 1/2 billion dollars to return, we must protect the scenery which they say they come to see. And as a postscript, I'd like to tell you of a paradox I recently encountered while writing to a local restaurant to tell them my feelings on their brand new billboard on I-90 which I get to look at every day. Imagine my surprise when I looked up their address in the yellow pages. Even as they are devaluing the landscape with their new sign, their ad sold the benefit of stunning views of the valley. And you know its true, because from where they're perched you can't see the billboard at all. Thank you.

John Stewart stated, I'm going to reduce the size of my presentation. I live at 111 East Crestline Drive in Missoula. In past open meetings on the subject of billboards, there's been a lot of emotion generated by people wanting to keep the large billboards. And they made the inference that the SAVE Organization which is opposed to the big billboards is in favor eliminating all outdoor advertising. This was the inference. The opposite is really true. We are in favor of advertising but keeping it controlled so that the small business people may have the same advantages that the large companies have in promoting their own businesses.

There are many alternatives to these large billboards which include the blue logo signs which you see on the exit ways along I-90. And there are smaller ones which are called TODS, Tourist Oriented Directional Signs which are on Highways 93, 83, and 12, for less costs, so that these pinpoint exact locations and do not block out or deter from the scenery which the tourists come to enjoy. Tourism is our second largest industry in the state.

Other alternatives would include a development of visitor's centers where free literature could be dispensed by the various businesses in the area for all to take. There could be centers for phone reservations and of course there is always the AM radio outlet. As has been mentioned before, the neighboring states of Washington, Oregon, Colorado, and California, do not allow off-premise signs in rural areas and businesses there are thriving without the large billboards. A ban on big billboards would be much fairer for small businesses striving to compete. My conviction is that if the Chamber of Commerce in Missoula would make a survey ballot on this question for all businesses in the area, the big majority would favor a much smaller size limitation. This is exactly what happened when this was done in Kalispell. If neighboring states can get along well without these eyesores, why can't the Last Best Place, as we claim Montana to be, do the same? Thank you.

Daphne Jones stated, I came here 37 years ago. Missoula was a dull and somewhat bleak little city. Since then it is nothing short of remarkable to me to see what Missoulians have done to enhance their community. They have invested in the future and they have really reaped the future. They have done this by themselves with their own taxes. We had no urban renewal help from the feds. We did it ourselves. Beginning with the Clark Fork River Conservation Fund, at least 20 years ago, establishment of the Design Review Board, passage of the Tax Increment Bill that established the Missoula Redevelopment Association. Community investment in downtown riverfront parks alone is \$3,295,000. This is for all seven of the major parks downtown. Attractive, livable communities invariably develop only incrementally over time. Tree by tree, building by building. And this incremental change has also been enhanced by the careful work of our historic preservation committee.

And what has happened in the downtown has permeated the whole community. For instance, the Wal-Mart Corporation has spent three-quarters of a million more in property improvements and one million more on their building than is their usual corporate policy in other communities. They did it because we asked them to do it. These investments in our community have paid off handsomely. In 1994 alone, tourism brought in approximately 120 million dollars to Missoula.

We are a booming community because of the commitment we have made over the years. Making permanent the ban on billboards is simply another step in assuring that this stewardship will continue and its success assured. Thank you.

Jerry Covault stated, I come from a natural resource background and I believe that natural scenic beauty, our scenery, our mountains, and our forests is very much a natural resource of this area. It has amenity values that are terribly important to our lifestyle and it has economic values as interpreted through tourism. As a resource, its every bit as much natural resources are for us, and our watersheds. Mountain resources, especially scenery, have a long history of being protected by the public. We think of it in terms of our national parks, our national forests, city parks, county parks. Those are scenic places that are protected. I believe that the County is a logical protector against the loss or the abuse of this scenic natural resource. I'd suggest that the County is the best government organization to protect this resource, whether its in Iowa or Western Montana, or wherever because this scenery is the source of our stories, our art, of our music, of our way of life. And its being taken because so far is hasn't had wise management. That's what we're asking is wise management. And I would also suggest that wise management of our scenery would not be a taking of a private property right. Because I suggest that when these big billboards go up they are separated from land by those poles that hold them aloft and jut into the air and get in between us and what we value as people of this area. So I urge you to come forward with strong and wise management that will not only limit these but also find innovative ways to remove them. Thank you.

Sarah Busey with the SAVE Organization, 75 Brookside, stated, you've heard a lot of people ask you to do this. The petitions that we brought in again ask that you do that. Can you do this? Is this permanent ban consistent with the Comprehensive Plan? At the Planning Board we explained that there were five points of the Comprehensive Plan with which this goes hand-in-hand. I won't read all of those because they're in the Planning Board Minutes. But one of them I particularly wanted to point out. The long-term economic stability and a high quality living environment should not be sacrificed for short-term economic gain. And I think that, in a nutshell, is what we're asking. Can local governments control outdoor advertising in unzoned areas? The sixty-four dollar 1995 question. The U.S. Supreme Court has upheld the right of local governments to pass regulations on billboards for safety, traffic safety, and aesthetic purposes. *Metromedia vs. San Diego* and *Members of City Council vs. Taxpayers for Vincent*.

Montana Outdoor Advertising Law 75-15-104 states that more restrictive regulations are preserved. Nothing in this part shall be construed to aggregate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part. This permanent ban is more restrictive than state law and regulates the zoning ordinance outdoor advertising in the unincorporated area over which, according to Missoula County's Zoning Regulation 76-113, Commissioners have jurisdiction. Flathead County passed a permanent outdoor advertising zoning ordinance for unzoned areas, which is more restrictive than state law, just last year. Your own County Zoning Ordinance on Signs, 3.04 (k) 2 specifically gives power to the Commissioners to establish standards by resolution not ordinance. For scenic areas where unique visual characteristics and natural beauty require standards more astringent than those contained in this section.

Montana County Zoning Law 76-2-203 states that County Zoning Regulation shall as nearly as possible be made compatible with the zoning ordinances with the municipality within the jurisdictional area. That's the City of Missoula. And the City of Missoula banned all new off-premise signs in 1979. Its time for the County to at least ban any new over-sized signs.

Helen Cipolato, 602 East Broadway, and a member of the Planning Board, stated, my concern is the 100' setback in the sign regulations because of the safety and visual impact of this 100' setback. When we had the Planning Board meeting I mentioned this and I was just using my common sense in regards to this because I always catch myself driving down the road and if there is something you see and you want to see what it is. And so I do notice that I kind of tend to maybe drive off the road. And so I was just using my common sense as what I would feel in regards to this. I hadn't done my homework so I did not make an amendment to eliminate this at the Planning Board meeting and because I thought maybe I should get other people's concerns about this. I attended the Evaro meeting and Meagen Hartse was there and some other people. And that was one of the things they mentioned. They thought that, before I even thought about it, they thought because of the visual impact it should not be further away from the road. They should stay close to the road because, say for instance you wanted to take a picture or whatever, you have this sign at least you can walk up to the road or whatever and take a picture beyond that. But if you're going to take a picture, look on you'll see a sign that's say out in the middle of the field, and that isn't very pleasant. So they thought the visual impact was worse as you got further away from the road. And also the safety concern. As you are looking at this sign you'd be drawn to be away from that.

So then I got on the bandwagon to do more of my homework. I talked to many people in the Rattlesnake Homeowners' Association when we had some of these zoning meetings. I talked to the Neighborhood Network members. I talked to Highway Patrol Officers, Police Officers, Sheriff Deputies, and the officers were more concerned about the safety hazard the further away from the road as were the members. They were mainly concerned that it would cause a greater visual impact the further away from the road. I also called Lake County, Ravalli County, Flathead County, Sanders County, and the State Department of Transportation. I talked to the State Traffic Engineer and I also talked to the Department of Right-of-Way. And all of them said that it is a safety concern the further away you put the signs, and they should be near as possible to the road so that people can see them, especially when they are smaller like this. They said just a couple of seconds of your eyes going off the road to see what this thing is would cause quite a safety factor on the highway. And also all of them agreed that they felt that it was a greater visual impact the further away from the road. I would suggest, I would like to ask you, to make an amendment to the sign regulation to eliminate this 100 setback because of safety reasons and also of the visual impact. Thank you very much.

Michael Kennedy asked, Helen, before you leave, do you have a suggestion on distance?

Helen Cipolato stated, when I talked to the Highway Department, the Highway Department is in charge of putting those logo and TOD signs up. And I got a lot of information on that. The TOD signs go on the primary roads and the logo signs go on the interstates. And what they said was that they did a lot of research and they felt that they are right there on the right-of-way. And they said that they felt as close to the right-of-way as possible. Because of the fact that you cannot



put these signs on the right-of-way that on the property line they felt was the best way to go. When I talked to the different counties, a lot of them did not have setback because of the fact most people do just keep it on their property line.

And all of the planners, I just asked them to use their common sense, the ones that did not have ordinances like Lake County and Ravalli County and Sanders County, do not have any kind of sign ordinances. No, Lake County does have a sign ordinance. Ravalli County and Sanders County do not. Flathead County and Lake County said they had various sizes for their signs. None of them had a setback. But they felt it was best to keep it just right off of the highway right-of-way and as close to the people's property boundary as possible.

Joe Jindrich, from Clinton, stated, I'm a sign painter and I'm a property owner. I would just like to say that I would like to share the comments made by Ms. Cipolito as far as the setback I would agree with that. I think one thing that I might add to what she said is that the highway is a heavily used area and anyone who lives on a highway knows the sound and the smell and the traffic and everything is not a pristine environment. So I would agree that the closer that you put the sign to the highway that the better off you are in terms of aesthetics. Especially when you have a height situation where you're controlling the height which you're doing. I think that eliminates a lot of the complaints that we have about these huge mega-signs that are up very high. As a sign painter I feel that these mega-signs are very ugly myself. I don't paint them anyway. I don't get any money for that type of a situation. But I also feel that they are ridiculous in terms of the height because when I drive down the highway I'm looking out here where my headlights are pointed or whatever. I'm not looking up here. I don't understand why they do it personally. And I don't see why a height limitation is a problem for a sign as long as its reasonable.

I think that the size, the difference between 675 square feet versus 32 square feet is an extreme difference. And I think that I really believe that the 32 square foot is much too small. For example, you know the closer you are to something the easier it is for you to read. If I held up a business card right here you couldn't read it. But if I held it maybe five feet away, maybe you could read it. And I'm sure if you made a science out of this you could quantify it and you could say "x" number of feet, blah, blah, blah. But I'm not that bright. But I would say that as I drove into town today I was noticing these signs and some of these signs which are right on the right-of-way, I mean they're smack-dab. They're measuring, I approximated, at least 12 to 16 feet across by 6 feet tall. And they're right on the right-of-way. And if you look at these, these are approximately 4 foot by 3 foot. Almost half the size of the 32 square feet that is being recommended by the committee. And that's what the Highway Department is putting right there. I mean maybe two signs on a 16' or at least 12' board, I'm not sure of the measurements, I just estimated that. Some of them are very large. And if you look at the exit signs for Missoula, the exit signs for East Missoula, they're large. So, if you're gonna put a 3 x 4 or a 3 x 3 sign for each business right on the right-of-way, and then you take a 4 x 8 and stick it back a hundred feet off of the property, I think you've reduced the 4 x 8 to much smaller than even what you have here.

And a big company who has a logo and an advertising campaign nation-wide can use a logo. But the mom and pop organization that has a little motel that they bought down here that doesn't have a national following is not going to be able to necessarily say, you know, Mom and Pop Motel, next exit, whatever, a rate or something. They're not going to have as easy to advertise of this small ... So I guess one question I had about the recommendations of the Board was why ... maybe I'm making this into something here but it seemed to me that they didn't have any ... even any state personnel from the Highway Department that Ms. Cipolito called, why couldn't we have had input onto the Board's recommendations other than by attorneys who may not be trained in the area of--okay, maybe that was a little biased statement, I'm sorry. I apologize for that. But someone who is trained in the area of signs. There's plenty of people in the Highway Department who work for the state. You should be able to get some good information there.

I also feel I want to make this comment about Lee Enterprise's editorial policy towards billboards. Lee Enterprise competes for advertising dollars with people who advertise on billboards who sell the advertising on billboards. Companies have fixed advertising budgets and they only have so much to spend and so I question some of the credibility of their editorial policy in terms of the fact that they're direct competitors with people who sell signboard advertising. All you've got to do is look at a Sunday newspaper and see the color ads. Like I said before I do agree that I think the giant signs are a problem. But I think that this particular proposal is extreme in the sense of the size and the setbacks. Well, most of the people that I just heard speak a minute ago refer to it as a ban. And I guess that I'd have to agree that I think it is a ban, basically, because of the effectiveness of the sign. Another thing, it's been brought up about Evaro Hill and the empty signs up on Evaro Hill. And I also think that as a policy its not a good idea to punish the whole class for the sins of one student. I've seen that done. One kid acts up then there won't be any popcorn party at the end of the week. And I've objected to that before. And anyway educators do that. And I just think that if there's a mega-sign out there that's a problem then why not somehow try to address that problem. And deal with that - what the real issue is, the mega-sign. Or whoever it is that's creating this problem rather than coming back and going after any new signs which haven't even committed any sins yet. You know they haven't--they're still unborn, whatever.

I think that legislation should address the culprit. If someone commits a crime with a handgun, definitely I think the penalty should be there for the person who used the handgun.

Barbara Evans asked, are you just about ready to finish?

Joe Jindrich stated, I have a few more comments unless there's a time limit. Is there any more--anyone speaking against?

Barbara Evans stated, I believe so. We don't know yet.

Joe Jindrich stated, as far as the Metromedia case, I'm not an expert in law. I was reading some of the Metromedia vs. San Diego case today. And one of the rulings the Supreme Court did make in that case was on the issue of whether or not there was a safety hazard. In that case, the City of San Diego did not present any evidence to substantiate that there was a risk. And that's what I read today. Now someone can contradict me there. Like I say, I'm not a legal expert but what I read in there was that they did not even present any evidence to sustain that fact. So they didn't rule on that issue in that case. I just wanted to make that point.



Through this whole thing I think that there's been a lack of discussion of the concrete issues here. You know the 32 square feet, the setback, etc. And obviously there's a lot of emotions that go along with this issue concerning mega-signs and what's been going on in the area of signs. So while there is all this support for doing something I wish that more of the people could look at the specifics of what's being asked. You know we'd all prefer--I think there are many of us who would prefer to see less houses built in this community as well as signs. And I take a float down the Bitterroot when I hadn't been up and down that stretch for five years and I see all these new houses and I have to admit, its not aesthetically appealing, even though they're big, beautiful houses. But I think that I don't feel I have the authority to walk up to them and say well, you've got to move your house. That's all. Thanks.

Mike Bellows stated, I live at P.O. Box 4803 and that's Missoula. I think the underlying issue, and I look at this as not versus large or small billboards but as the effect that government's eroding more of our private property rights and to me that's wrong. And I would have you vote against this based on that. Thank you very much.

Barbara Evans asked is there anyone else who'd care to speak either in favor of or in opposition to? Last call. Anyone else who'd care to speak either in favor of or in opposition to? Seeing none, we will close the public hearing and I thank all of you for coming and giving us your input. Do I hear any statements, questions, motions?

Fern Hart stated, I have a couple of questions. Philip, what kind of response can you give me about the distance of 100' from the right-of-way? And perhaps Colleen on that too.

Philip Maechling stated, a 100' distance was chosen essentially to allow the sign to be set back against the landscape, frankly, and to not be a skyline element or a high element relative to the traveler. And 100' was picked as a jurisdictional number and frankly as an arbitrary number. We haven't done, I would have to say, a scientific analysis of this. It really comes more from looking at signs as we've been driving down the road and seeing which kind of signs can be seen and indeed read from a distance.

Barbara Evans stated, I'd also like to be really, really clear to everybody, and I've thought this out in my own mind almost every time we go over this, and we have been looking at this off and on for two years, is that these are areas which are away from the commercial zone. These are areas we call, and State Highway calls them this too, "off-premise signs." We have another regulation related to commercial zones. This is areas which are unzoned. Colleen, do you have any notion, as a legal mind, about the 100'.

Colleen Dowdall, Deputy County Attorney, stated, I was hoping Philip would address his conversation with Robert Riley from the State Highway Department and his concerns about where we measure the setback from. And whether you discussed that distance with him at all.

Philip Maechling stated, right. We talked about the 100' and he simply wanted to know where it was measured from. And we decided and we looked in our rules and that's why we've added a statement so that its clear that its a setback from the right-of-way line. Because he had a concern that he wasn't sure when there is a right-of-way across private property that the State Highway has determined that it would not be confusing to anyone that the measurement would not be from the private property line that has an easement through it. But rather from the right-of-way line. But he didn't express anything to me relative to that distance. He simply wanted to know how far it was. He didn't voice a concern, for example, of its distance being a traffic problem. It wasn't part of his discussion.

Michael Kennedy stated, I think that in itself presents a problem, Philip, because in highway design, of course, the right-of-way line is non consistent--not a consistent distance at all. When you get into mountainous regions it can stretch, in some cases, out to a thousand feet or more. And so that is somewhat of a problem in those areas. It an undefined number.

Philip Maechling stated, that's correct. And there would be some difficulty with signs on an upslope hillside in all cases when they would be on private property.

Michael Kennedy stated, so the combination of the two restricts it within a zone. I understand.

Philip Maechling stated, that's correct.

Colleen Dowdall stated, I think also under those circumstances, typically that would eliminate that as a location where signs are a problem.

Philip Maechling stated, yes, you're right. That's correct.

Michael Kennedy stated, I have a question for you Philip. And I notice what I think is a conflict here. In your presentation you said that the number of signs were limited to one per 1,000' and yet the information that you gave to us says one per one thousand feet 1,000' but it also says the number of signs per parcel of land. And so my inference is you have numerous parcels that have less frontages than a 1,000', then you can have numerous signs. Was that your intent?

Philip Maechling stated, that's actually correct.

Michael Kennedy asked, what is correct?

Philip Maechling stated, that you could have more than one sign per 1,000' on a different parcel if there were adjacent parcels that were right next to each other.

Michael Kennedy stated, and what I notice is that in other states who have done this ... even the State of Montana, limits the number of signs per feet of frontage. And so in some narrow cases, if it's enacted in this way we could allow more signs than are allowed by the State of Montana. That's what I'm hearing you say.

Barbara Evans asked, would it be the case that if there were a 50' piece of land and I had a business on it, say it was 50 x 100 or 20) or whatever, that the fact that its 50 feet wide might preclude me from having an on-premises sign? If not, I don't have a problem with it. If it does I'd have a problem.

Philip Maechling stated, this doesn't regulate on-premise signs for the business on the lot or parcel concerned.

Barbara Evans asked, Sarah, I'm calling on you if you have a clarification for that.

Sarah Busey stated, as I read this I assumed that if you had a lot 500 feet wide and that your neighbor had a lot 500 feet wide that there would only be able to be one sign because you are separating these signs by a 1,000. If there is a different interpretation about that, I'd like to discuss that. The other thing is that we will fall back on state law out in the unzoned areas. And the state only allows signs 500 feet apart. And you cannot put them closer than that on the interstates. On the primaries you can put them closer, depending on how many intersecting roads. But also the new state law says that if you had one business in the unzoned areas it will only allow two signs. If a business is 600 feet this way and 600 feet that way, are qualifiable for signs. One sign here and one sign there. So I think you're going have to go along, based on state law, of one every 1,000 feet.

Michael Kennedy stated, state law is one every 500 feet, first of all.

Sarah Busey stated, right.

Philip Maechling stated, you may want to simply cross out "per parcel of land" and leave it at "number of signs" and then 1,000 feet of frontage to clarify that.

Michael Kennedy stated, I think that if you had one per parcel of land or per 1,000 feet whichever happens to be the largest number you'd be better off. Because if you just eliminated the parcel of land you may even get them--there are several parcels of land that extend longer than a thousand feet.

Barbara Evans asked, what is the suggestion how to word this particular condition?

Colleen Dowdall stated, I was thinking that perhaps we could not call it number of signs at all. And just call it distance between signs.

Philip Maechling stated, okay.

Michael Kennedy stated, no, I think the number of signs per parcel of land is fine with me as long as the net effect is that the signs become no closer than 1,000'. And I think that is different than what you described.

Colleen Dowdall stated, I think it was our intention that there be signs no closer than a 1,000 feet and I didn't envision someone being entitled to a sign if they have less than 1,000' of land.

Michael Kennedy stated, then we can say that.

Colleen Dowdall stated, right. So that if we just said the distance between signs and you bring in a site plan--

Michael Kennedy stated, no, because in that instance if a person owned 5,000 feet of land under the way its written now, then he would be entitled to one sign. The way you are envisioning, he would be entitled to five signs.

Colleen Dowdall stated, I think they would be entitled to five signs. They would get a sign every 1,000 feet. The way its currently written they would get a sign every 1,000 feet.

Michael Kennedy stated, no, the way its currently written it says the number of signs per parcel of land.

Colleen Dowdall stated, and it says one per 1,000 feet of frontage. So every 1,000 feet.

Michael Kennedy stated, every thousand feet. I see what you're saying.

Fern Hart stated, so let me see if I have the correction. Philip, these standards are part of this motion, right?

Philip Maechling stated, that's correct.

Colleen Dowdall stated, they are the motion.

Fern Hart stated, they are the motion. If I made a motion that would amend number 2 it would read "number of signs" and omit "per parcel of land." Is that correct?

Philip Maechling stated, if you want to limit it. If you want to keep it at one per parcel of land and allow more than one sign on a parcel of land, then it would be interpreted to mean if you had 5,000 feet that you could have five signs. If that's how you want it to be. That question that needs to be answered and then we can figure out the language. Right now, as its written it would allow one per 1,000 feet of frontage on a parcel of land. Right?

Colleen Dowdall stated, I think what we're trying to limit is the distance between signs.

Fern Hart stated, yes.

Colleen Dowdall stated, not the numbers on a particular parcel.

Barbara Evans asked, would you want it worded something like leaving it the number of signs per parcel of land and then in the explanation say one per 1,000 feet of frontage or less? How would you word it so that they owned--whichever is least?

Colleen Dowdall stated, I think if we just say a distance between signs. Is that workable for your office if someone brings in a permit? For you to ask them the distance from the nearest sign? Or would that be part of a site plan?

Philip Maechling stated, that would have to be part of a site plan. And that's what I believe what the Highway Department also requires.

Michael Kennedy stated, I guess my preference would be to limit it to the number of signs per parcel of land at one or 1,000 feet, whichever is the greater number. That would be my preference.

Colleen Dowdall asked, so if someone had 500 feet they would get one, even if their neighbor's--

Michael Kennedy stated, no, it would be thousand. It was 1,000 feet in that case because one thousand is the greater number.

Colleen Dowdall asked, so not the greater number of signs but the greater distance?

Michael Kennedy stated, greater distance, yes.

Colleen Dowdall asked, so it would be more limiting. The person with the 5,000 feet would just get one sign?

Michael Kennedy stated, that is correct.

Barbara Evans asked, does any of this put us in a taking position? I'm sorry but I have to ask that.

Colleen Dowdall stated, no, I don't think so. I'm not sure if its under the health, safety, and welfare, if it's as defensible because there are lots of reasons why we chose a thousand feet. Not for just the view and the scenery but also for safety reasons to avoid cluttering the side of the roads.

Barbara Evans requested, give us some final wording so that we make sure that we all are in agreement with what we're trying to accomplish and the proper wording to do that.

Colleen Dowdall stated, I can tell you what Philip and I intended to accomplish with our recommendation. And that was to limit the distance between signs so there would be signs no more frequently than every 1,000 feet. And I didn't consider limiting a particular land owner, a larger land owner, to just one sign. That's within your discretion to do that but it wasn't what we intended in our report.

Michael Kennedy stated, if you wish to do that, let me try this out for size. Under number of signs per parcel of land, would read one per 1,000 feet of frontage not to exceed one sign per parcel.

Fern Hart asked, do I need to also ask about amending the setback to be clarified that that is from the right-of-way?

Colleen Dowdall stated, if you just add those words after setback. Setback from right-of-way.

Fern Hart stated, now I would like to discuss 50 feet rather than a 100 feet.

Philip Maechling stated, you currently have travel corridor standards for buildings and setback to 50 feet so that would be consistent with your limitation of structures in the travel corridor at 50 feet. So it would be on-premise.

Barbara Evans asked, are you suggesting then that we change this to say 50 feet or that we delete this requirement? And then it would follow that.

Philip Maechling stated, I would suggest if you're going to make it consistent with the travel corridor because that's where on-premise, on-the-building signs would be placed, and other structures in rural areas that are designated as travel corridors also are set back 50 feet from the right-of-way, there would be some consistency there.

Barbara Evans stated, my only concern with that is if, as Michael says, that in some places the right-of-way extends a long, long ways from the edge of the road, and we're still requiring another 50 feet past that. Is there some language that can say instead of from the right-of-way but from the edge of the pavement?

Colleen Dowdall stated, you can't.

Michael Kennedy stated, the reason why the right-of-way would be extended would be because of the large excavation or a large fill and the height limitation would take care of that and bring it in. So I really don't think that that's a problem any longer.

Colleen Dowdall stated, that was also the concern of the State Highway Department that we not say from the edge of the road. Because then we might be permitting that within the right-of-way which they don't allow. So we have to have it some distance from the right-of-way.

Barbara Evans stated, one other concern that I have is, and I don't want to strike fear into the heart of the folks who want this passed, but I remember when we did the Special Zoning District 4 on Reserve Street and it was new. And the potential for having some problems with what we had done was a real concern. And so we said that it would be reviewed or could be reviewed at a year or five years or something in case what we had done needed some fine tuning. Is there anything in here that allows for fine tuning if we need to do that?

Colleen Dowdall stated, we always have the ability to make amendments.

Fern Hart stated, we could amend next month.

Barbara Evans stated, I just want to make sure that there isn't a prohibition against that.

Colleen Dowdall stated, I think we just have to acknowledge that what we're doing is new and, if it works we can keep it.

Michael Kennedy stated, I think if you want any higher comfort level than that, Barbara, you might ask for OCD to report at the end of a year or eighteen (18) months, their experiences, number of permits, number of variances, problems that have arisen with this. And basically just make sure that we take a look at it and see what's happening. I rather suspect that if there are serious problems OCD will call it to your attention.

Barbara Evans stated, I think you're right so we won't bother with that.

Fern Hart stated, Colleen, I'll just clarify if I may. This would be a request coming through OCD in zoning to put up a sign?

Philip Maechling stated, that's correct, yes. They would come to our office for a sign permit.

Fern Hart stated, and should there be some circumstance, I don't know, a prairie dog hole so big or I don't know, they would then go to the Board of Adjustment?

Colleen Dowdall stated, correct.

Fern Hart asked, and ask for a variance because of some particular hardship?

Philip Maechling stated, that is correct.

Fern Hart stated, I am ready to make a motion. Did you have something, Michael, you wrote?

Michael Kennedy stated, no, actually, just listening to you and listening to the setback thing, the more I think about it I think experience is going to tell us whether or not it works. And based on that, I'm in favor of the 100 feet. I don't have a problem with it. And the only change that I would make would be the second one, as Philip stated it. So, I'm okay with it.

Barbara Evans stated, I appreciate what you've had to say but I think I am going to, based on what Helen has said and the research that she did, that 50 feet from the right-of-way is more acceptable to me.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners adopt the Corridor Advertising Zone with standards:

A. DISTRICT

All land under jurisdiction of Missoula County excluding those areas already in an existing zoning district.

B. STANDARDS

The standards for all off-premise signs in this district are as follows:

<u>Setback</u>	<u>Fifty (50') feet</u>
<u>Height and supports</u>	<u>Maximum of ten (10') feet in elevation above the elevation of the center line of the adjacent roadway. Absolute sign height not to exceed twenty-two (22) feet.</u>
<u>Number of signs per parcel of land</u>	<u>One (1) per one thousand feet (1,000') of frontage not to exceed one (1) per parcel</u>
<u>Size of sign</u>	<u>Maximum thirty-two (32) square feet</u>
<u>Orientation</u>	<u>No more than one face visible and readable from the same direction</u>
<u>Lighting</u>	<u>Indirect: lighting only the message on the face of the sign. Maximum reflected light: 1 footcandle or 10 lumens (lux)</u>

each face.

Sign motion

No sign shall have flashing lights, movement or moving parts, or simulate motion with reflective parts

Identification

Each sign shall have the owner's name firmly attached to the sign structure

C. PROHIBITION OF SIGNS

All other off-premise activity signs that do not meet these standards. Abandoned signs.

D. GENERAL STANDARDS

All other applicable standards in the County Zoning Resolution are incorporated by reference. The following standards in Section 3.04- Signs are specifically incorporated by reference and apply to this district. In the event of a conflict between the general standards and the Corridor Advertising Zone standards, the more restrictive standard prevails.

3.04 B. Definitions

3.04 G. Sign Lights

3.04 J. Exceptions

3.04 L. Maintenance and Construction

Section 1.05 Definitions

ABANDONED SIGN - a sign which no longer correctly directs or exhorts any person, advertises a bona fide business, lessor, owner, product or activity conducted or product available. Any sign that remains blank, or contains only the owner/agent's advertisement for its lease, for more than 60 days.

ABSOLUTE SIGN HEIGHT - The vertical distance from elevation of the finished grade at the structure to the highest point of the structure.

Motion carried by a vote of 3-0.

Daphne Jones stated, before you close on this subject I'd like to say that Frank Bessac walked all the way here to testify in front of this meeting. And I really don't know whether he wants to say anything or not but he wanted to come to the meeting. And I'd like to have his name entered here, please, as a proponent.

Barbara Evans asked, Mr. Bessac, did you have anything you wanted to say? We'd be happy to hear it.

Frank Bessac: Comments out of range of microphone.

Fern Hart stated, let me see if I can explain that, Frank. This is in the area where there is no commercial zone. It's the area, I would say more or less between developed parcels. So the parcels we refer to are probably only those sort of open-type lands along what would be our secondaries. Not I-90. I-90 is already under state jurisdiction.

Frank Bessac: Comments out of range of microphone.

Barbara Evans stated, these are for areas that are not their premises. It would be other than on their premises advertising.

DECISION ON PETITION TO ALTER COUNTY ROAD (PETTY CREEK)

Horace Brown stated, Commissioner Hart and I went out and looked at the road. And what this does is put the road within the right-of-way. Now most of the road is outside the right-of-way, therefore, we take the easement and move it to where the road is.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners alter Petty Creek Road located in the Northwest Quarter, Section 1, Township 13 North, Range 23 West, from the west end of Exhibit A, Micro Book 333, page 565, to the calculated tie line on Exhibit A. Motion carried by a vote of 3-0.

CONSIDERATION OF REQUEST FOR SUBDIVISION FOR LEASE OR RENT, 1500 TROTTER HORSE LANE

Lisa Moisey, Planner with Office of Community Development, explained that this is a request by Arthur and Katherine Lusse for a subdivision for lease or rent at 1500 Trotter Horse Lane. The property is located in the Big Flat area along the Clark Fork River, and legally described as Lot 14B of COS 1161 and is located in the southwest quarter of Section 16, T13N, R20W. Mr. and Mrs. Lusse are requesting approval through subdivision review, for an additional thirty (30) feet of drainfield for their Barn unit, which they intend to use as a separate residential guest home. The total acreage of the subject parcel is 11.41 acres.

The Lusses have a home with an approved well and septic. They also have what we're calling a barn unit which they intend to use as a guest house. The barn unit has one hundred feet (100') of drainfield and they need approval for additional thirty feet (30') to comply with City-County Health Department regulations for residential use.

The property is located in a CA-3 residential zone in the County which requires a maximum residential density of one (1) dwelling unit per five (5) acres. And the Lusses have nearly eleven and a half (11 1/2) acres and they will comply with the density for this zone.

The existing barn right now is considered an accessory use to the primary residence. It has a side-yard setback of thirty-two feet (32'). The side-yard setback requirements for accessory uses in the CA-3 zone is three feet (3') so they are currently in compliance, however, the side-yard setback for primary residences in this zone is fifty feet (50').

Given the limited use of the barn unit as a guest house this structure can still be considered an accessory structure to the primary residence. However, if the developer desires to legally split the lot and create two (2) separate deeds the barn structure would be considered a primary residential unit at that point. And approval would be needed from the County Board of Adjustments to vary from the side-yard setbacks for a primary residence. We have a condition of approval stating such which is included in your staff report. The developer is requesting a variance from the requirement for sidewalks. Staff recommends approval of this request, given the rural character of the area and the limited use that a sidewalk would receive over such large parcels.

And staff recommends approval for the subdivision for lease or rent at 1500 Trotting Horse Lane, based on the findings of fact as set forth and subject to the conditions set forth in the Staff Report:

1. The property owner and or purchasers of the barn unit understand and agree 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.
2. Grading, drainage, erosion control and road plans shall be approved by the County Surveyor prior to plat filing.
3. The developer understands that the existing barn unit is a legal conforming accessory use to the primary residence and will continue to be treated as such under the subdivision for lease or rent. If, at a future date, the developer desires to legally split the parcel and create two lots with separate deeds, the barn unit will be considered a separate primary residence and the developer shall obtain approval from the County Board of Adjustments to allow a side yard setback of 32 feet in the "CA-3" zone which requires a 50 foot side yard setback.

Barbara Evans stated, this does not require a hearing, however, if there is anyone in the audience who would care to speak, we'd be happy to hear it.

There being none we will not have any testimony on the issue. Is there any motions or questions?

Michael Kennedy asked, when this thing was originally approved out there, I presume it was consistent with the density of that particular area and I'm wondering whether if subsequent to this, if this lot is split, whether that split would be consistent with existing density?

Lisa Moisey stated, it would be consistent in terms of the zoning. The zoning is one dwelling unit per five acre zone. And they have about eleven and a half acres. So if they were to actually go in and legally make the two lots they'd still be in compliance with the zone.

Michael Kennedy stated, yes, thank you.

Barbara Evans stated, are there any other questions, comments, or motions?

Fern Hart stated, no, I'm ready to make a motion. Colleen, as I understand this, and I'm glad that it's brought before us, it is because of an extension of the drainfield. And it is for lease or rent. And that is in our subdivision rules.

Colleen Dowdall, Deputy County Attorney, stated, and it's because they are adding another dwelling, basically, that provides for the two uses so you're required to go through the subdivision for lease or rent process.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the request for variance for sidewalks, pedestrian walkways and bikeways. Motion carried by a vote of 3-0.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the summary plat of 1500 Trotting Horse Lane, a Subdivision for Lease or Rent, subject to the Findings of Fact, and conditions:

1. The property owner and or purchasers of the barn unit understand and agree 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.
2. Grading, drainage, erosion control and road plans shall be approved by the County Surveyor prior to plat filing.
3. The developer understands that the existing barn unit is a legal conforming accessory use to the primary residence and will continue to be treated as such under the subdivision for lease or rent. If, at a future date, the

developer desires to legally split the parcel and create two lots with separate deeds, the barn unit will be considered a separate primary residence and the developer shall obtain approval from the County Board of Adjustments to allow a side yard setback of 32 feet in the "CA-3" zone which requires a 50 foot side yard setback.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners approve the request for an additional thirty feet (30') of drainfield for the barn unit, at 1500 Trotting Horse Lane. Motion carried on a vote of 3-0.

#### HEARING - WAIVER OF CONFLICT OF INTEREST RULES (PURCHASE OF ARTWORK)

Barbara Evans explained, the next item on the agenda is a Request for a Rezoning and a Subdivision Request for Osprey Subdivision and PUD in the Big Flat area. I think what I'd like to do is hold that for just one second. Because the next one I think is very simple. Let's take care of it and then we'll do the subdivision last. We have a Request for an Approval of a Waiver of Conflict of Interest Prohibition on behalf of a Missoula County employee who wishes to sell artwork to the County.

Montana Codes Annotated 7-3-4376 prohibits any County employee from entering into a contract with the governmental entity through which he or she is employed during their employment and for any time six (6) months thereafter.

Missoula County wishes to purchase an original drawing of the Courthouse rendered by a County employee, Kevin Parks, to be used for various purposes. The County Commissioners may determine that this particular employee, in his official capacity, does not influence the decision-making process or supervise a function regarding the contract in question. The Board of County Commissioners can waive the conflict of interest if they find it is not significant.

This hearing was duly noticed in the County Commissioner's printed agenda distributed June 23rd, 1995. It is recommend the waiver be accepted as it is in the public's interest to do so.

Is there any comment or anything anyone would care to say about this? Just for the public's information, Kevin Parks, who is the Deputy Clerk of Court, is quite a talented artist. He has done one of the Missoula County Courthouse that we will want to have framed and use in lieu of the Dolack painting which we usually give in lieu to the key to the County.

Barbara Evans: Is there anyone who would care to comment in favor of or in opposition to this proposal? There being none, the hearing is closed. Do I hear a motion?

Fern Hart moved and Michael Kennedy second the motion that the Board of County Commissioners approve the waiver of conflict of interest prohibitions on behalf of a Missoula County employee who wishes to sell artwork to the County, in that the matter was duly noticed and no objection has been received. Motion carried on a vote of 3-0.

Barbara Evans stated, Michael Sehestedt will draw up the resolution.

#### CONSIDERATION OF REZONING AND SUBDIVISION REQUEST, OSPREY SUBDIVISION AND PLANNED UNIT DEVELOPMENT

Philip Maechling, Planner with Office of Community Development, explained, the Osprey is a proposed planned unit development and subdivision located on the Big Flat Road adjacent to and northwest of the Hidden Heights neighborhood.

The property is thirty-three and a half (33 1/2) acres. It is located in the Southeast quarter of the Southeast Quarter of Section 21, Township 13 North, Range 20 West (SE1/4 SE1/4 S21 T13N R20W). The request is to create a planned unit development with a total of seven (7) single family lots on a total of thirty-three and a half acres (33 1/2). Each cluster lot contains just over one-half (1/2) acre in area within which a custom home will be constructed. And within design perimeters for hillside sites with steep slope constraints and those design perimeters are contained in the planned unit development design data that Eric Hefty has submitted.

The remaining twenty-five and a half (25 1/2) acres of the Osprey is proposed for conservation easement and you've got a letter in your file from the Five Valleys Land Trust discussing the merits of the lands.

As proposed, there will be shared driveway entrances off Big Flat Road for each two (2) homesites. The land is steeply sloping with variable grange ranging from twenty-five percent (25%) to greater than fifty percent (50%), vegetated mainly with native and naturalized grasses and shrubs, Douglas Fir, and ponderosa pine.

There is significant riparian area and riparian buffer on the downhill slopes above and adjacent to the Clark Fork River. The developer is requesting a re-zoning from the CA-3 current zoning to CA-3 with a planned unit development overlay and approval of the preliminary plat as a planned unit development.

The Urban Comprehensive Plan calls for parks and open space for the riparian corridor and designates the upland hillsides are open and resource lands.

According to the County Zoning Resolution, planned unit developments and zoning amendments in development projects must meet the standards and criteria listed. You have those contained in your report.

I've brought some slides along and I can show you slides of the site if you'd like to see that. We can't do much about the light but this is the Big Flat Road as you approach. The Heftys currently live on Lot 1 and it would be the first lot of the subdivision. The next six lots would be to the north, and on the air photo on the wall it also shows the general location. It's called the Osprey because of an osprey nest that's right on the lot boundary between Lots 1 and 2 where the slope are



the gentlest slopes on the whole project area, and we'll talk about access at a later point, but there can be access to Lots 2 and 3 across this corner of Lot 1. As I said, the site is a sloping sight. This is right at the boundary essentially between the Hefty residence and Lots 2 and 3 as they are proposed as we go to the northwest along the Big Flat Road. The Big Flat Road is to a County paved standard, however, it is a narrow road and there are some visibility problems and I think Horace can address those later. This is the road as it goes through the project area in the general area of Lots 4 and 5, and looking back toward the southeast from the middle of the project area, you can see the cut slope on the uphill side for the roadway and there's not much turn out space, a limited shoulder of about 2 feet on the down hill, toward the river, side. Going further along the road in the general area of Lots 5 and 6, looking back toward Hidden Heights from the downhill side of the road, and now we are onto the project area. There is a current fishing access that is used by people to get down to the river across the irrigation ditch at the base of the hill. The Heftys are proposing to retain a trail access for people to be able to go down and continue using that stretch of river for fishing. This is that impromptu trail. You can see views of the river and across the river through the trees. As we said, the site is steep. This is in an area that is generally 30%. There are parts of the site that exceed the angle of repose of the material in their natural state, which is that disturbed soils can be more eroded if they are beyond their angle of repose in steepness, so construction will have to be extremely careful.

The applicant is proposing caissons and essentially an elevated building structure. Caissons are concrete footings sunk into the ground down toward bedrock on which the building will rest. Sometimes called pylons. Another view along the road. On the uphill side the applicant is proposing a common drainfield area for all the home sites to pump sewage up to a site. I haven't yet received notice of approval from the Health Department for this, but the site is so steep and the area so essentially small that they're proposing for construction that there is no drainfield area on the down hill side of the road, so all sewage will have to be pumped up to an uphill drainfield site. They will go under the road in the area essentially where this picture is being taken and where my pickup truck is down below. This is a view across toward the Hefty residence site which is in the right hand middle ground where you see it's cleared and open, and toward Lots 2 and 3 where they are proposing the access from the uphill side. This is looking to the northwest from the last slide. The soil is a mixed kind of soil. It's an unconsolidated soil with a lot of crunched up sedimentary material, sand, gravel and cobbles. There is present wildlife. It is an area frequented by wildlife.

The applicants address the criteria for the Planned Unit Development in proposal. Reviewing agencies and the OCD Staff generally concur with the intent of the Osprey PUD. The hillside proposal has admirable qualities in that it proposes buildings with minimal footprints, requiring minimum earthworks, grading, drainage and heavy construction. Siting buildings downhill from the road and more than 150 feet from the property line at the irrigation ditch at the toe of the slope in the riparian zone and stepping the proposed buildings along the slope should reduce the visual impact and mass of the buildings to people on the road as well as to river travelers traveling the Clark Fork River. In particular, the conservation of valuable resource lands is a positive benefit to the community, the County and the developer. The design proposal has the support of County staff with a major caution. The details for site engineering, roadway and driveway design and earthworks are in a preliminary form, incomplete and have not been tested in this type of environment, on this type of rural roadway and hillside combination in Missoula County. The proposal is a creative one and with innovation comes uncertainty. Staff has not recommended the proposal be denied because it is a difficult site and the prototype has only been developed on less constrained land on more gentle slopes to the south, including the applicant's home on Lot 1. Staff recommends the proposal be granted approval for the less constrained sites, with better physical, on Lots 2 and 3 only.

The principal issues regarding the design of this PUD/Preliminary Plat have to do with the extreme site slopes, at times greater than 50% or, 2:1 rise to run ratio, and the transitional access points for driveway "bridges", driveway approaches onto Big Flat Road, and the earthworks and retaining wall and landform structures necessary to join architectural forms and the roadway right-of-way. While these site and design problems may not be insurmountable, the best information presented to staff at the writing of this report suggests that the County approach this PUD with some caution. Staff recommends that the County approve the concept of the zoning and wait to evaluate actual project development of homes on the initial lots recommended for approval prior to approval of any new lots in the Osprey Subdivision. This evaluation of the first homes, on sites with the fewest development constraints for access and for building, their driveway and grading impacts, and the impacts on Big Flat should clearly indicate that the extension of homesites to the north indeed will meet the standards established by the PUD, and will result in the type of development on the hillside consistent with the concept, language and schematic designs included in this proposal. It is further intended that each PUD zone will be a separate zone, each having differing design criteria to provide for the uses and improvements based on a particular environmental situation.

Eric Hefty has presented you with a second booklet to try and clarify, and that's the red booklet that you have, some of the issues that were addressed in the evaluation. The Planning Board made a recommendation, and in your Request for Commission Action, there are two options presented. The first option would be to adopt Staff Recommendation which would be to approve Preliminary Plat and Planned Unit Development as a four lot proposal, with additional residences on Lots 2 and 3, and Lot 4 held in reserve, with 26 1/2 acres of conservation area. The Planning Board, and you have the minutes of the Planning Board, and there will be testimony here by people in the neighborhood and presentation by the architect, recommended approval of the seven lots with conditions, and those conditions are contained in the Report.

1. Lot 4 shall be retained as a non-buildable lot in reserve for future consideration for development by the Board of County Commissioners, after evaluation of the impacts and effective land management after construction and management on Lots 2 and 3.
2. Plans for roadway and right of way improvements, paving, grading, and drainage shall be approved by the County Surveyor.
3. The Property-owners' Association Articles of Incorporation, By-Laws, Covenants and Restrictions shall bear the certification of the attorney who prepared or reviewed them stating that such attorney is licensed to practice law in the State of Montana; that they contain the applicable provisions required by the Missoula County

Subdivision Regulations, and any provisions upon which approval was based or conditioned; and that these provisions do not conflict.

4. All easements shall be shown on the face of the plat. Easement widths shall be 20 feet unless a narrower width is approved by the appropriate utilities and governing body. In addition to showing the location of the easements the following statement shall appear on the face of the final plat:

*"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 in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever."*

5. Fire hydrant locations, water supply pressure and turn arounds, shall be approved by the Rural Fire Marshal prior to final plat submittal.
6. A 60 foot right of way shall be granted to Missoula County. No retaining walls shall be constructed in the right of way, and no slopes in the right of way shall exceed 3:1 for the purpose of retaining or supporting driveway approaches in the right of way.
7. The Board of County Commissioners shall approve the Declaration of Covenants and the mechanism to manage and preserve the common area/conservation easement as perpetual open space and wildlife habitat.
8. Preliminary plat approval of this subdivision is conditional upon approval of the Planned Unit Development, and final approval is conditional upon compliance with the conditions of the Planned Unit Development as well as the conditions of the preliminary plat.

Fern Hart stated, talk to me about the four lots. It would be two sites for families. I'm thinking about the way the bridge goes in and the garages.

Philip Maechling stated, the four lot proposal would be the existing home site, which is Lot 1, which is where the Heftys live, and they designed and built that house, Lots 2 and 3 as new developable lots on your plan, and the 4th lot would be the rest of the site retained as a reserve for further consideration. Kind of like a remainder. The County currently has no right-of-way on the Big Flat Road through this land, and a 60 foot right-of-way would also be required by the County Surveyor.

Colleen Dowdall asked, no deeded right-of-way, is it a County road?

Philip Maechling stated, yes.

Eric Hefty, owner of the property along with his wife, and proposed architect for the houses stated, I would like to give you a little bit of history about this piece of property. On the photograph behind you it's right above where that little sticker is. It's a 33 1/2 acre parcel. My wife and I purchased that in 1971. The property is zoned 1 unit per 5 acres or 7 units. We're not proposing to increase the density of the parcel, but only to change the development into a PUD so we can take better advantage of the site and also to preserve open space. In 1981, we built our house on that parcel. Our house is currently on Lot 1 which is in the lower left hand corner of this map. In 1985, we without approval of the County, the osprey subdivided our land for us and took over ownership of the parcel between Lot 1 and Lot 2. We are proposing to develop three lots at this time and save three for our children. The reason we're proposing this as a PUD, as Phil mentioned, is for the steep slopes which are greater than 25% and the other reason is because of the 50 foot set back required for that zone. It is our intent to have a very tight controlled development. Currently, our house is built on a 36% slope. There is confusion between percentage and degrees to some people that are not familiar with using those numbers. A 50% slope is only beyond where the subdivision is. Our steepest lots are just slightly over 40%, or in layman's terms, it would be about 4 feet of rise for every 10 feet of run. We're proposing that the houses be developed without excavation. We do have to do some excavation for the caissons. Those would be put in and grade beams installed, but the intent is to not disturb the footprint of the site except at the building itself. Our house was done somewhat like that so the restoration of the native vegetation would not really be a problem. In some areas where they build on hillsides, there are massive cuts and fills and a lot of earthwork and it's never restored to the original grade no matter how much the owner tries. The section below the river is full of fir and larch trees, many of them old growth, many of them 3 to 400 years old. Some of those, like the osprey nest and others, have actually died and have become very popular for birds and woodpeckers to live in. There are whitetail on the site quite often. The proposed development would give the County a right-of-way through about 2100 lineal feet of our property. We've been paying taxes on the right-of-way since 1971 and I think the previous landowner paid taxes as well, so that the County is getting about three acres of right-of-way from us as part of this development. Plus, there's about 25 acres of conservation easement, 19 above the road and slightly more than six below the road. We're also proposing that about 2500 lineal feet of river front and of that I think over 1500 feet would be completely dedicated as open space.

The architectural control, our architectural firm would do the design of the projects and we would be our intent to have very strict controls over the architecture. Currently, our house has one state design when it was built and two national design awards, which is kind of the standard we would like to keep in that area. The houses would be unique. There are not very many houses built to these kind of standards, but in my submission you can see that this is not an unusual type of construction and it is not untried in many areas of the country. I think it's good use of the land. It preserves the river front for access. We're proposing that the fishing access be maintained. There's about a nine foot shoulder at that space between Lot 1 and 2 that the fishermen park on. We'll keep that as an access point.

This packet is pretty robust, but I would like to go through a couple of more points. I mentioned the open space, 25 acres dedicated to conservation easement. In terms of hillside construction, anything greater than 25% is considered a steep

site and it's my opinion as a professional architect that the steepness of these slopes is not excessive for construction. It's not a hazard for health, safety and welfare of the occupants or the public. The right-of-way and the sight distances. The County recommended sight distances for a 35 mile zone, which this is, is 350 feet of sight distance, and we won't have any trouble meeting that with removal of some of the trees along the road. Some of those trees are quite hazardous anyway because they're so close to the road and because some of them have died and broken off, and one just recently in this last windstorm. The hillside construction is not a health, safety, welfare issue. It's not an engineering issue. I think the aesthetic considerations have been dealt with quite effectively. I mentioned the area of riparian resource. We propose to leave all those old dead snags, and large old-growth fir trees. Those are very valuable for a timber resource, but we propose not to remove those big, old four and five foot pine trees, but leave those as part of the riparian resource. We will do some selective thinning for fire control, which is also, I think in a way, restoring the property to its condition before they started suppressing fires. There is a letter in your packet from one of the gentleman that said originally this was more open and less populated with the pine trees that have taken over since the fire suppression started.

The subdivision is complete site specific. I don't think you'll find another subdivision in Montana that has such strict controls as far as site excavation and grading and site disturbance. We are proposing to even limit the way they control knapweed and selectively control it.

Fern Hart asked, and how are you going to do that.

Eric Hefty stated, it won't work for the County. In my own case, I pulled knapweed for three or four years and sprayed selectively with 2,4-D on the individual plants. After the knapweed is gone it's incredible how the wildflowers take off again. They don't actually kill the original growth, but they really retard it. But right now there is a real profusion of wildflowers and so on. I think you can do that on a small scale, but you can't do it county-wide. We're proposing to do that anyway in terms of weed control. As Phil mentioned, we don't have the sewage approval. We're looking at a couple of options on the sewer system. One would be a more experimental system. The other one would be a traditional system using standard drainfield construction, but we're kind of working back and forth with Land and Water Consulting in the state and we originally proposed an irrigation system for the upper part and I'm not sure if that's going to be approved or not. I don't know if this is the time to open up for questions or if you want to do that during your discussion.

Barbara Evans stated, we will open for the hearing public comment.

Rick Oncken, Hidden Heights Subdivision and we also own the majority of land that is around this proposed subdivision. At the last meeting I spoke and identified Eric as an attorney. Sorry for that unintended slight, present company excluded. I'm neither for or against the subdivision which I suppose is a little unusual for a realtor, but I'm more interested in a couple of corollary issues, one being safety. The road, Big Flat Road, if any of you have traveled it, is a very winding, limited road as far as sight distances, there's a lot of wildlife that crosses the road all the time. During the winter it's mostly rock covered, not gravel rock, as well as ice, which makes it a little bit treacherous to come up and down, particularly the area from Eric's house on to the north. A lot of that will carry ice for a month to two months after ice is gone in the valley. We've all dodged other cars, deer, whatever happens to be on the road, joggers. This time of year we have the cute little people in their Spandex, 4 abreast going through the curves. But there is basically no shoulders on these roads. There's a hint of a shoulder, but there's not enough to really stand on if a car comes by you, so it's rather a limited road. Traffic at this area is 35 miles an hour posted, however, on either end of it it's 45. The majority of people that go through this section of road I think don't bother to look at the 35 and continue on. We've all been passed in the curves by people doing far greater than 45. I think although cutting the trees would definitely help the sight pattern, I don't know if it will completely resolve the issue. The other issue, which I'm just sure you love to hear about, is Maclay Bridge. There's just been another home on Big Flat and this will be six more, and that issue has never been resolved. We continue to--you continue to add houses on that side of the river without resolving the issue.

Fern Hart stated, and you're not going to have any more children or sell any more land.

Rick Oncken stated, no, actually my last one is on his way to college so I'm cutting down on the population crossing the bridge, but it seems like everybody in our area has multiple, multiple cars that make multiple trips into town, and if any of you were out there when Buckhouse was shut down, there was often 30 to 40 cars backed up on the bridge waiting to get across from people that were taking short cuts to the hospital or wherever they happened to work. But it continues to be a problem that doesn't go away.

Barbara Evans stated, we keep working on that. In fact, I took a colored picture of it to Washington, D.C. and asked Conrad Burns to put it on his wall, so he can forever remember that we need a new Maclay Bridge.

Rick Oncken stated, otherwise, most of the neighbors that I've talked to in our development don't care one way or the other. It's just a matter that all of us travel that road one way or the other daily, sometimes multiple times a day, and it is not particularly a safe road, and if the safety issue could be addressed in some fashion it would definitely make all of our lives a little easier, and particularly these people that have to enter the highway from a short span.

Barbara Evans asked, is there anyone else who would like to speak in favor of or in opposition to this project. There being none, I will close the public hearing. Horace, do you have any comments you'd like to make on the plans for Big Flat Road.

Horace Brown: There are no plans for doing much except maintenance on Big Flat Road. We don't have the funds to do much more than that. We did get some right-of-way to straighten River Pines Road to take care of that sharp curve, but we haven't done anything on it yet. They may be just doing design work on it. I think what you saw were stakes for the telephone company who is putting a line down through there and we staked the right-of-way for them.

Fern Hart stated, I've got some concerns, Horace, and I think major concerns. I was out there today and boy that's the steepest hillside I've ever seen for proposed building, and that tells you that I'm not an urban dweller by heart, but I can respect so many things that's there and I want to give credit to it. These are going to be for folk who like to live in urban

areas, they're not going to have dog or pet houses or pens or yards or gardens, or no storage of boats or trailers, or no fencing. That's remarkable, really remarkable. What kind of right-of-way do you think that you're going to get off the sides of that road.

Horace Brown stated, we won't get much. We'll get 30 feet each side of the center line of the existing road. Anymore than that you'd end up way down at the river if you wanted to do any construction there. The slopes are so steep if you go out very far you go down a long ways before you hit daylight.

Fern Hart stated, every subdivision has--every house pays taxes to the center of the road.

Horace Brown stated, what we have is an easement. We don't have the fee of land, so regardless of whether he dedicates 30 feet to the County or not, he still pays taxes on it.

Fern Hart asked, how much width would that add to the shoulder?

Horace Brown stated, the right-of-way itself would not add anything. The road would stay the way it is. It just gives us an ability to cut brush and clear sight distance that we don't have now. Also, it gives a larger area to store snow when we're plowing.

Fern Hart asked, how would you plow that road without plowing snow off the edge of it anyway?

Horace Brown stated, you couldn't, but this gives us a larger area to push it if we want to widen the banks in the wintertime.

Fern Hart stated, I have a couple of questions for Bill Lindstrom. Thank you for coming. I am wondering where you would put a fire truck if you saw this structure and there were a fire?

Bill Lindstrom, Rural Fire Chief, stated, we discussed that with Mr. Hefty and we believe that the bridges that he is intending to use as driveways will hold, I believe he indicated, they would support the weight of a fire truck. I believe if they'll support a concrete mixer they'll support a fire truck. That will give us an area to get off of the road. Certain weather conditions might keep us in the right-of-way if there was a fire there.

Fern Hart asked, do you have any problems with all of those trees? They're not going to remove a tree unless it's dead.

Bill Lindstrom stated, he's going to thin and bring it back to native conditions which are substantially better than exist right now.

Fern Hart asked, what do you think about the water supply? I saw one fire hydrant.

Bill Lindstrom stated, the Hidden Heights Subdivision has three existing fire hydrants right now, and Mr. Hefty is proposing one more to protect the addition, and I believe he is working to strengthen the whole Hidden Heights water system at this point.

Fern Hart asked, what do you think, is it strong fire flow now?

Bill Lindstrom stated, no, it's marginal right now. The upgrades that he is proposing would make it substantially stronger.

Michael Kennedy asked, does that system have storage at all?

Bill Lindstrom stated, yes, at the present time it does, and I think it's a marginal storage at this time and the proposal is to increase by 25,000 to 72,000.

Eric Hefty stated, that hasn't been approved by the homeowners. If it is not approved, we will put our own system in.

Michael Kennedy stated, to understand you before Bill leaves, if Hidden Heights Association doesn't approve additional storage, you're going to add storage and your storage is going to be in the nature of 50,000 gallon reservoir. The 50,000 for you is certainly a lot better than 72,000 for 30. There's no question that 25,000 gallons for 30 houses up there is really inadequate storage. If you're going to join with Hidden Heights, I suggest that you develop more storage than that. 30 houses for 72,000 gallons in that area out there is not adequate storage. If you're going to do it you may as well get a good number that works over time. My suggestion would also be that if this is approved and you go through with it, if they don't agree to a higher storage facility, you would be better off with your own system with 50,000. You certainly offer more protection and better insurance rates and better service. The other question for you, Bill, is do you take a tanker out there? Do you take on board?

Bill Lindstrom stated, yes.

Michael Kennedy asked, so you effectively fight with on board then?

Bill Lindstrom stated, yes, we currently serve that system with the initial attack engine that carries about 800 gallons of water, then we follow that up with a water tender that carries up to 4,000 gallons of water.

Michael Kennedy asked, mostly 800 is adequate?

Bill Lindstrom stated, for most structure fires.

Michael Kennedy stated, a couple of questions for you, Eric. One has to do with the roadway. I share the same concern that Fern does. First of all the sight distance, I really question that. I looked at what you are doing here to access your bridge by proposing a retaining wall and I presume that based on my knowledge of that road up there, that that retaining wall would also retain part of the right-of-way.

Eric Hefty stated, it would retain the fill in the right-of-way.

Michael Kennedy stated, that's right, so the right-of-way would be within the area that is retained.

Eric Hefty stated, right.

Michael Kennedy stated, there was some disagreement in Horace's letter about where you wanted to measure that right-of-way and Horace suggested that it be measured from the center of the existing traveled way, 30 feet each side.

Eric Hefty stated, that's been amended to reflect that comment.

Michael Kennedy stated, so that comment is acceptable to you.

Eric Hefty stated, correct.

Michael Kennedy stated, that traffic there and the safety issue is one that I don't know--I'm not sure that you could afford to address. To be frank with you, I think it's a big deal, that road is only about 21 1/2 feet wide, and there is no shoulder on the downstream side other than the gravel that is shoved off of there in the wintertime. It's really a very, very narrow and dangerous road that will be made more so by this development, there's no doubt about that. You did address, but in my opinion not adequately, number 8 on page 5, the vegetation, topography and natural drainage, where you state that the development is planned around topography. The natural drainage will not be impinged upon. I want to refer to what Commissioner Hart said about the steepness of the slope. Just for everyone's information, normal roof slopes are 3 on 12 or 4 on 12, and the slope of this land is 4 on 10, so it's remarkably steeper than a roof. What will happen as a result of these houses, you will reduce the effective size of the lot and increase the amount of drainage and you haven't dealt with that at all. To me that's a significant thing, and you call it insignificant. I believe it is significant and I'm wondering how you will deal with that. You no longer have the land that would be covered for any kind of drainage, and you're concentrating more drainage on a smaller piece of land and I'm wondering what you will do with that to prevent erosion and also prevent sedimentation and excess drainage.

Eric Hefty stated, let me describe how I dealt with it on my own house. I've got a bigger footprint on my house than these would have because my house is--

Michael Kennedy stated, but you have 2 1/2 acres for your house and they only have .9 acres.

Eric Hefty stated, right. But right now I've got roof gutters and down spouts, and at the bottom of the down spout I've got some stones are about 4' x 1'6". Anytime the water runs off any of my downspouts and in some storms it's considerable, it just disperses into the soil and doesn't create any kind of water way at all beyond that. So the soil is absorptive enough to absorb that water. I've never had a problem with any kind of water damage or anything.

Fern Hart stated, but when I looked up there, your lot is different than where these footprints are going to be. These are rocky, steep, thin soil.

Eric Hefty stated, my house is on a 36% slope. The steepest slope that I'm proposing is just slightly over 40%. The soil out there is the same. In fact, the soil at my house is thinner than the soil on those sites. I encountered bedrock sometimes within a couple feet of the surface. Out where these houses are proposed, the bedrock is deeper.

Fern Hart stated, your house looks like it has a flat meadow compared to these sites.

Eric Hefty stated, there's a meadow in front of it that's flat, but the house itself is on a slope.

Fern Hart stated, I didn't walk back there.

Eric Hefty stated, you can walk around it and look for any kind of water damage and there is none. In fact, our whole driveway is 12 feet wide and 110 feet long and the water runs down the driveway and is diverted to the side and it disperses within 10 feet of the driveway, so there's no erosion problem.

Michael Kennedy asked, what happens in the winter?

Eric Hefty asked, with the water?

Michael Kennedy stated, yes.

Eric Hefty stated, the same thing.

Michael Kennedy stated, it has to run off in the winter when it's frozen.

Eric Hefty stated, there's never been any sign of any water coursing down beyond--if it's warm enough to melt the snow, it's usually warm enough to disperse it also.

Michael Kennedy stated, in any case, I think you have a big problem here, to me that problem alone is enough for me to not agree with this development unless it is solved, because drainage is a major deal there. We're talking 280 some feet.

You're talking 120 feet difference in elevation between the top and bottom of the lot at a 40% slope. That's a lot and it has an enormous erosion potential, particularly when you start stripping for construction, and thinning and reducing the effective size of the lot because of the impervious areas that you have on there. I think that needs a stronger address than to say there's no problem, because there is a problem, in my view and in my experience. The last issue has to do with the upslope discharge of your waste water, and certainly that's an interesting proposal. You still have that same wintertime thing, you can't irrigate except for five months out of the year and you've got to store water or figure out something to do with it upslope. And that's going to be a daunting problem for you. One thing that you can do, though, is deal with some water conservation methods within the household, water heating and all that. We're in the midst of studying that, the Commissioners are, in other areas now, so although it isn't a standard now it certainly will become a standard and you might as well be on the cutting edge of it.

Eric Hefty stated, it's our intent when we proposed the experimental system, we weren't aware of all the ramifications of storage and so on. A standard drainfield system is an option that would work on that site.

Michael Kennedy asked, you mean the Health Department has tested it--

Eric Hefty stated, we're in the process of going through that.

Michael Kennedy stated, because what you have up there, the soil overlay is not all that thick.

Eric Hefty stated, the soil is at least 9 or 10 feet thick at that location.

Michael Kennedy stated, I was thinking that if you had to go to conventional drainfields that you would get approval from the Health Department.

Eric Hefty stated, the subdivision would have to get approval or we couldn't go ahead, I mean with the State and County Health Departments. But the fact is, that mountainside has a higher evaporation rate than the actual precipitation on the site. I mean, the evaporable transformation of that forest land is about 32 inches a year, which compares to an effective precipitation rate of under 13.

Michael Kennedy stated, but what you're doing is adding something that wasn't there before, which creates an imbalance of that natural environment which you need to be aware of. Water conservation is still worked out if you're going to succeed up there at all. Those are the only comments that I have. I think the innovation that you have is really quite good. I'm really conscious, however, of the drainage thing, which in my view needs to be resolved prior to my agreement with it, and in my opinion, it has not even been addressed let alone resolved.

Eric Hefty stated, we could take the storm drainage and dump it into a system that would be similar to a septic system. I don't think that's necessary, but that's a possibility.

Barbara Evans stated, talk to me Eric about the location of the houses and therefore, the sewage, etc., and the drain water in relation to the river. You're above the river so that these things will ultimately, like the storm water, will ultimately find its way down the hill to the river. Am I understanding that correctly?

Eric Hefty stated, the storm water itself will be absorbed into the forest floor before it gets anywhere near the river and then it will be just like rain water.

Barbara Evans stated, but it is heading towards the river if it made it.

Fern Hart asked, had you thought about a land application system? I don't think I noticed that.

Eric Hefty stated, right. We discussed the possibility of irrigation, but with this site--I think they do it on bigger systems than this would be.

Fern Hart stated, I've got a couple of more questions. What do you estimate the cost of these houses would be?

Eric Hefty stated, I really can't tell you. It depends on what each owner wants to build. It's probably going to be in the two hundred thousand up range, maybe three to four hundred thousand, I don't know.

Fern Hart asked, and if you can't make an arrangement or your fire protection measures would be better supported by wells on this property, can you get a well on this property? I thought I read that you could.

Eric Hefty stated, we can drill wells on the property. We're proposing to use the Hidden Heights system, but we can drill wells on the property. We would probably drill a central system if we did it on the property. It would still be a storage tank scenario. It wouldn't be an individual well with pressure tanks.

Fern Hart stated, it would be a storage tank. But somewhere you would have to have a well.

Eric Hefty stated, right.

Fern Hart stated, and then you would have a storage tank, and that would be all on that slope.

Eric Hefty stated, that would be up above the road.

Fern Hart stated, it would be up and come under.

Eric Hefty stated, it would be a gravity system, right. It's our hope that that doesn't have to happen, but we don't know.

Fern Hart stated, somehow when I looked at all of this, I thought maybe all of these would look alike, but you're seeing them as individual.

Eric Hefty stated, none of them would look alike.

Fern Hart asked, how, as you pull off of Big Flat Road, into one of these--and they're little pods aren't they. You come into the same driveway and the garages are at opposite ends and the houses are onto the garages. What is the distance from the road to the entry and then from the entry on across to where you could park?

Eric Hefty stated, the roadway itself is about, let's say from centerline to edge of pavement is about 11 feet. From the centerline to the right-of-way is 30 feet, so from centerline to set back is 50 feet, so the nearest structure would be 50 feet of the centerline of the road.

Fern Hart stated, Eric, what I'm trying to think about is how much space there will be for vehicles as they pull off this road and onto this driveway and before they get to the garage. How many feet?

Eric Hefty stated, (displaying picture to Fern) this is 50 feet, the centerline is 30 feet. From the edge of the road is 20 feet. So it's 60 feet from the edge of the road.

Fern Hart asked, then the houses are somewhere under here and under here going in that way?

Eric Hefty stated, right.

Michael Kennedy stated, that prompts another question on the roadway. The way you have the retaining wall drawn here, and I understand there's some scale problem with it, but you represented as about 10 feet, and so, according to this drawing, it would seem to me that the right of way that you're deeding to the County would extend more than half way across the bridge to the house.

(Eric Hefty explained the distances shown on the plat to Commissioners Kennedy and Hart, and how the footages were made up to the roadway.)

Eric Hefty stated, we're proposing--that one drawing shows two stalls off the right-of-way, plus two in the garage, plus you could put actually six cars in that property off the right-of-way if you wanted to. Two in the garage, two directly outside the garage and two adjacent to the garage.

Michael Kennedy stated, I see, sure.

Eric Hefty stated, the driveways themselves, compared to Hidden Heights, the driveways are flat which is safer than those driveways that come up at an angle in the wintertime, plus the widths are about the same as a normal road. It's 25 feet wide at the driveway, which is not a tight driveway at all. The way we've got it laid out, you would not back out onto Big Flat, you'd head out just like you would on a normal situation.

Barbara Evans stated, Philip, it has certainly always been my understanding that on a grade that exceeds or equals 25 degrees that you can't build without an engineer's study or something. I've not heard any questions at all about the steepness of the slope and the grade here. I'm assuming that since it's a PUD and well we have engineering for this, it's not an issue. Is that correct?

Philip Maechling stated, this is inside the building jurisdiction, so whatever they would do or propose as a building, and the driveway and grading, the driveway would be subject to Horace's approval from an engineering standpoint, but all of the construction would be subject to UBC, Unified Building Code standards for hillsides. Eric's correct, there are some examples, there are lots of more urban examples on steep hillsides of this type of construction, but this really is a more urban kind of thing with infrastructure in place and slow traffic speeds and that kind of thing. Steep slopes in and of themselves are a limitation for drainfields at 25% and cause driveway and road construction problems, but if those are solved by a bridge you don't have that particular issue. With an engineer's help, you have a standard that says you have to have an engineer, engineer the construction.

Barbara Evans asked, so there is no problem here?

Philip Maechling stated, it's not a prohibition by the regulations.

Fern Hart stated, Eric, I'm just fascinated by this. I can't support it. I've gone out there and looked at it. I can understand Philip, and I know he went against several folks in OCD to bring it forward with less development than you're proposing. I know what the Planning Board said. I've looked at that. What I believe is, after being there, and I think I parked on that 9 foot pad to go and look at these lots, I can't imagine, and that may be my limitation, many fishermen parking anywhere there. And this is a real concern because folks are driving more than 35 miles an hour, and we're going to get a dozen calls all the time for the Sheriff to come out there and control the traffic. I just can't believe that this is a wise thing to do. I believe you're a good builder and a good architect, this area is at best unsafe.

Barbara Evans asked, it's the road that's unsafe and not the houses? Did I understand you right?

Fern Hart stated, the road.

Eric Hefty stated, the posted speed limit there is 35 miles an hour, which is posted that way because of the condition of the road. I as a landowner have no control over how fast people drive. That's not my jurisdiction.



Fern Hart stated, I know, but you know what we do and they call us, and I'm sure there will be many, many calls from your clients because they're driving faster than 35. And they will and they did today.

Eric Hefty stated, the other issue is that the property is zoned one house per five acres. If you deny me the ability to develop that for that scenario, that's in my opinion a taking of property.

Fern Hart stated, it's on a slope that I think I can say I don't find the engineering feasibility strong enough to do it, and you may challenge.

Eric Hefty stated, I've included a lot--there's thousands of examples of property of this steepness or steeper that have been developed successfully. It's not an architectural--it's not an engineering feat, it's a standard architectural type of construction. I've lived out there since 1981, I've owned the property since '71, and I think, in my opinion, I'm as sensitive to environmental concerns as anybody, and I think I've done as much within my realm to champion that. I think I've done as much as I can to be a good steward of that property, and I think what I'm doing is within the limits of the zoning and it's within the limits of good taste and of good planning. I'm not trying to pull something over on you.

Fern Hart stated, I think you're right, I think it's not safe. If they could enter on your area and have one access, that would look different to me.

Eric Hefty stated, to me it's not any less safe than any driveway in any 35 mile zone.

Fern Hart stated, it's a different driveway, it's very different to me.

Barbara Evans stated, let me point out something. Since I've been moving this last week and I have been spending a lot of time driving up High Park Way, which I haven't spent much time driving up it before, I have noticed a couple of things that have really surprised me and they go to the heart of what your concern is here. There is one house up there that I swear I have never seen anything so steep, and it's not being done the way Eric has shown here. It's built into the side of the hill and it's done with layers of concrete retaining and I don't find it a very aesthetically pleasing house. But it's certainly built into the hillside about as steep as what I think Eric is talking about. The parking is almost nonexistent for people in that area, not this particular house, and they have taken over some of the public right-of-way, up on the curb, to find a place to park. It doesn't offend me, I'm just commenting that they have found a place to park. I also looked at another house, a beautiful home in that area, a different area up there, with an eye to looking at it. It's a beautiful home but you can park two people there because they have a little dinky spot off the road where you can put your guests and then a place for your own cars. So it's not unusual. I personally wouldn't want to be limited that much, but it is being done and while I'm not particularly thrilled with some of the design works you're showing, I think what you're showing is the fact that people can park on a bridge, so to speak, versus the design of this house.

Colleen Dowdall stated, I would just like to address the engineering issue with regard to the slope, and, Philip, I need help here. My understanding of why we require an engineer is typically for the cut and fill. This wouldn't require cut and fill because they're using the poles instead of building it into the side of the slope.

Philip Maechling stated, that's right. But it is a Planned Unit Development that he's proposing and our lots and blocks section of the regulations say that slopes of 25% shall be deemed unsuitable for building sites, and shall be shown as such on the plat. That's what the straight standard is. As a PUD they can request essentially deviations from these standards, but to do that, reason would suggest that there would have to be adequate engineering to assure that the grading would work. There will be cut and fill, there will be lots of fill. On the downhill side they'll have to fill in the public right-of-way and that's going to be in excess of 3 feet so that work will have to be done ahead of time and be approved by Horace. The building part itself and the cut and fill won't, at least right now being proposed, will be excavation for caissons. But to get there, to get to the building there will be fill and that will be in the right-of-way, so that's where you would have to have it.

Fern Hart asked, how close are these entrances as proposed onto Big Flat Feet, every how many feet?

Eric Hefty stated, every 280 feet, lineal feet of the roadway per two units.

Fern Hart asked, from your house to the next unit?

Eric Hefty stated, from my house it would be longer because from my house it would be about 300 feet. Between two driveways it will be 280 feet.

Michael Kennedy stated, I have no questions, just a statement. I think the proposal is really an interesting one and I think it deserves a lot of merit. At the same time I think you've got some pretty remarkable deficiencies that you've got to work out, and you're not there yet. And while I'm not going to close the door on the potential of it right now, to me it's not an approvable project the way it is.

Barbara Evans asked, would you say that primarily your concerns are about drainage?

Michael Kennedy stated, primarily drainage, but I think the roadway thing is still there, and we haven't even talked about the liability issue. The number of people who use that road sooner or later, just because of the narrowness of it and also the lack of shoulder and all kinds of other things, it is--one of these times there is going to be an accident that's related to the amount of traffic and it's our road and we'll be in the middle of it. Promoting that kind of thing by approving this development is not something I feel urgent to do right now.

Eric Hefty stated, let me address a couple of things. As a landowner I have--I have different options. I have to deal with the need, I've got two kids in college and I need to develop that land in some way. I've got options, I could take and log that whole thing and get a big chunk of change and just destroy that. I don't want to do that. I'm trying to do the best that

I can. The other option is to sell it as open space and that's not a viable option because there are no funds. I think I can deal with the rain water--if the rain water is the only issue you've got, that's a problem that can be solved. As an engineer I know you know that. The driveways are no less safe than any other driveway out on Big Flat Road.

Michael Kennedy stated, I grant you that. You wouldn't receive any argument from me on that. They're more safe, I would say, than most of those in that particular area of Hidden Heights.

Barbara Evans stated, let me make a suggestion and see whether it finds any favor with anyone. I have not been out there, I'm on vacation. But I would ask that Horace, from an engineering standpoint, go out and look at it and that someone look at it from a drainage standpoint. Did you say you have Land and Water working with you?

Eric Hefty stated, we're consulting with them, not on the storm drainage but on the sanitary system

Barbara Evans stated, I would assume there is someone who could look at that and address it for us in regards to the absorbability and ability for the soil to take the drainage and have Horace look at what you're proposing in relationship to the road, to see if is someway to assuage Fern's concerns and Mr. Oncken's concerns about the road so that it could be dealt with before somebody makes a motion to deny. Does that meet anybody's approval to do that?

Fern Hart asked, do you want a motion to delay and where are we with respect to the time?

Philip Maechling stated, I don't have that file in front of me so I'm not sure, but I think if Eric were to grant you an extension of the 60 day period until you make a decision, then we could get a note from him to that effect and we would not have any problem with the timetable.

Michael Kennedy stated, I think you need to be realistic about it, Eric. If we act on it today the answer is going to be no, so there's every motive for you to grant this extension.

Eric Hefty stated, I don't have a problem with that.

Barbara Evans asked, how about if we have a delay until the 12th or the 19th of July, and that would give time for you to find someone to address those questions and for Horace to look at it from the road standpoint to see if there is something that can be done to assuage Fern's concerns on the road and Michael's concerns on the drainage? Mike Sehestedt, do I hear a concern over there?

Michael Sehestedt, Missoula County Attorney, stated, not on this approach at all.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners postpone the decision on the Osprey Subdivision until July 12, 1995.

Michael Kennedy asked, Eric, would you be too upset to just grant a 30 day extension rather than just to the 12 of July. The reason why I'm saying that is I won't be back until the 9th. I would really like some time to really look at this and pay some attention to this because I think it's a big issue for us as well as for you, and I'm wondering whether that would create a problem for you to delay it a full 30 days. Fern, if you would amend your motion for that I would certainly appreciate it.

Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners postpone the decision on the Osprey Subdivision until July 19, 1995. Motion carried on a vote of 3-0.

Michael Kennedy asked, so you are going to write a note to this effect?

Eric Hefty stated, yes.

There being no further business to come before the Board, the Commissioners were in recess at 4:10 p.m.

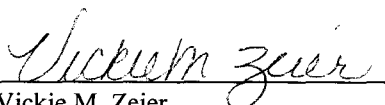
#### THURSDAY, JUNE 29, 1995

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was on vacation June 29th and 30th.

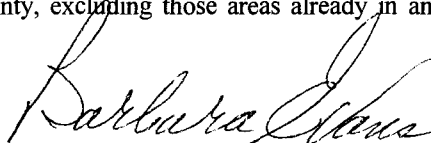
#### FRIDAY, JUNE 30, 1995

The Board of County Commissioners did not meet in regular session. Commissioner Kennedy was out of the office all day; Commissioner Evans was on vacation, but available for signatures.

Resolution No. 95-062 -- The Board of County Commissioners signed Resolution No. 95-062, a Resolution of Intent to create a corridor advertising zone with standards for off-premise signs, and that the Board will apply this District and its standards to all lands under the jurisdiction of Missoula County, excluding those areas already in an existing zoning district.



Vickie M. Zeier  
Clerk & Recorder



Barbara Evans, Chairman  
Board of County Commissioners